AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

11-7-80
Vol. 45—No. 218
BOOK 1:
Pages
73895-74154

BOOK 2:
Pages
74155-74462

federal register

Book 1 of 2 Books
Friday, November 7

Highlights

74158 **Alpha-Fetoprotein** HHS/FDA proposes to restrict the sale, use and distribution of test kits with certain exceptions and the CDC, PHS and HCFA jointly propose additional quality control and testing requirements; comments for both documents by 1-6-81; hearing on 1-15-81 (2 documents) (Part II of this issue)

74456 **Grant Programs—Medicare and Medicaid** HHS/HCFA announces grant funds for demonstration projects on the effectiveness of providing alcoholism services; apply by 1-15-81 (Part XII of this issue)

74017 **Standby Gasoline Rationing Plan** DOE solicits the 50 States, District of Columbia and Puerto Rico for proposals to preimplement a State Ration Reserve Plan and provides grant awards to complying States

74432 **Petroleum** DOE/ERA amends price regulations to reflect a markup of twenty cents per barrel for all crude oil resellers; effective 12-1-80 (Part X of this issue)

74422 **Energy** DOE publishes interpretations and rulings through 10-15-80 (Part IX of this issue)

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

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

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

Highlights

74004 **Grant Programs—Telecommunications** Commerce/NTIA announces that applications for planning and construction grants for public telecommunications facilities are invited by 1–19–81, under the Public Telecommunications Facilities Program

73923 **Mobile Homes** HUD/FHC increases loan limits and maturities to the authorized maximum on mobile homes and lot loans; effective 11–7–80; comments by 1–6–81

73962 **Grant Programs—Housing** HUD announces transmittal to Congress of proposal on community development block grants

74384 **School Breakfast and Lunch Programs** USDA/FNS proposes changes in the Summer Food Service Program for children; comments by 12–7–80 (Part VII of this issue)

74093 **Grant Programs—Social** Labor/ETA announces several awards for research on social and institutional processes affecting Hispanic American Employment Outcomes

73955 **Over-the-Counter-Drugs (OTC)** HHS/FDA proposes that hair grower and hair loss drug products be classified as not generally effective and misbranded for OTC use; comments by 2–5–81

74416 **Grant Program Requirements** OMB request comments by 1–15–81, on the OMB circular entitled managing generally applicable requirements for assistance programs (Part VIII of this issue)

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74016 Commerce/Sec'y

74141 **Sunshine Act Meetings**

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 726

[Amendment 15]

Burley Tobacco Quota Program; Correction

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Correction of final rule.

SUMMARY: This document corrects a previous **Federal Register** document relating to the burley tobacco quota program (FR Doc. 80–31682) appearing at page 67296 in the issue for Friday, October 10, 1980.

EFFECTIVE DATE: October 10, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burgess, Program Specialist, Agricultural Stabilization and Conservation Service, Washington, D.C. 20013, (202) 447–7935.

SUPPLEMENTARY INFORMATION: In FR Doc. 80–31682 appearing at page 67296 in the **Federal Register** of Friday, October 10, 1980, Amendment 15 in the heading of the document was shown incorrectly as "Amendment 14". This document corrects the heading to read "Amendment 15".

Final Rule

The heading of the document appearing at page 67296 in the **Federal Register** (FR Doc. 80–31682) of Friday, October 10, 1980, is changed to read "Amendment 15".

Signed at Washington, D.C., on October 30, 1980.

Bill Cherry,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80–34697 Filed 11–6–80; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Parts 906 and 944

[Texas Orange and Grapefruit Regulation 32; Orange Import Regulation 11]

Handling Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Fruits; Import Regulations; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes minimum grade and size requirements for Texas oranges and grapefruit and for imported oranges. The action is necessary to assure shipment of ample supplies of fruit of acceptable grade and size in the interests of growers and consumers.

DATES: Effective November 10, 1980, through November 8, 1981.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Statement relative to this final rule is available upon request from the above named individual.

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." Notice was published in the October 17, 1980, issue of the **Federal Register** (45 FR 68951) that the Department was considering establishment of minimum grade and size regulations, to be effective under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906). This marketing agreement and order regulate the handling of oranges and grapefruit grown in Texas, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). A conforming regulation for imported oranges, effective under § 8e (7 U.S.C. 608e–1) of this act, was also considered. The notice provided that all written comments be submitted by November 3, 1980. None were received.

The minimum grade and size requirements for Texas oranges and grapefruit reflect the Department's appraisal of the need for regulating domestic shipments of Texas oranges and grapefruit during the specified period, based on the available supply and current and prospective market demand conditions. The minimum grade and size requirements for imported oranges, which are the same as those for Texas oranges, are issued under § 8e of the act, as required. Both the domestic and import requirements are the same as those currently in effect through November 9, 1980, under § 906.362 Texas Orange and Grapefruit Regulation 31, and § 944.309 Orange Import Regulation 10.

The regulations with respect to Texas oranges and grapefruit are based upon recommendations of the Texas Valley Citrus Committee established under the marketing order. The 1980–81 season Texas orange crop is forecast at 5,600,000 boxes (85 pounds net weight), 39 percent above the 1979–80 crop; while the Texas grapefruit crop is forecast at 9,000,000 boxes (80 pounds net weight), 14 percent more than the 1979–80 production. In Texas, citrus trees recovered well from the summer's heat stress. Irrigation kept adequate moisture on trees to insure good crops. Hurricane Allen brought needed rains which reduced irrigation needs but caused some fruit droppage. Fruit is sizing well and condition is good. Harvest of early oranges began in late September.

The committee estimates that about 50 percent of the Texas orange crop, and 60 percent of the Texas grapefruit crop will be marketed as fresh fruit. In addition to the regulated domestic market (United States, Canada, and Mexico), Texas oranges are also sold in the fresh export market, the processed products market, and the local unregulated market within the production area. Fresh shipments of Texas oranges and grapefruit meet considerable competition in major markets from citrus produced in other areas of the country. This season, about 2 percent of the nation's orange supply and about 13 percent of the nation's grapefruit supply is expected to be produced in Texas.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is found that

the domestic requirements are in accordance with the provisions of this marketing agreement and order, and that the domestic and import requirements are necessary to establish and maintain orderly marketing conditions, and they will tend to effectuate the declared policy of the act in the interests of growers and consumers.

It is further found that good cause exists for not postponing the effective date of these regulations until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning these regulations, with an effective date of November 10, 1980, was published in the **Federal Register**, and no objection to the regulations or such effective date was received; (2) the recommendation for regulation was developed at a public meeting at which interested persons were afforded an opportunity to submit their views; (3) the regulations will not require any special preparation on the part of the persons subject to these requirements which cannot be completed by the effective time; (4) shipment of the 1980–81 season Texas orange and grapefruit crops have already begun; (5) the regulatory provisions for Texas oranges and grapefruit, and for imported oranges are the same as those currently in effect and those proposed in the notice; (6) the import requirements are mandatory under § 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and they should become effective at nearly the same time as is reasonably practicable as the domestic requirements; (7) the import regulation imposes the same grade and size requirements on imports of oranges as are being made applicable to shipments of Texas oranges; and (8) three days notice thereof, the minimum prescribed by § 8e, is provided with respect to this import regulation.

Therefore, new §§ 906.363 and 944.310 are added to read as follows: (§§ 906.363 and 944.310 expire November 8, 1981, and will not be published in the annual Code of Federal Regulations).

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

§ 906.363 Texas Orange and Grapefruit Regulation 32.

(a) During the period November 10, 1980, through November 8, 1981, no handler shall handle any variety of oranges or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Such oranges are at least pack size 288, as such size is specified in § 2851.691(c) of the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2 9/16 inches;

(3) Such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in § 2851.630(c) of the U.S. Standards for Grades of Grapefruit (Texas and States other then Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3 9/16 inches: *Provided,* That any handler may handle grapefruit smaller than pack size 96, provided such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3 5/16 inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing order.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and diameter shall mean the same as in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.680–2851.714) or in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.620–2851.653).

PART 944—FRUITS; IMPORT REGULATIONS

§ 944.310 Orange Import Regulation 11.

(a) *Applicability to imports.* Pursuant to § 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States of any oranges is prohibited during the period November 10, 1980, through November 8, 1981, unless such oranges meet the minimum grade and size requirements specified in paragraphs (a)(1) and (a)(2) of § 906.363 Texas Orange and Grapefruit Regulation 32.

(b) It is hereby determined that oranges imported into the United States are in most direct competition with oranges grown in the Lower Rio Grande Valley in Texas, and that the grade and size requirements specified in this section are the same as those being made effective for Texas oranges in § 906.363.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective Service, applicable to the particular shipment of oranges, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944).

(d) The term "importation" means release from custody of the United States Customs Service.

(e) *Minimum quantity exemption:* Any person may import up to ten 7/10 bushel cartons, or equivalent quantity, of oranges exempt from the requirements specified in this section, except for oranges which have been inspected and found not to meet such requirements.

(f) No provisions of this section shall supersede the restrictions or prohibitions on oranges under the Plant Quarantine Act of 1912.

(g) Nothing contained in this section shall be deemed to preclude any importer from reconditioning, prior to importation, any shipment of oranges for the purpose of making it eligible for importation. Any lot of oranges or portion thereof which subsequently fails to meet the grade or size requirements specified herein may not be imported. Disposal of such fruit at the port of entry shall be certified by the Federal or Federal-State Inspection Service. Costs of certifying the disposal of rejected oranges shall be borne by the importer.

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

Dated: November 5, 1980, to become effective November 10, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-34964 Filed 11-5-80; 1:05 pm]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 278]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period November 9–15, 1980. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: November 9, 1980.

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

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

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on November 4, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.578 is added as follows:

§ 910.578 Lemon regulation 278.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period November 9, 1980, through November 15, 1980, is established at 215,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: November 5, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-35055 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 971

Lettuce Grown in Lower Rio Grande Valley in South Texas; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorized expenses for the functioning of the South Texas Lettuce Committee. It will enable the committee to collect assessments from first handlers of lettuce grown in the Lower Rio Grande Valley in South Texas and to use the resulting funds for its expenses.

EFFECTIVE DATE: During fiscal period ending July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–2615. The Impact Analysis relating to this final rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION: *Findings.* 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."

Pursuant to Marketing Order No. 971 (7 CFR Part 971), regulating the handling of lettuce grown in Cameron, Hidalgo, Starr and Willacy Counties in Texas, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the committee, established under the marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments, engage in public rulemaking procedure, and that good cause exists for not postponing the effective date until 30 days after publication (5 U.S.C. 553), as the order requires that the rate of assessment for a particular fiscal period shall apply to all assessable lettuce handled from the beginning of such period. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the committee on October 21, 1980, at McAllen. No objections were offered. To effectuate the declared purposes of the act, it is necessary to make these provisions effective as specified.

Section 971.219 (44 FR 66178, November 19, 1979) is hereby deleted and a new § 971.220 is added as follows:

§ 971.219 [Deleted]

§ 971.220 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1981, by the South Texas Lettuce Committee for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate amount to $40,875.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be three cents ($0.03) per carton of assessable lettuce handled by him as the first handler during the fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve to the extent authorized in § 971.43(a)(2).

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

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

Dated: November 4, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-34898 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, 274

[Release Nos. 33-6254, IC-11414, File No. S7-743]

Bearing of Distribution Expenses by Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting a rule to permit open-end management investment companies to bear expenses associated with the distribution of their shares, if such companies comply with certain conditions and procedures. The rule requires that any decision by an open-end management investment company to use its assets to finance distribution be approved by its shareholders and directors, including its disinterested directors. The rule also contains provisions intended to ensure that the disinterested directors are not dominated nor unduly influenced by management and that the directors are fully informed and exercise reasonable business judgment. The procedures in the rule by which shareholders and directors would approve a plan to use assets for distribution are generally similar to those prescribed by statute for approval of investment advisory contracts. The procedural requirements are somewhat less stringent than they were in the rule as proposed.

The Commission also is adopting a rule to exempt from the requirement of prior Commission approval, to the extent necessary, certain agreements between open-end management investment companies and their affiliated persons whereby investment company assets are used for distribution, if such agreements are entered into in compliance with the rule permitting such companies to bear their distribution expenses.

The Commission is adopting certain disclosure and reporting requirements relating to the use of assets for distribution, including a revision of the registration and reporting form for open-end management investment companies.

The Commission is taking these actions because it believes that directors and shareholders of open-end management investment companies shold be able to make business judgments to use fund assets for distribution in appropriate cases but that, in view of the investment adviser's conflict of interest with respect to any recommendation to bear distribution expenses and because of uncertainties about whether such companies are likely to benefit from such expenditures, any such exercise of business judgment should be subject to conditions designed to ensure that it is made by persons who are free of undue management influence and have carefully considered all relevant factors.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Richard W. Grant, Special Counsel to the Director, (202) 272-2041, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 12b-1 (17 CFR 270.12b-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Act") to permit open-end management investment companies ("mutual funds" or "funds") to bear expenses associated with the distribution of their shares. Among the significant provisions of the rule are the following:

—Selection and nomination of directors who are not interested persons of the fund must be committed to the discretion of such disinterested directors;

—A fund which decides to bear distribution expenses must formulate a written plan describing all material aspects of the proposed financing of distribution, and all agreements relating to implementation of the plan must be in writing; such plan and agreements must contain certain provisions similar to those required by the Act for investment advisory contracts;

—The plan must be approved initially: (1) By a vote of at least a majority of the fund's outstanding voting securities; (2) by its board of directors as a whole; and (3) separately by its directors who are not interested persons of the fund and have no direct or indirect financial interest in the operation of the plan or any agreement related to the plan;

—In considering a plan to finance distribution, the directors must give appropriate weight to all pertinent factors; and

—The directors must decide, in the exercise of their reasonable business judgment and in light of their fiduciary duties under state law and under the Act, that there is a reasonable likelihood that a plan will benefit the fund and its shareholders.

The Commission also is adopting rule 17d-3 (17 CFR 270.17d-3) under the Act to provide an exemption from section 17(d) (15 U.S.C. 80a-17(d)) of the Act and rule 17d-1 (17 CFR 270.17d-1) thereunder, to the extent necessary, for agreements between a mutual fund and its affiliated persons whereby payments are made by the fund with respect to distribution, if such agreements are entered into in compliance with rule 12b-1. The Commission also is adopting certain disclosure and reporting requirements relating to use of assets for distribution, so that funds which bear distribution expenses in accordance with rule 12b-1 will disclose that fact to shareholders and prospective investors, as well as report it in registration statements filed with the Commission.

Background

In November, 1976, the Commission held public hearings on the use of fund assets for distribution.[1] After analyzing the comments and written submissions made at the hearings, the Commission reiterated its traditional view that it is generally improper under the Act for mutual funds to bear direct or indirect expenses related to the distribution of their shares.[2] However, the Commission has been reviewing the issue in light of public interest in and comment on the legal and policy implications of use of fund assets for distribution. In May, 1978, the Commission issued an Advance Notice of Proposed Rulemaking concerning conditions under which mutual funds might be permitted to bear distribution expenses.[3] Release No. 10252 stated the Commission's belief that it would be useful to explore further whether permitting mutual funds to finance distribution could, under some circumstances, benefit investors. It also solicited public comment on a variety of proposed conditions upon such use of assets designed to safeguard the interests of investors.

The Commission reevaluated the issue of funds bearing distribution expenses in view of the comments received in

[1] The hearings were announced in Investment Company Act Release No. 9470 (Oct. 4, 1976) (41 FR 44770, Oct. 12, 1976) ("Release No. 9470"). Copies of the hearing transcripts and written submissions made in connection with the hearings are filed in File No. 4-186.

[2] Investment Company Act Release No. 9915 (Aug. 31, 1977) (42 FR 44810, Sept. 7, 1977).

[3] Investment Company Act Release No. 10252 (May 23, 1978) (43 FR 23589, May 31, 1978) ("Release No. 10252").

response to Release No. 10252[4] and in view of the philosophy and objectives of the Investment Company Act Study being conducted by the Division of Investment Management. The Commission concluded that there were a number of difficulties with some of the conditions proposed in Release No. 10252. Accordingly, in September, 1979, the Commission proposed for public comment rule 12b–1 under the Act.[5] Generally, the proposed rule would make it unlawful for a mutual fund to finance distribution directly or indirectly except in compliance with the rule's substantive provisions. It would prescribe procedural requirements which are similar to those established by the Act for approval of investment advisory contracts, although the requirements of the proposed rule were more stringent. The substantive provisions of the proposed rule would place a great deal of responsibility on fund directors, especially the disinterested directors. The provisions were intended to insure that: (1) The disinterested directors would be free of domination or undue influence by management; (2) the directors would be fully informed and consider all relevant factors; and (3) the directors would exercise reasonable business judgment and would act in a manner consistent with their fiduciary duties.

Summary of Comments on Release No. 10862

Thirty-two comments were received on Release No. 10862.[6] Twenty-two commentators, associated primarily with the mutual fund industry, submitted statements favoring the use of fund assets for distribution.[7] Six commentators argued against such use of fund assets,[8] and one commentator refrained from taking any position on the propriety of a fund using its assets for distribution.[9] In general, most commentators objected to at least some of the provisions of proposed rules 12b–1 and 17d–3. Several commentators also questioned some general statements made by the Commission in Release No. 10862.

Several commentators challenged the fundamental premises underlying the proposed rule. A common statement made by those in favor of using fund assets for distribution was that no Commission rule was necessary to enable funds to finance distribution.[10] Instead, these commentators thought that directors could already authorize a fund to bear distribution expenses. Several commentators thought that the proposed rule would create uncertainty about purportedly well-established and current industry practice whereby the level of advisory fees reflects distribution expenses of the advisers.[11]

Three of the commentators who opposed the use of fund assets for distribution concluded that withdrawal of the proposed rule and a reaffirmation of the Commission's traditional position was warranted because of the assertedly irreconcilable conflicts of interest of fund advisers and because the shareholder benefit would not be as discernible as that of advisers, since advisers clearly benefit from increased sales of fund shares.[12] Dreyfus and Federated, which also opposed using fund assets for distribution, thought that the proposed rule would destroy the entrepreneurial incentives provided by the Act. Dreyfus concluded that the additional responsibilities placed on the disinterested directors would improperly transform their role from one of supervision to one of management. Dreyfus questioned the ability of the disinterested directors to assume the management functions described in Release No. 10862. The board of directors of a fund advised by Dreyfus and a disinterested director[13] from that fund made similar comments individually.

Several commentators criticized the Commission's reliance on section 12(b) for rulemaking authority with respect to distribution and argued that Congress intended section 12(b) (15 U.S.C. 80a–12(b)) to authorize the Commission to adopt rules only where a fund distributed its own shares without an external underwriter.[14] Instead, several submitted that any distribution rule with respect to funds which have principal underwriters should be promulgated only under section 15 of the Act.[15]

Some commentators, who argued in favor of permitting mutual funds to bear distribution expenses, urged the Commssion to adopt the standard for decision-making by fund disinterested directors established by *Tannenbaum* v. *Zeller*, 552 F.2d 402 (2d Cir.), *cert. denied*, 434 U.S. 934 (1977), as the only legal requirement in the distribution area.[16] In *Tannenbaum*, the Court of Appeals for the Second Circuit held that the disinterested directors of a fund did not breach their fiduciary duty to the fund in deciding to forgo recapture of brokerage commissions because: The directors were truly independent of the adviser; they were fully informed of all the available alternatives; and they had made a "reasonable business judgment" after thorough review of all relevant factors. Others would place responsibility with the entire board of directors and/or shareholders.[17] The ABA urged that any rule adopted should apply only to those funds which knowingly elect to use fund assets for distribution purposes.

Two commentators suggested conditions governing use of fund assets for distribution that were, in some respects, similar to the proposed rule. Scudder would be sympathetic to a permissive rule if the independent directors of a fund concluded, acting in good faith, that a fund would benefit from sales expenditures by the fund, and if there was adequate disclosure to and consent by the shareholders. A disinterested director of Vanguard

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[4] The comments are summarized in Investment Company Act Release No. 10862 (Sept. 7, 1979) (44 FR 54014, Sept. 17, 1979) ("Release No. 10862").

[5] Release No. 10862. Certain disclosure and reporting requirements relating to the use of fund assets for distribution were also proposed in Release No. 10862. In addition, the release contained proposed rule 17d–3 under the Act.

[6] Copies of the comments are filed in File No. S7–743. Two comments were filed too late to be included in this summary. However, neither contained comments that had not already been made by the other commentators on the proposed rule.

[7] American Bar Association ("ABA"), Capital Research and Management Company ("Capital Research"), The Fidelity Group of Mutual Funds ("Fidelity Group"), Fidelity Management and Research Company ("Fidelity Management"), Neil Flanagin, Gardner, Carton & Douglas ("Gardner"), Investment Company Institute ("ICI"), Investors Diversified Services, Inc. ("IDS"), Investors Group of Companies ("Investors Group"), Alice P. Jones ("Jones"), Jones & Babson, Inc. ("Babson"), Lord Abbett & Co. ("Lord Abbett"), Massachusetts Financial Services Company ("Mass. Financial"), John G. McDonald ("McDonald"), John R. Metcalf, National Association of Securities Dealers, Inc., Paine Webber Cashfund, Inc. ("Paine Webber"), Pilgrim Management Corporation ("Pilgrim"), Charles D. Root, Jr. ("Root"), Scudder, Stevens & Clark ("Scudder"), The Vanguard Group of Investment Companies ("Vanguard"), and Waddell & Reed, Inc. ("Waddell").

[8] American Bankers Association ("American Bankers"), The Dreyfus Corporation ("Dreyfus"), The Dreyfus Third Century Fund, Inc. ("Dreyfus Fund"), Federated Investors, Inc. ("Federated"), State of California, Department of Corporations ("Calif. Department of Corporations"), and Harold N. Warsawer ("Warsawer").

[9] The Association of the Bar of the City of New York ("NYC Bar").

[10] Capital Research, Fidelity Group, ICI, McDonald, and Waddell.

[11] ICI, NYC Bar, Paine Webber, and Waddell.

[12] American Bankers, Calif. Department of Corporations, and Warsawer.

[13] Jones.

[14] Gardner, ICI, Mass. Financial, Paine Webber, and Waddell.

[15] ABA, ICI, Mass. Financial, and Waddell.

[16] Gardner, ICI, IDS, and Lord Abbett.

[17] Federated, Mass. Financial, and McDonald (director approval), and Babson (director and shareholder approval). In the context of responding specifically to the voting provisions of the proposed rule, several commentators, including some who preferred the *Tannenbaum* standard, supported the general concept of shareholder and director approval. Others opposed the requirements for shareholder approval. *See* pp. 13–14 *infra*.

thought that shareholder interests would be protected by independent directors exercising reasonable business judgments on distribution arrangements where: (1) The independent directors have no connection to or conflicts of interest with investment advisers, distributors, or any other organizations rendering services to the fund; (2) the independent directors are fully informed and represent a diversity of talent; (3) actual distribution expenses, whether paid directly or indirectly, are disclosed to shareholders; and (4) the independent directors review annually the long-term cost effectiveness and benefits to shareholders of any distribution expenses.

Commentators expressed some support for the statement in Release No. 10862 that there would be an indirect use of fund assets for distribution if the advisory fee was inflated to provide the adviser with funds for that purpose [18] and agreement with the position that any rule on distribution should encompass both direct and indirect distribution expenses.[19] In general, however, the commentors either criticized or were confused by the statement that distribution expenses include direct and indirect expenses primarily intended to result in the sale of shares of a fund. The ABA thought that directors should consider whether there is any indirect use of fund assets only if the directors previously made an express determination that a portion of the advisory fee would be used by the adviser to pay distribution expenses. Two commentators [20] thought that, to the extent approval of an underwriting contract which diverted a portion of investors' payments from the fund to the underwriter is deemed to be an indirect distribution expense, a fund and its directors could comply with section 15(b) of the Act (15 U.S.C. 80a–15(b)) and still violate the proposed rule. Others [21] were uncertain whether the indirect bearing of distribution expenses was intended to be subject to the proposed rule. Two commentators [22] urged that the concept of "indirect expenses" be deleted from the proposed rule.

Many commentators misconstrued the discussion in Release No. 10862 of the Commission's longstanding position that an adviser may use its "legitimate" or "not excessive" profits to finance distribution. In the opinion of several, such statements represented an improper and unwarranted expansion of the fiduciary duty standard embodied in section 36(b) of the Act (15 U.S.C. 80a–35(b)).[23] A few commentators concluded that the proposed rule would establish a level of profit standard that was rejected by Congress in 1970, when Congress considered profit standards for investment advisory agreements but instead created the fiduciary duty standard under section 36 (15 U.S.C. 80a–35).[24] The ABA and the ICI thought that every externally managed fund would be forced to adopt the procedures within the proposed rule rather than risk a later determination that the adviser's profits were not legitimate and that the failure to adopt a plan resulted in a violation of the rule. Fidelity Management, on the other hand, thought that the rule would discourage an adviser from using any of its profits for distribution for fear of second guessing by the Commission.

Many of the specific conditions suggested by the Commission drew extensive criticism from the commentators. For example, several objected to the definition of distribution expenses, part of which included a non-exclusive list of activities that would be deemed distribution expenses. Instead, the commentators recommended that the definition be changed to recite precisely all activities that would be deemed distribution expenses.[25]

Similarly, commentators criticized the requirement for two-thirds approval by shareholders and directors for the implementation of a distribution plan. They concluded that, since the potential for conflict in the decision whether a fund should bear distribution expenses would assertedly be no greater than the conflict involved in approving the advisory contract, a majority vote by shareholders and directors should be sufficient to approve a distribution plan,[26] and that there was no statutory basis for the more stringent voting requirements in the proposed rule.[27] Several commentators thought that it would be expensive [28] and difficult [29] for a fund to achieve such a high percentage of shareholder approval. Capital Research and Vanguard were of the opinion that, after the initial shareholder approval of a distribution plan, choice of specific arrangements to be used from time to time should be within the discretion of the board of directors. Capital Research argued against requiring shareholder approval after each adjustment to the basic plan. Other commentators saw no need to require any shareholder approval for a distribution plan proposal.[30]

Several commentators urged the Commission to eliminate the nominating committee requirement because they viewed it as unnecessary,[31] founded on erroneous premises,[32] inconsistent with the Act,[33] and creating additional problems.[34] Commentators also questioned the Commission's views in Release No. 10862 as to the possible lack of independence of independent directors, in light of the analysis by the Supreme Court in *Burks* v. *Lasker*, 99 S. Ct. 1831 (1979), concerning the role of disinterested directors.[35] Vanguard was the only commentator that expressly approved of the requirement that the selection and nomination of disinterested directors be committed to the discretion of the disinterested directors. Several commentators thought that, if the nominating committee concept is preserved in the proposed rule, interested directors should be allowed to participate in the nominating process.[36]

With respect to the requirement that the directors weigh all pertinent factors before deciding to use fund assets for distribution, including a list of nine requisite factors, a majority of commentators on this point preferred the Commission to issue a release incorporating the nine factors.[37] In such a format, they contended, the directors could be made aware of their obligations to consider each factor without the rigidity that they feared would occur if the factors became mandatory provisions in a rule.

The standard of care required of directors in implementing a distribution plan was viewed with concern by some commentators, who thought the standard suggested that there may be fiduciary duties under state law or under the Act which are inconsistent

[18] Lord Abbett.

[19] Vanguard.

[20] Fidelity Management and Paine Webber.

[21] Pilgrim and Vanguard.

[22] Babson and Pilgrim.

[23] ABA, Federated, IDS, and Waddell.

[24] Federated, NYC Bar, and Waddell.

[25] ABA, ICI, IDS, and NYC Bar.

[26] ABA, Capital Research, Federated, ICI, IDS, Investors Group, NYC Bar, Paine Webber, Pilgrim, Root, and Vanguard.

[27] Babson, Fidelity Management, Gardner, ICI, Mass. Financial, NYC Bar, and Waddell.

[28] ABA, IDS, and Paine Webber.

[29] ABA, Fidelity Management, Gardner, ICI, Lord Abbett, NYC Bar, and Paine Webber.

[30] Fidelity Management, Lord Abbett, and Scudder.

[31] Federated, Lord Abbett, and ICI.

[32] ABA, Federated, Fidelity Group, ICI, Paine Webber, and Pilgrim.

[33] ABA, Federated, Fidelity Group, ICI, Mass. Financial, and NYC Bar.

[34] Dreyfus Fund.

[35] ABA, Federated, Fidelity Group, ICI, and Paine Webber.

[36] ABA, Capital Research, and Fidelity Management.

[37] ABA, Fidelity Management, ICI, Investors Group, and Lord Abbett.

with a business judgment standard.[38] Instead, these commentators joined Mass. Financial in the view that a business judgment standard alone would be appropriate when directors considered adopting a distribution plan.

Release No. 10862 stated that the proxy statement relating to a proposal to use fund assets for distribution would have to describe all material aspects of the plan and all material aspects of any agreements relating to implementation of the plan and it listed numerous disclosure items. The few comments that were received on this portion of the proposed rule generally supported the concept of full disclosure to investors.[39] The Fidelity Group concluded that meaningful disclosure would be the most practical check on excessive commitments of fund assets for distribution expenses. Fidelity Management, however, objected to the list of items in Release No. 10862 that were deemed to be required disclosure items because it was concerned that such a pattern of regulation could be expected to expand into other areas.

Release No. 10862 noted that the Commission has taken the preliminary position in the *Vanguard* [40] proceeding that a fund which bears distribution expenses but which does not charge a front end sales load cannot refer to itself as a "no-load" fund or use equivalent terminology. Release No. 10862 stated further that the Commission would not change its position at this time but that further consideration would be given to the "no-load" issue in connection with the *Vanguard* proceeding. Scudder, adviser to eight "no-load" funds, argued that, if the term "no-load" could be applied where a fund pays promotional expenses, the term would lose its meaning. On the other hand, a few commentators argued that there was no justification for the position taken in the *Vanguard* proceeding because the Act makes a distinction between a "sales load" and "sales or promotional expenses," [41] and because such a prohibition would not necessarily result in fair disclosure.[42]

Commentators on proposed rule 17d–3 requested that the Commission clarify the effects of such a rule,[43] requested that the rule be expanded to encompass fund complexes,[44] and challenged the Commission's asserted characterization of situations raising questions under section 17(d) of the Act.[45] The ICI and IDS objected to what they considered the Commission's position that funds with a common adviser, directors and/or officers are affiliated persons of one another. Paine Webber objected to what it viewed as the assumption in proposed rule 17d–3 that a traditional advisory or distribution agreement involving a single fund and its underwriter is subject to rule 17d–1. Federated and Vanguard argued that distribution services would be done most efficiently on a group-sharing basis and that proposed rule 17d–3 ignores the fact that fund complexes, rather than individual funds, dominate the industry. The ABA questioned whether the proposed rule would apply only with respect to a single fund within a complex, to funds not within a complex, or to several funds within a complex.

Discussion

After a thorough review of the comments on proposed rule 12b–1 and the companion rules, the Commission has decided to adopt the rules substantially as proposed in Release No. 10862. In response to the comments, however, the Commission has made certain modifications to proposed rule 12b–1, which are discussed below. Since there may be circumstances under which it would be appropriate for a fund to bear its distribution expenses, the Commission believes there should be some latitude for fund directors to exercise their business judgment to authorize such a use of fund assets. Nevertheless, the Commission still remains generally concerned about: (1) The conflicts which may exist between the interests of a fund and those of its investment adviser in deciding whether a fund should pay its distribution costs; (2) the likelihood that the fund will benefit from paying for such costs, and (3) the fairness to existing shareholders. Therefore, the Commission believes that any permissive rule in this area must contain substantive standards to protect fund shareholders, guidelines to ensure an orderly process of decision-making by directors, and accountability for exercising the authority to use fund assets for distribution. The Commission has concluded that proposed rule 12b–1, as modified, and its companion rules establish an appropriate regulatory balance and should be adopted. The Commission and its staff will monitor the operation of the rules closely and will be prepared to adjust the rules in light of experience to make the restrictions on use of fund assets for distribution either more or less strict.

The Legal Authority To Adopt Proposed Rule 12b–1

Before proposing rule 12b–1 the Commission twice received public comment on its legal authority to regulate the direct or indirect use of fund assets for distribution. The release announcing the public hearings which were held in November, 1976, suggested as an issue for consideration: "What, if any, authority does the Commission have to adopt rules which would permit, prohibit, or limit the use of fund assets to pay distribution expenses?" [46] The Advance Notice of Proposed Rulemaking [47] stated that any ensuing rule proposal would be under section 12(b).

Relatively few of the presentations at the public hearings discussed the legal issues associated with the regulation of fund distribution expenses, but the prevalent view among those who did was that, although the Act did not necessarily prohibit the financing of distribution by funds, the Commission had the legal authority under the Act to prohibit or limit such activity. Of the 51 persons who commented on the Advance Notice, only three questioned the Commission's legal authority under section 12(b); only two argued affirmatively that the Commission lacks the authority to regulate expenditures by funds which have principal underwriters.

However, a significant number of the commentators on Release No. 10862 questioned the Commission's legal authority, so it is important to set forth fully the Commission's basis for relying primarily on section 12(b) for authority to regulate the use of fund assets for distribution.[48] Section 12(b) provides:

> It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 10(d)) to act as a distributor of securities of

[38] ABA, Federated, and ICI.

[39] Fidelity Group, Fidelity Management, and Lord Abbett.

[40] For a full discussion of this issue, see *In Re The Vanguard Group, Inc.*, Initial Decision, Admin. Proc. File No. 3–5281, 21 (Nov. 29, 1978).

[41] Paine Webber and Vanguard.

[42] Gardner and Paine Webber.

[43] ABA.

[44] Federated, Root, and Vanguard.

[45] ICI, IDS, and Paine Webber.

[46] Release No. 9470.

[47] Release No. 10252.

[48] It must be noted that the Commission is also relying on other sources of authority as well. Section 38(a) of the Act (15 U.S.C. 80a–37(a)) gives the Commission general authority to adopt rules "necessary or appropriate to the exercise of the powers conferred" elsewhere in the Act and specifically authorizes the Commission to define "accounting, technical, and trade terms" used in the Act. The latter phrase is significant because the term "distributor" in section 12(b) is not defined. In addition, section 17(d) of the Act authorizes the Commission to adopt rules regulating certain joint transactions involving investment companies and their affiliated persons and principal underwriters. The Commission is exercising its authority under section 17(d) to permit arrangements for use of fund assets for distribution which involve covered joint transactions only if such arrangements comply with rule 12b–1.

which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Many commentators argued that the Commission has no authority under this provision to regulate the distribution financing activities of funds which have principal underwriters because of the phrase "except through an underwriter." Most of these commentators believed that other provisions of the Act, primarily section 15(b), govern the distribution efforts of funds which have principal underwriters. Some contended that the proposed rule was inconsistent with the basic statutory scheme regulating the relationships between funds and their investment advisers and principal underwriters established by sections 10 and 15 of the Act (15 U.S.C. 80a–10, 80a–15) because some of the procedural and substantive requirements of the proposed rule were more rigorous than similar provisions in the Act.

Section 12(b) was intended to permit the Commission to regulate the use of mutual fund assets to finance distribution. Commission spokesman David Schenker testified that the purpose of the section was to protect funds "against excessive sales, promotion expenses, and so forth."[49] The phrase "except through an underwriter" does not deprive the Commission of authority over the distribution financing activities of funds which have underwriters. If a fund finances distribution, it becomes so actively and intimately involved in the distribution process that, even if it contracts with an underwriter, it cannot fairly be said to be distributing *through* that underwriter. Such a fund should more properly be viewed as acting as a distributor *along with* the underwriter.

Nevertheless, it is argued that section 15(b) of the Act is the exclusive source of authority to regulate the distribution arrangements of funds with underwriters. However, that section, in contrast to Section 12(b), provides no alternative mechanism for the regulation of fund expenditures to promote distribution. It would appear that section 15(b) is designed to regulate traditional underwriting arrangements, i.e., those where underwriters get their compensation from sales loads. Unlike section 15(a) (15 U.S.C. 80a–15(a)), Section 15(b) does not require any description of the compensation to be paid to the underwriter. This difference presumably exists because Congress did not expect funds to pay underwriters anything. It would appear that Congress sought to regulate under section 15(b) only distribution arrangements as it understood them to exist and did not comtemplate the bearing of distribution expenses by funds which have underwriters. Therefore, it is inconsistent with the purposes of the Act to conclude that Section 15(b) is the exclusive source of regulation of fund expenditures to promote distribution.

General Requirements

Many commentators were critical of the inclusion of indirect distribution expenses within the scope of the rule. Some appeared confused about what might constitute indirect expenses, and others recommended that the rule apply only to direct expenditures. One commentator recommended that directors consider whether there is an indirect use of fund assets only if the directors made an express determination that part of the advisory fee would be used for fund distribution expenses. Accepting these recommendations would make evasion of the rule easy. The Commission has historically been concerned with whether funds are paying for distribution in substance and not with the form of particular arrangements. In this connection, it should be noted that section 48(a) of the Act (15 U.S.C. 80a–47(a)) in effect prohibits doing indirectly that which cannot be done directly. Therefore, the Commission believes that the rule should apply to indirect expenses as well as direct expenses.

However, in light of the uncertainty evinced by the commentators, some further explanation is in order. If a mutual fund makes payments which are earmarked for distribution, that is obviously a direct use of fund assets for distribution. If a fund makes payments which are ostensibly for some other purpose, and the recipient of those payments finances distribution, the question arises whether the fund's assets are being used indirectly. The Commission's position has been and continues to be that there can be no precise definition of what types of expenditures constitute indirect use of fund assets. That judgment will have to be made based on the facts and circumstances of each individual case. Under proposed rule 12b–1, fund directors, particularly the disinterested directors, would bear substantial responsibility for making that judgment. Under sections 15(a) and (c) of the Act they are also responsible for evaluating and deciding whether to approve the advisory contract. In fulfilling these obligations directors of mutual funds would have to give careful scrutiny to any past, present or planned expenditures by the investment adviser for distribution, and determine on the basis of the facts of each particular case whether such expenditures constituted an indirect use of fund assets in violation of their fiduciary obligations under section 36 of the Act and in contravention of the rule. The Commission and its staff will continue to scrutinize arrangements which appear to involve the indirect use of fund assets for distribution.

Much of the confusion among the commentators arose from the description in Release No. 10862 of the effect proposed rule 12b–1 would have on advisers who bear the cost of distribution. Many commentators misconstrued the Commission's reaffirmation of its position that distribution financing activities by investment advisers do not necessarily involve an indirect use of fund assets. It is hoped that the following explanation will clarify the Commission's position. It is the Commission's view that, an indirect use of fund assets result if any allowance is made in the adviser's fee to provide money to finance distribution. Therefore, when an adviser finances distribution, fund directors, in discharging their responsibilities in connection with approval of the advisory contract, must satisfy themselves either that the management fee is not a conduit for the indirect use of the fund's assets for distribution or that the rule has been complied with. However, under the rule there is no indirect use of fund assets if an adviser makes distribution related payments out of its own resources. In determining whether there is an indirect use of fund assets, it is appropriate to relate a fund's payments pursuant to the advisory contract to the adviser's expenditures for distribution and to view such expenditures as having been made from

[49] H.R. 10065, *Investment Trusts and Investment Companies: Hearings Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong. 3d Sess. 112 (1940) (testimony of Commission spokesman David Schenker). H.R. 10065, which became law, embodied a compromise accepted both by the Commission and representatives of the investment company industry. (*Id.* at 15–16.) Shortly after passage of the Act, Alfred Jaretzki, who had participated in drafting the Act as a representative of closed-end companies, wrote about section 12(b):

[a]pparently the Commission was particularly fearful of the possibility that open-end investment companies in their formative stages might be made to shoulder the unprofitable burden of selling and distributing their shares during this period of heavy expenses and small return, building up the investment company for the benefit of some controlling person.

Jaretzki, *The Investment Company Act of 1940*, 26 Wash. U.L.Q. 303, 324–25 (1941) (footnote omitted).

the adviser's profits, if any, from the advisory contract. To the extent that such profits are "legitimate" or "not excessive", the adviser's distribution expenses are not an indirect use of fund assets. Many commentators drew unwarranted inferences from the use of "legitimate" and "not excessive" in Release No. 10862. Profits which are legitimate or not excessive are simply those which are derived from an advisory contract which does not result in a breach of fiduciary duty under section 36 of the Act. The courts have not established definitive standards for determining what does or does not constitute a breach of fiduciary duty in the compensation area, and, although the Commission reserves the right to express its own views of what such standards should be, it has not done so.

Some commentators suggested that the definition of distribution expenses recite precisely all activities that would be deemed distribution expenses. Recognizing that new distribution activities may continuously evolve in the future, and in view of the impracticability of developing an all-inclusive list, the Commission maintains that the better approach is to define distribution expenses in conceptual terms (e.g., financing activities primarily intended to result in the sale of fund shares).

Procedural Requirements

The Commission has reevaluated the requirement in the proposed rule for two-thirds approval by shareholders in light of comments about the practical difficulties funds anticipated in getting sufficient shareholder participation, as distinct from approval, to meet the two-thirds requirement. Consequently, the rule, as adopted, requires only a majority shareholder vote. The Commission believes that the approval requirements, including the requirement of director approval, are sufficient to protect adequately shareholder interests in deciding whether it is necessary or appropriate for a fund to bear its distribution expenses. In addition, the Commission does not believe it is necessary to impose the extraordinary requirement that two-thirds of the disinterested directors and of the board as a whole approve the use of fund assets for distribution. It is not clear that the practical effect of such a requirement would justify deviation from the normal requirement of a majority vote, especially since in most cases it would require the support of as many disinterested directors to achieve a majority vote as it would to achieve a two-thirds vote.

The rule has also been amended to clarify that, subsequent to the adoption of a distribution plan, only modifications which would materially increase the amount of money to be spent need be submitted to the shareholders for approval. Moreover, agreements pursuant to a plan will not be subjected to a shareholder vote. The Commission recognizes that once a distribution plan has been approved in the manner prescribed in the rule, directors should be allowed some discretion to modify agreements with the providers of distribution services as the circumstances change.

Independence of Directors

Permitting the use of fund assets for distribution is a major regulatory change for the Commission. This change reflects both altered circumstances and a determination by the Commission that adoption of rule 12b–1 is appropriate in light of the regulatory reform objectives of the Investment Company Act Study. Two central goals of the Study are to permit investment companies to exercise wider latitude in making business judgments without Commission approval and to enhance the role of directors, particularly the disinterested directors, in scrutinizing investment company affairs. These goals are interdependent in that the more capable the disinterested directors are of overseeing the kinds of activities of investment companies which are of regulatory significance, the more the Commission will be willing to reduce regulatory restrictions.

The Commission views a decision to use fund assets for distribution as a particularly difficult business judgment which is complicated by the conflicts of interest which are present. Since rule 12b–1 does not restrict the kinds or amounts of payments which could be made, the role of the disinterested directors in approving such expenditures is crucial. No formal provisions in a rule can insure that directors will make the right decision in every instance; however, the likelihood that a decision will be in the best interests of a fund and its shareholders will be increased if the disinterested directors are genuinely independent of management. Of course, a requirement that the tenure of disinterested directors be independent of management control will not guarantee that disinterested directors will in fact be independent. Nevertheless, experience indicates that such formal independence will breed an atmosphere in which actual independence will develop. The well-documented trend among corporations generally toward director independence (e.g., the increasing number of boards which have independent majorities and majority independent committees, including nominating committees) strongly implies a recognition of the validity of this proposition. Accordingly, the Commission believes that, in order for rule 12b–1 to be effective, disinterested directors must be independent.

The Commission remains concerned that there will be situations in which disinterested directors may not be able to act with complete independence in deciding whether to use fund assets for distribution because of the possibility that the advisers' control over the funds they advise could lead to domination of or undue influence over the disinterested directors. The Commission recognizes that many advisers who control the funds they advise would not attempt to misuse such control over the disinterested directors and that many disinterested directors are fully independent. However, the Commission still believes that it is appropriate to enhance the independence of disinterested directors by adopting the provisions of paragraph (c) as proposed. This belief reflects the cumulative experience of the staff in regulating the mutual fund industry and, for that reason, citations of such cases as *Burks* v. *Lasker* [50] are not apposite. Whatever *Burks* or *Tannenbaum* may have said about the theoretical role of disinterested directors or about the actual independence of the directors who were involved in those cases, it is the Commission's view that as a general proposition disinterested directors should not be entrusted with a decision on use of fund assets for distribution without receiving the benefit of measures designed to enhance their ability to act independently.

With respect to the argument that paragraph (c) is extra statutory, the Commission acknowledges that there are no identical provisions in the Investment Company Act, although

[50] 99 S. Ct. 1831. In *Burks* the Supreme Court held, in part, that the Act did not forbid disinterested directors from terminating non-frivolous law suits. In that case, the Court did not pronounce generally that under all circumstances disinterested directors are able to act with genuine independence. Instead, the court recognized that because of the potential conflicts, "some restraints upon the unfettered discretion of even disinterested mutual fund directors, particularly in their transactions with the investment adviser" may be justified (at 1839). Although the Commission does not view the measures in the rule which will enhance the independence of disinterested directors to be restraints upon such directors, the Commission believes that such measures, in the context of a permissive rule to allow funds to pay distribution expenses, are consistent with the Supreme Court's caution concerning the role of disinterested directors and are necessary and appropriate.

section 15(f) contains provisions of similar import.[51] Nevertheless, the Commission believes that paragraph (c) is a reasonable restriction. That provision does not impose a new regulatory requirement on all investment companies; instead it makes available an exemption from regulation for companies which elect to institute a corporate governance mechanism which, as suggested above, is consistent with salutary developments among corporations of all types.

Factors

In order to avoid the appearance of either unduly constricting the directors' decision making process or of creating a mechanical checklist, the Commission has decided to delete the list of factors from rule 12b–1. However, in order to insure a proper record of the deliberative process, the rule will require preservation of minutes. Since corporate minutes are frequently cryptic, the rule requires explicitly that these minutes set forth the factors the directors considered, together with an explanation of the basis for the decision to sue fund assets for distribution.

Although the Commission has decided not to require directors to consider any particular factors, the Commission believes that the factors enumerated in rule 12b.1 would normally be relevant to a determination of whether to use fund assets for distribution. Therefore, it appears that setting forth those factors in this release may provide helpful guidance to directors. The following list of factors is the same as the list contained in proposed rule 12b–1, except for slight amplification of the fourth factor:

(1) Consider the need for independent counsel or experts to assist the directors in reaching a determination;

(2) Consider the nature of the problems or circumstances which purportedly make implementation or continuation of such a plan necessary or appropriate;

(3) Consider the causes of such problems or circumstances;

(4) Consider the way in which the plan would address these problems or circumstances and how it would be expected to resolve or alleviate them, including the nature and approximate amount of the expenditures; the relationship of such expenditures to the overall cost structure of the fund; the nature of the anticipated benefits, and the time it would take for those benefits to be achieved;

(5) Consider the merits of possible alternative plans;

(6) Consider the interrelationship between the plan and the activities of any other person who finances or has financed distribution of the company's shares, including whether any payments by the company to such other person are made in such a manner as to constitute the indirect financing of distribution by the company;

(7) Consider the possible benefits of the plan to any other person relative to those expected to inure to the company;

(8) Consider the effect of the plan on existing shareholders; and

(9) Consider, in the case of a decision on whether to continue a plan, whether the plan has in fact produced the anticipated benefits for the company and its shareholders.

Reasonable Business Judgment

The Commission is adopting the standard of care required of directors in implementing a distribution plan as proposed originally in Release No. 10862. The Commission intentionally did not define the relationship between a "reasonable business judgment" and "fiduciary duties" under state law and under sections 36 (a) and (b) of the Act, nor did it define those director activities that would be consistent with each concept. The Commission did this in recognition that the concepts are constantly evolving and, particularly, that there have been no comprehensive or definitive interpretations of the various fiduciary duty requirements of section 36. Certainly it was not the Commission's intent to assert any such interpretation of its own. Rather, as stated clearly in Release No. 10862, paragraph (e) incorporates directors' existing duties in order to emphasize that formal compliance with the other provisions of the rule will not establish a safe harbor. The Commission believes that the standards for accountability placed on the directors concerning their decision to implement a distribution plan are necessary and are consistent with the standards under the Act and under state law required of fund directors in other decision making contexts.

Disclosure and Reporting Requirements

The Commission is adopting the disclosure and reporting requirements substantially as proposed in Release No. 10862 for the reasons stated in that release.[52] As noted above, the few comments that were received on the disclosure and reporting requirements generally supported the concept of full disclosure to investors. Moreover, the Commission continues to believe that it is inappropriate, at this time, to modify the position taken in the *Vanguard* proceeding that a fund which bears distribution expenses but which does not charge a front-end sales load cannot refer to itself as a "no-load" fund or use equivalent terminology. Instead, the Commission remains of the opinion that it is more appropriate to give further consideration to this issue within the context of the *Vanguard* proceeding.

Proposed Rule 17d-3

The Commission is adopting rule 17d-3 as proposed in Release No. 10862. One commentator asked whether the rule 17d-3 exemption would apply to several funds within a complex. Each fund within a complex can make individual and independent determinations, in accordance with the provisions of rule 12b-1, to bear its own distribution expenses. To the extent that each fund independently decides to bear its own distribution expenses, and to the extent that the provisions of section 17(d) and rule 17d-1 would otherwise apply, the exemption under rule 17d-3 is available. However, the Commission remains of the opinion that it would be inappropriate, in view of the *Vanguard* proceeding, to extend rule 17d-3 to arrangements for the joint sharing of distribution costs by funds which are affiliates (or affiliates of affiliates) of each other. The Commission wished to emphasize that it has no intention of categorizing certain transactions as raising the applicability of section 17(d) and rule 17d-3 of the Act. The Commission's only comment is that, to the extent that arrangements in which a fund pays for its distribution costs would involve the fund in a "joint enterprise" with an affiliated person, and if such arrangements were entered into in compliance with rule 12b-1, the Commission sees no need for prior Commission review and approval of the arrangements.

Authority, Effective Date

The Commission, pursuant to section 12(b) (15 U.S.C. 80a-12(b)), and section 38(a) (15 U.S.C. 80a-37(a)) of the Act hereby amends 17 CFR Part 270 by adding new § 270.12b-1. Further, the Commission pursuant to section 17(d) (15 U.S.C. 80a-17(d)) and 38(a) of the Act hereby amends 17 CFR Part CFR Part 270 by adding new § 270.17d-3. Finally, the Commission is amending 17 CFR Part 239 and 17 CFR Part 274 by amending § 239.15 and § 274.11, pursuant to sections 6, 7, 8, 19, and 19(a)

[51] Section 15(f) requires, inter alia, that the board be three-fourths disinterested for three years after a sale of an interest in the investment adviser resulting in assignment of the advisory contract.

[52] The Commission has slightly amended proposed new Item 9, Part II, Form N–1 (17 CFR 239.15, 274.11) in order to facilitate monitoring of expenditures for distribution.

of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)), and sections 8 (15 U.S.C., 80a-8) and 38(a) of the Act. This action is effective immediately pursuant to the Administrative Procedure Act (15 U.S.C. 553(d)(1)).

I. Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. Adding a new § 270.12b-1 as follows:

§ 270.12b-1 Distribution of shares by registered open-end management investment company.

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act (15 U.S.C. 80a-10(d))) to act as a distributor of securities of which it is the issuer, except through an underwriter.

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature.

(b) A registered, open-end management investment company ("Company") may act as a distributor of securities of which it is the issuer: *Provided,* That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing: *And further provided,* That:

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company;

(2) Such plan, together with any related agreements, has been approved by a vote of the board of directors of such company, and of the directors who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements; and

(3) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2) of this section;

(ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company; and

(iv) In the case of an agreement related to a plan,

(A) That it may be terminated at any time, without the payment of any penalty, by vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

(B) For its automatic termination in the event of its assignment; and

(4) Such plan provides that it may not be amended to increase materially the amount to be spent for distribution without shareholder approval and that all material amendments of the plan must be approved in the manner described in paragraph (b)(2) of this section;

(5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if selection and nomination of those directors who are not interested persons of such company are committed to the discretion of such disinterested directors;

(d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of this section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, and minutes describing the factors considered and the basis for the decision to use company assets for distribution must be made and preserved in accordance with paragraph (f) of this section;

Note.—For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.

(e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b) (15 U.S.C. 80a-35 (a) and (b)) of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders; and

(f) A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place.

2. Adding a new § 270.17d-3 as follows:

§ 270.17d-3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.

An affiliated person, of, or principal underwriter for, a registered open-end management investment company and an affiliated person of such a person or principal underwriter shall be exempt from section 17(d) of the Act (15 U.S.C. 80a-17(d)) and rule 17d-1 thereunder (17 CFR 270.17d-1), to the extent necessary to permit any such person or principal underwriter to enter into a written

agreement with such company whereby the company will make payments in connection with the distribution of its shares, *Provided*, That:

(a) Such agreement is made in compliance with the provisions of § 270.12b–1; and

(b) No other registered management investment company which is either an affiliated person of such company or an affiliated person of such a person is a party to such agreement.

II. Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By adding new Item 1(b)(15), Part II of Form N–1 as follows:

§ 239.15 Form N–1 for open-end management investment companies registered on Form N–8A.

§ 274.11 Form N–1, registration statement of open-end management investment companies.

* * * * *

Item 1. Financial Statements and Exhibits.

* * * * *

(b) Exhibits:

* * * * *

(15) copies of any plan entered into by Registrant pursuant to rule 12b–1 under the 1940 Act, which describes all material aspects of the financing of distribution of Registrant's shares, and any agreements with any person relating to implementation of such plan.

2. By adding new Item 9, Part II, of Form N–1 and renumbering current Item 9 in Part II as Item 10:

§ 239.15 Form N–1 for open-end management investment companies registered on Form N–8A.

§ 274.11 Form N–1, registration statement of open-end management investment companies.

* * * * *

Item 9. Distribution Expenses.

Furnish a summary of the material aspects of any plan pursuant to which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The summary should include, among other material information, the following:

(a) The amounts paid by the Registrant under the plan during the last fiscal year, as a total dollar amount and a percentage of Registrant's average net assets during that period;

(b) The manner in which such amount was spent on:

(i) Advertising,

(ii) Printing and mailing of prospectuses to other than current shareholders,

(iii) Compensation to underwriters,

(iv) Compensation to dealers,

(v) Compensation to sales personnel, and

(vi) Other (specify).

(c) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Registrant; or

(ii) Any director of the Registrant who is not an interested person of the Registrant.

(d) The benefits, if any, to the Registrant resulting from the plan.

Instruction: In responding to this item the Registrant should take note of the requirements of rule 12b–1 under the 1940 Act (17 CFR 270.12b–1).

By the Commission.

George A. Fitzsimmons,

Secretary.

October 28, 1980.

[FR Doc. 80–34786 Filed 11–6–80; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 240 and 249

[Release No. 34–17258, File No. S7–590]

Filings by Self-Regulatory Organizations of Proposed Rule Changes and Other Materials with the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and form; revocation of rule and form.

SUMMARY: The Commission is amending the requirements applicable to the filing by self-regulatory organizations of proposed rule changes and certain other materials. The amendments, which are intended to facilitate the review of proposed rule changes, (i) specify in greater detail the information required in a filing; (ii) expand the categories of proposed rule changes that may become effective summarily to include certain rules effecting changes in existing services of registered clearing agencies; and (iii) clarify which actions of self-regulatory organizations are proposed rule changes. In addition, the Commission is revoking the requirement that self-regulatory organizations file stated policies, practices, and interpretations not deemed to be rules. The Commission is also revoking requirements that each national securities exchange or registered securities association file separately information about its rules in effect on June 4, 1975, and certain forms, reports, or questionnaires. Finally, the Commission is adopting a rule requiring registered clearing agencies to file material they make generally available. The Commission is withdrawing, in a separate release, proposals relating to these matters.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Susan Davis, Esq., (202) 272–2828; or Jeffrey Jordan, Esq., (202) 272–2847, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the following action with respect to proposals in its May 1979 release [1] (the "Proposal Release") to facilitate review of proposed rule changes of self-regulatory organizations under Section 19(b) [2] of the Securities Exchange Act of 1934 (the "Act"): [3]

(1) Adoption of amendments to Rule 19b–4 under the Act,[4]

(A) Clarifying which actions of a self-regulatory organization constitute proposed rule changes,

(B) Providing summary effectiveness for certain rules changing existing services of registered clearing agencies,

(C) Eliminating the requirement that a self-regulatory organization file on Form 19b–4B [5] notice of stated policies, practices, and interpretations not deemed to be rules, and

(D) Eliminating the requirement that each national securities exchange and registered securities association file information about its rules in effect on June 4, 1975.

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[1] Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 (May 29, 1979). The Commission received comments in response to the Proposal Release from the American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), Depository Trust Company ("DTC"), Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers, Inc. ("NASD"), National Securities Clearing Corporation ("NSCC"), New York Stock Exchange, Inc. ("NYSE"), and Options Clearing Corporation ("OCC"). Securities and Exchange Commission File No. S7–590 ("File No. S7–590").

[2] 15 U.S.C. 78s(b). Section 19(b) requires a self-regulatory organization to file with the Commission each of its proposed rule changes, accompanied by a concise general statement of the basis and purpose of the proposed rule change. A proposed rule change cannot take effect unless the Commission approves it, or it is otherwise permitted to become effective under Section 19(b). To approve a proposed rule change, the Commission must find that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization proposing the rule change.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.19b–4. Rule 19b–4 was adopted in August 1975. Securities Exchange Act Release No. 11604 (Aug. 19, 1975), 40 FR 40509 (Sept. 3, 1975).

[5] 17 CFR 249.819b.

(2) Adoption of amendments to Form 19b–4A [6] and redesignation of Form 19b–4A as Form 19b–4.

(3) Revocation of Form 19b–4B, on which notice is filed of stated policies, practices, and interpretations not deemed to be rules.

(4) Revocation of Rule 17a–18,[7] which requires national securities exchanges and registered securities associations to file new or substantially modified forms, reports, or questionnaires.

(5) Adoption of Rule 17a–22 [8] requiring registered clearing agencies to file materials they issue or make generally available.

(6) Withdrawal of proposed amendments to Rule 19b–4 and Form 19b–4A that would have provided summary effectiveness for certain proposed rule changes of self-regulatory organizations circulated, for pre-filing review, to the Commission and to persons who would be subject to the rules.

(7) Withdrawal of proposed Rule 3b–7, which would have defined the term "rule" of a self-regulatory organization for purposes of Sections 3(a)(27) and 3(a)(28) of the Act.[9]

The Commission's actions announced today [10] are intended to facilitate the review of proposed rule changes of self-regulatory organizations [11] and are designed to complement the Commission's ongoing program to improve the review process.[12] The self-regulatory organizations have also undertaken efforts to improve the review process and have substantially assisted the Commission in its efforts in this area. Continued cooperation and communication between the Commission and the self-regulatory organizations is essential to the efficient administration of Section 19(b).

The Commission's actions are discussed in detail in the remainder of this release,[13] which consists of the following sections:

I. Amendments to Form 19b–4.
II. Expansion of categories of proposed rule changes that may become effective on filing.
III. Self-regulatory organization actions constituting proposed rule changes.
IV. Revocation of certain filing requirements; adoption of rule 17a–22 concerning registered clearing agencies.
V. Statutory basis.
VI. Text of rules and form.

I. Amendments to Form 19b–4

A major problem the Commission has encountered in administering Section 19(b) is that many proposed rule change filings have not provided an adequate basis for Commission review. As a result, the Commission's staff has had to devote considerable time and resources to obtaining from self-regulatory organizations necessary information not provided in the filings, thereby delaying the rule review process. To avoid such delays, the Commission proposed amendments to Form 19b–4A designed to elicit the information necessary for it to review proposed rule changes promptly and efficiently. The Commission is adopting the proposed amendments with the modifications described below and is redesignating Form 19b–4A as Form 19b–4.

A. Instruction B. Need for Careful Preparation of the Completed Form, Including Exhibits

The Commission proposed a new Instruction B to Form 19b–4 emphasizing that the information required by the form is necessary for the Commission to determine whether, as required by Section 19(b) of the Act, a proposed rule change is consistent with the Act and the rules and regulations thereunder. Instruction B also makes clear that any filing not in compliance with the requirements of the form may be returned to the self-regulatory organization at any time before issuance of the notice of filing.

Commentators expressed concern that Instruction B would permit the Commission or its staff to return filings on the basis of substantive objections.[14] Instruction B, however, does not contemplate that filings will be returned for reasons other than failure to comply with the requirements of the form.

Another commentator stated that Instruction B could exacerbate pre-filing delays unless the Commission established a limit on the time for determining whether a filing is deficient.[15] The Commission intends to publish notices of filing promptly. Since prompt publication of the notices will effectively reduce pre-filing delays, the Commission believes that establishing further limits on the time for pre-filing review is unnecessary.

The Commission believes that the information provided on Form 19b–4 must be adequate to support a Commission finding that a proposed rule change is consistent with the Act and applicable rules and regulations.[16] Returning deficient filings permits the Commission and its staff to focus on filings that provide an adequate basis for review. Accordingly, the Commission is adopting Instruction B, as proposed, with only editorial changes.

B. Instruction D. Amendments

Instruction D prescribes requirements for amending rule change filings. The Commission proposed certain amendments to the instruction, including requirements to indicate changes, if any, made from the preceding filing and from existing rules of the self-regulatory organization.

One commentator stated that when amending a filing the self-regulatory organization should not be required to submit the entire text of a lengthy rule in order to alter, for example, only one page of the text.[17] The Commission agrees that the filing requirement should afford some flexibility in that regard and has revised the instruction to provide that if the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may file only those portions of the text in which amendments are made if the filing is clearly understandable on its face.

Instruction D has also been revised in several other respects. First, it has been revised to make clear that the self-regulatory organization must file, in accordance with Instruction F, copies of any correspondence or other communications reduced to writing (including comment letters) to and from the self-regulatory organization that it prepares or receives on a proposed rule change after the rule change is filed with the Commission but before the Commission takes final action on it. Second, Instruction D has been revised to provide that if information in such a communication makes the rule change filing inaccurate, the filing must be amended to correct the inaccuracy.

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[6] 17 CFR 249.819a.

[7] 17 CFR 240.17a–18.

[8] 17 CFR 240.17a–22.

[9] 15 U.S.C. 78c(a)(27), 78c(a)(28).

[10] In accordance with Section 17A(d)(3)(A)(i) of the Act, 15 U.S.C. 78q–1(d)(3)(A)(i), at least fifteen days before this announcement, the Commission consulted and requested the views of the Board of Governors of the Federal Reserve System.

[11] Rule 19b–4 applies only to proposed rule changes of self-regulatory organizations. The Commission has proposed a separate rule under the Act, proposed Rule 11Aa3–2, which would establish procedures relating to plans governing the planning, developing, operating or regulating of a national market system, or one or more facilities thereof. See Securities Exchange Act Release No. 16410 (Dec. 7, 1979), 44 FR 72607 (Dec. 14, 1979).

[12] Each year since 1975 the Commission has received approximately three hundred filings of proposed rule changes and stated policies, practices, and interpretations not deemed to be rules.

[13] The withdrawal of proposed Rule 3b–7 and certain proposed amendments to Rule 19b–4 and Form 19b–4A is the subject of a brief companion release also issued today, Securities Exchange Act Release No. 17259 (October 30, 1980) (the "Companion Release").

[14] DTC, NASD, and NYSE Responses, File No. S7–590.

[15] Amex Response, File No. S7–590.

[16] *See* text accompanying n. 24, *infra*.

[17] NASD Response, File No. S7–590.

Third, it has been revised to describe more clearly the manner in which changes made by the amendment are to be marked. Finally, the instruction has been revised to provide that the self-regulatory organization is required to explain the purpose of the amendment and, if the amendment changes the purpose of the proposed rule change, it is also required to provide a revised statement of the purpose of the proposed rule change.[18]

C. Instruction E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

Instruction E provides that if the self-regulatory organization files a proposed rule change before it has completed all action necessary for internal approval of the change, it must consent to an extension of time until at least thirty-five days after the self-regulatory organization files an amendment stating that it has completed action on the rule change. One commentator stated that the requirement is unnecessarily rigid.[19] The commentator suggested that the instruction should provide for extensions of up to thirty-five days, to be negotiated as circumstances warrant.

In most instances, after the self-regulatory organization files an amendment stating that it has completed action on the proposed rule change, the Commission requires thirty-five days to complete its review. Where the Commission completes its review before expiration of the thirty-five day period, it can accelerate effectiveness of the rule change.[20] Accordingly, the Commission is adopting Instruction E without the suggested amendment.

D. Item 1. Text of the Proposed Rule Change

Paragraph (a) of Item 1 requires the self-regulatory organization to set forth the text of the proposed rule change. The Commission proposed to amend paragraph (a) to require the self-regulatory organization to submit any existing form, report, or questionnaire that is directly related to a proposed rule change. A number of self-regulatory organization rules are implemented through prescribed forms, reports, or questionnaires not set forth in the text of the rules published by the self-regulatory organization. In considering such rules, the Commission reviews the related forms, reports, or questionnaires. Accordingly, to expedite the review process, the Commission is adopting the amendment to Item 1(a) as proposed.

Paragraph (b) of Item 1 of Form 19b–4A as originally adopted requires the self-regulatory organization to set forth the text of any rules the application of which is affected, directly or indirectly, by the proposed rule change. In response to comments that that requirement was overly burdensome, the Commission proposed to amend paragraph (b) to require that the designation or title, rather than the text, of such rules be provided.

One commentator suggested that the Commission revise paragraph (b) to delete the requirement that the self-regulatory organization list those rules that the proposed rule change affects indirectly.[21] The commentator stated that the requirement is unwieldy and burdensome because indirect effects cannot be predicted fully and accurately.

The Commission does not intend to require the self-regulatory organization to predict every effect a proposed rule change could have on the organization's existing rules. Rather, the Commission intends to require the self-regulatory organization merely to identify those rules on which the organization reasonably expects the proposed rule change to have direct or significant indirect effects. Accordingly, the Commission has revised the amendment to Item 1(b) to make that intent clear.

E. Item 2. Procedures of the Self-Regulatory Organization

Item 2 requires the self-regulatory organization to describe action on the proposed rule change taken by its members or board of directors or other governing body. The Commission proposed to amend Item 2 to require the self-regulatory organization to provide the name and telephone number of the staff member prepared to respond to questions and comments on the proposed rule change. The Commission has revised the amendment, in light of a suggestion made by one commentator,[22] to provide for instances where different persons at the self-regulatory organization are best prepared to discuss different aspects of the proposal.

F. Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Item 3 of Form 19b–4A as originally adopted requires a statement of the purpose of a proposed rule change, and Item 4 requires a statement of its basis under the Act. The Commission proposed to combine the statements of purpose and basis. The Commission also proposed amendments to specify in detail the information required in the statement, making clear that the statement should be sufficiently detailed and specific to support a Commission finding under Section 19(b) that the proposed rule change is consistent with the Act and rules and regulations thereunder. Several commentators objected to proposed Item 3, contending that the required statement either is unnecessary or exceeds the Section 19(b)(2) requirement for a "concise" statement.[23]

The statement of purpose and basis must be sufficient to support a finding by the Commission that a proposed rule change is consistent with the Act and rules and regulations thereunder. The Congress anticipated that, in most instances, the Commission's statement of reasons for approving a proposed rule change would "simply be an endorsement of the justification filed by the self-regulatory agency."[24] The Commission is adopting the proposed amendments to the statement of purpose and basis, limiting the requirement to discuss problems persons are likely to have in complying with the proposed rule change. In light of objections raised by commentators,[25] the Commission has modified that requirement to require discussion only of significant compliance problems.

G. Item 4. Self-Regulatory Organization's Statement on Burden on Competition

Item 4 requires the self-regulatory organization to provide a discussion of any burden on competition the proposed rule change would impose. The Commission proposed to amend Item 4 to make it clear that the discussion must be clearly articulated and thorough and to specify in detail the information to be included.

[18] As indicated elsewhere in this release, the Commission has decided not to adopt the proposed category for summary effectiveness of proposed rule changes subjected to pre-filing review (see text accompanying n. 46 *infra*). Therefore, the Commission is withdrawing related proposed amendments to Instructions D and E and Item 7. See the Companion Release.

[19] NYSE Response, File No. S7–590.

[20] Section 19(b)(2) of the Act provides that the Commission shall not approve any proposed rule change before the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for doing so. If the self-regulatory organization requests accelerated effectiveness pursuant to Section 19(b)(2), it should so indicate in Item 7(d) of Form 19b–4 and provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

[21] NYSE Response, File No. S7–590.

[22] *Id.*

[23] DTC, NASD, and NYSE Responses, File No. S7–590.

[24] Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 30 (1975).

[25] DTC and NASD Responses, File No. S7–590.

One commentator stated that the proposed amendment would require self-regulatory organizations to speculate on competition issues.[26] A second commentator suggested that the requirement to discuss competition issues raised by commentators should be limited to significant issues.[27]

The Commission believes that the statement concerning any burden on competition must be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act and is adopting Item 4 essentially as proposed. It has, however, revised the requirement to respond to comments received concerning any impact on competition to comments received concerning any significant impact on competition.[28]

H. Items 5 and 9. Comments on the Proposed Rule Change

Item 5 requires the self-regulatory organization to summarize the comments it receives on a proposed rule change. The Commission proposed to amend Item 5 to require the self-regulatory organization to respond in detail to significant issues raised by commentators that are not discussed in response to Items 3 or 4.

One commentator stated that the requirement in Item 5 to respond to comments is unnecessary in light of the Item 4 requirement to provide a discussion of comments on any burden on competition.[29] A second commentator stated that the requirement is unnecessary because self-regulatory organizations will not risk rejection or disapproval of a proposed rule change by failing to respond to any comment concerning the statutory basis for the proposed rule change.[30] This commentator also stated that the new requirement would, in effect, require the self-regulatory organization to respond to every comment received because the significance of a comment would be determined not by the self-regulatory organization but by the Commission's staff in its review of the filing.[31] A third commentator stated that the comments to which the self-regulatory organization must respond should be limited to written comments, at least as far as clearing agencies are concerned.[32]

The requirement in Item 5 to respond to comments does not duplicate the Item 4 requirement to discuss comments on competition. Item 5 provides that if a comment is addressed in the statement of basis and purpose (Item 3) or discussion of competition issues (Item 4), the self-regulatory organization should cross-reference the response.

The Commission does not believe that the requirement to respond to comments raising significant issues would impose an undue burden on self-regulatory organizations. The amendment is intended to require only that the self-regulatory organization respond to written comments. The volume of such comment letters usually is not great. Frequently, none or at most a very few are received. Moreover, it has not been the Commission's experience that the comment letters typically raise inappropriate or trivial issues. Accordingly, the Commission is adopting the amendment to Item 5, modified to make clear that the requirement applies only to written comments.

A related provision, Item 9, requires the self-regulatory organization to file copies of any comment letters it receives. The Commission proposed to amend Item 9 to require the self-regulatory organization to provide, in addition to the required copies of comment letters, an alphabetical list of such letters and a transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a summary of such comments.

One commentator suggested that the Commission make it clear that the term "public meeting" does not include, except to the extent specifically designated as "public," meetings such as board meetings, committee meetings, and informal meetings between staff and members of the self-regulatory organization.[33] The Commission does not intend, and does not believe the term "public meeting" is generally understood, to cover such meetings. The Commission believes transcripts or summaries of comments made at public meetings would facilitate Commission review.[34]

The Commission is adopting Item 9 as proposed with one revision. It has revised Item 9 to reflect the requirement in Instruction D that the self-regulatory organization file copies of any correspondence or other communications reduced to writing (including comment letters) to and from the self-regulatory organization concerning the rule change that it receives or prepares after the proposed rule change is filed with the Commission but before the Commission takes final action on it.

I. Item 7. Basis for Summary Effectiveness or Accelerated Effectiveness of the Proposed Rule Change

Item 7 requires the self-regulatory organization to indicate under which provision of Section 19(b)(3), if any, it is designating the proposed rule change for summary effectiveness. The Commission is amending that item to reflect the new category for summary effectiveness of certain clearing agency rules.[35] It is also adding a new paragraph (d) to Item 7 providing that if the self-regulatory organization requests accelerated effectiveness pursuant to Section 19(b)(2), it must provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.[36]

J. Item 8. Proposed Rule Change Based on Other Rules

The Commission proposed a new Item 8 to require the self-regulatory organization to state whether a proposed rule change is based on a rule of another self-regulatory organization or of the Commission and, if so, to identify the rule and explain any differences between that rule and the proposed rule change.

One commentator asserted that it is inappropriate to require the self-regulatory organization to interpret the rules of another self-regulatory organization, with respect to which it does not have jurisdiction, expertise, or experience.[37] The Commission is adopting Item 8, revised to make clear that any discussion of rules of other self-regulatory organizations or of the Commission is to be based on the self-regulatory organization's understanding of those rules.

K. Exhibit 1. Notice of Filing

The Commission is adopting the proposed amendments to Exhibit 1 of Form 19b–4, the Notice of Filing for

[26] DTC Response, File No. S7–590.

[27] NYSE Response, File No. S7–590.

[28] See text accompanying n. 29 *infra*.

[29] NYSE Response, File No. S7–590.

[30] Amex Response, File No. S7–590.

[31] *Id.*

[32] DTC Response, File No. S7–590.

[33] Amex Response, File No. S7–590.

[34] The Commission is amending paragraph (h) of Rule 19b–4, to require that a self-regulatory organizations retain in a file, available for public inspection and copying, any correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any proposed rule change filing, whether the correspondence or communication is prepared or received before or after the filing of the proposed rule change.

[35] See text accompanying n. 49 *infra*.

[36] See n. 20 *supra*.

[37] NYSE Response, File No. S7–590.

publication in the **Federal Register.**[38] The Commission is also adopting two other amendments to Exhibit 1. First, it is amending Item I to require that the response to the item include only the terms of substance of the proposed rule change or the text of the proposed rule change, if it is relatively brief. Second, it is amending Item II to require a brief summary of the most significant aspects, rather than the full text, of the responses to Items 3, 4, and 5 in the completed Form 19b–4. These two changes are designed to reduce the length of notices published in the **Federal Register.**

II. Expansion of Categories of Proposed Rule Changes That may Become Effective on Filing

Section 19(b)(3)(A)(iii) of the Act [39] authorizes the Commission to expand the categories of proposed rule changes that self-regulatory organizations may designate for summary effectiveness.[40] The Commission proposed to exercise that authority by amending Rule 19b–4 to permit the self-regulatory organization to designate a proposed rule change for summary effectiveness if the self-regulatory organization provides a thirty-day pre-filing comment period on the rule and before the rule change becomes operative affords the Commission a sixty-day period to consider abrogation (and refiling under Section 19(b)). The proposal was intended to permit proposed rule changes to be put into effect more rapidly than frequently is the case when full Commission review and approval are required.

Commentators questioned both the usefulness of the proposed category [41] and the Commission's authority to adopt it.[42] The major objection to the proposed amendment was to the length of time required between circulation and operation of the rule.[43] Commentators stated that the time savings offered by the proposed category would not be sufficient to cause them to forego Commission approval under Section 19(b)(2). They suggested that the proposed new category be revised either to permit the Commission to use its discretion to set a postfiling operative date up to 60 days after filing [44] or to dispense with the post-filing delay in operation.[45]

The proposed category for summary effectiveness was intended to provide, consistently with the purposes of Section 19(b), a meaningful opportunity for public comment on, and Commission review of, proposed rule changes filed under the category. The Commission believes that the suggested revisions do not make sufficient provision for comment or review before such rule changes become operative. Accordingly, because commentators indicated that they would not use the new category as proposed, the Commission is withdrawing the proposal.[46]

The Commission also is not adopting the proposal suggested by certain commentators [47] that proposed rule changes of limited duration be permitted to become effective summarily. The proposal does not make adequate provision for pre-effective comment or review, nor does it provide sufficient assurance that a defective rule could be abrogated promptly. A substantive rule change involving, for example, facilities implementation or clearing practices that became operative under the proposed category might not be able to be withdrawn without undue disruption. The Commission also does not agree with commentators that the proposal would reduce the Commission's work. In fact, if adopted, the proposal might require a disproportionate amount of staff time for evaluation of such filings to avoid disruption resulting from abrogation.[48]

The Commission, however, is expanding the categories of clearing agency rules that may become effective summarily, as suggested in the Proposal Release and supported by clearing agency commentators.[49] Clearing agencies often include in their rules the precise mechanical or operational details of their procedures.[50] Frequently, minor changes in these details do not fail within any existing category of proposed rule changes that may be designated for summary effectiveness, and therefore they require Commission review and approval.

Proposed rules dealing solely with mechanical or operational details of existing clearing agency services are similar to "solely administrative" rules, which currently qualify for summary effectiveness under Section 19(b)(3)(A)(iii) of the Act. Allowing such changes to become effective on filing should increase staff time available to review other filings. The Commission believes that it is consistent with the public interest and the purposes of Section 19(b) to amend paragraph (d) of Rule 19b–4 (redesignated as paragraph (e)) by adding a new subparagraph (4) to provide that:

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if properly designated by the self-regulatory organization as * * *

* * * * *

(4) effecting a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

The Commission believes that permitting such proposed rule changes to become summarily effective could expedite the review process significantly.[51] For example, proposed

[38] For the reasons expressed in the Proposal Release, the Commission plans to continue publishing notices in the **Federal Register.** See Proposal Release, 44 FR 30932.

[39] Section 19(b)(3)(A) provides that a proposed rule change may take effect upon filing if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of Section 19(b), may specify as without the provisions of Section 19(b)(2).

[40] The Commission announced in the Proposal Release that, as a matter of general policy, if a self-regulatory organization, other than the MSRB, files under Section 19(b)(3)(A)(ii) a proposed rule change that establishes or changes a due, fee, or other charge applicable to a non-member or a non-participant, the Commission intends, unless unusual circumstances are present, to abrogate the rule change and require that it be filed for review under Section 19(b)(2). Proposal Release, 44 FR 30928. Several commentators stated that they believe that general policy is too broad. The Commission, however, continues to believe that, in the absence of unusal circumstances, dues, fees, and other charges applicable to non-members or non-participants should receive full review under Section 19(b)(2). The general policy announced is sufficiently flexible to permit summary effectiveness on a case-by-case basis.

[41] Amex, CBOE, DTC, NSCC, NYSE, and OCC Responses, File No. S7–590.

[42] CBOE, NYSE, and OCC Responses, File No. S7–590.

[43] CBOE Response, File No. S7–590.

[44] NYSE Response, File No. S7–590.

[45] Amex Response, File No. S7–590.

[46] See Companion Release.

[47] CBOE, NSCC, and OCC Responses, File No. S7–590.

[48] The Commission has previously accelerated the effectiveness of, or taken similar steps for, temporary or test programs filed as proposed rule changes under Section 19(b)(2). The Commission will continue to do so for appropriate proposed rule changes.

[49] NSCC and OCC Responses, File No. S7–590.

[50] DTC, NSCC, and OCC Responses, File No. S7–590.

[51] The Commission, at this time, is not expanding this category to include rule changes of other self-regulatory organizations. Clearing agencies, unlike other self-regulatory organizations, function primarily as providers of services to their participants. As other self-regulatory organizations develop more varied and complex services, it may become appropriate to expand the category to include certain rules of those organizations.

rule changes that make minor modifications or improvements in services or implement changes of a "housekeeping" nature would be eligible for summary effectiveness under the category.[52]

III. Self-Regulatory Organization Actions Constituting Proposed Rule Changes

The Commission's proposals to facilitate filing and review of proposed rule changes included a new rule, proposed Rule 3b–7, defining the term "rule." That definition was intended to clarify which stated policies, practices, and interpretations and other self-regulatory actions must be filed as proposed rule changes. Commentators, however, stated that they did not believe the proposed definition would provide clarification.

The Commission has decided to withdraw proposed Rule 3b–7 and to amend Rule 19b–4 to specify more precisely which self-regulatory actions constitute proposed rule changes. The amendments to Rule 19b–4 are discussed in detail below. As background for that discussion, this section first discusses (A) the standards under the Act and under Rule 19b–4 as originally adopted for determining which actions are proposed rule changes and (B) proposed Rule 3b–7.

A. Standards Under the Act and Rule 19b–4 as Originally Adopted

Section 19(b) defines the term "proposed rule change" to mean any proposed rule or any proposed change in, addition to, or deletion from the rules of the self-regulatory organization. Read together, Sections 3(a)(27) and 3(a)(28) of the Act define "rules of a self-regulatory organization" to mean (i) the rules of the MSRB and the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding thereto, of any other self-regulatory organization, and (ii) such stated policies, practices, and interpretations of the self-regulatory organization, other than the MSRB, as the Commission deems to be rules.

Paragraph (b) of Rule 19b–4 as originally adopted defines "stated policies, practices, and interpretations" to include certain self-regulatory actions and paragraph (a) of the rule deems certain of these to be rules. The definition of "stated policies, practices, and interpretations" in paragraph (b) focuses primarily on whether the self-regulatory action is either a material aspect of the operation of the facilities of a self-regulatory organization or a statement that is made generally available to specified persons and has certain effects on those persons.[53] Paragraph (a) deems a stated policy, practice, or interpretation to be a rule only if it meets one of several primarily procedural tests, such as being required, under the rules of the self-regulatory organization, to be approved by the organization's governing body.[54] The standards established by paragraphs (a) and (b) were entended to ensure that all significant regulatory actions by self-regulatory organizations would be subject to Commission review.

The definition of "stated policies, practices, and interpretations" in paragraph (b) of Rule 19b–4 is sufficiently broad to encompass most significant self-regulatory initiatives. The definition, however, does not make clear that certain significant regulatory matters that may be considered to concern "privileges," rather than "rights or obligations," are within the definition. In addition, the definition does not cover significant interpretations if they are not made generally available, even if the interpretation is approved or ratified by the governing body of the self-regulatory organization.

The Commission believes that paragraph (a), which deems certain stated policies, practices, and interpretations to be rules, focuses too extensively on procedural aspects of how the statement was adopted rather than on the substance of the statement. For example, paragraph (a) deems a stated policy, practice, or interpretation to be a rule if it is required to be approved by the governing body of the self-regulatory organization; however, not all matters that are required to be so approved are necessarily significant enough to warrant Commission review. At the same time, certain other matters that are not required to be approved by the governing body have significant regulatory effects and should be subject to Commission review.

B. Proposed Rule 3b–7

Proposed Rule 3b–7 was intended to resolve problems encountered with Rule 19b–4 by defining the term "rule" functionally, instead of procedurally, to include statements and stated policies, practices, and interpretations having specified significant regulatory effects.[55] The definition of "rule" in proposed Rule 3b–7 was drawn, in large part, from the definition of "rule" in the Administrative Procedure Act ("APA").[56] The definition expressly excluded certain stated policies, practices, and interpretations of the self-regulatory organization that are reasonably and fairly implied by the organization's existing rules.

Commentators raised a number of objections to the proposed definition of "rule." Several commentators stated that they believe the meaning of the term "rule" is already sufficiently clear. They questioned both the Commission's authority to define "rule"[57] and the usefulness of doing so.[58] One commentator stated that the proposed definition of "rule" is difficult to read

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[52] The Commission, of course, retains the authority, under Section 19(b)(3)(C), to abrogate summarily within sixty days of the date of filing any proposed rule change that has become effective under Section 19(b)(3)(A).

[53] Paragraph (b) of Rule 19b–4 as originally adopted provided that the term "stated policies, practices, and interpretation" includes:

Any material aspect of the operation of the facilities of the self-regulatory organization or any statement made generally available to the membership of, or all participants in, or persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, a self-regulatory organization, or to a group or category of such persons, establishing or changing any standards or guidelines with respect to (1) the rights or obligations of such persons or, in the case of national securities exchanges or registered securities associations, persons associated with such persons or (2) the application or interpretation of an existing rule.

[54] Paragraph (a) of Rule 19b–4 as originally adopted provided that a stated policy, practice, or interpretation of a self-regulatory organization shall be deemed to be a rule of the self-regulatory organization if:

(1) Action thereon by the members or by the board of directors, or similar governing body, of such self-regulatory organization is required under its constitution, articles of incorporation, by-laws, rules, or instruments corresponding thereto, (2) a self-regulatory organization elects or is required, pursuant to its constitution, articles of incorporation, by-laws, rules, or instruments corresponding thereto, to treat it as a rule change hereunder, (3) it represents a change in, addition to, or deletion from a stated policy, practice or interpretation which the self-regulatory organization previously treated as a proposed rule change or (4) it requires a determination, or affects a prior determination, pursuant to Rules 8c–1(g) or 15c2–1(g).

[55] Proposed Rule 3b–7 defined "rule" to include:

The whole or part of any statement or of any stated policy, practice, or interpretation (including any form, report, or questionnaire)

(a) that is of general or particular applicability and future effect,

(b) that is designed to implement, interpret, describe, or prescribe a requirement, procedure, definition, standard, guideline, policy, or any part of a corporate or financial structure or organization, and

(c) that directly or indirectly affects the rights or obligations of any person or the conduct of business by any person;

Provided, however, that the term "rule" shall not include any stated policy, practice, or interpretation with respect to an existing rule that is reasonably and fairly implied by that rule and that is not required under the rules of the self-regulatory organization to be approved by the governing body of the self-regulatory organization.

[56] 5 U.S.C. 551(4).

[57] Amex and CBOE Responses, File No. S7–590.

[58] Amex Response, File No. S7–590.

and understand.[59] Several commentators questioned whether the APA definition of "rule" is an appropriate basis for a definition of "rule" for self-regulatory organizations.[60] In addition, one commentator stated that the proposed definition appears to preclude the self-regulatory organization from designating actions that are not within the proposed definition as proposed rule changes.[61]

The major objection to proposed Rule 3b–7, however, was to the breadth of the definition of "rule."[62] Commentators were concerned that the definition is too open-ended and would, inappropriately, cover internal administrative matters[63] and many day-to-day business decisions of self-regulatory organizations.[64] Clearing agencies expressed concern that the definition would cover minor changes in clearance and settlement systems.[65] A few commentators suggested that the definition would cover such statements or documents as contracts for goods and services, individual employment arrangements, real estate leases, and annual reports.[66]

Several commentators focused separately on the exclusion from the definition of "rule" of any stated policy, practice, or interpretation that is "reasonably and fairly implied" by an existing rule of the self-regulatory organization and is not required under the rules of the organization to be approved by its governing body (the "exclusion"). Commentators stated that the "reasonably and fairly implied" standard would not provide sufficient guidance to self-regulatory organizations as to when an action would not be required to be filed as a proposed rule change,[67] and that the standard would allow self-regulatory determinations to be "second-guessed" by the Commission.[68] In addition, the MSRB expressed concern that, because the exclusion would not be available if the action was required to be approved by the self-regulatory organization's governing body, the exclusion would not be available for MSRB interpretations.[69] The MSRB explained that it has adopted internal procedures to ensure that the Board itself is directly involved in the interpretive process.

C. Amendments to Rule 19b–4

The Commission continues to believe it is important to make clear to self-regulatory organizations that they must file all significant regulatory actions for Commission review.[70] The Commission also continues to believe that additional guidance can be provided, beyond that contained in Rule 19b–4 as originally adopted, as to which self-regulatory actions are proposed rule changes. In light of the comments received on proposed Rule 3b–7, however, the Commission does not believe that it is useful to attempt to provide additional guidance through a definition of "rule" based on the APA. Accordingly, the Commission is withdrawing proposed Rule 3b–7[71] and is amending Rule 19b–4 to specify more precisely which self-regulatory actions are proposed rule changes.

The amendments (i) make minor modifications in the definition of "stated policies, practices, and interpretations" in paragraph (b); (ii) revise paragraph (a) (redesignated as paragraph (c)) to deem stated policies, practices, and interpretations to be proposed rule changes primarily on the basis of their substantive effect; and (iii) add a new paragraph (d) deeming to be a proposed rule change any interpretation of an existing rule of the self-regulatory organization if it is approved or ratified by the governing body of the self-regulatory organization and is not reasonably and fairly implied by the existing rule.[72]

Paragraphs (a) through (d) of Rule 19b–4 will read as follows:

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b–4.

(b) The term "stated policy, practice, or interpretation" means (1) any material aspect of the operation of the facilities of the self-regulatory organization or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization ("specified persons"), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to (i) the rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons, or (ii) the meaning, administration, or enforcement of an existing rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization shall be deemed to be a proposed rule change if (1) it is approved or ratified by the governing body of the self-regulatory organization and (2) it is not reasonably and fairly implied by that rule.

Paragraphs (b), (c), and (d) will operate as discussed below.

1. Paragraph (b): Definition of Stated Policy, Practice, or Interpretation

Revised paragraph (b) continues to define "stated policy, practice, or interpretation" as, essentially, (1) any material aspect of the operation of the facilities of the self-regulatory organization or (2) any statement that the self-regulatory organization makes generally available to specified persons and that has certain effects.[73] The revised definition differs from the definition as originally adopted in several minor respects.

First, the revised definition substitutes "stated policy, practice, or interpretation means" for "stated policies, practices, and interpretations includes" to clarify that a self-regulatory action that is not within the definition is not a stated policy, practice, or interpretation.[74] Second, for simplification, it adds the term "specified persons" as a definition

[59] CBOE Response, File No. S7–590.

[60] Amex, CBOE, and NSCC Responses, File No. S7–590.

[61] OCC Response, File No. S7–590. See n. 74 *infra*.

[62] Amex, CBOE, DTC, NSCC, NYSE, and OCC Responses, File No. S7–590.

[63] Amex, CBOE, and NYSE Responses, File No. S7–590.

[64] Amex, NSCC, NYSE, and OCC Responses, File No. S7–590.

[65] DTC and NSCC Responses, File No. S7–590.

[66] CBOE, DTC, NSCC, NYSE, and OCC Responses, File No. S7–590.

[67] NSCC, NYSE, and OCC Responses, File No. S7–590.

[68] OCC Response, File No. S7–590.

[69] MSRB Response, File No. S7–590.

[70] The Commission expects that, in most instances where a self-regulatory organization acts in such a manner as to have a significant regulatory impact on persons, the self-regulatory organization will designate the action as a "rule." Sections 6, 15A, 15B, and 17A of the Act provide that self-regulatory organizations must have "rules" designed to achieve specified objectives.

[71] See Companion Release.

[72] Self-regulatory organizations may seek interpretive advice from the Commission's staff in those instances where the self-regulatory organization is uncertain whether a particular action is a proposed rule change or should have been previously treated as one.

[73] Material, even if it is not included in the definition of "stated policy, practice, or interpretation," that the self-regulatory organization (other than a registered clearing agency) makes generally available is required to be filed with the Commission under Rules 6a–3, 15Aj–1, and 17a–21 under the Act, 17 CFR 240.6a–3, 240.15Aj–1, and 240.17a–21. Rule 17a–22, the adoption of which is announced in this release, will impose a similar requirement on registered clearing agencies.

[74] The self-regulatory organization could, of course, elect to designate as a "rule" a statement that is not within the definition of "stated policy, practice, or interpretation."

of the persons included in the definition of "stated policy, practice, or interpretation" in Rule 19b–4.

Third, the revised definition adds the word "limit" to the list of specified effects to make clear that a statement prohibiting conduct is within the definition. Fourth, it adds in paragraph (b)(2)(i) the word "privileges" to make clear that statements establishing or changing any standard, limit, or guideline with respect to the privileges of specified persons are within the definition. Finally, it substitutes, in paragraph (b)(2)(ii), "meaning, administration, or enforcement of an existing rule" for "application or interpretation of an existing rule." That substitution is intended to conform the language of the provision to that in Section 19(b)(3)(A)(i) of the Act and is not intended to change the meaning of paragraph (b)(2).[75]

2. Paragraph (c): Stated Policy, Practice, or Interpretation Deemed to be a Proposed Rule Change

Revised paragraph (c) is intended to limit the stated policies, practices, and interpretations subject to Commission review to those most likely to affect significantly the activities of specified persons. It does so by excepting two categories of stated policies, practices, and interpretations from those deemed to be proposed rule changes. The first exception is for stated policies, practices, and interpretations "reasonably and fairly implied" by the self-regulatory organization's existing rules. The second exception is for certain stated policies, practices, and interpretations that are "concerned solely with the administration" of the self-regulatory organization. The two exceptions are intended to operate independently of each other; if the action meets the requirements of either exception, it will not be considered a proposed rule change under paragraph (c). The two exceptions are discussed further below.

(i) "Reasonably and Fairly Implied" Exception

The "reasonably and fairly implied" exception is intended to make clear that self-regulatory organizations may issue stated policies, practices, and interpretations with respect to their existing rules without necessarily being subject to rule filing requirements. For example, interpretations of existing rules arising out of individual enforcement or disciplinary proceedings would not have to be filed as proposed rule changes if the interpretations are reasonably and fairly implied by the existing rules.

The "reasonably and fairly implied" standard is the same standard used in proposed Rule 3b–7 to except certain stated policies, practices, and interpretations from the definition of "rule." The Commission believes, in spite of commentators' objections that the standard is vague, that it provides as much guidance to self-regulatory organizations as is now possible. The limits of the "reasonably and fairly implied" exception will have to be determined on a case-by-case basis. It is clear, however, the a stated policy, practice, or interpretation that prescribes extensive and specific limitations on particular types of transactions or conduct that are not apparent from the face of the existing rule is not "reasonably and fairly implied" by the rule.[76] Moreover, the fact that a self-regulatory organization, for purposes of its internal operations, characterizes a stated policy, practice, or interpretation as reasonably and fairly implied does not mean the statement is reasonably and fairly implied for purposes of Rule 19b–4.[77]

(ii) "Concerned Solely with the Administration" Exception

The "concerned solely with the administration" exception in paragraph (c) is intended to prevent the self-regulatory organization from having to file as a proposed rule change most stated policies, practices, or interpretations that deal solely with "housekeeping" matters.[78] The exception should eliminate concern, stemming from the definition of "rule" in proposed Rule 3b–7, that self-regulatory organizations would have to file as proposed rule changes stated policies, practices, or interpretations relating to matters such as floor decorum.[79]

The exception would not be available for stated policies, practices, and interpretations with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. The Commission believes that, once the self-regulatory organization has chosen to handle a housekeeping matter by rule, the Commission and the public should be given notice of any stated policy, practice, or interpretation that effectively modifies the terms of that rule.[80] Any such stated policy, practice, or interpretation should be set forth in the self-regulatory organization's rule book.

3. Paragraph (d): Governing Body Interpretations Deemed to be Proposed Rule Changes

The Commission believes that any interpretation of an existing rule that is of sufficient importance to be approved or ratified by the governing body of the self-regulatory organization, whether or not it is made generally available, is a proposed rule change subject to Commission review unless it is reasonably and fairly implied by the existing rule.

Accordingly, the Commission is amending Rule 19b–4 to provide, in paragraph (d), that regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization is a proposed rule change if it is approved or ratified by the governing body of the self-regulatory organization and it is not reasonably and fairly implied by the

[75] A form, report, or questionnaire of a self-regulatory organization that constitutes a stated policy, practice, or interpretation under paragraph (b) would have to be filed as a proposed rule change if, under paragraph (c), it is a stated policy, practice, or interpretation deemed to be a proposed rule change.

[76] As the Commission explained in connection with its discussion of the "reasonably and fairly implied" standard in the exclusion of proposed Rule 3b–7, the standard would not be met by an interpretation such as that filed by the CBOE and other exchanges concerning "front-running." *See, e.g.*, File No. SR–CBOE–78–28. The standard also would not be met by a stated policy, practice, or interpretation that implements a system if if affects the manner in which members or others do business or in which the system functions, in a way that is not reasonably foreseeable from the rule to which the stated policy, practice, or interpretation applies.

[77] For example, the governing body of the NASD adopts or amends specific implementing policies under general rules adopted by its membership, such as its rule requiring observance of just and equitable principles of trade, and, for purposes of its by-laws, characterizes the implementing policies as reasonably and fairly implied by the general rules. See the NASD's interpretations and policy statements relating to "free-riding," advertising, and underwriting arrangements. Such interpretations or policy statements are required to be filed as proposed rule changes. NASD Manual (CCH) ¶2151. See also Article VII of the NASD's By-Laws, NASD Manual (CCH) ¶1501 *et seq.*

[78] If the self-regulatory organization adopts a "rule" that is concerned solely with the administration of the organization, that rule is required to be filed as a proposed rule change, but it may qualify for summary effectiveness under Section 19(b)(3)(A) of the Act.

[79] An administrative stated policy, practice, or interpretation having implications beyond housekeeping matters would not, of course, qualify for this exception. For example, a stated policy, practice, or interpretation establishing or changing floor procedures, procedures for resolving or determining the rights or obligations of members, or composition of the self-regulatory organization's governing body would generally not be "concerned solely with the administration" of the self-regulatory organization.

[80] For example, if the self-regulatory organization has a rule establishing a dress code, any stated policy, practice, or interpretation with respect to the dress code would be a proposed rule change, unless it is reasonably and fairly implied by the rule, in which case it would qualify for the first exception.

existing rule.[81] Paragraph (d) makes clear that, whenever the governing body of the self-regulatory organization, including that of the MSRB,[82] approves or ratifies an interpretation that is not reasonably and fairly implied by an existing rule, its action is a proposed rule change.

IV. Revocation of Certain Filing Requirements; Adoption of Rule 17a-22 Concerning Registered Clearing Agencies

The Commission proposed to revoke several filing requirements that it believes are unduly burdensome. First, the Commission proposed to revoke the provision in paragraph (c) of Rule 19b-4 as originally adopted, and related Form 19b-4B, requiring self-regulatory organizations to file on Form 19b-4B notice of stated policies, practices, and interpretations not deemed to be rules. The filing requirement partially duplicates filing requirements in Rules 6a-3, 15Aj-1, and 17a-21 under the Act,[83] which require national securities exchanges, registered securities associations, and the MSRB, respectively, to submit to the Commission any material they make generally available.

Second, the Commission proposed to revoke Rule 17a-18, which requires a national securities exchange or registered securities association to file with the Commission any form, report, or questionnaire it requires or proposes to require its members to complete. The Commission believes this requirement is unnecessary because self-regulatory organizations are required to file such documents under Section 19(b).

Finally, the Commission proposed to revoke paragraph (g) of Rule 19b-4. Paragraph (g) required self-regulatory organizations to respond to Items 3, 4, 5, and 6 of Form 19b-4A with respect to their rules in effect on June 4, 1975, and to file those responses with the Commission by April 1, 1976. Paragraph (g) was intended to afford national securities exchanges and associations an opportunity to provide relevant information on their existing rules before any Commission action under Section 31(b) of the Securities Acts Amendments of 1975. Commentators expressed the view that the information supplied would be of little assistance to the Commission and that supplying the information would impose a considerable burden on self-regulatory organizations. To avoid imposing that burden, the Commission decided in early 1976 not to require compliance with paragraph (g) of Rule 19b-4.[84]

The Commission did not receive any comments on its proposals to revoke the Form 19b-4B filing requirement, Rule 17a-18, and paragraph (g) of Rule 19b-4, and, as proposed, is revoking those provisions.

In conjunction with its proposal to revoke Form 19b-4B, the Commission proposed Rule 17a-22, which would establish for registered clearing agencies a filing requirement parallel to the filing requirements imposed under Rules 6a-3, 15Aj-1, and 17a-21. Registered clearing agencies, unlike national securities exchanges, registered securities associations, and the MSRB, previously have not been required to file with the Commission materials (other than stated policies, practices, and interpretations deemed not to be rules) they make generally available. Receipt of such material is important to the Commission's oversight responsibilities under the Act. The Commission did not receive any comments on proposed Rule 17a-22 and is adopting the rule as proposed, with minor modifications.

V. Statutory Basis

On the basis of the foregoing analysis and discussion, the Commission finds that the rule and the amendments to the rule and the form adopted are consistent with the public interest, the protection of investors, and the purposes of the Act. The Commission also finds that the amendment to paragraph (e) of Rule 19b-4, expanding the categories of proposed rule changes that may become effective pursuant to Section 19(b)(3)(A) of the Act, is consistent with the public interest and the purposes of Section 19(b) of the Act. The Commission, pursuant to Section 23(a)(2) of the Act, finds that the rule and the amendments to the rule and the form adopted herein do not impose any burdens on competition.

Rule 17a-22 is promulgated under the Act, and particularly Sections 2, 3, 17, 17A, and 23, 15 U.S.C. 78b, 78c, 78q, 78q-1, and 78w. The amendments to Rule 19b-4 and Form 19b-4A (redesignated as Form 19b-4) are promulgated under the Act, and particularly Sections 2, 3, 6, 11A, 15A, 15B, 17, 17A, 19, and 23, 15 U.S.C. 78b, 78c, 78f, 78k-1, 78o-3, 78o-4, 78q, 78q-1, 78s, and 78w.

VI. Text of Rules and Form

The Commission is amending Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.17a-18 [Removed]

1. By revoking § 240.17a-18.

2. By adding § 240.17a-22 to read as follows:

§ 240.17a-22 Supplemental material of registered clearing agencies.

Within ten days after issuing, or making generally available, to its participants or to other entities with whom it has a significant relationship, such as pledgees, transfer agents, or self-regulatory organizations, any material (including, for example, manuals, notices, circulars, bulletins, lists, or periodicals), a registered clearing agency shall file three copies of such material with the Commission. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall at the same time file one copy of such material with its appropriate regulatory agency.

(Secs. 2, 3, 17, and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 897, and 901, as amended by secs. 2, 3, 14, and 18, Pub. L. No. 94-29, 89 Stat. 97, 137, and 155 (15 U.S.C. 78b, 78c, 78q, and 78w); sec. 17A, as added by sec. 15, Pub. L. No. 94-29, 89 Stat. 141 (15 U.S.C. 78q-1))

3. By revising § 240.19b-4 to read as follows:

§ 240.19b-4 Filings with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b-4.

(b) The term "stated policy, practice, or interpretation" means (1) any material aspect of the operation of the facilities of the self-regulatory organization or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization ("specified persons"), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to (i) the rights, obligations, or privileges

[81] If the governing board of the self-regulatory organization establishes a committee to approve or ratify interpretations, the self-regulatory organization should treat interpretations approved or ratified by that committee as having been acted upon by the governing body.

[82] Paragraph (d) makes clear that if the MSRB issues an interpretation of an existing rule that is not reasonably and fairly implied by that rule, it is a proposed rule change.

[83] 17 CFR 240.6a-3, 240.15Aj-1, and 240.17a-21. Rule 17a-22, the adoption of which is announced in this release, will impose a similar requirement on registered clearing agencies.

[84] Securities Exchange Act Release Nos. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976), and 13100 (Dec. 22, 1976), 42 FR 782 (Jan. 4, 1977).

of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons, or (ii) the meaning, administration, or enforcement of an existing rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization shall be deemed to be a proposed rule change if (1) it is approved or ratified by the governing body of the self-regulatory organization and (2) it is not reasonably and fairly implied by that rule.

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if properly designated by the self-regulatory organization as (1) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, (2) establishing or changing a due, fee, or other charge, (3) concerned solely with the administration of the self-regulatory organization, or (4) effecting a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

(f) After instituting a proceeding to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views, and arguments and may afford, in the discretion of the Commission, an opportunity to make oral presentations.

(g) Notice of orders issued pursuant to Section 19(b) of the Act will be given by prompt publication thereof, together with a statement of written reasons therefor.

(h) Self-regulatory organizations shall retain at their principal place of business a file, available to interested persons for public inspection and copying, of all filings made pursuant to this section and all correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

(Secs. 2, 3, 6, 17, 19, and 23, Pub. L. No. 78–291, 48 Stat. 881, 882, 885, 897, 898, and 901, as amended by secs. 2, 3, 4, 14, 16, and 18, Pub. L. No. 94–29, 89 Stat. 97, 104, 137, 146, and 155 (15 U.S.C. 78b, 78c, 78f, 78q, 78s, and 78w); sec. 15A, as added by sec. 1, Pub. L. No. 75–719, 52 Stat 1070, as amended by sec. 12, Pub. L. No. 94–29, 89 Stat. 127 (15 U.S.C. 78*o*–3); secs. 11A, 15B, and 17A, as added by secs. 7, 13, and 15, Pub. L. No. 94–29, 89 Stat. 111, 131, and 141 (15 U.S.C. 78k–1, 78*o*–4, and 78q–1))

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.819a [Redesignated as § 249.819 and Amended]

1. By redesignating § 249.819a (Form 19b–4A, for filings with respect to proposed rule changes by all self-regulatory organizations) as § 249.819, by amending the heading of this section to refer to "Form 19b–4," and by amending the text of this form as provided by this release.

§ 249.819b [Removed]

2. By revoking § 249.819b.

Copies of the form have been filed with the Office of the Federal Register and will be forwarded to the self-regulatory organizations. Copies may be requested from the Commission.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 30, 1980.

[FR Doc. 80–34737 Filed 11–6–80; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 270

[Release No. IC–11421]

Prevention of Certain Unlawful Activities With Respect to Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission announced that it is adopting a rule under the Investment Company Act of 1940 to provide guidance to investment companies as to the minimum standards of conduct appropriate for persons who have access to information regarding the purchase and sale of portfolio securities by investment companies. The rule prohibits certain activities on the part of persons affiliated with registered investment companies or their investment advisers or principal underwriters. In addition, the rule requires such entities to establish codes of ethics applicable to certain persons associated with them, and requires that these persons make certain reports regarding their securities transactions.

EFFECTIVE DATE: (1) As to paragraph (a), October 31, 1980; (2) as to all other paragraphs, May 1, 1981.

FOR FURTHER INFORMATION CONTACT: S. Elliott Cohan, Esq. (202) 272–2060, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting Rule 17j–1 [17 CFR 270.17j–1] ("Rule") under the Investment Company Act of 1940 ("Act"). The Rule is designed to implement Section 17(j) of the Act [15 U.S.C. 80a–17(j)] which provides that:

> It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business.

Background

Section 17(j) was added to the Act in 1970 as a result of a recommendation to Congress by the Commission that the Commission be authorized to adopt rules for the protection of investors in connection with trading in securities purchased and sold by investment companies by persons affiliated with them or their investment advisers or principal underwriters.[1] This

[1] See Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 200 (1966).

recommendation was based upon the Commission's earlier finding that transactions by such persons in securities held by investment companies often placed such persons in a position of conflict of interest, and that the considerable disagreement in the investment company industry as to the nature and extent of obligations in this area suggested a need for clearer and higher standards of conduct.[2]

The Commission believes that the conditions which led to the original recommendation are to some extent still present in the investment company industry. Through its examination program, the Commission has become aware of an increasing number of situations involving parallel trading by individuals with knowledge regarding transactions anticipated or engaged in by registered investment companies. Therefore, the Commission believes it would be desirable to provide guidance to the investment company industry as to the minimum standards of conduct which it believes would be appropriate for persons with access to information regarding the purchase and sale of portfolio securities of investment companies. However, the variety of employment and institutional arrangements utilized by different investment companies renders impracticable a rule designed to cover all conceivable possibilities. Moreover, as a matter of policy the Commission believes the introduction and tailoring of ethical restraints on the behavior of persons associated with an investment company can best be left in the first instance to the directors of the investment company. Therefore, the Commission believes it is appropriate to impose an obligation on individual investment companies and their investment advisers and principal underwriters to prescribe standards and procedures reasonably designed to prevent the fraudulent or manipulative activities proscribed by the Rule.

The Rule is intended to be broad enough to permit those entities required to adopt codes of ethics to establish the standards and procedures that they believe are necessary to prevent fraudulent, deceptive and manipulative practices. However, the Commission believes that certain activities may be of such a nature as to create the type of conflict of interest situations to which Section 17(j) was addressed. The Commission expects that these potentially abusive activities would be specifically considered by entities required to adopt code of ethics. For example, it is expected that an effective code of ethics will be designed, in part, to eliminate conflict of interest situations where access persons improperly are able to gain personal benefit through their relationship with the investment company. Such situations might exist if access persons were to engage in prsonal securities transactions involving securities which are held by the investment company or which are to be acquired by such investment company, or involving securities which, although they have not yet been purchased or sold by the investment company, are being considered for purchase or sale. Furthermore, such activities may create an incentive for such persons to influence improperly the investment strategy of the company.

Entities subject to the Rule should, therefore, consider whether to provide in their codes of ethics prohibitions against access persons engaging in such activities and appropriate guidelines for determining when a transaction by an access person is prohibited. In this regard, the entity may have to determine the point at which a purchase or sale recommendation is deemed to reach a stage where a concurrent or related transaction in the same security by an access person would present a danger of abuse. Though such a threat may not exist where particular securities are merely being reviewed as part of a general industrial survey or other broad monitoring of the securities markets, an access person may take unfair advantage of an investment company once a particular security has become a probable target of purchase or sale by the investment company.

Another situation which would appear to present a conflict of interest of the type to which Section 17(j) is addressed might occur where access persons already own a particular security and through their position of influence over the investment company attempt to cause the investment company to purchase, sell or hold the same security. This situation could be especially abusive where the investment strategy recommended by the access person may be expected to create a personal benefit to the access person. The Commission expects such a situation would be considered also in adopting codes of ethics, and that appropriate prohibitions, restrictions or guidelines would be included in the codes of ethics.

Although entities, in adopting their codes of ethics, may determine to prohibit certain (or all) of the activities discussed above, the Commission recognizes that there may be certain types of personal transactions by access persons which may not create the conflict of interest situations to which Section 17(j) was addressed. These nonabusive transactions might be generally characterized as ones which are: non-volitional on the part of the access person involved in the transaction; only remotely potentially harmful to the investment company because they would be very unlikely to affect a highly institutional market; or clearly not related economically to the securities to be purchased, sold or held by the investment company.[3] The broad language of the Rule is intended to permit entities to consider transactions by access persons in the context of their particular business operations when adopting their individual codes of ethics.

The Commission is endeavoring in this discussion to offer guidance with regard to the type of activities which should be considered by entities in designing and adopting codes of ethics. It is not attempting to list all activities and circumstances which could or should be the subject of concern by those entities, for it is the entities themselves, required by the Rule to adopt codes of ethics, that bear the primary responsibility for identifying those areas which present a potential for abuse by access persons. In this regard, the Commission has instructed its Division of Investment Management through the inspection program to monitor carefully developments under the Rule. If it appears to the Commission that entities are not adopting and enforcing codes which deal adequately with potential abuses in terms of current economic conditions, the Commission may determine that it is necessary to exercise further its authority under Section 17(j), and it may then consider whether it would be necessary and appropriate to propose amendments to the Rule specifically to prohibit certain abusive activities.

Discussion

The Commission proposed Rule 17j–1 (the "proposed rule") and requested public comments on that proposed rulemaking in Investment Company Act Release No. 10162, 43 FR 12721 (March 17, 1978), File No. S7–738 ("Release No. 10162"). Forty-two letters of comment were received.

[2] See Report of the Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess, pt. 4, at 235–55 (1963).

[3] For example, an entity required to adopt a code of ethics might determine that there is little or no potential for abuse where the particular purchase transaction is part of an automatic dividend reinvestment plan in which the access person participates.

General Anti-Fraud Provisions

Paragraph (a) of the proposed rule was a general antifraud provision similar to Section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)] and Rule 10b-5 under the Securities Exchange Act of 1934 [17 CFR 240.10b-5], and would have prohibited, generally speaking, fraudulent trading by certain persons affiliated with investment companies or their investment advisers or principal underwriters with respect to securities held or to be acquired by the investment company. Almost all of the letters received opposed adoption of the anti-fraud section of the proposed rule. Commentators argued that this provision was overly broad and outside the authority granted the Commission in Section 17(j). Another argument advanced by most of the commentators opposed to the provision was that, as proposed, any securities transaction—whether or not in securities being held, purchased or sold by the investment company—by an affiliated person of an investment company or its investment adviser and principal underwriter would be subject to the antifraud provision of the proposed rule.

In response to these comments, the Commission has made certain changes in this paragraph in order to clarify its intent that the anti-fraud provision should be limited to purchases and sales of securities held or to be acquired by a registered investment company.[4] The Commission expects that the anti-fraud section in the final rule, as revised, will accomplish one of the objectives desired by Congress in enacting Section 17(j).

Code of Ethics

Paragraph (b) of the proposed rule would have required each registered investment company, and each investment adviser of or principal underwriter for the investment company, to adopt a written code of ethics containing provisions reasonably necessary to prevent certain persons associated with an investment company from violating the general anti-fraud provisions of paragraph (a). Two commentators suggested that the codes of ethics should allow an investment company the option of permitting an "access person"[5] to obtain written clearance from a designated person or body prior to effecting any personal securities transaction. This procedure, it was suggested, would help assure the investment company and the access person that the proposed securities transaction was proper.

The Commission has determined to retain the approach taken in the proposed rule, i.e., to let individual entities take fully into account their own unique circumstances in designing their codes of ethics prescribing standards of conduct which effectuate the purposes of the Rule. The Commission would not have any objection to a prior clearance procedure where the investment company directors believed it was appropriate for their particular investment company arrangements. However, it is concerned that, if the Commission were to modify the proposed rule explicity to require or allow all investment companies to adopt prior clearance procedures, then it would appear that the Commission had concluded that any code of ethics which did not contain a prior clearance procedure would be fatally defective. Accordingly, the Commission believes the current approach is more desirable because it gives maximum flexibility to the entities which must design the codes of ethics.

However, paragraph (b)(1) requiring the adoption of codes of ethics by certain entities has been modified to make clear that such codes of ethics need only apply to access persons of those individual entities.

In addition, the language of paragraph (b)(1) of the Rule has been altered by deleting the words "and detect" in order to clarify the Commission's belief that entities which adopt codes of ethics have an affirmative duty to take appropriate steps to enforce the standards of conduct contained in the codes of ethics where violations occur. In terms of implementation and fulfillment of the statutory mandate that entities be required to adopt codes of ethics as a means reasonably necessary to prevent improper acts, those entities in designing codes of ethics must go beyond mere detection of improper acts; rather, the codes of ethics must necessarily also include provisions addressed to enforcement of the codes of ethics.

It should be noted that a violation of any provision of a particular code of ethics would not be considered a *per se*, unlawful act prohibited by paragraphs (a) and (b) of the Rule. Rather, the Commission believes that such a violation should and would be considered, with all the surrounding facts and circumstances, merely as one piece of evidence in determining whether, in addition to a violation of the code of ethics, a violation of the anti-fraud provisions of the Rule also has occurred.

Reporting Requirements

Paragraph (c) of the proposed rule would have required access persons to report certain information about securities transactions to the investment company, investment adviser or principal underwriter, subject to certain exceptions.

Many commentators objected to the Commission's approach in the proposed rule of requiring reports of certain disinterested directors who might have access to information concerning an investment company's portfolio transactions, even though the proposed rule would have limited the transactions to be reported by such persons who are not "interested persons"[6] of an investment company. Commentators argued that this reporting requirement would pose an undue burden on disinterested directors making it difficult to attract high caliber people.

The proposed rule stated that a disinterested director would be required to report transactions only if he or she "has actual knowledge that, within the most recent 30 days, such security was purchased or sold by the investment company or such purchase or sale by such company was considered by the company or its adviser." Commentators suggested that this limited reporting requirement for disinterested directors should be extended to those persons who, though interested persons of the investment company, are not "affiliated persons."[7] It was argued that requiring these outside directors to file reports, even with the limitations permitted, will alienate and antagonize them and again make it more difficult to attract qualified people.

The Commission has carefully considered those comments which sought to expand the more limited reporting requirement for disinterested directors to include also those directors who, though unaffiliated with the investment company on whose board they sit, still come within the definition of "interested person." The Commission believes that it is appropriate, in continuing the statutory distinctions made between interested and disinterested persons in the Act, to subject all interested directors to the full

[4] In this regard, it should be noted that a major criticism of the proposed rule by the commentators was alleviated merely by correcting an unfortunate error which occurred in the printing of the proposed rule.

[5] Briefly, paragraph (e)(1) of the proposed rule would have defined the term "access person" to mean a director, officer or general partner, or an employee of an investment company, investment adviser or principal underwriter whose functions or duties relate to the determination or what securities an investment company should purchase or sell.

[6] The term "interested person" is defined in Section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)].

[7] The term "affiliated person" is defined in Section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)] and is substantially more restrictive than the definition of "interested person."

reporting requirements of the Rule. Therefore, no change has been made in this regard.

Furthermore, the Commission believes that the limited reporting requirement permitted by paragraph (c)(3)(ii) does not present an unduly onerous burden to those directors who are not interested persons of investment companies. Although the Commission recognizes that the preparation of these reports may be time consuming, it understands that that type of reporting requirement is used already by some industrial companies and some investment companies as a matter of fundamental corporate policy. Extrapolating from those experiences, the Commission does not believe that this reporting requirment is so burdensome as to force talented individuals to choose not to serve as investment company directors. In addition, the imposition of such responsibility does not appear to be inconsistent with other responsibilities imposed by Congress on disinterested directors throughout the Act.

With respect to the requirement that disinterested directors submit reports about their securities transactions only where they have actual knowledge that the investment company purchased or sold (or was considering the purchase or sale of) a security, the Commission is concerned that the "actual knowledge" standard previously employed in the proposed rule may be a difficult concept for investment companies to administer. For example, in determining whether a disinterested director had properly filed reports with the investment company, the other investment company directors might be placed in the difficult position of having to evaluate the credibility of testimony or an affidavit of such disinterested director wherein he contends that, although the circumstances might suggest otherwise, he really did not know about a particular investment company security transaction. Also, the Commission is concerned that an "actual knowledge" standard inappropriately might encourage a disinterested director to avoid situations or committee assignments, although otherwise within the proper scope of his official duties as a director of an investment company, where he might become privy to substantial knowledge about proposed and actual investment company security transactions. To avoid creating unnecessary problems, the Commission has determined that disinterested directors should be required to report transactions when they know or, in the ordinary course of fulfilling their official duties as directors of the investment company, should have known that the investment company purchased or sold (or was considering the purchase or sale of) the security involved. While this modifies the standard used in the proposed rule, it is intended to clarify the circumstances under which disinterested directors should file reports of their security transactions. The Commission believes that this modified reporting obligation is consistent with the regulatory scheme of the Act and the general responsibilities of directors to be aware of the activities of those investment companies for which they serve.

In addition, the proposed rule has been modified to shorten and clarify the period of time during which a reportable transaction by the disinterested director takes place. Pursuant to the Rule as modified, a transaction need be reported only if it occurs within 15 days prior to or after either: (1) the purchase or sale of such security by the investment company; or (2) the consideration of such purchase or sale by the investment company or its investment adviser.

Beneficial Ownership—Paragraph (c)(1)

Several commentators raised questions concerning the term "beneficial ownership" as it related to the reporting requirements of the proposed rule. Commentators expressed confusion as to whether beneficial ownership for purposes of paragraph (c)(1) of the proposed rule should be construed in accordance with the definition in Rule 13d-3 of the Securities Exchange Act of 1934 [17 CFR 240.13d-3] or the general meaning in Section 16 [15 U.S.C. 78p] of that act.

To alleviate any confusion as to how the term "beneficial ownership" will be construed, the Commission has concluded that beneficial ownership should be interpreted in a manner which is consistent with the way it is presently interpreted for purposes of determining whether an individual is subject to the requirements of Section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder. However, in light of the diverse composition of investment company portfolios, transactions in all securities as to which the access person has or acquires any direct or indirect beneficial ownership, whether or not such securities are issued by companies registered pursuant to Section 12 of the Securities Exchange Act [15 U.S.C. 781], must be considered as subject to Section 16 solely for purposes of the reporting requirements of the Rule.

Access Person—Paragraph (e)(1)

Four commentators argued that the definition of access person in paragraph (e)(1) of the proposed rule was overly broad. Briefly, paragraph (e)(1) of the proposed rule would have defined the term "access person" to mean all directors, officers, general partners and advisory persons, as defined, with respect to a registered investment company or its investment adviser, and with respect to principal underwriters, all directors, officers or general partners. It was pointed out that such a definition would be unduly burdensome to institutions such as banks which, as a result of being primarily engaged in a business other than advising registered investment companies, allocate only a small part of their staff to the operations of any investment company managed by them. These commentators suggested that the term "access person" should be defined separately for investment advisers that are primarily engaged in a business other than advising registered investment companies.

One commentator argued that, with respect to principal underwriters, the definition of access person was overly broad also. This argument was advanced using reasoning similar to that used in the case of investment advisers primarily engaged in a business other than advising investment companies.

In recognition of the above comments, the definition of "access person" has been changed in order to ensure that the Rule will apply only to those persons who have an active part in the management, portfolio selection or underwriting functions of the investment companies with which they are associated. The Commission has determined that, where the investment adviser is primarily engaged in a business other than advising registered investment companies, only those directors, officers, general partners or advisory persons of the investment adviser who are involved in making investment decisions or portfolio selections for the registered investment company should be subject to the Rule. Similarly, the Commission has concluded that only those directors, officers or general partners of principal underwriters for registered investment companies who participate in recommending the purchase or sale of securities by such companies should be considered access persons.

Advisory Person—Paragraph (e)(2)(i) & (ii)

Although no specific comments were received, the Commission is concerned that the definition of advisory person in

the proposed rule might, for purposes of the reporting requirements, have created unintentional confusion as to whether employees of companies in control relationships with investment companies or their investment advisers who obtain information regarding the purchase or sale of a security by a registered investment company were subject to the reporting provisions of the Rule. Accordingly, the Commission has altered the definition of advisory person to make clear its intention that the Rule apply both to natural persons and certain employees of companies in a control relationship to such investment company or investment adviser. The Commission believes that this change is consistent with both the mandate given by the Congress in Section 17(j) of the Act and the general regulatory scheme of the Act.

Security—Paragraph (e)(5)

Briefly, the term "security" was defined to except only securities issued by the United States government. Several commentators suggested that the exception to the definition of "security" provided in paragraph (e)(4) of the proposed rule should be expanded to include all money market instruments and shares of open-end investment companies. Commentators argued that these securities do not present an opportunity for profiting at the expense of an investment company.

After analyzing the comments received in regard to the definition of "security," the Commission has concluded that money market instruments and shares of open-end investment companies present very little opportunity for the type of improper trading that the Rule is intended to cover. The exceptions to the definition of security have, therefore, been expanded to include bankers' acceptances, bank certificates of deposit, commercial paper and shares of open-end investment companies.

Consideration of Purchases and Sales—Paragraphs (c)(3)(ii) and (e)(6)

As noted in footnote 9 of Release No. 10162 proposing Rule 17j-1, commentators on an earlier proposal of the Rule suggested that that proposal's trading prohibition with respect to securities "being considered" for purchase or sale by an investment company was too broad. Similar comments were advanced regarding the proposed rule as that concept is used in paragraphs (c)(3)(ii) and (e)(6). The Commission continues to believe that the scope of the trading prohibition was intended by Congress to be very broad, but that the mechanics of setting parameters for determining when a transaction is "being considered" by a particular investment company can best be resolved by the investment company, investment adviser or principal underwriter in the codes of ethics required to be adopted under the Rule.

Other Comments

One comment received suggested that all reports made pursuant to the code of ethics should be filed with the independent accountants to preserve the privacy of respondents.

The Commission believes that filing the required reports with the entity of which the individual is an access person will ensure the maximum amount of privacy.

Two commentators suggested that the time for filing the required reports should be extended to 30 days after the end of the quarter. After considering this suggestion, the Commission has decided that the 10 day time requirement for filing the reports is adequate and, therefore, no change has been made in the Rule.

Effective Dates

The effective dates of Rule 17j-1 are as follows:

(1) As to paragraph (a), October 31, 1980;

(2) As to all other paragraphs, May 1, 1981.

The Commission finds, in accordance with Section 553(d) of the Administrative Procedure Act of 1946 [5 U.S.C. 553(d)] that good cause exists for dispensing with the normal 30-day delay in the effectiveness of paragraph (a) of the Rule. Further, the Commission believes that these effective dates should allow all those subject to the Rule sufficient time to adopt appropriate codes of ethics and establish the necessary reporting and record keeping procedures.

Text of Rule 17j-1

Accordingly, 17 CFR Part 270 is amended by adding § 270.17j-1 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.17j-1 Certain unlawful acts, practices, or courses of business and requirements relating to codes of ethics with respect to registered investment companies.

(a) It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of an investment adviser of or principal underwriter for a registered investment company in connection with the purchase or sale, directly or indirectly, by such person of a security held or to be acquired, as defined in this section, by such registered investment company—

(1) To employ any device, scheme or artifice to defraud such registered investment company;

(2) To make to such registered investment company any untrue statement of a material fact or omit to state to such registered investment company a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any such registered investment company; or

(4) To engage in any manipulative practice with respect to such registered investment company.

(b)(1) Every registered investment company, and each investment adviser of or principal underwriter for such investment company, shall adopt a written code of ethics containing provisions reasonably necessary to prevent its access persons from engaging in any act, practice, or course of business prohibited by paragraph (a) of this section and shall use reasonable diligence, and institute procedures reasonably necessary, to prevent violations of such code.

(2) The requirements of paragraph (b)(1) shall not apply to any underwriter (i) which is not an affiliated person of the registered investment company or its investment adviser, and (ii) none of whose officers, directors or general partners serves as an officer, director or general partner of such registered investment company or investment adviser.

(c)(1) Every access person of a registered investment company or of an investment adviser of or principal underwriter for such investment company shall report to such investment company, investment adviser or principal underwriter of which he or she is an access person the information described in paragraph (c)(2) with respect to transactions in any security in which such access person has, or by reason of such transaction acquires, any direct or indirect beneficial ownership in the security: *Provided, however,* That any such report may contain a statement that the report shall not be construed as an admission by the person making such report that he or she has any direct or indirect beneficial ownership in the security to which the report relates. For purposes of this section, beneficial

ownership shall be interpreted in the same manner as it would be in determining whether a person is subject to the provisions of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder, except that the determination of direct or indirect beneficial ownership shall apply to all securities which the access person has or acquires.

(2) Every report required to be made pursuant to paragraph (c)(1) shall be made not later than 10 days after the end of the calendar quarter in which the transaction to which the report relates was effected, and shall contain the following information:

(i) The date of the transaction, the title and the number of shares, and the principal amount of each security involved;

(ii) The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

(iii) The price at which the transaction was effected; and

(iv) The name of the broker, dealer or bank with or through whom the transaction was effected.

(3) Notwithstanding the provision of paragraph (c)(1), no person shall be required to make a report:

(i) With respect to transactions effected for any account over which such person does not have any direct or indirect influence or control;

(ii) If such person is not an "interested person" of a registered investment company within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)], and would be required to make such a report solely by reason of being a director to make such a report solely by reason of being a director of such investment company, except where such director knew or, in the ordinary course of fulfilling his official duties as a director of the registered investment company, should have known that during the 15-day period immediately preceding or after the date of the transaction in a security by the director such security is or was purchased or sold by such investment company or such purchase or sale by such investment company is or was considered by the investment company or its investment adviser;

(iii) Where the principal underwriter, as to which such person is an access person, (A) is not an affiliated person of the registered investment company or any investment adviser of such investment company, and (B) has no officers, directors, or general partners who serve as officers, directors or general partners of such investment company or any such investment adviser; or

(iv) Where a report to an investment adviser would duplicate information recorded pursuant to Rules 204-2(a)(12) or 204-2(a)(13) [17 CFR 275.204-2(a)(12) and 275.204-2(a)(13)] under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1, et seq.].

(4) Each registered investment company, investment adviser and principal underwriter to which reports are required to be made pursuant to this section shall identify all access persons who are under a duty to make such reports to it and shall inform such persons of such duty.

(d) Each registered investment company, investment adviser and principal underwriter which is required to adopt a code of ethics or to which reports are required to be made by access persons shall, at its principal place of business, maintain records in the manner and to the extent set forth below, and make such records available to the Commission or any representative thereof at any time and from time to time for reasonable periodic, special or other examination.

(1) A copy of each such code of ethics which is, or at any time within the past five years has been, in effect shall be preserved in an easily accessible place;

(2) A record of any violation of such code of ethics, and of any action taken as a result of such violation, shall be preserved in an easily accessible place for a period of not less than five years following the end of the fiscal year in which the violation occurs;

(3) A copy of each report made by an access person pursuant to this rule shall be preserved for a period of not less than five years from the end of the fiscal year in which it is made, the first two years in an easily accessible place; and

(4) A list of all persons who are, or within the past five years have been, required to make reports pursuant to this section shall be maintained in an easily accessible place.

(e) As used in this rule

(1) "Access person" means:

(i) With respect to a registered investment company or an investment adviser thereof, any director, officer, general partner, or advisory person, as defined in this section, of such investment company or investment adviser;

(ii) With respect to a principal underwriter, any director, officer, or general partner of such principal underwriter who in the ordinary course of his business makes, participates in or obtains information regarding the purchase or sale of securities for the registered investment company for which the principal underwriter so acts or whose functions or duties as part of the ordinary course of his business relate to the making of any recommendation to such investment company regarding the purchase or sale of securities.

(iii) Notwithstanding the provisions of paragraph (e)(1)(i), where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, the term "access person" shall mean: any director, officer, general partner, or advisory person of the investment adviser who, with respect to any registered investment company, makes any recommendation, participates in the determination of which recommendation shall be made, or whose principal function or duties relate to the determination of which recommendation shall be made to any registered investment company; or who, in connection with his duties, obtains any information concerning securities recommendations being made by such investment adviser to any registered investment company.

(iv) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since its organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (A) its total sales and revenues, and (B) its income (or loss) before income taxes and extraordinary items from such other business or businesses.

(2) "Advisory person" of a registered investment company or an investment adviser thereof means:

(i) Any employee of such company or investment adviser (or of any company in a control relationship to such investment company or investment adviser) who, in connection with his regular functions or duties, makes, participates in, or obtains information regarding the purchase or sale of a security by a registered investment company, or whose functions relate to the making of any recommendations with respect to such pruchases or sales; and

(ii) Any natural person in a control relationship to such company or investment adviser who obtains information concerning recommendations made to such company with regard to the purchase or sale of a security.

(3) "Control" shall have the same meaning as that set forth in section 2(a)(9) of the Act [15 U.S.C. 80a-2(a)(9)].

(4) "Purchase or sale of a security" includes, *inter alia*, the writing of an option to purchase or sell a security.

(5) "Security" shall have the meaning set forth in section 2(a)(36) of the Act [15 U.S.C. 80a-2(a)(36)], except that it shall not include securities issued by the Government of the United States, bankers' acceptances, bank certificates of deposit, commercial paper and shares of registered open-end investment companies.

(6) "Security held or to be acquired" by a registered investment company means any security as defined in this rule which, within the most recent 15 days, (i) is or has been held by such company, or (ii) is being or has been considered by such company or its investment adviser for purchase by such company.

Authority

The Commission is adopting Rule 17j-1 under its authority in Sections 17(j) and 38(a) of the Act [15 U.S.C. 80a-17(j) and 15 U.S.C. 80a-37(a)]. It finds that any changes in the rule from the proposal published in Investment Company Act Release No. 10162 have already been generally subject to comment and pertain to matters of form or are less burdensome than those proposed. Further notice and rulemaking procedures under the Administrative Procedure Act [15 U.S.C. 553] are, therefore, unnecessary.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 31, 1980.

[FR Doc. 80-34869 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

Chains and Parts Thereof, of Cast Iron, Iron or Steel From Italy; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Revocation of countervailing duty order.

SUMMARY: This notice is to advise the public that the Department of Commerce is revoking the countervailing duty order on chains and parts thereof from Italy because of the termination of an injury investigation by the United States International Trade Commission.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C. 20230 (202-377-3758).

SUPPLEMENTARY INFORMATION: A notice entitled "Countervailing Duties: Chains and Parts Thereof, of Cast Iron, Iron or Steel from Italy," T.D. 77-249, was published in the **Federal Register** of October 11, 1977 (42 FR 54799). The notice stated that the Treasury Department had determined that exports of chains and parts thereof, of cast iron, iron or steel from Italy were provided bounties or grants, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) ("the Act"). Accordingly, imports of the merchandise were subject to countervailing duties as set out in T.D. 77-249 and as modified in T.D. 79-20, published in the **Federal Register** of January 17, 1979 (44 FR 3473).

On January 1, 1980, Title I of the Trade Agreements Act of 1979 (93 Stat. 150) ("the TAA") went into effect. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). Under section 104(b)(1) of the TAA, the United States International Trade Commission ("the ITC") is required to review countervailing duty orders issued under section 303 of the Act applicable to merchandise from "countries under the Agreement" upon the request of a government or group of exporters of merchandise covered by the order. Italy is considered a "country under the Agreement".

On January 11, 1980 and March 27, 1980, the ITC received two such requests for review of the countervailing duty order on chains and parts thereof from Italy. Pursuant to the ITC's notification to the Department of the requests for an injury review of the order, the Department issued instructions to suspend liquidation of entries of the affected merchandise made on or after April 3, 1980, as required by section 104(b)(3) of the TAA.

On May 2, 1980, the ITC received a request to withdraw the petition from counsel for the National Association of Chain Manufacturers, the petitioner in the original proceeding.

The ITC published a notice on August 6, 1980 in the **Federal Register** (45 FR 52273) proposing termination of its investigation under section 710(a) of the Act and section 104(b) of the TAA and requesting public comment by September 5, 1980. No adverse comments were received in response to the ITC notice. As a result, the ITC published a notice in the **Federal Register** of October 1, 1980 (45 FR 65087) accepting the withdrawal of the petition and terminating its investigation, pursuant to section 704(a) of the Act. The ITC informed the Department that "the termination of this investigation has the same effect as a determination of no material injury or threat thereof." This was the same language used by the ITC in its letter of August 26, 1980 terminating the investigation concerning certain steel products from Italy (T.D. 69-113). On the basis of such language, the Department subsequently revoked the latter order (45 FR 68931).

Similarly, the Department hereby revokes T.D. 77-249 with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after April 3, 1980.

The Department will instruct Customs officers to proceed with liquidation of all such entries of the subject merchandise without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to such entries. Entries, or withdrawals from warehouse, for consumption made before April 3, 1980 are subject to countervailing duties as set forth in T.D. 77-249 and as modified by T.D. 79-20.

Table in Part 355, Annex III [Amended]

The table in Part 355, Annex III, Commerce Regulations (19 CFR Part 355, Annex III, 45 FR 4949), is amended under the country heading "Italy", by deleting from the column headed "Commodity", the words "Iron or steel chains and parts"; from the column headed "Treasury Decision", the numbers "77-249"; and from the column headed "Action", the words "Bounty declared-rate".

This revocation and notice publication are in accordance with section 104(b)(4)(B) of the TAA (93 Stat. 192, 19 U.S.C. 1671 note).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-34808 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 80F-0112]

Boiler Water Additives; Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polymaleic acid (hydrolyzed polymaleic anhydride) and/or its sodium salt as boiler water additives in the preparation of steam that will contact food. This action is based on a petition by Ciba-Geigy Corp.

DATES: Effective November 7, 1980; objections by December 8, 1980.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 1980 (45 FR 45961), notice was given that a petition (FAP 8A3405) had been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of hydrolyzed polymaleic anhydride and its sodium salt as boiler water additives in the preparation of steam that will contact food. The agency subsequently determined that the proper chemical name for hydrolyzed polymaleic anhydride for purposes of regulation would be polymaleic acid.

The agency has evaluated data in the food additive petition and other relevant material and concludes that the food additive regulations should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 173 is amended in § 173.310 by alphabetically inserting a new item in paragraph (c), to read as follows:

§ 173.310 Boiler water additives.

* * * * *

(c) * * *

Substances	Limitations
* * *	* * *
Polymaleic acid [CAS Reg. No. 26099-09-2], and/or its sodium salt [CAS Reg. No. 70247-90-4].	Total not to exceed 1 part per million in boiler feed water (calculated as the acid).
* * *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 8, 1980 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 7, 1980.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: October 28, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34454 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 601

[Docket No. 80N-0377]

Licensing; Sale of Biological Products Under Development

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologic regulations to clarify the relationship between the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act relating to the sale of investigational biological products.

DATES: Effective November 7, 1980; comments by January 6, 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: Paul K. Hiranaka, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Biological products are controlled by the Public Health Service Act (PHS Act) (42 U.S.C. 262), the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 et. seq.) and the regulations promulgated thereunder. The PHS Act requires that biological products be licensed before their sale, barter, or exchange in interstate commerce. The Bureau of Biologics of the Food and Drug Administration is responsible for licensing biological products. To be licensed, an investigational biological product must be developed and tested to ensure that it is safe, pure, potent, and effective. A biological product undergoing development is subject to the investigational new drug regulations prescribed in §§ 312.1 and 601.21 (21 CFR 312.1 and 601.21) promulgated under the FD&C Act and the PHS Act, respectively. However, once such a product is licensed under the PHS Act, the new drug provisions of the FD&C Act no longer apply (21 CFR 310.4).

In the **Federal Register** of July 31, 1954 (19 FR 4722), the Division of Biologics Standards of the National Institutes of Health (now the Bureau of Biologics, FDA) issued a regulation (now § 601.21) interpreting the interaction between the PHS Act and the FD&C Act. The preamble of that **Federal Register** document characterized the regulation as "essentially informative in nature * * *" and "at most interpretative of the relationship between the two statutes * * *." The regulation appears to prohibit the interstate shipment of an unlicensed biological product undergoing development if it is to be sold, bartered, or exchanged.

Subsequently, FDA issued in the **Federal Register** of July 25, 1956 (21 CFR 5577) the investigational new drug regulations (now § 312.1), which define the conditions under which

investigational drugs and biologicals may be used. These regulations require, in part, that an investigational product shall not be sold, unless a full and satisfactory explanation of why the sale should not be regarded as commercialization of the product is provided.

Because the regulations concerning investigational new drugs under § 312.1 complement § 601.21, the agency concludes that § 601.21 should be clarified by including a reference to § 312.1. Accordingly, the prohibition in the PHS Act and § 601.21 against the sale of an unlicensed biological product does not preclude the sale of an investigational biological product where such sale is in conformance with the regulations governing investigational new drugs and is approved by the agency.

In order for a sale of an investigational biological product to be permitted, the requester must show why the sale is necessary as part of an investigation and should not be regarded as commercialization of the product. The request must be submitted in advance of any sale. The agency will carefully review each request, and no such sale will be permitted except in the context of an acceptable clinical investigation. No sale of an investigational biological product shall occur unless and until it has been approved by the Director, Bureau of Biologics.

This interpretation in no way affects the basic statutory prohibition against any interstate shipment of an investigational biological product prior to submission of a Notice of Claimed Investigational Exception for a New Drug and full compliance with § 312.1.

In addition to clarifying § 601.21 by including a reference to § 312.1, the agency concludes that § 601.21 should also be amended to delete reference to trivalent organic arsenical since such products are included in the definition of a biological product.

The agency has determined pursuant to § 25.24(b)(17) (proposed December 11, 1979, 44 FR 11742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 601 is amended by revising § 601.21 to read as follows:

§ 601.21 Products under development.

A biological product undergoing development, but not yet ready for a product license, may be shipped or otherwise delivered from one State or possession into another State or possession provided such shipment or delivery is not for sale, barter, or exchange, except as provided in section 505(i) of the Federal Food, Drug, and Cosmetic Act, as amended, and the regulations thereunder (21 CFR 312.1).

Under the Administrative Procedure Act (5 U.S.C. 5539 (b) and (d)) and 21 CFR 10.40 (c)(4) and (e)(1)), the agency concludes that notice, public procedure, and delayed effective date are unnecessary for the amendment of § 601.21 because it does not impose an additional duty or burden on any person but rather clarifies an existing regulation. However, interested persons may, on or before January 6, 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 any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective Date. This final rule becomes effective November 7, 1980.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: October 29, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34463 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-80-883]

Combination and Mobile Home Lot Loans

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule with request for comments.

SUMMARY: Section 313 of the Housing and Community Development Amendments of 1979 amended the National Housing Act to permit increased loan amounts and terms under HUD's Combination and Mobile Home Lot Loan Program. The following amendments increase loan limits and maturities to the maximum authorized by the 1979 Act and also make other miscellaneous changes.

EFFECTIVE DATE: November 7, 1980.

COMMENTS DUE: January 6, 1981.

ADDRESS: Written comments should refer to the docket number and date and should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the docket number indicated by the headings, and give reasons for any recommendations. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The interim rule may be changed in light of the comments received.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Department of Housing and Urban Development, Room 9178, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6680. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 313 of the Housing and Community Development Amendments of 1979, Pub. L. 96-153, amended Title I of the National Housing Act (12 U.S.C. 1703) to authorize increased loan limits and terms for single-unit and multi-unit mobile homes when purchased in combination with developed and undeveloped lots. These regulations implement the increases so authorized. For single-unit homes with undeveloped lots the dollar limit will be raised from $21,000 to $24,000. For multi-unit homes with undeveloped lots the limit will be raised from $29,000 to $33,000. The limit for single-unit homes with developed lots will be raised from $23,500 to $27,500 and the dollar limit for multi-unit homes with developed lots from $31,500 to $36,500.

The individual ceilings on dollar amounts allocated to purchase the lot or mobile home in combination were removed by the Act, and it is intended to remove this limitation from the regulations.

The term for loans to purchase single-unit homes purchased in combination with developed or undeveloped lots will be increased to 20 years and 32 days, and the term for multi-module homes

with developed or undeveloped lots will be increased to 25 years and 32 days.

The loan limit for the purchase of a lot only by the present owner of a mobile home will be increased to $6,250 for an undeveloped lot and $9,375 for a developed lot. The maximum term for lot purchase loans, whether developed or undeveloped, will be raised from 10 years and 32 days to 15 years and 32 days.

Loans are also limited to 130 percent of the price set in the mobile home manufacturer's invoice plus the actual cost and installation of central air conditioning and/or heat pumps and the appraised value of the lot.

Section 201.1502 is amended to delete the prohibition on the purchase of a lot subject to a condominium agreement, and to clarify the definition of a "developed" lot.

Section 201.1504 is amended to provide for the financing of the purchase of a used mobile home which was previously financed with a loan under this part.

Section 201.1511 is amended to provide for a one percent origination fee although it must be included within the maximum financing charge.

A new § 201.1515 is added which will require at least 30 calendar days prior notice by the lender to the homeowner before acceleration of the debt instrument secured by the mobile home or lot. The lender shall also be required to make certain disclosures to the borrower concerning the borrower's default and to offer the borrower an opportunity to cure the default.

Section 201.1520 is amended to provide that prior approval by the Commissioner is required before a deed in lieu of foreclosure or repossession is taken by an insured lender.

Section 201.1525(b) is amended to provide that claim shall be filed no later than 18 months and 31 days after the due date of the earliest fully unpaid installment.

Section 201.1526(b) is amended to provide that interest at the rate of 7 percent shall be paid upon the amount due on the borrower's obligation without deducting the amount received from sale of the home, and to provide that such interest shall be payable for a period computed from the date of default to either the date of the claim or for a period of 18 months and 31 days following the date of default, whichever period of time is less.

Due to sharp increases in the cost of housing, many middle-income families and individuals have been excluded from homeownership. This interim regulation will make homeownership available to a broader segment of the population, particularly the first time homebuyer, and will also help stimulate and stabilize the production of housing.

In the current economic situation, rising costs have tended to make decent housing unavailable for many low and moderate income families. Prompt implementation of the program to be authorized by this rule will help to provide new affordable homeownership opportunities to these low and moderate income families. Accordingly, the Secretary has determined that, in light of the current economic situation, it is urgent that the benefits afforded by this rule be made available as soon as possible. Publishing a notice of proposed rulemaking and giving the public an opportunity to comment on the rule prior to its effective date would cause a substantial delay in making the benefits available. Therefore, the Secretary finds that prior notice and public procedure on the rule would be contrary to public interest and that the rule should become effective as soon as possible under applicable legal requirements. However, the Secretary is providing an opportunity for public comment on the rule following its effective date. Serious consideration will be given to all public comments submitted in developing a final rule, which will be prepared and published as soon as possible after the close of the time period allowed for public comment.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address listed above. In addition, the Chairman and Ranking Minority Members of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives have waived the prepublication review of this rule provided for in Section 7(o)(2) of the Department of Housing and Urban Development Act and the delay of effective date required by Section 7(o)(3) of the Department of Housing and Urban Development Act.

In accordance with Executive Order 12044 a Regulatory Analysis has been prepared on this regulation and is available for copy and inspection at the above address.

This rule is not listed in the Department's semi-annual agenda of significant rules, published pursuant to Executive Order 12044, as extended by Executive Order 12221.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart D—Combination and Mobile Home Lot Loans

1. Section 201.1502 (b) and (f) are revised to read as follows:

§ 201.1502 Definitions.

* * * * *

(b) "Mobile Home Lot" means a portion of land acceptable to the Secretary as a mobile home site. The mobile home lot may be unplatted, or may be in a mobile home park, a recorded or unrecorded subdivision, or planned unit development or condominiums.

* * * * *

(f) "Developed lot" means a lot with water and utility connections, sanitary facilities, appropriate driveways, provisions for anchoring and support systems as specified by the manufacturer of the home to be placed on the lot, and other improvements which are necessary to make the lot acceptable to the Secretary as a mobile home site.

* * * * *

3. Section 201.1504 is revised to read as follows:

§ 201.1504 Maximum loan amounts and terms.

(a) Maximum insurable loan amounts and terms shall not exceed the lesser of:

(1) $24,000 for 20 years and 32 days for the purchase of a single-wide mobile home and an undeveloped lot.

(2) $27,500 for 20 years and 32 days for the purchase of a single-wide mobile home and a developed lot.

(3) $33,000 for 25 years and 32 days for the purchase of a mobile home composed of two or more modules and an undeveloped lot.

(4) $36,000 for 25 years and 32 days for the purchase of a mobile home composed of two or more modules and a developed lot.

(5) 130 percent of the total price of a new mobile home, as stated in the manufacturer's invoice plus the actual cost and installation of central air conditioning and/or heat pumps. To this amount may be added the Secretary's estimate of the value of the mobile home lot; or

(6) 90 percent of the Secretary's estimate of the value of a used mobile home, if the used mobile home was

previously financed with a loan under this part, plus the Secretary's estimate of the value of the mobile home lot.

(b) The maximum permissible loan amounts and terms for the purchase of a mobile home shall not exceed the lesser of the Secretary's estimate of the value of the mobile home lot or;

(1) $6,250 for 15 years and 32 days for the purchase of an undeveloped lot on which to place a mobile home owned by the borrower.

(2) $9,375 for 15 years and 32 days for the purchase of a developed lot for which to place a mobile home owned by the borrower.

4. Section 201.1506(a) is revised as follows:

§ 201.1506 Loans for the purchase or acquisition of a lot.

(a) A loan to finance the purchase by the borrower of a lot on which to place a mobile home owned by the borrower including funds for site preparation, anchoring devices, support systems and foundation shall be eligible: *Provided,* That

* * * * *

5. Section 201.1509 (a) and (b)(1) is revised to read as follows:

§ 201.1509 Fees and charges for origination of loan.

(a) The insured will be charged a fee by an appraiser approved by the Commissioner.

(b) * * *

(1) Appraisal fee charged by an approved appraiser.

* * * * *

6. Section 201.1511(a)(2) is revised to read as follows:

§ 201.1511 Financing charges.

(a) * * *

(1) * * *

(2) No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed this fee must be included in the financing charge. * * *

* * * * *

7. A new § 201.1515 is proposed to be added to read as follows:

§ 201.1515 Notice of default.

(a) The lender shall, prior to taking any action to accelerate the maturity of the borrower's note or obligation, send to the mobile home owner a written notice by registered or certified mail of the lender's intention to declare a default. The notice shall be sent to the address where the mobile home is located. The notice shall contain the following disclosures in a clear and concise manner:

(1) A description of the obligation or security interest held by the lender.

(2) The nature of the default claimed, which may be stated in general terms, for example: "failure to make required installment payments when due."

(3) The specific actions which the lender intends to take at the expiration of the 30-day notice period.

(4) The right of the mobile home owner to cure the default and the exact manner in which he or she may do so, including the sum of money which must be tendered, if any, in order to cure the default; and the office address to which payment must be sent.

(5) A statement that the default may be cured at any time before title is lawfully transferred, and that title will not be transferred, in any event, until at least 40 days, or such longer period as required by state law, has passed following mailing of the notice to the mobile homeowner.

(b) The notice required by paragraph (a) of this section shall not be required when the mobile home owner has abandoned the mobile home or offered a deed in lieu of foreclosure, provided that the lender retains evidence thereof satisfactory to the Commissioner.

7. Section 201.1520(a) is amended to add subparagraph (5) as follows:

§ 201.1520 Deed in lieu of foreclosure.

(a) * * *

(5) The Secretary's prior approval shall be obtained before a deed in lieu of foreclosure is accepted by the lender.

8. Section 201.1525(b) is revised to read as follows:

§ 201.1525 Claim application.

(a) * * *

(b) *Where to file.* Claim shall not be filed by the insured lender until after default, repossession, and resale of the mobile home and lot or mobile home lot. Where a mobile home and lot have been financed, the mobile home and lot shall be sold in a single transaction. The mobile home may not be removed from the lot without the prior approval of the Secretary. Claim shall be filed no later than 18 months and 31 days after the due date of the earliest fully unpaid installment unless an extension is requested and approved by the Secretary.

9. Section 201.1526(b)(1) is amended to read as follows:

§ 201.1526 Amount of claim.

* * * * *

(b) On loans in default prior to April 1, 1980 add to 90 percent of the amount determined under paragraph (a) of this section, computed from date of default: On loans in default on or after April 1, 1980 add to 90 percent of the amount determined under paragraph (a) of this section, 90 percent of the interest at 7 percent per annum on the outstanding principal balance computed from the date of default:

(1) To either the date of claim application or for a period of 18 months and 31 days following such default date, whichever period of time is the lesser, or;

* * * * *

(Sec. 7(d), Department of Housing and Urban Development Act (12 U.S.C. 3535(d)))

Issued at Washington, D.C., October 16, 1980.

Clyde McHenry,

Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 80-34783 Filed 11-6-80; 8:45 am]

BILLING CODE 4210-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Rate Changes, Bibliography, and Index

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby makes numerous rate changes and adds a bibliography and a subject index to the Domestic Mail Manual (DMM), which is incorporated by reference in the **Federal Register.** 39 CFR 111.1.

All of the rate changes made to sections or Exhibits in the DMM reflect rate changes previously published in a notice in the **Federal Register** and made effective on July 6, 1980, 45 FR 45041. The bibliography and subject index are new.

EFFECTIVE DATE: July 30, 1980.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245-4638.

SUPPLEMENTARY INFORMATION: The DMM has been amended by the publication of a transmittal letter for Issue 3, dated July 30, 1980. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following Summary of Changes is taken from the transmittal letter for Issue 3.

Summary of Changes

1. Sections 411.21, 411.321 b, 411.322, 411.331, 411.332, 411.341, 411.342 and Exhibits 611.2 and 711.4 are revised to

reflect the rate changes implemented effective 12:01 a.m., July 6, 1980. These rates appeared in *Postal Bulletin* 21244, dated May 8, 1980.

2. A Bibliography and Index are added to the DMM.

In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ *111.3 Amendments to the Domestic Mail Manual.*

* * * * *

Transmittal letter for issue	Dated	Federal Register Publication
• • • • •		
3	July 30, 1980	45 FR 73925

(5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408, 3001–3011, 3201–3218, 3403–3405, 3601, 3621; 42 U.S.C. 1973–cc–13, 1973–cc–14)

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 80-34721 Filed 11-6-80; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to the Postal Contracting Manual.

SUMMARY: The Postal Service hereby announces numerous miscellaneous revisions of the Postal Contracting Manual. The revisions are explained below in the Supplementary Information.

EFFECTIVE DATE: August 30, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Jones, (202) 245–4603.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which has been incorporated by reference in the **Federal Register** (see 39 CFR 601.100), has been amended by the issuance of Transmittal Letter 33, dated July 30, 1980.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** as an amendment to that section and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers of the basic Manual will receive these amendments from the Government Printing Office. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

Explanation of these amendments to the Postal Contracting Manual follows:

Explanation

a. Paragraph 1–309.2(c) has been revised to remove the existing limitation on the maximum period for the assessment of liquidated damages.

b. Paragraph 1–313 has been revised to implement the Contract Disputes Act of 1978.

c. Paragraph 1–407.2(b)(2)(i) has been revised to reflect a change in the procurement authority that the Regional Postmasters General may delegate the SC Manager/Postmasters for construction contracts.

d. Paragraph 1–903.1(i) has been revised to provide guidance in determining responsibility of prospective contractors as it relates to unusually low offers.

e. Paragraph 1–1001.1 has been revised to update policy on publicizing proposed procurement actions in newspapers and trade journals.

f. Paragraph 1–1105.2 has been revised to reflect that the General Manager, Procurement Technical Support Division, Procurement and Supply Department, shall approve brand name or equal purchase descriptions for procurements in excess of $30,000.

g. Paragraph 1–1906 has been revised to reflect that the General Manager, Procurement Technical Support Division, Procurement and Supply Department, shall evaluate any value engineering change proposals received by the contracting officer.

h. Paragraph 2–406.3(c)(ii) has been revised for clarity with respect to the evaluation of unusually low offers.

i. Paragraph 7–103.5, the *Inspection* clause, has been revised.

j. Paragraph 7–103.12, the *Disputes* clause, has been replaced by the *Claims and Disputes* clause.

k. Paragraph 7–104.47 has been added to incorporate a new clause, *Affirmative Action for Handicapped Workers.*

l. Paragraph 7–104.48 has been added to incorporate a new clause, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.*

m. Section 12, Part 8, has been updated to reflect changes in the policies and procedures established by the Department of Labor with respect to equal opportunity, specifically in the areas of contract compliance reviews and dealings with the Office of Federal Contract Compliance Programs.

n. Section 12, Part 10, has been added to incorporate policies and procedures with respect to employment of the handicapped.

o. Section 12, Part 11, has been added to incorporate policies and procedures with respect to employment of disabled veterans and veterans of the Vietnam era.

p. The following new, revised, or replacement forms have been included in Section 16 and shall be used immediately:

(1) Form 7308, April 1979—*Evaluation and Award Criteria—Contract Units*

(2) Form 7310, April 1979—*Representations and Certifications—Contract Units*

(3) Form 7311, Dec. 1979—*Specification Requirements—Contract Stations, Contract Branches, and Community Post Offices*

(4) Form 7312, April 1979—*Monthly Report of Operations—Contract Units*

(5) Form 7313, Jan. 1979—*Health Unit Agreement*

(6) Form 7314, Dec. 1979—*Medical Agreement*

(7) Form 7332, July 1979—*General Provisions for Fixed-Price Contracts (Supplies and Services or Research and Development)*

(8) Form 7348, January 1980—*Sale of USPS Personal Property—Bid and Award*

(9) Form 7348–A, January 1980—*Sale of USPS Personal Property—General Sale Terms and Conditions*

(10) Form 7348–B, January 1980—*Sale of USPS Personal Property—Item Bid Page*

(11) Form 7368, Dec. 1979—*Solicitation, Offer, and Award—Contractor Operated Stations, Branches, or Community Post Offices*

(12) Form 7369, Dec. 1979—*General Provisions for Contract Stations, Contract Branches, and Community Post Offices*

(13) Form 7475, Nov. 1979—*Solicitation, Offer, and Award—Vehicle Hire*

(14) Form 7476, Nov. 1979—*General Provisions for Vehicle Hire Contracts.*

q. The following obsolete forms have been deleted from section 16:

(1) Form 7361, April 1976—*Solicitation, Offer, and Award—Vehicle Hire (Areawide)*

(2) Form 7361–A, May 1977—*Area Wide Vehicle Contract Modification*

(3) Form 7374, April 1975—*Solicitation, Offer, and Award—Vehicle Hire (not to Exceed $5,000 Annually)*

(4) Form 7374, Feb. 1976—*Solicitation, Offer, and Award—Vehicle Hire (Over $5,000 Annually)*

r. Paragraphs 18–309.7 and 18–518.12 have been added to provide instructions for use of the new clause entitled *Affirmative Action for Handicapped Workers* prescribed in 7–104.47.

s. Paragraphs 18–309.8 and 18–518.13 have been added to provide instructions for use of the new clause entitled

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era prescribed in 7-104.48.

t. The following new, revised, or replacement forms have been included in section 18 and shall be used immediately where applicable:

(1) Form 7322, Jan. 1979—*Solicitation, Offer, and Award (Construction Contract)*

(2) Form 7322-A, Dec. 1976—*Labor Standards Provisions Applicable to Contracts in Excess of $2,000*

(3) Form 7388, May 1975—*Bid Form (Construction Contract)*

(4) Form 7389, May 1975—*Instructions to Bidders (Construction Contract)*

(5) Form 7391, Oct. 1979—*General Provisions for Fixed-Price Construction Contracts*

(6) Form 7401, July 1979—*Supplemental Agreement (Lessor Improvements)*

(7) Form 7404, July 1979—*Contract for Real Estate Services*

(8) Form 7417, Dec. 1974—*Short Form Lease*

(9) Form 7417-A, April 1979—*General Conditions to Short Form Lease*

(Previous editions of any of the above forms are obsolete and must be destroyed.)

u. Paragraph 26-208 has been revised to clarify the provisions of the clause entitled *Guaranteed Maximum Shipping Weights and Dimensions.*

v. Appendix A has been revised to update the rules of practice before the Postal Service Board of Contract Appeals.

w. The remainder of the changes are minor, editorial, or technical in nature.

In consideration of the foregoing, 39 CFR Part 601 is amended by adding the following to § 601.105:

§ 601.105 Amendments to the Postal Contracting Manual.

Transmittal letter	Dated	Federal Register Publication
. . . .		
33	July 30, 1980	45 FR 73926

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 80-34722 Filed 11-6-80; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52

[A-5-FRL 1661-3]

Approval and Promulgation of Implementation Plans; Ohio.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule restarts compliance schedules and revises attainment dates in the federally promulgated Ohio state implementation plan for three power plants. Compliance with the emission limitations for the three power plants was stayed pending the Environmental Protection Agency's reconsideration of its original use of the Pasquill-Gifford (P-G) class A dispersion coefficients in setting emission limitations for these plants. The United States Court of Appeals for the Sixth Circuit remanded the class A record to the agency on June 29, 1978. *Cincinnati Gas and Electric Company* v. *EPA*, 578 F.2d 660 (6th Cir. 1978). On June 19, 1980, EPA published its reconsideration of the class A issue and affirmed its original use of the P-G class A coefficients in setting emission limitations for these power plants (45 FR 41501). Thus, on June 19, 1980, EPA affirmed the emission limitations for the power plants that were originally promulgated by EPA on August 27, 1976. 41 FR 36324, 40 CFR 52.1881, et seq. In order to bring the three power plants into compliance with their emission limitations, EPA is restarting the original compliance schedules. The new starting date for the compliance schedules is June 19, 1980. The attainment date for these plants is June 19, 1983. EPA is also publishing for comment in today's **Federal Register** a proposed alternative compliance schedule for the Conesville power plant based on the stated intention of Columbus and Southern Ohio Electric Company to install a coal washing facility to achieve compliance. If CSOE chooses not to install a coal washing facility to achieve compliance, it must comply with the original compliance schedule.

EFFECTIVE DATE: June 19, 1980.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6039.

SUPPLEMENTARY INFORMATION: On June 29, 1978, the U.S. Court of Appeals for the Sixth Circuit remanded to EPA for its further consideration the agency's use of the Pasquill-Gifford dispersion coefficients in setting emission limitations for isolated rural sources in Ohio. *Cincinnati Gas and Electric Company* v. *EPA*, 578 F.2d 660 (1978). The agency published its preliminary findings on its review of the original class A record on February 7, 1979. 44 FR 7798. The agency stated that its preliminary review of additional scientific data supported EPA's original decision to use the class A coefficients in setting emission limitations for isolated rural power plants in Ohio. Review of the agency's modeling determined that only four Ohio power plants had emission limitations which were determined by P-G class A conditions. These power plants are Stuart (Dayton Power and Light Company), Conesville (Columbus and Southern Ohio Electric Company), Cardinal and Muskingum River (Ohio Power Company).

The Court's remand effectively stayed compliance with the originally promulgated emission limitations for the four plants pending the agency's reconsideration of the original class A record. 44 FR 7798 (February 7, 1979). However, since the agency's preliminary findings supported the original use of class A, the agency solicited comment on whether these utilities would need more time than allowed under the current compliance schedule to bring their sources into compliance with their original emission limitations.[1] 44 FR 7798. The original attainment date for these four plants was June 17, 1980. 40 CFR 52.1875 (1979). EPA stated in the February 7, 1979 notice that, if necessary, it would amend the SIP to give the utilities more time to comply.[2]

On June 19, 1980, EPA published its evaluation of comments on the February 7, 1979 notice and its final determination on use of the P-G class A coefficients. 45 FR 41501. EPA found that the scientific evidence and utility monitor data supported the agency's original decision to use the P-G class A coefficients in setting emission limitations for the four Ohio power plants. Therefore, the agency reaffirmed

[1] The current emission limitations for these plants are as follows: Stuart—3.16 lbs. SO_2/MBTU; Conesville—5.66 lbs. SO_2/MBTU; Cardinal—4.76 lbs. SO_2/MBTU; and Muskingum River—6.48 lbs. SO_2/MBTU. *See* 40 CFR § 52.1881. These are some of the highest emission limitations in the federally promulgated Ohio SO_2 plan.

[2] Restarting compliance schedules and revising attainment dates following a remand is proper under the Clean Air Act. Section 110(a)(2)(A), 42 U.S.C. §7410(a)(2)(A). The United States Court of Appeals for the Sixth Circuit affirmed exactly such an action following remand of particulate matter regulations in Ohio. *Northern Ohio Lung Association* v. *EPA*, 572 F.2d 1143 (1978).

the originally promulgated emission limitations for the four plants on June 19, 1980, and these sources are now required to come into compliance with those emission limitations.[3] 45 FR 41509 (June 19, 1980).

In response to EPA's February 7, 1979 notice, only Dayton Power and Light Company indicated that it would not need more time to comply. Dayton Power and Light stated that its Stuart power plant is in compliance with the originally promulgated emission limitation. There is, therefore, no need to restart the compliance schedule or revise the attainment date for the Stuart power plant. However, in order to bring the Conesville, Muskingum River and Cardinal plants into compliance, the agency is restarting the original compliance schedules for these plants. This means that these plants will have to comply with the same interim compliance milestones used for all other SO_2 sources in the state of Ohio. These plants will also have the same three year period for attainment as used for all other SO_2 sources in Ohio.

In addition to restarting the original compliance schedules, the agency is proposing to promulgate an alternative compliance schedule for the Conesville plant. On January 23, 1980, Columbus and Southern Ohio Electric Company (CSOE) submitted to EPA a proposed coal washing compliance program and schedule to meet its original emission limitation. EPA reviewed the CSOE schedule and determined that it is as expeditious as practicable and provides for compliance within three years of approval. In addition, the coal washing program allows CSOE to continue burning Ohio coal and still meet its emission limitation. EPA is publishing for comment in the proposed rules section of today's **Federal Register** the CSOE coal washing compliance schedule as an alternative to the original compliance schedule in 40 CFR 52–1882(b). If CSOE chooses to comply by installing a coal washing facility, it would have to meet the interim dates in the coal washing compliance schedule. If CSOE chooses not to install a coal washing facility, it will be subject to the interim dates of the original compliance schedule. EPA is proposing to make the coal washing schedule subject to the same starting date as the original schedule.

The agency has determined that the appropriate starting date for the original compliance schedules for these plants is June 19, 1980. Accordingly, the new attainment date for these plants is June 19, 1983. The Court's remand in effect required the agency to stay compliance for the "class A" power plants until the agency responded to the remand. The utilities, however, were on notice that the stay would be lifted once the agency's responded to the remand. The utilities were also on notice that the agency was considering reaffirming their original emission limitations. 44 FR 7798 (February 7, 1979). In fact, the agency specifically asked the utilities to comment on whether they would need more time to comply with their original emission limitations. Therefore, the utilities had fair warning that they could be required to comply with their original emission limitations once the agency responded to the remand. Further delay in moving these plants toward compliance with emission limitations that were promulgated in 1976 is unwarranted and would be contrary to the public interest.[4]

The agency has determined that it is unnecessary to provide for further comment on the original compliance schedules. Both the utilities and the public have already had the opportunity to comment on the compliance schedules as part of the agency's original promulgation of the SO_2 plan in 1976. Thirty-three petitions for review were filed following EPA's promulgation of the SO_2 plan in 1976. None of the petitioners challenged the compliance schedules. *Cleveland Electric Illuminating Company* v. *EPA*, 572 F.2d 1150 (6th Cir. 1978), *cert. denied* 439 U.S. 910 (1978); *Cincinnati Gas and Electric Company* v. *EPA*, 578 F. 2d 660 (6th Cir. 1978), *cert. denied* 439 U.S. 1114 (1978). In addition, the public and the utilities have had an opportunity to comment on the need to revise the original compliance schedules for these four "class A" power plants. 44 FR 7798 (February 7, 1979). Only the affected utilitites commented. In addition, further public comment on these compliance schedules and revised attainment dates would delay moving these sources toward compliance. For these reasons, further public comment is unnecessary and would be contrary to the public interest.

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action and supporting record is available only by the filing of a petition for review in the United States Court of Appeals for the Sixth Circuit within 60 days of the date of this publication. Under Section 307(b)(1) of the Clean Air Act, the requirements which are the subject to today's notice may *not* be challenged later in civil or criminal proceedings brough by EPA to enforce these requirements. This Notice of Final Rulemaking is issued under the authority of Section 110(a), 172 and 301 of the Clean Air Act as amended.

(42 U.S.C. 7410(a), 7502, 7601(a))

Dated: November 3, 1980.

Barbara Blum,

Acting Administrator.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart kk—Ohio

1. In § 52.1875, the attainment date for sulfur dioxide in the table is revised for Ohio Power Company and Columbus and Southern Ohio Electric Company. This revision is reflected in footnote "f" to the table. The introduction paragraph of footnote f. is revised and a new footnote f.(3) is added, as follows

§ 52.1875 Attainment dates for national standards.

* * * * *

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company which is subject to an attainment date of Septebmer 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983, and the utilities listed in (3) which are subject to an attainment date of June 19, 1983.

* * * * *

(3) Ohio Power Company (Cardinal plant in Jefferson County and Muskingum River plant in Washington and Morgan Counties) and the Columbus and Southern Ohio Electric Company (Conesville plant in Coshocton County).

[3] Ohio Power Company and Columbus and Southern Ohio Electric Company filed petitions for reconsideration of the agency's June 19, 1980 determination on class A. Both requested a stay of the decision pending the agency's reconsideration or, if the agency denies the reconsideration, pending judicial review. The agency will respond to the petitions and requests for stay in a seperate **Federal Register** notice.

[4] The U.S. Court of Appeals for the Sixth Circuit recently cited the long delays and the " 'public interest' in achievement of national air quality standards" in Ohio. *Republic Steel Corporation* v. *Costle*, 621 F.2d 797 (6th Cir. 1980).

2. In § 52.1882, new section (h) is added as follows:

§ 52.1882 Compliance schedules.

* * * * *

(h) The federal compliance schedule for Ohio Power Company's Cardinal plant in Jefferson County and Muskingum River plant in Washington and Morgan Counties and Columbus and Southern Ohio Electric Company's Conesville plant in Coshocton County is set forth in § 52.1882(b) except that all references to June 17, 1977, are changed to June 19, 1980.

[FR Doc. 80-34907 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 55

[A-4-FRL 1646-1]

Energy Related Authority; Amendment to Delayed Compliance Order for the Florida Power Corp.—Crystal River Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues an Amendment to the Delayed Compliance Order (DCO) for the Florida Power Corporation. The amended DCO requires the Company to bring air emissions from its Crystal River Plant Unit No. 2 boiler located near Red Level, Florida, into compliance with certain regulations contained in the Federally-approved Florida State Implementation Plan (SIP) by December 30, 1980. Florida Power Corporation's compliance with the amended DCO will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the amended DCO.

EFFECTIVE DATE: This rule takes effect on November 7, 1980.

ADDRESS: The amended Federal Delayed Compliance Order, supporting material, and any comments received in response to the prior **Federal Register** notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne J. Aronson, Air Enforcement Branch, Enforcement Division, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone number: 404/881-4253.

SUPPLEMENTARY INFORMATION: On September 3, 1980, the Regional Administrator of EPA's Region IV Office published in the **Federal Register** (Volume 45, No. 172 at page 58381), a notice setting out the provisions of a proposed Amendment to the Delayed Compliance Order (DCO) for Florida Power Corporation's (FPC)—Crystal River Plant. The notice asked for public comments and provided an opportunity for a public hearing on the proposed Amendment. No public comments or requests for a public hearing were received in response to the proposal notice.

Therefore, an Amendment to Delayed Compliance Order (Docket No. DCO-78-6) effective this date is issued to Florida Power Corporation by the Administrator of EPA pursuant to the authority of Section 113(d)(5) of the Clean Air Act (the Act), 42 U.S.C. 7413(d)(5). The amended DCO places Florida Power Corporation on a schedule to bring Crystal River Plant Unit No. 2 boiler located near Red Level, Florida, into compliance by December 30, 1980, with Sections 17-2.04(6)(e)2a and 17-2.04(6)(e)2b of the Air Pollution Rules of the State of Florida, a part of the Federally-approved Florida State Implementation Plan. This Amendment to the DCO requires FPC to complete installation of particulate emission control equipment, shakedown operations, performance tests, and certification of final compliance at its Crystal River Plant for Unit No. 2, according to the schedule set forth below. The amendment to the DCO requires FPC to maintain compliance with an interim emission limit of 0.10 pound per million BTU's while operating Unit 2 at a derated level of approximately 303 megawatts. Compliance with the terms of the amended DCO precludes any further enforcement by EPA under Section 113 of the Act, and any citizen suits under Section 304 of the Act, against FPC for violations of the Florida State Implementation Plan provisions covered by the amended DCO.

Enforcement may be initiated, however, for violations of any provision of the amended DCO. If the Administrator determines that FPC violates any requirement contained in the amended DCO, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of the notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act. EPA has determined that the Amendment to the DCO shall be effective upon publication of this notice because of the need to immediately place FPC on a revised schedule for compliance with the Florida State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: October 31, 1980.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Part 55 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

In § 55.230, paragraphs (f)(1)-(3) and (k)(4) and (5) are revised to read as follows:

Subpart K—Florida

§ 55.230 Federal delayed compliance orders issued under section 113(d)(5) of the Act.

* * * * *

(f) * * *

(1) Particulate emissions from Crystal River Unit 2 shall not exceed 0.10 pound per million BTU heat input maximum 2-hour average.

(2) (Reserved)

(3) FPC as part of the control strategy shall operate, calibrate, and maintain an instrument to continuously monitor and record visible emissions from Crystal River Unit 2. Visible emissions from Crystal River Unit 2 shall be limited to 20% opacity averaged over a six-minute period recorded by the continuous opacity monitor. In the event of a malfunction of the continuous opacity monitor, opacity shall be determined in accordance with EPA Reference Method 9 averaged over a six-minute period. The continuous opacity monitor strip charts shall be maintained by the Company and be subject to EPA review when requested.

* * * * *

(k) * * *

(4) October 30, 1980—Complete onsite construction or installation of particulate emission control equipment.

(5) December 30, 1980—Complete shakedown operations and performance tests for particulate emissions in accordance with EPA reference methods as contained in 40 CFR Part 60, Appendix A on the emission control equipment; also achieve compliance with the Florida Air Pollution Rules, Chapter 17-2 and certify such compliance to the Director of the Enforcement Division, Region IV.

As amended, Delayed Compliance Order Docket No. DCO-78-6 issued on November 21, 1978, shall remain in full

force and effect until termination by EPA.

[FR Doc. 80-34799 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A-6-FRL 1660-F]

State of Oklahoma; Section 107 Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the *Oklahoma* chart for total suspended particulates (TSP) by revising two terms under the Air Quality Control Regions (AQCRs) 184 and 186 respectively. These AQCRs are listed in the Revised July 1, 1979, Title 40 Parts 81 and 99 Code of Federal Regulations (CFR). The language in the existing CFR is ambiguous for the nonattainment status of Oklahoma and Tulsa Counties. There is no distinction in wording between those "portions" which do not meet the primary standards and those "portions" which do not meet the secondary standards. The revised wording will provide a clear distinction between the two Oklahoma County areas and the two Tulsa County areas by using the terms "portions" and "remainder." Therefore, EPA is requesting that the revised terms be included in the next publication of Title 40 CFR.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Chief, Implementation Plan Section, Air and Hazardous Materials Division, Environmental Protection Agency Region 6, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION: § 81.337 Oklahoma—chart TSP is amended by revising AQCRs 184 and 186 to read as follows:

Oklahoma—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 184:				
Portions of Oklahoma County	X	X		
Remainder of Oklahoma County			X	
Remainder of AQCR				X
AQCR 186:				
Portions of Tulsa County	X	X		
Remainder of Tulsa County			X	
Portions of Muskagee County			X	
Portions of Mayes County	*X			
Remainder of AQCR				X

*EPA designation replaces State designation.

(This notice of final rulemaking is issued under the authority of Section 107 of the Clean Air Act, as amended, 42 U.S.C. 7407)

Dated: October 23, 1980.

Frances E. Phillips,

Deputy Administrator, Region VI.

[FR Doc. 80-34921 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Definition and Reimbursement of Hospital Intensive Care Type Units

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of a final rule.

SUMMARY: This document makes certain corrections to the Medicare final rule published in the **Federal Register** August 18, 1980 (45 FR 54757) concerning the definition and reimbursement of hospital intensive care type units.

EFFECTIVE DATE: Effective for provider cost reporting periods beginning on or after October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Alton Cobb, 301-594-9773.

SUPPLEMENTARY INFORMATION:

Background

The revision to the regulations in 42 CFR 405.452(e)(2)(ii) that was published August 18, 1980, (45 FR 54757) failed to include the asterisks at the end of the regulation text. As a result, the regulation printed in the next edition of the CFR would have inadvertently omitted the charts that follow the text in that section.

In addition, we omitted a conforming change in the regulations at 42 CFR 405.430(b)(9). The definition that now appears in this section is the same as the definition that formerly appeared at 42 CFR 405.452(d)(10) which we revised in the August 18 document. We have therefore revised § 405.430(b)(9) to include the revised definition. We have also made a conforming change in the charts in § 405.452(e)(3)(iii) that should have appeared in the published document.

The revisions to the regulations in 42 CFR Part 405 that were published August 18, 1980, (45 FR 54757), are amended as set forth below:

1. The revisions to the regulation appearing at § 405.430 are amended by revising paragraph (b)(9) to read as follows:

§ 405.430 Inpatient routine nursing salary cost differential.

* * * * *

(b) *Definitions.* * * *

(9) *Intensive care type inpatient hospital unit.* To be considered an intensive care type inpatient hospital unit, the unit must furnish services to critically ill patients. (Examples of intensive care type units include, but are not limited to, intensive care units, trauma units, coronary care units, pulmonary care units, and burn units. Excluded as intensive care type units are postoperative recovery rooms, postanesthesia recovery rooms, maternity labor rooms, and subintensive or intermediate care units.) The unit must also meet the following conditions:

(i) The unit must be in a hospital;

(ii) The unit must be physically and identifiably separate from general routine patient care areas, including subintensive or intermediate care units, and ancillary service areas. There cannot be a concurrent sharing of nursing staff between an intensive care type unit and units or areas furnishing different levels or types of care. However, two or more intensive care type units that concurrently share nursing staff can be reimbursed as one combined intensive care type unit if all other criteria are met. Float nurses (nurses who work in different units on an as-needed basis) can be utilized in the intensive care type unit. If a float

nurse works in two different units during the same eight hour shift, then the costs must be allocated to the appropriate units depending upon the time spent in those units. The hospital must maintain adequate records to support the allocation. If such records are not available, then the costs must be allocated to the general routine services cost areas;

(iii) There must be specific written policies that include criteria for admission to, and discharge from, the unit;

(iv) Registered nursing care must be furnished on a continuous 24-hour basis. At least one registered nurse must be present in the unit at all times;

(v) A minimum nurse-patient ratio of one nurse to two patients per patient day must be maintained. Included in the calculation of this nurse/patient ratio are registered nurses, licensed vocational nurses, licensed practical nurses, and nursing assistants who provide patient care. Not included are general support personnel such as ward clerks, custodians and housekeeping personnel; and

(vi) The unit must be equippped, or have available for immediate use, lifesaving equipment necessary to treat the critically ill patients for which it is designed. This equipment may include, but is not limited to, respiratory and cardiac monitoring equipment, respirators, cardiac defibrillators, and wall or canister oxygen and compressed air.

2. The revisions to the regulation appearing at § 405.452 are amended by adding asterisks after paragraph (e)(2)(ii) and by revising the chart in paragraph (e)(3)(iii) to read as follows:

§ 405.452 Determination of cost of services to beneficiaries.

* * * * *

(e) *Application.* * * *

(2) *Departmental Method.* * * *

(ii) *For cost reporting periods starting after December 31, 1971.* * * *

(3) *Combination Method.* * * *

(iii) *Combination Method for cost reporting periods beginning after December 31, 1971.* * * *

Hospital Z

Statistical and financial data:	
Total inpatient days for all patients—General area	$30,000
Total inpatient days for all patients—All intensive care type units units	2,500
Inpatient days applicable to program beneficiaries—General area	7,500
Inpatient days applicable to program beneficiaries—All intensive care type	750
Total allowable costs—General inpatient routine area	600,000
Total allowable costs—All intensive care type units	95,000
Inpatient ancillary services—Total allowable cost excluding delivery room cost	320,000

Hospital Z—Continued

Inpatient ancillary services—Total charges excluding delivery room charges	400,000
Inpatient ancillary services—Charges for services to program beneficiaries	80,000
Computation of cost applicable to program:	
Average cost per diem for general routine services: 600,000 ÷ 30,000 = $20 per diem.	
Cost of general routine services (exclusive of any inpatient routine nursing salary cost differential adjustment factor) rendered to program beneficiaries: $20 per diem X 7,500 days	150,000
Average cost per diem for intensive care type units: $95,000 ÷ 2,500 = $38 per diem.	
Cost of services rendered to program beneficiaries in intensive care type units: $38 per diem X 750 days	28,500
Ratio of beneficiary charges to total charges for all ancilliary services excluding delivery room charges: $80,000 ÷ $400,000 = 20 percent.	
Cost of anciliary services rendered to program beneficiaries: 20 percent X $230,000	64,000
Total cost (exclusive of any inpatient routine nursing salary cost differential adjustment factor) of services rendered to program beneficiaries	$242,500

* * * * *

(Secs. 1102, 1814(b), 1861(v), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v) and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: November 3, 1980.

Robert F. Sermier,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 80-34772 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-35-M

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42 CFR Part 405

Medicare Program; Technical Amendments on Reconsideration and Appeals Under the Hospital Insurance Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final regulation.

SUMMARY: This regulation places in HCFA's part of the Code of Federal Regulations certain material formerly included in the regulations of the Social Security Administration (SSA). Specifically, SSA's regulations about making and reviewing program determinations referred to certain types of determinations made in the Medicare program. However, in its recent recodification of those regulations, SSA deleted the references to Medicare determinations. The following amendments place the deleted material among the HCFA regulations on making and reviewing program determinations. In addition, for the convenience of the reader of HCFA regulations, we are reprinting the SSA's regulations on making and reviewing program determinations as an Appendix to the Medicare regulations on the same subject.

EFFECTIVE DATE: December 8, 1980.

FOR FURTHER INFORMATION CONTACT: Jack Wasserman, Health Care Financing Administration, Division of Technical Policy and Litigation, Dogwood West Building, Second Floor, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207, 301-594-9300.

SUPPLEMENTARY INFORMATION:

Background

Section 1869(b) of the Social Security Act provides that individuals who are dissatisfied with certain determinations about Medicare entitlement and payment of benefits have a right to a hearing. The Social Security Administration (SSA) makes initial and reconsidered determinations about entitlement to hospital insurance (Part A of Medicare) and supplementary medical insurance (Part B of Medicare), and HCFA makes initial and reconsidered determinations about the amount of hospital insurance benefits payable. However, SSA provides the hearings and final agency review to individuals who dispute either SSA's entitlement determinations or HCFA's hospital insurance benefit amount determinations. (Under section 1842(b)(3)(c) of the Act, Medicare carriers provide hearings about determinations about the amount of supplementary medical insurance benefits payable (42 CFR 405, Subpart H)).

The regulations that govern SSA's administrative review process, 20 CFR Part 404, Subpart J, have been rewritten and published in the **Federal Register** (45 FR 52078, August 5, 1980). The material on representation of parties has been moved to a new Subpart R. In recodifying its material, however, SSA deleted references to the Medicare program that had been contained mainly in 20 CFR 404.905 and 404.906 (initial determinations). Although the preamble to the recodified regulations indicated that the old SSA regulations continue to apply to Medicare, the CFR will not contain this information since preambles are not printed in the CFR. Consequently, organizations and individuals using the CFR will not have the necessary information on SSA's responsibility for making determinations and holding hearings on certain matters under Medicare.

Provisions of the Regulations

To fill this gap, we are amending HCFA regulations at 42 CFR Part 405, Subparts G and H and adding an

appendix to Subpart G. The specific changes in Subpart G are:

1. Section 405.701 explains more clearly the content and applicability of Subpart G.

2. Section 405.704 specifically states that initial determinations about the Medicare program include determinations as to whether an individual is entitled to hospital or supplementary medical insurance, and other determinations regarding such matters as applications for Medicare, failure to provide evidence and withdrawal of applications.

3. Section 405.705 describes more clearly those administrative actions that are not considered initial determinations and, therefore, do not confer the right to a formal hearing and judicial review.

4. Section 405.750 states that SSA will continue to reopen Medicare entitlement determinations as appropriate.

5. Cross-references to 20 CFR Part 404, Subparts J and R are updated.

6. A new appendix provides a reprint of SSA's Subparts J and R in order to make access to the rules easier for the public. Subpart J contains SSA's rules on initial determinations, reconsiderations, reopenings, hearings, and appeals council review. Subpart R contains the rules on representation of parties.

In addition, we are amending §§ 405.801 and 405.803 in 42 CFR Part 405, Subpart H, to cite the HCFA and SSA regulations that contain the administrative review procedures governing determinations about entitlement to supplementary medical insurance.

Waiver of Notice Requirements

This is a technical regulation that merely relocates provisions currently applicable to Medicare. It will provide easier access to Medicare rules and will not adversely affect any individual or organization. Therefore, issuing a notice of proposed rulemaking with a public comment period is unnecessary. Accordingly, we find good cause to waive publication of notice of proposed rulemaking requirements.

42 CFR Part 405 is amended as set forth below:

A. Subpart G is amended as follows:

1. The table of contents is amended by changing the title of § 405.701 and by adding a new appendix at the end, as follows:

Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program

Sec.
405.701 Basis and purpose.
* * * * *
Appendix—Social Security Administration Regulations on Determinations, the Administrative Review Process, and Representation of Parties.

2. Section 405.701 is revised to read as follows:

§ 405.701 Basis and purpose.

(a) This subpart implements section 1869 of the Social Security Act. Section 1869(a) provides that the Secretary will make determinations about the following matters, and section 1869(b) provides for a hearing for an individual who is dissatisfied with the Secretary's determination as to:

(1) Whether the individual is entitled to hospital insurance (Part A) or supplementary medical insurance (Part B) under title XVIII of the Act; or

(2) The amount payable under hospital insurance.

(b) This subpart establishes the procedures governing initial determinations, reconsidered determinations, hearings, and final agency review, and the reopening of determinations and decisions that are applicable to matters arising under paragraph (a) of this section.

(c) Subparts J and R of 20 CFR Part 404 (dealing with determinations, the administrative review process and representation of parties), reprinted in the appendix to this subpart, are also applicable to matters arising under paragraph (a) of this section, except to the extent that specific provisions are contained in this subpart.

3. Section 405.704 is amended as follows:

§ 405.704 Actions which are initial determinations.

(a) *Applications and entitlement of individuals.* An initial determination with respect to an individual includes the following—

(1) A determination with respect to entitlement to hospital insurance or supplementary medical insurance;

(2) A disallowance of an individual's application for entitlement to hospital or supplementary medical insurance, if the individual fails to submit evidence requested by SSA to support the application. (SSA will specify in the initial determination the conditions of entitlement that the applicant failed to establish by not submitting the requested evidence);

(3) A denial of a request for withdrawal of an application for hospital or supplementary medical insurance;

(4) A denial of a request for cancellation of a "request for withdrawal"; and

(5) A determination as to whether an individual, previously determined to be entitled to hospital or supplementary medical insurance, is no longer entitled to such benefits, including a determination based on nonpayment of premiums.

(b) *Requests for payment by or on behalf of individuals.* An initial determination with respect to an individual includes any determination made on the basis of a request for payment by or on behalf of the individual under Part A of Medicare, including a determination with respect to:

(1) The coverage of items and services furnished;

* * * * *

(13) Any other issues having a present or potential effect on the amount of benefits to be paid under Part A of Medicare, including a determination as to whether there has been an overpayment or underpayment of benefits paid under Part A, and if so, the amount thereof; and

(14) Whether a waiver of adjustment or recovery under sections 1870(b) and (c) of the Act is appropriate when an overpayment of hospital insurance benefits or supplementary medical insurance benefits (including a payment under section 1814(e) of the Act) has been made with respect to an individual.

(c) *Initial determination with respect to a provider of services.* An initial determination with respect to a provider of services shall be a determination made on the basis of a request for payment filed by the provider under Part A of Medicare on behalf of an individual who was furnished items or services by the provider, but only if the determination involves the following:

* * * * *

4. Section 405.705 is amended as follows:

§ 405.705 Actions which are not initial determinations.

An initial determination under Part A of Medicare does not include determinations relating to:

(a) The reasonable cost of items or services furnished under Part A of Medicare;

(b) Whether an institution or agency meets the conditions for participation in the program (see Subpart O of this Part 405);

(c) Whether an individual is qualified for use of the expedited appeals process as provided in § 405.718; or

(d) An action regarding compromise of a claim arising under the Medicare program, or termination or suspension of collection action on such a claim under the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953). (See 20 CFR 404.515 for overpayment claims against an individual, § 405.374 for overpayment

claims against a provider, physician or other supplier, and § 405.462 for claims concerning unpaid Medicare premiums.

5. In §§ 405.718a, 405.722, 405.724 and 405.730, the cross-references to 20 CFR Part 404, Subpart J are changed as follows:

§ 405.718a Expedited appeals process; place and time of filing request.

* * * * *

(b) * * *

(1) No later than 60 days after the date of receipt of notice of the reconsidered determination, unless the time is extended in accordance with the standards set out in 20 CFR 404.925(c). For purposes of this paragraph, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(2) * * *

(3) Within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in 20 CFR 404.925(c). For purposes of this paragraph, the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(4) If a request for review by the Appeals Council has been timely filed (see 20 CFR 404.968) at any time prior to receipt by such individual of notice of the Appeals Council's final action.

§ 405.722 Time and place of filing request for a hearing.

The request for a hearing shall be made in writing and filed at an office of the Social Security Administration or the Health Care Financing Administration or with a presiding officer, or, in the case of a qualified railroad retirement beneficiary, at an office of the Railroad Retirement Board. Such request must be filed within 60 days after the date of receipt of notice of the reconsidered determination by such individual, except where the time is extended as provided in 20 CFR 404.933(c). For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

§ 405.724 Appeals Council review.

Appeals Council review is provided by 20 CFR 404.967.

§ 405.730 Court review.

To the extent authorized by section 1869, section 1876(f), and section 1879(d) of the Act, a party to a decision of the Appeals Council (see 20 CFR 404.979) or the decision of a presiding officer where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is $1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see 20 CFR 422.210 for the filing procedure). A party to a reconsidered determination may obtain a court review where the amount in controversy is $1,000 or more and he requests and meets the conditions for the expedited appeals process (see § 405.718).

6. Section 405.750 is amended as follows:

§ 405.750 Time period for reopening initial, revised, or reconsidered determinations and decisions or revised decisions of a presiding officer or the Appeals Council; finality of determinations and decisions.

(a) *Reopenings concerning applications and entitlement.* A determination, or decision, or revised determination or decision made by the Social Security Administration concerning any matter under § 405.704(a), may be reopened and revised under 20 CFR 404.988 (Conditions for reopening).

(b) *Reopenings concerning a request for payment.* An initial, revised, or reconsidered determination of the Health Care Financing Administration, or a decision or revised decision of a presiding officer or of the Appeals Council, with respect to an individual's rights concerning a request for payment under Part A of Medicare, which is otherwise final under 20 CFR 404.955 or 404.981 and 405.708, or 405.717 of this subpart may be reopened:

(1) Within 12 months from the date of the notice of the initial or reconsidered determination to the party to such determination;

(2) After such 12-month period, but within 4 years after the date of the notice of the initial determination to the individual, upon establishment of good cause for reopening such determination or decision (see 20 CFR 404.988(b) and 404.989; or

(3) At any time, when:

(i) Such initial, revised, or reconsidered determination or such decision or revised decision is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting clerical error or error on the face of the evidence on which such determination or decision was based; or

(ii) Such initial, revised, or reconsidered determination or such decision or revised decision was procured by fraud or similar fault of the beneficiary or some other person.

7. An appendix is added as follows:

Appendix

This appendix is a reprint of 20 CFR Part 404, Subparts J and R, as published in the **Federal Register** on August 5, 1980 (45 FR 52078). It sets forth the rules for—

1. Initial determinations about the Medicare program made by the Social Security Administration (SSA);
2. SSA's administrative review process;
3. The reopening and revision by SSA of final determinations or decisions; and
4. The representation of parties by someone else in dealing with SSA or HCFA.

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

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Authority: Secs. 205 and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302).

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

Introduction, Definitions, and Initial Determinations

§ 404.900 Introduction.

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your rights under title II of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

(1) *Initial determination.* This is a determination we make about your entitlement or your continuing entitlement to benefits or about any other matter, as discussed in § 404.902, that gives you a right to further review.

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it. Generally, you must request a reconsideration before you may request a hearing.

(3) *Hearing.* If you are dissatisifed with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) *Appeals Council review.* If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.

(5) *Federal court review.* When you have completed the steps of the administrative review process listed in paragraphs (a)(1) through (a)(4) of this section, we will have made our final decision. If you are dissatisifed with our final decision, you may request judicial review by filing an action in a Federal district court.

(6) *Expedited appeals process.* At some time after your initial determination has been reviewed, if you have no dispute with our findings of fact and our application and interpretation of the controlling laws, but you believe that a part of the law is unconstitutional, you may use the expedited appeals process. This process permits you to go directly to a Federal district court so that the constitutional issue may be resolved.

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, nonadversary manner. In each step of the review process, you may present any information you feel is helpful to your case. We will consider it and all the information in our records. You may present the information yourself or have someone represent you, including an attorney. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

§ 404.901 Definitions.

As used in this subpart:

"Date you receive notice" means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

"Decision" means the decision made by an administrative law judge or the Appeals Council.

"Determination" means the initial determination or the reconsidered determination.

"Remand" means to return a case for further review.

"Vacate" means to set aside a previous action.

"Waive" means to give up a right knowingly and voluntarily.

"We," "us," or "our" refers to the Social Security Administration.

"You" or "your" refers to any person claiming a right under the old age, disability, dependents' or survivors' benefits program.

§ 404.902 Administrative actions that are initial determinations.

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the important facts and give the reasons for our conclusions. In the old age, disability, dependents' and survivors' insurance programs, initial determinations include, but are not limited to, determinations about—

(a) Your entitlement or your continuing entitlement to benefits;

(b) Your reentitlement to benefits;

(c) The amount of your benefit;

(d) A recomputation of your benefit;

(e) A reduction in your disability benefits because you also receive benefits under a workmen's compensation law;

(f) A deduction from your benefits on account of work;

(g) A deduction from your disability benefits because you refuse to accept rehabilitation services;

(h) Termination of your benefits;

(i) Penalty deductions imposed because you failed to report certain events;

(j) Any overpayment or underpayment of your benefits;

(k) Whether an overpayment of benefits must be repaid to us;

(l) How an underpayment of benefits due a deceased person will be paid;

(m) The establishment or termination of a period of disability;

(n) A revision of your earnings record;

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee, unless you are under age 18 or legally incompetent; and

(p) Who will act as your payee if we determine that representative payment will be made.

§ 404.903 Administrative actions that are not initial determinations.

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by this subpart, and they are not subject to judicial review. These actions include, but are not limited to, an action—

(a) Suspending benefits pending an investigation and determination of any factual issue relating to a deduction on account of work;

(b) Suspending benefits pending an investigation to determine if your disability has ceased;

(c) Denying a request to be made a representative payee;

(d) Certifying two or more family members for joint payment of benefits;

(e) Withholding less than the full amount of your monthly benefit to recover an overpayment;

(f) Detemining the fee that may be charged or received by a person who has represented you in connection with a proceeding before us;

(g) Disqualifying or suspending a person from acting as your representative in a proceeding before us (See § 404.1745);

(h) Compromising, suspending or terminating collection of an overpayment under the Federal Claims Collection Act;

(i) Extending or not extending the time to file a report of earnings;

(j) Denying your request to extend the time period for requesting review of a determination or a decision;

(k) Denying your request to use the expedited appeals process;

(l) Denying your request to reopen a determination or a decision; and

(m) Withholding temporarily benefits based on a wage earner's estimate of earnings to avoid creating an overpayment.

§ 404.904 Notice of the initial determination.

We shall mail a written notice of the initial determination to you at your last known address. The reasons for the initial determination and the effect of the initial determination will be stated in the notice. The notice also informs you of the right to a reconsideration or to a hearing. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

§ 404.905 Effect of an initial determination.

An initial determination is binding unless you request a reconsideration or a hearing, as appropriate, within the stated time period, or we revise the initial determination.

Reconsideration

§ 404.907 Reconsideration—general.

Reconsideration is the first step in the administrative review process that we provide if you are dissatisfied with the initial determination. However, if the initial determination is that your blindness or disability has ceased due to medical reasons, and you have a right to a hearing on the same issue in connection with a claim for supplemental security income benefits, your first step is to request a hearing right after the initial determination. If you are dissatisfied with our reconsidered determination, you may request a hearing.

§ 404.908 Parties to a reconsideration.

(a) *Who may request a reconsideration.* If you are dissatisfied with the initial determination, you may request that we reconsider it. In addition, a person who shows in writing that his or her rights may be adversely affected by the initial determination may request a reconsideration.

(b) *Who are parties to a reconsideration.* After a request for the reconsideration, you and any person who shows in writing that his or her rights are adversely affected by the initial determination will be parties to the reconsideration.

§ 404.909 How to request reconsideration.

(a) We shall reconsider an initial determination if you or any other party to the reconsideration files a written request—

(1) Within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (b) of this section);

(2) At one of our offices, the Veterans Administration Regional Office in the Philippines, or an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry.

(b) *Extension of time to request a reconsideration.* If you want a reconsideration of the initial determination but do not request one in time, you may ask us for more time to request a reconsideration. Your request for an extension of time must be in writing and must give the reasons why the request for reconsideration was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 404.911.

§ 404.911 Good cause for missing the deadline to request review.

(a) In determining whether you have shown that you had good cause for missing a deadline to request review we consider—

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions.

(b) Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the explanation you requested Appeal Council review or filed a civil suit.

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit.

(7) You did not recieve notice of the determination or decision.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist which show that you could not have known of the need to file timely, or which prevented you from filing timely.

§ 404.917 Notice of another person's request for reconsideration.

If any other person files a request for reconsideration of the initial determination in your case, we shall notify you at your last known address before we reconsider the initial determination. We shall also give you an opportunity to present any evidence you think helpful to the reconsidered determination.

§ 404.918 Reconsidered determination.

After you or another person requests a reconsideration, we shall review the evidence considered in making the initial determination and any other evidence we receive. We shall make our determination based on this evidence.

§ 404.920 Effect of a reconsidered determination.

The reconsidered determination is binding unless—

(a) You or any other party to the reconsideration requests a hearing within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.

§ 404.921 Notice of a reconsidered determination.

We shall mail a written notice of the reconsidered determination to the parties at their last known address. We shall state the specific reasons for the determination and tell you and any other parties of the right to a hearing. If it is appropriate, we will also tell you and any other parties how to use the expedited appeals process.

Expedited Appeals Process

§ 404.923 Expedited appeals process—general.

By using the expedited appeals process you may go directly to a Federal district court without first completing the administrative review process that is generally required before the court will hear your case.

§ 404.924 When the expedited appeals process may be used.

You may use the expedited appeals process if all of the following requirements are met:

(a) We have made an initial and a reconsidered determination; an

administrative law judge has made a hearing decision; or Appeals Council review has been requested, but a final decision has not been issued.

(b) You are a party to the reconsidered determination or the hearing decision.

(c) You have submitted a written request for the expedited appeals process.

(d) You have claimed, and we agree, that the only factor preventing a favorable determination or decision is a provision in the law that you believe is unconstitutional.

(e) If you are not the only party, all parties to the determination or decision agree to request the expedited appeals process.

§ 404.925 How to request expedited appeals process.

(a) *Time of filing request.* You may request the expedited appeals process—

(1) Within 60 days after the date you receive notice of the reconsidered determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section);

(2) At any time after you have filed a timely request for a hearing but before you receive notice of the administrative law judge's decision;

(3) Within 60 days after the date you receive a notice of the administrative law judge's decision or dismissal (or within the extended time period if we extend the time as provided in paragraph (c) of this section); or

(4) At any time after you have filed a timely request for Appeals Council review, but before you receive notice of the Appeals Council's action.

(b) *Place of filing request.* You may file a written request for the expedited appeals process at one of our offices, the Veterans Administration Regional Office in the Philippines, or an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry.

(c) *Extension of time to request expedited appeals process.*

If you want to use the expedited appeals process but do not request it within the stated time period, you may ask for more time to submit your request. Your request for an extension of time must be in writing and must give the reasons why the request for the expedited appeals process was not filed within the stated time period. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 404.911.

§ 404.926 Agreement in expedited appeals process.

If you meet all the requirements necessary for the use of the expedited appeals process, our authorized representative shall prepare an agreement. The agreement must be signed by you, by every other party to the determination or decison and by our authorized representative. The agreement must provide that—

(a) The facts in your claim are not in dispute;

(b) The sole issue in dispute is whether a provision of the Act that applies to your case is unconstitutional;

(c) Except for your belief that a provision of the Act is unconstitutional, you agree with our interpretation of the law;

(d) If the provision of the Act that you believe is unconstitutional were not applied to your case, your claim would be allowed; and

(e) Our determination or the decision is final for the purpose of seeking judicial review.

§ 404.927 Effect of expedited appeals process agreement.

After an expedited appeals process agreement is signed, you will not need to complete the remaining steps of the administrative review process. Instead, you may file an action in a Federal district court within 60 days after the date the agreement is signed by our authorized representative.

§ 404.928 Expedited appeals process request that does not result in agreement.

If you do not meet all of the requirements necessary to use the expedited appeals process, we shall tell you that your request to use this process is denied and that your request will be considered as a request for a hearing or Appeals Council review, whichever is appropriate.

Hearings

§ 404.929 Hearing—general.

If you are dissatisfied with one of the determinations or decisions listed in § 404.930 you may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, shall appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Associate Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing you may appear in person, submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she shall issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file and any new evidence that may have been submitted for consideration

§ 404.930 Availability of a hearing.

(a) You may request a hearing if we have made—

(1) A reconsidered determination;

(2) A revised determination of an initial or reconsidered determination;

(3) An initial determination that your blindness or disability has ceased due to medical reasons, and you have a right to a hearing on the same issue in connection with a claim for supplemental security income benefits; or

(4) A revised decision based on evidence not included in the record on which the prior decision was based.

(b) We will hold a hearing only if you or another party to the hearing file a written request for a hearing.

§ 404.932 Parties to a hearing.

(a) *Who may request a hearing.* You may request a hearing if a hearing is available under § 404.930. In addition, a person who shows in writing that his or her rights may be adversely effected by the decision may request a hearing.

(b) *Who are parties to a hearing.* After a request for a hearing is made, you, the other parties to the initial, reconsidered, or revised determination, and any other person who shows in writing that his or her rights may be adversely affected by the hearing, are parties to the hearing. In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and the administrative law judge notifies the person to appear at the hearing or to present evidence supporting his or her interest.

§ 404.933 How to request a hearing.

(a) *Written request.* You may request a hearing by filing a written request. You should include in your request—

(1) The name and social security number of the wage earner;

(2) The reasons you disagree with the previous determination or decision;

(3) A statement of additional evidence to be submitted and the date you will submit it; and

(4) The name and address of any designated representative.

(b) *When and where to file.* The request must be filed—

(1) Within 60 days after the date you receive notice of the previous determination or decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section);

(2) At one of our offices, the Veterans Administration Regional Office in the Philippines, or an office of the Railroad Retirement Board for persons having 10 or more years of service in the railroad industry.

(c) *Extension of time to request a hearing.* If you have a right to a hearing but do not request one in time, you may ask for more time to make your request. The request for an extension of time must be in writing and it must give the reasons why the request for a hearing was not filed within the stated time period. You may file your request for an extension of time at one of our offices. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 404.911.

§ 404.935 Submitting evidence before a hearing.

If possible, the evidence or a summary of evidence you wish to have considered at the hearing should be submitted to the administrative law judge with the request for hearing or within 10 days after filing the request. Each party shall make every effort to be sure that all material evidence is received by the administrative law judge or is available at the time and place set for the hearing.

§ 404.936 Time and place for a hearing.

(a) The administrative law judge sets the time and place for the hearing. He or she may

change the time and place, if it is necessary. After sending the parties reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies the parties of a hearing decision. Hearings are held in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Virgin Islands.

(b) If you object to the time or place of the hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the time set for the hearing. You must state the reasons for your objection and the time or place you want the hearing to be held. The administrative law judge may change the time or place for the hearing if you show good cause for the change.

§ 404.938 Notice of a hearing.

After the administrative law judge sets the time and place for the hearing, notice of the hearing will be mailed to the parties at their last known address or given by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 10 days before the hearing. It will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings.

§ 404.939 Objections to the issues.

If you object to the issues to be decided upon at the hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the time set for the hearing. You must state the reasons for your objections. The administrative law judge shall make a decision on your objections either in writing or at the hearing.

§ 404.940 Disqualification of the administrative law judge.

An administrative law judge shall not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. If you object to the administrative law judge who will conduct the hearing, you must notify the administrative law judge at your earliest opportunity. The administrative law judge shall consider your objections and shall decide whether to proceed with the hearing or withdraw. If he or she withdraws, the Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint another administrative law judge to conduct the hearing. If the administrative law judge does not withdraw, you may; after the hearing, present your objections to the Appeals Council as reasons why the hearing decision should be revised or a new hearing held before another administrative law judge.

§ 404.941 Prehearing case review.

(a) *General.* After a hearing is requested but before it is held, we may, for the purposes of a prehearing case review, forward the case to the component of our office (including a State agency) that issued the determination being reviewed. That component will decide whether the determination may be revised. A revised determination may be wholly or partially favorable to you. A prehearing case review will not delay the scheduling of a hearing unless you agree to continue the review and delay the hearing. If the prehearing case review is not completed before the date of the hearing, the case will be sent to the administrative law judge unless a favorable revised determination is in process or you and the other parties to the hearing agree in writing to delay the hearing until the review is completed.

(b) *When a prehearing case review may be conducted.* We may conduct a prehearing case review if—

(1) Additional evidence is submitted;

(2) There is an indication that additional evidence is available;

(3) There is a change in the law or regulation; or

(4) There is an error in the file or some other indication that the prior determination may be revised.

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we shall mail written notice of the revised determination to all parties at their last known address. We shall state the basis for the revised determination and advise all parties of their right to request a hearing on the revised determination within 60 days after the date of receiving this notice.

(d) *Revised determination wholly favorable.* If the revised determination is wholly favorable to you, we shall tell you in the notice that the administrative law judge will dismiss the hearing request unless a party requests that the hearing proceed. A request to continue must be made in writing within 30 days after the date the notice of the revised determination is mailed.

(e) *Revised determination partially favorable.* If the revised determination is partially favorable to you, we shall tell you in the notice what was not favorable. We shall also tell you that the hearing you requested will be held unless you, the parties to the revised determination and the parties to the hearing tell us that all parties agree to dismiss the hearing request.

Hearing Procedures

§ 404.944 Hearing procedures—general.

A hearing is open to the parties and to other persons the administrative law judge considers necessary and proper. At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses, and accepts as evidence any documents that are material to the issues. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing. The administrative law judge may also reopen the hearing at any time before he or she mails a notice of the decision in order to receive new and material evidence. The administrative law judge may decide when the evidence will be presented and when the issues will be discussed.

404.946 Issues before the administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues brought out in the initial, reconsidered or revised determination that were not decided entirely in your favor. However, if evidence presented before or during the hearing causes the administrative law judge to question a fully favorable determination, he or she will notify you and will consider it an issue at the hearing.

(b) *New issues.*—(1) *General.* The administrative law judge may consider a new issue at the hearing if he or she notifies you and all the parties about the new issue any time after receiving the hearing request and before mailing notice of the hearing decision. The administrative law judge or any party may raise a new issue; an issue may be raised even though it arose after the request for a hearing and even though it has not been considered in an initial or reconsidered determination. However, it may not be raised if it involves a claim that is within the jurisdiction of a State agency under a Federal-State agreement concerning the determination of disability.

(2) *Notice of a new issue.* The administrative law judge shall notify you and any other party if he or she will consider any new issue. Notice of the time and place of the hearing on any new issues will be given in the manner described in § 404.938, unless you have indicated in writing that you do not wish to receive the notice.

§ 404.948 Deciding a case without an oral hearing.

(a) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of you and all the parties on every issue, the administrative law judge may issue a hearing decision without holding an oral hearing. However, the notice of the decision will inform you that you have the right to an oral hearing and that you have a right to examine the evidence on which the decision is based.

(b) *Parties do not wish to appear.* (1) The administrative law judge may decide a case on the record and not conduct an oral hearing if—

(i) You and all the parties indicate in writing that you do not wish to appear before the administrative law judge at an oral hearing; or

(ii) You live outside the United States and you do not inform us that you want to appear and there are no other parties who wish to appear.

(2) When an oral hearing is not held, the administrative law judge shall make a record of the material evidence. The record will inclue the applications, written statements, certificates, reports, affidavits, and other documents that were used in making the determination under review and any additional evidence you or any other party to the hearing present in writing. The decision of the administrative law judge must be based on this record.

(c) *Case remanded for a revised determination.* (1) The administrative law judge may remand a case to the appropriate component of our office for a revised determination if there is reason to believe that the revised determination would be fully favorable to you. This could happen if the administrative law judge receives new and

material evidence or if there is a change in the law that permits the favorable determination.

(2) Unless you request the remand, the administrative law judge shall notify you that your case has been remanded and tell you that if you object, you must notify him or her of your objections within 10 days of the date the case is remanded or we will assume that you agree to the remand. If you object to the remand, the administrative law judge will consider the objection and rule on it in writing.

§ 404.949 Presenting written statements and oral arguments.

You or a person you designate to act as your representative may appear before the administrative law judge to state your case, to present a written summary of your case, or to enter written statements about the facts and law material to your case in the record. A copy of your written statements should be filed for each party.

§ 404.950 Presenting evidence at a hearing.

(a) *The right to appear and present evidence.* Any party to a hearing has the right to appear before the administrative law judge, either personally or by means of a designated representative, to present evidence and to state his or her position.

(b) *Waiver of the right to appear.* You may send the administrative law judge a waiver or a written statement indicating that you do not wish to appear at the hearing. You may withdraw this waiver any time before a notice of the hearing decision is mailed to you. Even if all of the parties waive their right to appear at a hearing, the administrative law judge may notify them of a time and a place for an oral hearing, if he or she believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

(c) *What evidence is admissible at a hearing.* The administrative law judge may receive evidence at the hearing even though the evidence would not be admissible in court under the rules of evidence used by the court.

(d) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, an administrative law judge or a member of the Appeals Council may, on his or her own initiative or at the request of a party, issue subpoenas for the appearance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents that are material to an issue at the hearing.

(2) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for the issuance of a subpoena with the administrative law judge or at one of our offices at least 5 days before the hearing date. The written request must give the names of the witnesses or documents to be produced; describe the address or location of the witnesses or documents with sufficient detail to find them; state the important facts that the witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.

(3) We will pay the cost of issuing the subpoena.

(4) We will pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

(f) *Collateral estoppel—issues previously decided.* An issue at your hearing may be a fact that has already been decided in one of our previous determinations or decisions in a claim involving the same parties, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision unless there are reasons to believe that it was wrong.

§ 404.951 When a record of a hearing is made.

The administrative law judge shall make a complete record of the hearing proceedings. The record will be prepared as a typed copy of the proceedings if—

(a) The case is sent to the Appeals Council without a decision or with a recommended decision by the administrative law judge;

(b) You seek judicial review of your case by filing an action in a Federal district court within the stated time period, unless we request the court to remand the case; or

(c) An administrative law judge or the Appeals Council asks for a written record of the proceedings.

§ 404.952 Consolidated hearings.

(a) *General.* (1) A consolidated hearing may be held if—

(i) You have requested a hearing to decide your benefit rights under title II of the Act and you have also requested a hearing to decide your rights under another law we administer, and

(ii) One or more of the issues to be considered at the hearing you requested are the same issues that are involved in another claim you have pending before us.

(2) If the administrative law judge decides to hold the hearing on both claims, he or she decides both claims, even if we have not yet made an initial or reconsidered determination on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced in one case becomes evidence in the other(s). The administrative law judge may make either a separate or consolidated decision.

§ 404.953 The administrative law judge's decision.

(a) *General.* The administrative law judge shall issue a written decision that gives the findings of fact and the reasons for the decision. The decision must be based on evidence offered at the hearing or otherwise included in the record. The administrative law judge shall mail a copy of the decision to all the parties at their last known address. The Appeals Council may also receive a copy of the decision.

(b) *Recommended decision.* Although an administrative law judge will usually make an initial decision, where appropriate he or she may send the case to the Appeals Council with a recommended decision. Also, if a Federal district court remands a case to the Appeals Council, and the Appeals Council remands the cast to an administrative law judge the case must be returned to the Appeals Council with a recommended decision. The administrative law judge shall mail a copy of the recommended decision to the parties at their last known address and send the recommended decision to the Appeals Council.

§ 404.955 The effect of the administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party request a review of the decision by the Appeals Council within the stated time period, and the Appeals Council reviews your case;

(b) You or another party requests a review of the decision by the Appeals Council within the stated time period, the Appeals Council denies your request for review, and you seek judicial review of your case by filing an action in a Federal district court;

(c) The decision is revised by an administrative law judge or the Appeals Council under the procedures explained in § 404.987;

(d) The expedited appeals process is used; or

(e) The decision is a recommended decision directed to the Appeals Council.

§ 404.956 Removal of hearing request to the Appeals Council.

If you have requested a hearing and the request is pending before an administrative law judge, the Appeals Council may assume responsibility for holding a hearing by requesting that the administrative law judge send the hearing request to it. If the Appeals Council holds a hearing, it shall conduct the hearing according to the rules for hearings before an administrative law judge. Notice shall be mailed to all parties at their last known address telling them that the Appeals Council has assumed responsibility for the case.

§ 404.957 Dismissal of a request for a hearing.

An administrative law judge may dismiss a request for a hearing under any of the following conditions:

(a) At any time before notice of the hearing decision is mailed, you or the party or parties that requested the hearing ask to withdraw the request. This request may be submitted in writing to the administrative law judge or made orally at the hearing.

(b) Neither you nor the person you designate to act as your representative

appears at the time and place set for the hearing and—

(1) Before the time set for the hearing you did not give the administrative law judge a good reason why you or your representative could not appear; or

(2) Within 10 days after the administrative law judge mails you a notice asking why you did not appear, you do not give a good reason for the failure to appear.

(c) The administrative law judge decides that there is cause to dismiss a hearing request entirely or to refuse to consider any one or more of the issues because—

(1) The doctrine of *res judicata* applies in that we have made a previous determination or decision under this subpart about your rights on the same facts and on the same issue or issues, and this previous determination or decision has become final by either administrative or judicial action;

(2) The person requesting a hearing has no right to it under § 404.930;

(3) You did not request a hearing within the stated time period and we have not extended the time for requesting a hearing under § 404.933(c); or

(4) You die, there are no other parties, and we have no information to show that another person may be adversely affected by the determination that was to be reviewed at the hearing. However, dismissal of the hearing request will be vacated if, within 60 days after the date of the dismissal, another person submits a written request for a hearing on the claim and shows that he or she may be adversely affected by the determination that was to be reviewed at the hearing.

§ 404.958 Notice of dismissal of a hearing request.

We shall mail a written notice of the dismissal of the hearing request to all parties at their last known address. The notice will state that there is a right to request that the Appeals Council vacate the dismissal action.

§ 404.959 Effect of dismissal of a hearing request.

The dismissal of a request for a hearing is binding, unless it is vacated by an administrative law judge or the Appeals Council.

§ 404.960 Vacating a dismissal of a hearing request.

An administrative law judge or the Appeals Council may vacate any dismissal of a hearing request if within 60 days after the date you receive the dismissal notice, you request that the dismissal be vacated and show good cause why the hearing request should not have been dismissed. The Appeals Council itself may decide within 60 days after the notice of dismissal is mailed to vacate the dismissal. The Appeals Council shall advise you in writing of any action it takes.

§ 404.961 Prehearing and posthearing conferences.

The administrative law judge may decide on his or her own, or at the request of any party to the hearing, to hold a prehearing or posthearing conference to facilitate the hearing or the hearing decision. The administrative law judge shall tell the parties of the time, place and purpose of the conference at least seven days before the conference date, unless the parties have indicated in writing that they do not wish to receive a written notice of the conference. At the conference, the administrative law judge may consider matters in addition to those stated in the notice, if the parties consent in writing. A record of the conference will be made. The administrative law judge shall issue an order stating all agreements and actions resulting from the conference. If the parties do not object, the agreements and actions become part of the hearing record and are binding on all parties.

Appeals Council Review

§ 404.967 Appeals Council review—general.

If you or any other party is dissatisfied with the hearing decision or with the dismissal of a hearing request, you may request that the Appeals Council review that action. The Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case to an administrative law judge. The Appeals Council shall notify the parties at their last known address of the action it takes.

§ 404.968 How to request Appeals Council review.

(a) *Time and place to request Appeals Council review.* You may request Appeals Council review by filing a written request. Any documents or other evidence you wish to have considered by the Appeals Council should be submitted with your request for review. You may file your request—

(1) Within 60 days after the date you receive notice of the hearing decision or dismissal (or within the extended time period if we extend the time as provided in paragraph (b) of this section);

(2) At one of our offices, the Veterans Administration Regional Office in the Philippines, or an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry.

(b) *Extension of time to request review.* You or any party to a hearing decision may ask that the time for filing a request for the review be extended. The request for an extension of time must be in writing. It must be filed with the Appeals Council, and it must give the reasons why the request for review was not filed within the stated time period. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 404.911.

§ 404.969 Appeals Council initiates review.

Anytime within 50 days after the date of a hearing decision or dismissal, the Appeals Council itself may decide to review the action that was taken. If the Appeals Council does review the hearing decision or dismissal, notice of the action will be mailed to all parties at their last known address.

§ 404.970 Cases the Appeals Council will review.

(a) The Appeals Council will review a case if—

(1) There appears to be an abuse of discretion by the administrative law judge;

(2) There is an error of law;

(3) The action, findings or conclusions of the administrative law judge are not supported by substantial evidence; or

(4) There is a broad policy or procedural issue that may affect the general public interest.

(b) If new and material evidence is submitted with the request for review, the Appeals Council shall evaluate the entire record. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently in the record.

§ 404.971 Dismissal by Appeals Council.

The Appeals Council will dismiss your request for review if you did not file your request within the stated period of time and the time for filing has not been extended. The Appeals Council may also dismiss any proceedings before it if—

(a) You and any other party to the proceedings files a written request for dismissal; or

(b) You or any other party to the proceedings dies and the record clearly shows that dismissal will not adversely affect any other person who wishes to continue the action.

§ 404.972 Effect of dismissal of request for Appeals Council review.

The dismissal of a request for Appeals Council review is binding and not subject to further review.

§ 404.973 Notice of Appeals Council review.

When the Appeals Council decides to review a case, it shall mail a notice to all parties at their last known address stating the reasons for the review and the issues to be considered.

§ 404.974 Obtaining evidence from Appeals Council.

You may request and receive copies or a statement of the documents or other written evidence upon which the hearing decision or dismissal was based and a copy or summary of the transcript of oral evidence. However, you will be asked to pay the costs of providing these copies unless there is a good reason why you should not pay.

§ 404.975 Filing briefs with the Appeals Council.

Upon request, the Appeals Council shall give you and all other parties a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case. A copy of each brief or statement should be filed for each party.

§ 404.976 Procedures before Appeals Council on review.

(a) *Limitation of issues.* The Appeals Council may limit the issues it considers if it notifies you and the other parties of the issues it will review.

(b) *Evidence.* The Appeals Council will consider the evidence in the hearing record and any additional evidence it believes is

material to an issue being considered. If the Appeals Council decides that more evidence is needed, it may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Appeals Council decides that it can obtain the information more quickly, it may do so unless it will adversely affect your rights.

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 days before the scheduled date.

§ 404.977 Case remanded by Appeals Council.

(a) *When the Appeals Council may remand a case.* The Appeals Council may remand a case to an administrative law judge so that he or she may hold a hearing and issue a decision or a recommended decision. The Appeals Council may also remand a case in which additional evidence is needed or additional action by the administrative law judge is required.

(b) *Action by administrative law judge on remand.* The administrative law judge shall take any action that is ordered by the Appeals Council and may take any additional action that is not inconsistent with the Appeals Council's remand order.

(c) *Notice when case is returned with a recommended decision.* When the administrative law judge sends a case to the Appeals Council with a recommended decision, a notice is mailed to the parties at their last known address. The notice tells them that the case has been sent to the Appeals Council, explains the rules for filing briefs or other written statements with the Appeals Council, and includes a copy of the recommended decision.

(d) *Filing briefs with and obtaining evidence from the Appeals Council.* (1) You may file briefs or other written statements about the facts and law relevant to your case with the Appeals Council within 20 days of the date that the recommended decision is mailed to you. Any party may ask the Appeals Council for additional time to file briefs or statements. The Appeals Council will extend this period, as appropriate, if you show that you had good cause for missing the deadline.

(2) All other rules for filing briefs with and obtaining evidence from the Appeals Council follow the procedures explained in this subpart.

(e) *Procedures before the Appeals Council.* (1) The Appeals Council, after receiving a recommended decision, will conduct its proceedings and issue its decision according to the procedures explained in this subpart.

(2) If the Appeals Council believes that more evidence is required, it may again remand the case to an administrative law judge for further inquiry into the issues, rehearing, receipt of evidence, and another decision or recommended decision. However, if the Appeals Council decides that it can get the additional evidence more quickly, it will take appropriate action.

§ 404.979 Decision of Appeals Council.

After it has reviewed all the evidence in the hearing record and any additional evidence received, the Appeals Council will make a decision or remand the case to an administrative law judge. The Appeals Council may affirm, modify or reverse the hearing decision or it may adopt, modify or reject a recommended decision. A copy of the Appeals Council's decision will be mailed to the parties at their last known address.

§ 404.981 Effect of Appeals Council's decision or denial or review.

The Appeals Council may deny a party's request for review or it may decide to review a case and make a decision. The Appeals Council's decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court, or the decision is revised. You may file an action in a Federal district court within 60 days after the date you receive notice of the Appeals Council's action.

§ 404.982 Extension of time to file action in Federal district court.

Any party to the Appeals Council's decision or denial of review, or to an expedited appeals process agreement, may request that the time for filing an action in a Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council, or if it concerns an expedited appeals process agreement, with one of our offices. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 404.911.

§ 404.983 Case remanded by Federal court.

When a Federal court remands a case to the Appeals Council for further consideration, the Appeals Council may make a decision, or it may remand the case to an administrative law judge with instructions to take action and return the case to the Appeals Council with a recommended decision. If the case is remanded by the Appeals Council, the procedures explained in § 404.977 will be followed.

Reopening and Revising Determinations and Decisions

§ 404.987 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review. However, a determination or a decision made in your case may be reopened and revised. After we reopen your case, we may revise the earlier determination or decision.

(b) *Procedure for reopening and revision.* You may ask that a determination or a decision to which you were a party be revised. The conditions under which we will reopen a previous determination or decision are explained in § 404.988.

§ 404.988 Conditions for reopening.

A determination, revised determination, decision, or revised decision may be reopened—

(a) Within 12 months of the date of the notice of the initial determination, for any reason;

(b) Within four years of the date of the notice of the initial determination if we find good cause, as defined in § 404.989, to reopen the case; or

(c) At any time if—

(1) It was obtained by fraud or similar fault;

(2) Another person files a claim on the same earnings record and allowance of the claim adversely affects your claim;

(3) A person previously determined to be dead, and on whose earnings record your entitlement is based, is later found to be alive;

(4) Your claim was denied because you did not prove that the insured person died, and the death is later established by reason of an unexplained absence from his or her residence for a period of 7 years;

(5) The Railroad Retirement Board has awarded duplicate benefits on the same earnings record;

(6) It either—

(i) Denies the person on whose earnings record your claim is based gratuitous wage credits for military or naval service because another Federal agency (other than the Veterans Administration) has erroneously certified that it has awarded benefits based on the service; or

(ii) Credits the earnings record of the person on which your claim is based with gratuitous wage credits and another Federal agency (other than the Veterans Administration) certifies that it has awarded a benefit based on the period of service for which the wage credits were granted;

(7) It finds that the claimant did not have insured status, but earnings for the appropriate period of time were later credited to his or her earnings record;

(8) It is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made; or

(9) It finds that you are entitled to monthly benefits or to a lump sum death payment based on the earnings of a deceased person, and it is later established that you were finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of the deceased person.

§ 404.989 Good cause for reopening.

(a) We will find that there is good cause to reopen a determination or decision if—

(1) New and material evidence is furnished;

(2) A clerical error in the computation or recomputation of benefits was made; or

(3) The evidence that was considered in making the determination or decision clearly shows on its face that an error was made.

(b) We will not find good cause to reopen your case if the only reason for reopening is a change of legal interpretation or

administrative ruling upon which the determination or decision was made.

§ 404.990 Finality of determinations and decisions on revision of an earnings record.

A determination or a decision on a revision of an earnings record may be reopened only within the time period and under the conditions provided in section 205(c)(4) or (5) of the Act, or within 60 days after the date you receive notice of the determination or decision, whichever is later.

§ 404.991 Finality of determinations and decisions to suspend benefit payments for entire taxable year because of earnings.

A determination or decision to suspend benefit payments for an entire taxable year because of earnings may be reopened only within the time period and under the conditions provided in section 203(h)(1)(B) of the Act.

§ 404.992 Notice of revised determination or decision.

(a) When a determination or decision is revised, notice of the revision will be mailed to the parties at their last known address. The notice will state the basis for the revised determination or decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you and any other parties to the decision will be notified of the proposed action and of your right to request that a hearing be held before any further action is taken. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

(c) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based only on evidence included in the record which the prior decision was based, you and any other parties to the decision will be notified of the proposed action. If a revised decision is issued by an administrative law judge you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

§ 404.993 Effect of revised determination or decision.

A revised determination or decision is binding unless—

(a) You or another party to the revised determination file a written request for a hearing;

(b) You or another party to the revised decision file, as appropriate, a request for review by the Appeals Council or a hearing;

(c) The Appeals Council reviews the revised decision; or

(d) The revised determination or decision is further revised.

§ 404.994 Time and place to request a hearing on revised determination or decision.

You or another party to a revised determination or decision may request, as appropriate, further review or a hearing on the revision by filing a request in writing at one of our offices within 60 days after the date you receive notice of the revision. Further review or a hearing will be held on the revision according to the rules of this subpart.

§ 404.995 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits are filed on the same earnings records, findings of fact made in a determination on the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 404.988.

Subpart R—Representation of Parties

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Authority: Secs. 205, 206, and 1102 of the Social Security Act, 53 Stat. 1368.53 Stat. 1372, 49 Stat. 647; (42 U.S.C. 405, 406, and 1302).

Subpart R—Representation of Parties

§ 404.1700 Introduction.

You may appoint someone to represent you in any of your dealings with us. This subpart explains, among other things—

(a) Who may be your representative and what his or her qualifications must be;

(b) How you appoint a representative;

(c) The payment of fees to a representative;

(d) Our rules that representatives must follow; and

(e) What happens to a representative who breaks the rules.

§ 404.1703 Definitions.

As used in this subpart—

"Past-due benefits" means the total amount of benefits payable under title II of the Act to all beneficiaries that has accumulated because of a favorable administrative or judicial determination or decision, up to but not including the month the determination or decision is made.

"Representative" means an attorney who meets all of the requirements of § 404.1705(a), or a person other than an attorney who meets all of the requirements of § 404.1705(b), and whom you appoint to represent you in dealings with us.

"We," "our," or "us" refers to the Social Security Administration.

"You" or "your" refers to any person claiming a right under the old-age, disability, dependents', or survivors' benefits program.

§ 404.1705 Who may be your representative.

(a) *Attorney.* You may appoint as your representative in dealings with us, any attorney in good standing who—

(1) Has the right to practice law before a court of a State, Territory, District, or island possession of the United States, or before the Supreme Court or a lower Federal court of the United States;

(2) Is not disqualified or suspended from acting as a representative in dealings with us; and

(3) Is not prohibited by any law from acting as a representative.

(b) *Person other than attorney.* You may appoint any person who is not an attorney to be your representative in dealings with us if he or she—

(1) Is generally known to have a good character and reputation;

(2) Is capable of giving valuable help to you in connection with your claim;

(3) Is not disqualified or suspended from acting as a representative in dealings with us; and

(4) Is not prohibited by any law from acting as a representative.

§ 404.1707 Appointing a representative.

We will recognize a person as your representative if the following things are done:

(a) You sign a written notice stating that you want the person to be your representative in dealings with us.

(b) That person signs the notice, agreeing to be your representative, if the person is not an attorney. An attorney does not have to sign a notice of appointment.

(c) The notice is filed at one of our offices if you have initially filed a claim or have requested reconsideration; with an administrative law judge if you requested a hearing; or with the Appeals Council if you have requested a review of the administrative law judge's decision.

§ 404.1710 Authority of a representative.

(a) *What a representative may do.* Your representative may, on your behalf—

(1) Obtain information about your claim to the same extent that you are able to do;

(2) Submit evidence;

(3) Make statements about facts and law; and

(4) Make any request or give any notice about the proceedings before us.

(b) *What a representative may not do.* A representative may not sign an application on behalf of a claimant for rights or benefits under title II of the Act unless authorized to do so under § 404.612.

§ 404.1715 Notice or request to a representative.

(a) We shall send your representative—

(1) Notice and a copy of any administrative action, determination, or decision; and

(2) Requests for information or evidence.

(b) A notice or request sent to your representative, will have the same force and effect as if it had been sent to you.

§ 404.1720 Fee for a representative's services.

(a) *General.* A representative may charge and receive a fee for his or her services as a representative only as provided in paragraph (b) of this section.

(b) *Charging and receiving a fee.* (1) The representative must file a written request with us before he or she may charge or receive a fee for his or her services.

(2) We decide the amount of the fee, if any, a representative may charge or receive.

(3) A representative shall not charge or receive any fee unless we have approved it, and he or she shall not charge or receive any fee that is more than the amount we approve. This rule applies whether the fee is charged to or received from you or from someone else.

(4) If the representative is an attorney and the claimant is entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney out of the past-due benefits, subject to the limitations described in § 404.1730(b)(1). If the representative is not an attorney, we assume no responsibility for the repayment of any fee that we have authorized.

(c) *Notice of fee determination.* We shall mail to both you and your representative at your last known address a written notice of what we decide about the fee. We shall state in the notice—

(1) The amount of the fee that is authorized;

(2) How we made that decision;

(3) That we are not responsible for paying the fee, except when we may pay an attorney from past-due benefits; and

(4) That within 30 days of the date of the notice, either you or your representative may request us to review the fee determination.

(d) *Review of fee determination.*—(1) *Request filed on time.* We will review the decision we made about a fee if either you or your representative files a written request for the review at one of our offices within 30 days after the date of the notice of the fee determination. Either you or your representative, whoever requests the review, shall mail a copy of the request to the other person. An authorized official of the Social Security Administration who did not take part in the fee determination being questioned will review the determination. This determination is not subject to further review. The official shall mail a written notice of the decision made on review both to you and to your representative at your last known address.

(2) *Request not filed on time.* (i) If you or your representative requests a review of the decision we made about a fee, but does so more than 30 days after the date of the notice of the fee determination, whoever makes the request shall state in writing why it was not filed within the 30-day period. We will review the determination if we decide that there was good cause for not filing the request on time.

(ii) Some examples of good cause follow:

(A) Either you or your representative was seriously ill and the illness prevented you or your representative from contacting us in person or in writing.

(B) There was a death or serious illness in your family or in the family of your representative.

(C) Material records were destroyed by fire or other accidental cause.

(D) We gave you or your representative incorrect or incomplete information about the right to request review.

(E) You or your representative did not timely receive notice of the fee determination.

(F) You or your representative sent the request to another government agency in good faith within the 30-day period, and the request did not reach us until after the period had ended.

(3) *Payment of fees.* We assume no responsibility for the payment of a fee based on a revised determination if the request for administrative review was not filed on time.

§ 404.1725 Request for approval of a fee.

(a) *Filing a request.* In order for your representative to obtain approval of a fee for services he or she performed in dealings with us, he or she shall file a written request with one of our offices. This should be done after the proceedings in which he or she was a representative are completed. The request must contain—

(1) The dates the representative's services began and ended;

(2) A list of the services he or she gave and the amount of time he or she spent on each type of service;

(3) The amount of the fee he or she wants to charge for the services;

(4) The amount of fee the representative wants to request or charge for his or her services in the same matter before any State or Federal court;

(5) The amount of and a list of any expenses the representative incurred for which he or she has been paid or expects to be paid;

(6) A description of the special qualifications which enabled the representative, if he or she is not an attorney, to give valuable help in connection with your claim; and

(7) A statement showing that the representative sent a copy of the request for approval of a fee to you.

(b) *Evaluating a request for approval of a fee.*(1) When we evaluate a representative's request for approval of a fee, we consider the purpose of the social security proram, which is to provide a measure of economic security for the beneficiaries of the program, together with—

(i) The extent and type of services the representative performed;

(ii) The complexity of the case;

(iii) The level of skill and competence required of the representative in giving the services;

(iv) The amount of time the representative spent on the case;

(v) The results the representative achieved;

(vi) The level of review to which the claim was taken and the level of the review at which the representative became your representative; and

(vii) The amount of fee the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

(2) Although we consider the amount of benefits, if any, that are payable, we do not base the amount of fee we authorize on the amount of the benefit alone, but on a consideration of all the factors listed in this section. The benefits payable in any claim are determined by specific provisions of law and are unrelated to the efforts of the representative. We may authorize a fee even if no benefits are payable.

§ 404.1728 Proceedings before a State or Federal Court

(a) *Representation of a party in court proceedings.* We shall not consider any service the representative gave you in any proceeding before a State or Federal court to be services as a representative in dealings with us. However, if the representative also has given service to you in the same connection in any dealings with us, he or she must specify what, if any, portion of the fee he or she wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, he or she must file the request and furnish all of the information required by § 404.1725.

(b) *Attorney fee allowed by a Federal court.* If a Federal court in any proceeding under title II of the Act makes a judgment in favor of a claimant who was represented before the court by an attorney, and the court, under Section 206(b) of the Act, allows to the attorney as part of its judgment a fee not in excess of 25 percent of the total of past-due benefits to which the claimant is entitled by reason of the judgment, we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable. We will not certify for direct payment any other fee your representative may request.

§ 404.1730 Payment of fees.

(a) *Fees allowed by a Federal court.* We will pay a representative who is an attorney, out of the claimant's past-due benefits, the amount of fee allowed by a Federal court in a proceeding under title II of the Act. The payment we make to the attorney is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize.*—(1) *Attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in favor of a claimant who was represented by an attorney, and as a result of the determination or decision past-due benefits are payable, we will pay the attorney out of the past-due benefits the smallest of—

(i) Twenty-five percent of the total of the past-due benefits;

(ii) The amount of the fee that we set; or

(iii) The amount agreed upon between the attorney and the claimant represented.

(2) *Persons other than attorneys.* If the representative is not an attorney, we assume no responsibility for the payment of any fee that we have authorized. We will not deduct the fee from any benefits payable to the claimant represented.

(c) *Time limit for filing request for approval of attorney fee.* (1) In order to receive direct payment of a fee from a claimant's past-due benefits, an attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices within 60 days of the date the notice of the favorable determination is mailed.

(2)(i) If no request is filed within 60 days of the date the notice of the favorable determination is mailed, we will mail a written notice to the attorney and to the claimant, at their last known addresses. The notice will inform the attorney and the claimant that unless the attorney files, within 20 days from the date of the notice, a written request for approval of a fee under § 404.1725, or a written request for an extension of time, we will pay all the past-due benefits to the claimant.

(ii) The attorney must send the claimant a copy of any request made to us for an extension of time. If the request is not filed within 20 days of the date of the notice, or by the last day of any extension we approved, we will pay all past-due benefits to the claimant. Any fee the attorney charges after that time must be approved by us, but the collection of any approved fee is a matter between the attorney and the claimant represented.

§ 404.1735 Services in a proceeding under title II of the Act.

Services provided a claimant in any dealing with us under title II of the Act consist of services performed for that claimant in connection with any claim he or she may have before the Secretary of Health and Human Services under title II of the Act. These services include any in connection with any asserted right a claimant may have calling for an initial or reconsidered determination by us, and a decision or action by an administrative law judge or by the Appeals Council.

§ 404.1740 Rules governing representatives.

No attorney or other person representing a claimant shall—

(a) With intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten by word, circular, letter, or advertisement, either oral or written, any claimant or prospective claimant or beneficiary regarding benefits, or other initial or continued right under the Act;

(b) Knowingly charge or collect or make any agreement to charge or collect directly or indirectly, any fee in any amount in excess of that allowed by us or by the court.

(c) Knowlingly make or participate in the making or presentation of any false statement, representation, or claim about any material fact affecting the rights of any person under title II of the Act; or

(d) Divulge, except as may be authorized by regulations prescribed by us, any information we furnish or disclose about the claim or prospective claim of another person.

§ 404.1745 What happens to a representative who breaks the rules.

Our Deputy Commissioner (Operations) or the Director (or Deputy Director) of our Office of Insurance Programs may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

(a) Has violated any of the rules in § 404.1740;

(b) Has been convicted of a violation under section 206 of the Act; or

(c) Has otherwise refused to comply with our rules and regulations on representing claimants in dealings with us.

§ 404.1750 Notice of charges against a representative.

(a) The Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(b) We will send this notice to the representative either by certified or registered mail, to his or her last known address, or by personal delivery.

(c) We will advise the representative to file an answer, within 30 days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs may extend the 30-day period for good cause.

(e) The representative must—

(1) Answer the notice in writing under oath (or affirmation); and

(2) File the answer with the Social Security Administration, Office of Insurance Programs, 6401 Security Boulevard, Baltimore, Maryland 21235, within the 30-day time period.

(f) If the representative does not file an answer within the 30-day time period, he or she does not have the right to present evidence, except as may be provided in § 404.1765(f).

§ 404.1755 Withdrawing charges against a representative.

We may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that there is reasonable doubt about whether he or she should be suspended or disqualified from acting as a representative in dealings with us. If we withdraw the charges, we shall notify the representative by mail at his or her last known address.

§ 404.1760 Referring charges to the Office of Hearings and Appeals.

If we do not take action to withdraw the charges against the representative before 15 days have passed after the time within which he or she has filed an answer, we shall send the record of the evidence in support of the charges to the Office of Hearings and Appeals. We will ask that they hold a hearing and make a decision on the charges.

§ 404.1765 Hearing on charges.

(a) *Hearing officer.* (1) When the Office of Hearings and Appeals receives the notice of charges against the representative, the record of evidence, and the request for a hearing, the Associate Commissioner for Hearings and Appeals or his or her delegate shall name an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

(2) No hearing officer shall hold a hearing in a case in which he or she is prejudiced or partial about any party, or has any interest in the matter.

(3) If the representative or any party to the hearing objects to the hearing officer who has been named to hold the hearing, we must be notified at the earliest opportunity. The hearing officer shall consider the objection(s) and either proceed with the hearing or withdraw from it.

(4) If the hearing officer withdraws from the hearing, another one will be named.

(5) If the hearing officer does not withdraw, the representative or any other person objecting may, after the hearing, present his or her objections to the Appeals Council explaining why he or she believes the hearing officer's decision should be revised or a new hearing held by another administrative law judge designated to act as a hearing officer.

(b) *Time and place of hearing.* The hearing officer shall mail the representative a written notice of the hearing, at his or her last known address, at least 20 days before the date set for the hearing. The hearing officer shall send a copy of the notice to the Deputy Commissioner (Operations) or to the Director (or Deputy Director) of the Office of Insurance Programs.

(c) *Change of time and place for hearing.* (1) The hearing officer may change the time and place for the hearing. This may be done either on his or her own initiative, or at the request of the representative or the other party to the hearing.

(2) The hearing officer may adjourn or postpone the hearing.

(3) The hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

(4) The hearing officer shall give the representative and the other party to the hearing reasonable notice of any change in the time or place for the hearing, or of an adjournment or reopening of the hearing.

(d) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs also is a party to the hearing.

(e) *Subpoenas.* (1) The representative or the other party to the hearing may request the hearing officer to issue a subpoena for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents that are material to any matter being considered at the hearing. The hearing officer may, on his or her own initiative, issue subpoenas for the same purposes when the action is reasonably necessary for the full presentation of the facts.

(2) The representative or the other party who wants a subpoena issued shall file a written request with the hearing officer. This must be done at least 5 days before the date set for the hearing. The request must name the documents to be produced, and describe the address or location in enough detail to permit the witnesses or documents to be found.

(3) The representative or the other party who wants a subpoena issued shall state in the request for a subpoena the material facts that he or she expects to establish by the witness or document, and why the facts could not be established by the use of other evidence which could be obtained without use of a subpoena.

(4) We will pay the cost of the issuance and the fees and mileage of any witness subpoenaed, as provided in section 205(d) of the Act.

(f) *Conduct of the hearing.* (1) The hearing officer shall make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The hearing officer shall inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

(2) If the representative did not file an answer to the charges, he or she has no right to present evidence at the hearing. The hearing officer may make or recommend a decision on the basis of the record, or permit the representative to present a statement about the sufficiency of the evidence or the validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based.

(3) If the representative did not file an answer to the charges, and if the hearing officer believes that there is material evidence available that was not presented at the hearing, the hearing officer may at any time before mailing notice of the hearing decisions reopen the hearing to accept the additional evidence.

(4) The hearing officer has the right to decide the order in which the evidence and the allegations will be presented and the conduct of the hearing.

(g) *Evidence.* The hearing officer may accept evidence at the hearing, even though it is not admissible under the rules of evidence that apply to Federal court procedure.

(h) *Witnesses.* Witnesses who testify at the hearing shall do so under oath or affirmation. Either the representative or a person representing him or her may question the witnesses. The other party and that party's representative must also be allowed to question the witnesses. The hearing officer may also ask questions as considered necessary, and shall rule upon any objection made by either party about whether any question is proper.

(i) *Oral and written summation.* (1) The hearing officer shall give the representative and the other party a reasonable time to present oral summation and file briefs or other written statements about proposed findings of fact and conclusions of law if the parties request it.

(2) The party that files briefs or other written statements shall provide enough copies so that they may be made available to any other party to the hearing who requests a copy.

(j) *Record of hearing.* In all cases, the hearing officer shall have a complete record of the proceedings at the hearing made.

(k) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative.

(l) *Failure to appear.* If the representative or the other party to the hearing fails to appear after being notified of the time and place, the hearing officer may hold the hearing anyway so that the party present may offer evidence to sustain or rebut the charges. The hearing officer shall give the party who failed to appear an opportunity to show good cause for failure to appear. If the party fails to show good cause, he or she is considered to have waived the right to be present at the hearing. If the party shows good cause, the hearing officer may hold a supplemental hearing.

(m) *Dismissal of charges.* The hearing officer may dismiss the charges in the event of the death of the representative.

(n) *Cost of transcript.* If the representative or the other party to a hearing requests a copy of the transcript of the hearing, the hearing officer will have it prepared and sent to the party upon payment of the cost, unless the payment is waived for good cause.

§ 404.1770 Decision by hearing officer.

(a) *General.* (1) After the close of the hearing, the hearing officer shall issue a decision or certify the case to the Appeals Council. The decision must be in writing, will contain findings of fact and conclusions of law, and be based upon the evidence of record. (2) if the hearing officer finds that the charges against the representative have been sustained, he or she shall either—

(i) Suspend the representative for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision; or

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be reinstated under § 404.1799.

(3) The hearing officer shall mail a copy of the decision to the representative at his or her last known address and to the Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs. The notice will inform the parties of the right to request the Appeals Council to review the decision.

(b) *Effect of hearing officer's decision.* (1) The hearing officer's decision is final and binding unless reversed or modified by the Appeals Council upon review.

(2) If the final decision is that a person is disqualified from being a representative in dealings with us, he or she will not be permitted to represent anyone in dealings with us until authorized to do so under the provisions of § 404.1799.

(3) If the final decision is that a person is suspended for a specified period of time from being a representative in dealings with us, he or she will not be permitted to represent anyone in dealings with us during the period of suspension unless authorized to do so under the provisions of § 404.1799.

§ 404.1775 Requesting review of the hearing officer's decision.

(a) *General.* After the hearing officer issues a decision, either the representative or the other party to the hearing may ask the Appeals Council to review the decision.

(b) *Time and place of filing request for review.* The party requesting review shall file the request for review in writing with the Appeals Council within 30 days from the date the hearing officer mailed the notice. The party requesting review shall certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

§ 404.1780 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council shall give the parties a reasonable time to file briefs or other written statements as to fact and law, and to appear before the Appeals Council to present oral argument.

(b) If a party files a brief or other written statement with the Appeals Council, he or she shall send a copy to the opposing party and certify that the copy has been sent.

§ 404.1785 Evidence permitted on review.

(a) *General.* Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council believes that the evidence offered is material to an issue it is considering, the evidence will be considered.

(b) *Individual charged filed an answer.* (1) When the Appeals Council believes that additional material evidence is available, and the representative has filed an answer to the charges, the Appeals Council shall require that the evidence be obtained. The Appeals Council may name an administrative law judge or a member of the Appeals Council to receive the evidence.

(2) Before additional evidence is admitted into the record, the Appeals Council shall mail a notice to the parties, telling them that evidence about certain issues will be obtained, unless the notice is waived. The Appeals Council shall give each party a reasonable opportunity to comment on the

evidence and to present other evidence that is material to an issue it is considering.

(c) *Individual charged did not file an answer.* If the representative did not file an answer to the charges, the Appeals Council will not permit the introduction of evidence that was not considered at the hearing.

§ 404.1790 Appeals Council's decision.

(a) The Appeals Council shall base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council shall either—

(1) Affirm, reverse, or modify the hearing officer's decision; or

(2) Return a case to the hearing officer when the Appeals Council considers it appropriate.

(b) The Appeals Council, in changing a hearing officer's decision to suspend a representative for a specified period, shall in no event reduce the period of suspension to less than 1 year. In modifying a hearing officer's decision to disqualify a representative, the Appeals Council shall in no event impose a period of suspension of less than 1 year.

(c) If the Appeals Council affirms or changes a hearing officer's decision, the period of suspension or the disqualification is effective from the date of the Appeals Council's decision.

(d) If the hearing officer did not imposed a period of suspension or a disqualification, and the Appeals Council decides to impose one or the other, the suspension or disqualification is effective from the date of the Appeals Council's decision.

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the representative at his or her last known address and to the Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs.

§ 404.1795 When the Appeals Council will dismiss a request for review.

The Appeals Council may dismiss a request for the review of any proceeding to suspend or disqualify a representative in any of the following circumstances:

(a) *Upon request of party.* The Appeals Council may dismiss a request for review upon written request of the party or parties who filed the request if there is no other party who objects to the dismissal.

(b) *Death of party.* The Appeals Council may dismiss a request for review in the event of the death of the representative.

(c) *Request for review not timely filed.* The Appeals Council will dismiss a request for review if a party failed to file a request for review within the 30-day time period and the Appeals Council does not extend the time for good cause.

§ 404.1797 Reinstatement after suspension—period of suspension expired.

We shall automatically allow a person to serve again as a representative in dealings with us at the end of any suspension.

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

(a) After more than one year has passed, a person who has been suspended or disqualified, may ask the Appeals Council for permission to serve as a representative again.

(b) The suspended or disqualified person shall submit any evidence he or she wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The Appeals Council shall notify the Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs of the receipt of the request and give that person 30 days in which to present a written report of any experiences with the suspended or disqualified person since that person was suspended or disqualified. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

(d) The Appeals Council shall not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of section 206(a) of the Act, and to our rules and regulations.

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner (Operations) or the Director (or Deputy Director) of the Office of Insurance Programs.

(f) If the Appeals Council decides not to grant the request, it shall not consider another request before the end of 1 year from the date of the notice of the previous denial.

B. Subpart H is amended as follows:

1. Section 405.801 is amended by adding a new paragraph (c) as follows:

§ 405.801 Title XVIII, Part B—General.

* * * * *

(c) Procedures governing determinations as to whether an individual is entitled to supplementary medical insurance, which implement section 1869(a) of the Social Security Act, are covered in Subpart G of this part and 20 CFR Part 404, Subpart J.

2. In § 405.803, paragraph (c)(1) is amended as follows:

§ 405.803 Initial determination.

* * * * *

(c) Carriers (or hearing officers where a claim is not acted upon with reasonable promptness (see § 405.801)) do not make determinations with respect to the following, which are not initial determinations for purposes of this subpart:

(1) Any issue or factor for which the Social Security Administration or the Health Care Financing Administration has sole responsibility (for example, whether an independent laboratory meets the conditions for coverage of services; whether a Medicare overpayment claim should be compromised, or collection action terminated or suspended); or

* * * * *

(Sections 205, 1102, 1842, 1869 and 1871 of the Social Secruity Act (42 U.S.C. 405, 1302, 1395u, 1395ff and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare-Supplementary Medical Insurance Program).

Dated: September 18, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: October 30, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-34899 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining

30 CFR Parts 715, 816, and 817

Reclamation and Enforcement

Disposal of Excess Spoil in Durable Rock Fills; Withdrawal of Interpretative Ruling

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

ACTION: Withdrawal of Final Interpretative Rule.

SUMMARY: This notice announces the withdrawal of the interpretative rule relating to the disposal of excess spoil in durable rock fills published on April 16, 1980, at 45 FR 25998–26001, which was intended to clarify the regulations at 30 CFR 715.15(d), 816.74, and 817.74 providing for alternative methods of disposal of excess hard rock spoil. The withdrawal of the interpretative rule has resulted from numerous comments and suggestions received during the public comment period.

EFFECTIVE DATE: November 6, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, Physical Scientist, Technical Services Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 343–4022.

SUPPLEMENTARY INFORMATION: On April 16, 1980, the Office of Surface Mining Reclamation and Enforcement (OSM) published an interpretative rule relating to disposal of excess spoil in durable rock fills. 45 FR 25998–26001. The rule interpreted regulations published on March 13, 1979, 44 FR 15311–15463, and May 25, 1979, 44 FR 30610–30634, codified at 30 CFR 715.15(d), 816.74 and 817.74. See also 45 FR 48129, July 18, 1980 (provision for comment period on the interpretative rule), and 45 FR 56342,

August 25, 1980 (comment period extended until September 17, 1980). Prior to the comment period, the National Coal Association/American Mining Congress (NCA/AMC) and Falcon Coal Company had filed two separate legal challenges to the interpretative rule in the United States District Court for the District of Columbia. *NCA/AMC* v. *Andrus*, D.D.C. No. 80–1477, *Falcon Coal Co.* v. *Andrus*, D.D.C., No. 80–1478 (both filed June 13, 1980). The litigation was held in abeyance by District Court Order until October 15, 1980. Order, D.D.C., September 8, 1980. By affidavit of Walter N. Heine, Director, OSM, dated 9 October, 1980, and filed with the District Court on October 15, 1980, the court and petitioners NCA/AMC and Falcon Coal were informed of OSM's decision to publish this notice of withdrawal. Thereafter the Court dismissed the petitions. Order, D.D.C., October 15, 1980.

For the reasons discussed above, 30 CFR Chapter VII is amended as follows:

PART 715—GENERAL PERFORMANCE STANDARDS

§ 715.200 [Amended]

(1) In Part 715, § 715.200(a) is withdrawn.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

§ 816.200 [Amended]

(2) In Part 816, § 816.200(a) is withdrawn.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

§ 817.200 [Amended]

(3) In Part 817, § 817.200(a) is withdrawn.

OSM will soon be proposing for public comment a legislative rule relating to durable rock fill construction. Existing legislative durable rock fill rules at 30 CFR 715.15(d), 816.74, and 817.74 remain in effect. Those comments submitted during the 60 day comment period on the April 16, 1980, durable rock fill interpretative rule that have materially influenced OSM's decision to withdraw the interpretative rule will be addressed in the notice of proposed rulemaking.

Dated: October 30, 1980.

Walter Heine,

Director.

[FR Doc. 80–34785 Filed 11–6–80; 8:45 am]

BILLING CODE 4310–05–M

Proposed Rules

Federal Register
Vol. 45, No. 218
Friday, November 7, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

9 CFR Parts 318 and 381

Accredited Laboratory Program

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Federal meat and poultry products inspection regulations to establish standards and procedures for the accreditation of non-USDA chemistry laboratories for analysis of official meat and poultry samples for (1) residues of particular chemicals or classes of chemicals, and (2) protein, moisture, fat, and salt content. In recent years, the Department has made ever-increasing use of non-USDA laboratories for such analyses. It appears that a permanent program should now be established. Public comment is, therefore, sought both as to the concept of the program and as to the specific standards and procedures to be used in approving laboratories for participation in the program. An intended effect of this action would be to increase the number of non-USDA laboratories available to do these analyses. This would result in a more timely analysis of official meat and poultry samples.

DATE: Comments must be received on or before: January 6, 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 poultry products inspection regulations to: Mr. H. J. Barth, (202) 447-5850. See also comments under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. H. J. Barth, Staff Officer, Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5850. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant."

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Regulations Coordination Division, and should bear a reference to the date and page number of this issue of the **Federal Register.** Any person desiring opportunity for oral presentation of views concerning the proposed amendments to the poultry products inspection regulations must make such request to Mr. H. J. Barth so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this proposal will be made available for public inspection in the office of the Regulations Coordination Division during regular business hours.

Background

In order to assure compliance with Department regulations promulgated under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), samples of meat and poultry products are periodically tested to determine protein, moisture, fat, and salt content. Prior to 1962, these samples were principally analyzed by the Multidisciplinary Laboratories, Field Service Laboratories Division, Science Program, Food Safety and Quality Service (FSQS), USDA. However, in response to the meat and poultry industry's need for more rapid analytical results on official test samples, the Certified Laboratory Program for non-USDA chemistry laboratories was initiated in that year.

Traditionally, residue analysis was also generally done exclusively by departmental laboratories. In 1971 a "recognized status" for residue analysis was initiated for non-USDA chemistry laboratories when USDA laboratory capacity was exceeded during a major polychlorinated biphenyl (PCB) contamination problem in poultry. Since then, "recognized status" has been extended to additional non-USDA chemistry laboratories for testing of other pesticide and drug residues in both meat and poultry and of nitrosamines in meat products. Few, if any, laboratories can afford the resources necessary to test for all possible chemicals. Therefore, a laboratory is granted "recognized status" only with regard to those particular chemicals or classes of chemicals which it is qualified to analyze.

A processor whose sample is to be analyzed generally has the option of using either a USDA laboratory, or a certified or recognized laboratory. The cost of USDA analysis is borne by the government, while the cost of non-USDA analysis is borne by the processor. There are a limited number of USDA laboratories, and they all have a very heavy workload. Therefore, many processors prefer to use these non-USDA laboratories either for convenience of location or to obtain test results more quickly. In certain specific cases and situations, FSQS requires the use of USDA laboratories.

In order to become a certified or recognized laboratory, the non-USDA chemistry laboratory must meet certain standards required by FSQS for each respective laboratory program. These standards have evolved during the course of development of these two laboratory programs.

The Proposal

The proposed rule would combine the present certified and recognized laboratory programs into one accredited laboratory program. Specifically, it would amend the Federal meat and poultry products inspection regulations to establish standards and procedures for accrediting non-USDA chemistry laboratories for the analysis of meat and poultry samples for (1) residues of particular chemicals or classes of chemicals and/or (2) protein, moisture, fat, and salt content (PMFS).

The proposal would establish standards which must be met by a non-USDA laboratory to initially obtain

accreditation for either chemical residue analysis or PMFS analysis, or both. It would also specify the on-going standards which must be continually met by an accredited laboratory to maintain accreditation for either or both of these two categories of analysis. In addition, the proposal would establish conditions under which accreditation may be refused or withdrawn and would contain provisions offering the opportunity for an oral hearing to appeal such a decision by the Administrator of FSQS.

Laboratories designated as certified or recognized on the effective date of these regulations would automatically become accredited laboratories for their current type of analysis since they have demonstrated their ability to meet the criteria for obtaining accreditation. However, such laboratories would be required to meet the standards for maintaining accreditation, as set forth in the proposal. All other laboratories which wished to be accredited would have to apply for accreditation in accordance with these regulations.

Most of the particular standards in the proposal have been used for several years by the Department in making determinations in specific cases for certifying or recognizing laboratory programs. No method of analysis can ascertain in all instances the exact amount of a chemical present in any particular product. However, numerous studies have been conducted over the years under the auspices of the Association of Official Analytical Chemists, various governmental agencies, private and industry groups, and academic institutions to ascertain the degree of accuracy in analysis for specific chemicals that can be achieved under the methods of analysis. The particular numerical variations proposed by the Department, both as to percentage and amount, are based upon these studies.[1] In addition, the USDA has an ongoing program to sponsor or participate in further studies to refine or assure the efficacy of these numerical variations in light of present scientific and technological expertise.

The standards also contain requirements as to supervisory experience and education, recordkeeping, reporting, FSQS access, and check samples which the Department believes are necessary to assure that accredited laboratories have sufficient expertise to perform the types of analysis for which they are accredited and to assure that the samples in accredited laboratories are being properly analyzed. Finally, it is required that a laboratory seeking accreditation for PMFS analysis provide the name and address of an official meat or poultry establishment which has agreed to employ its services. Since many laboratories can perform this type of analysis, the Department wishes to avoid overburdening its resources by evaluating applicants who have no foreseeable need for such accreditation.

In sum, the Department has had very good experience with these standards and programs. It is believed, therefore, that these programs and standards should be accorded a more permanent basis of general applicability. Thus, these amendments to the regulations are being proposed.

Options Considered

The Department has reviewed both the certified and the recognized laboratory programs and considered two options for suggested revisions in the programs. Under Option I, the Department would provide all laboratory services for participating meat and poultry processing establishments. Non-USDA laboratories would no longer be used. Under Option II, the Department would combine the certified and the recognized laboratory programs into one Accredited Laboratory Program and propose laboratory accreditation standards and procedures in order to permit public review and comment.

A comparison of the two options indicates that there would be a substantial cost savings to the Department in the selection of Option II over Option I. The annual cost to the Department of maintaining USDA laboratories to analyze 36,000 official samples (Option I) would be over $750,000 more than the cost of effectively monitoring non-USDA laboratories to perform the same work under an Accredited Laboratory Program (Option II). In addition, the accreditation of non-USDA laboratories under Option II may increase the number and locations of laboratories available to the industry. This, in turn, would decrease turnaround time for the analysis of meat and poultry samples, and would thus save the industry money, as well as provide a more flexible, responsive system to meet industry needs. Such a responsive system may ultimately benefit the public through a more healthy and safe food supply. Thus, for the reasons stated herein, Option II was chosen.

This document incorporates by reference the "Official Methods of Analysis of the Association of Official Analytical Chemists". (*See* §§ 318.19(a)(13) and 381.153(13).)

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

Accordingly, Part 318 of the Federal meat inspection regulations (9 CFR 318) would be amended by adding a new § 318.19, and the Table of Contents would be amended accordingly, to read as follows:

§ 318.19 Accreditation of chemistry laboratories.

(a) *Definitions:*

(1) *Accredited Laboratory*—A non-USDA chemistry laboratory that has met the requirements specified in this section for accreditation. Payment for analysis of official samples is to be made by the laboratory client.

(2) *Split Samples*—A duplicate of an official sample which is analyzed by an FSQS Multidisciplinary Laboratory and is used for comparison to determine the continued analytical capability of the accredited laboratory.

(3) *FSQS Form 6200-2*—The laboratory biweekly report used by FSQS and those laboratories accredited for moisture, protein, fat, and salt analysis in meat and poultry products. The results of the analysis for protein, moisture, salt, and fat content are reported on this form to the Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

(4) *MP Form 115*—The laboratory biweekly report used by FSQS and those laboratories accredited for chemical residue analysis in meat and poultry food products. The results of the analysis for chemical residues are reported on this form to the Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

(5) *Minor deviation*—

(i) *Laboratories accredited for analysis of protein, moisture, fat and salt content:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds the following values: protein = ±0.5%, moisture and fat = ±1.0%, and salt = ±0.3%; but does not exceed the following values: protein = ±1.0%, moisture and fat = ±2.0%, and salt = ±0.6%.

(ii) *Laboratories accredited for analysis of chemical residues:*

[1] A list of, or copies of, the scientific studies relied upon by USDA in determining these variations for particular chemicals are available from the Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds 2 times but not 4 times the coefficient of variation times the mean of the two results.

(6) *Major deviation*—

(i) *Laboratories accredited for analysis of protein, moisture, fat and salt content:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds the following values: protein = ± 1.0%, moisture and fat = ± 2.0%, and salt = ± 0.6%.

(ii) *Laboratories accredited for analysis of chemical residues:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds 4 times the coefficient of variation times the mean of the two results.

(7) *Official sample.*—A sample selected by a Federal inspector at an establishment. For samples for chemical residue analysis, this term also includes any sample selected and submitted under USDA supervision by a grower of livestock or by an establishment.

(8) *Accredited Laboratory Coordinator*—The FSQS official responsible for coordinating all activities of laboratory accreditation and automatic data processing (ADP) analysis.

(9) *Minimum Proficiency Level*—The minimum level of incurred residue expected to be identified and quantified by an accredited laboratory.

(10) *COV (Coefficient of Variation)*—The standard deviation of a set of analytical results multiplied by 100, divided by the average value of those analytical results.

(11) *Accreditation Check Samples*—A set of samples prepared by an FSQS laboratory and used to ascertain a non-USDA laboratory's analytical capability for obtaining accreditation.

(12) *Official Check Samples*—Samples prepared by an FSQS laboratory and used to determine an accredited laboratory's continued analytical capability.

(13) *AOAC procedures*—Procedures of chemical analysis accepted by the Association of Official Analytical Chemists (AOAC) and published in the "Official Methods of Analysis of the Association of Official Analytical Chemists".[1]

(14) *Standards of performance for initial and continued laboratory accreditation for chemical residue analysis*—Table 1 establishes the standards of performance which must be set by non-USDA laboratories for residues analyses using analytical procedures designated and approved by FSQS:

Table 1

Residue	Minimum proficiency level	Percent expected recovery	Initial acceptance criteria*	Continued acceptance criteria*
Aldrin	0.10 ppm	80–100	<COV 15%	<COV 20%
Benzene hexachloride	0.10 ppm	80–100	<COV 15%	<COV 20%
Chlordane	0.3 ppm	80–100	<COV 15%	<COV 20%
Dieldrin	0.10 ppm	80–100	<COV 15%	<COV 20%
DDT	0.15 ppm	80–100	<COV 15%	<COV 20%
DDE	0.10 ppm	80–100	<COV 15%	<COV 20%
TDE	0.15 ppm	80–100	<COV 15%	<COV 20%
Endrin	0.10 ppm	80–100	<COV 15%	<COV 20%
Heptachlor	0.10 ppm	80–100	<COV 15%	<COV 20%
Heptachlor epoxide	0.10 ppm	80–100	<COV 15%	<COV 20%
Lindane	0.10 ppm	80–100	<COV 15%	<COV 20%
Methoxychlor	0.5 ppm	80–100	<COV 15%	<COV 20%
Toxaphene	1.0 ppm	80–100	<COV 15%	<COV 20%
Polychlorinate biphenyls	0.5 ppm	80–100	<COV 15%	<COV 20%
Hexachlorobenzene	0.10 ppm	80–100	<COV 15%	<COV 20%
Mirex	0.1 ppm	80–100	<COV 15%	<COV 20%
Nonachlor	0.15 ppm	80–100	<COV 15%	<COV 20%
Polybrominated biphenyls	0.15 ppm	80–100	<COV 15%	<COV 20%
Arsenic	0.20 ppm	N/A	<COV 15%	<COV 20%
Sulfa drugs	0.1 ppm	65–85	<COV 12%	<COV 16%
DES	2 ppb	60–90	<COV 12%	<COV 16%
Ipronidazole	2 ppb	60–900	<COV 15%	<COV 20%
Nitrosamine	5 ppb	70–110	<COV 8% at the 10 ppb level	<COV 12% at the 10 ppb level

*Proper identification of each residue present is required.

(b) *Laboratories accredited for analysis of protein, moisture, fat and salt content in meat food products.*

(1) *Applying for Accreditation.*[2] Application for accreditation shall be made by letter by the owner or operator of the non-USDA laboratory to the Accredited Laboratory Coordinator, Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. Laboratories whose accreditation has been refused or withdrawn under the circumstances described in paragraph (d) or (e) of this section may reapply for accreditation no sooner than 1 year after the effective date of that action.

(2) *Criteria for obtaining accreditation.* Non-USDA chemistry laboratories may be accredited for the Accredited Laboratory Program for the analysis of moisture, protein, fat, and salt content. This accreditation authorizes official FSQS acceptance of such analytical test results from such laboratories on official samples. To obtain FSQS accreditation for moisture, protein, fat, and salt analyses, a non-USDA chemistry laboratory must:

(i) Provide to FSQS the name and address of at least one official meat establishment which has agreed to employ its services,

(ii) Be supervised by a person holding, at a minimum, a bachelor's degree in chemistry, and 1 year's experience in meat chemistry, or the equivalent as determined by the Administrator, FSQS,

(iii) Successfully demonstrate analytical capability using AOAC procedures[1] by taking part in a 30 check sample accreditation study carried out between the applying laboratory and a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS, USDA. The applying laboratory will bear the costs of its analysis. If analysis of the first set of accreditation check samples does not meet FSQS standards for obtaining accreditation, a second set of samples will be provided to the non-USDA laboratory. If the analysis of the second set of samples does not meet FSQS

[1] Copies of this publication are on file with the Director, Office of the **Federal Register**, and are available from the Association of Official Analytical Chemists, 1111 N. 19th Street, Suite 210, Arlington, Virginia 22209.

[2] Laboratories designated by FSQS as "certified" on the effective date of this regulation will automatically become accredited laboratories for their current type of analysis without complying with paragraphs (b)(1) and (b)(2) of this section. However, all other requirements of this section shall be applicable to such laboratories.

standards for obtaining accreditation, no additional set of accreditation check samples will be provided for a 1-year time period commencing from the date on which the analysis results of the second set was reported to FSQS. The applying laboratory must meet the following standards on results from analyzing the 30 accreditation check samples:

(*a*) Not more than 25 percent of samples tested shall have minor deviations.

(*b*) Not more than 5 percent of samples tested shall have major deviations.

(*c*) Data must conform to normal statistical distribution.

(iv) Allow access to and inspection of the laboratory by FSQS officials prior to a determination as to the granting of accredited status.

(3) *Standards for maintaining accreditation.* To maintain accreditation for the Accredited Laboratory Program for moisture, protein, fat, and salt analyses, a non-USDA chemistry laboratory must:

(i) Report analytical results of the moisture, protein, fat, and salt content of official samples biweekly on FSQS Form 6200–2 to the Chemistry Division, Science Program, FSQS, USDA.

(ii) Maintain laboratory quality control records for a period of 3 years.

(iii) Maintain complete records of the receipt, analysis, and dispositon of official samples in a permanently bound book for a period of 3 years after the last entry.

(iv) Maintain a "standards book" which is a permanently bound book with sequentially numbered pages containing all readings and calculations for standardization of solutions, determination of recoveries, and calibration of instruments. All entries are to be dated and signed by the analyst and his/her supervisor within 1 working day, and the book is to be maintained for a period of 3 years after the last entry.

(v) Analyze official check samples, whenever requested by USDA, at no cost to USDA within 1 week of sample receipt.

(vi) Inform the Chemistry Division, Science Program, FSQS, by certified or registered mail, when a change in laboratory supervisory personnel occurs.

(vii) Permit FSQS officials to perform both announced and unannounced on-site laboratory reviews.

(viii) Use official AOAC procedures [1] on official samples.

(ix) Maintain acceptable analytical agreement of the laboratory's official sample results with split sample results from a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS. Acceptable agreement is:

(*a*) Not more than 25 percent of the samples tested having minor deviations.

(*b*) Not more than 5 percent of the samples tested having major deviations.

(*c*) Data conforming to normal statistical distribution.

(x) Report analytical results of official samples in accordance with the instructions of the Accredited Laboratory Coordinator before making the results available to any other party. The Federal inspector at any establishment may assign the analysis of official samples to an FSQS-Science Multidisciplinary Laboratory if, in his/her view, there are an excessive number of delays in receiving test results on official samples from an accredited laboratory.

(c) *Laboratories accredited for chemical residue analysis in meat food products.*—(1) *Applying for accreditation.*[3] Application for accreditation shall be made by letter by the owner or operator of the non-USDA laboratory to the Accredited Laboratory Coordinator, Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250. Laboratories whose accreditation has been refused or withdrawn under the circumstances described in paragraphs (d) or (e) of this section may reapply for accreditation no sooner than 1 year after the effective date of that action.

(2) *Criteria for obtaining accreditation.* Non-USDA chemistry laboratories may be accredited for the Accredited Laboratory Program for the analysis for residue content of particular chemicals or classes of chemicals. This accreditation authorizes official FSQS acceptance of such analytical test results from such laboratories on official samples. To obtain FSQS accreditation for chemical residue analysis, a non-USDA chemistry laboratory must:

(i) Be supervised by a person holding, at a minimum, a bachelor's degree in chemistry from an American Chemical Society (ACS) approved college or university and having a minimum of 3 years' experience in the preceding 6 years in the residue analysis of those particular chemicals or classes of chemicals for which accreditation is sought or the equivalent as determined by the Administrator, FSQS; or 8 years' experience in the preceding 10 years in the residue analysis of those particular chemicals or classes of chemicals for which accreditation is sought, and a bachelor's degree in chemistry from any college or university.

(ii) Successfully demonstrate analytical capability for the particular chemical or class of chemicals applied for using procedures designated and approved by FSQS by taking part in a check sample accreditation study carried out between the applying laboratory and a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS, USDA. The applying laboratory will bear the costs of its analysis. If analysis of the first set of accreditation check samples for the particular chemicals or class of chemicals does not meet FSQS standards for obtaining accreditation, a second set of samples will be provided to the non-USDA laboratory. If the analysis of the second set of samples does not meet FSQS standards for obtaining accreditation, no additional set of accreditation check samples for the particular chemical or class of chemicals will be provided for a 1-year time period commencing from the date on which the analysis results of the second set was reported to FSQS. With regard to the accreditation check samples, the applying laboratory must meet the standards of performance for initial laboratory accreditation for chemical residue analysis of the particular chemical or class of chemicals (Table 1) and

(*a*) Not more than 25 percent of the samples tested shall have minor deviations.

(*b*) Not more than 5 percent of the samples tested shall have major deviations.

(*c*) Data must conform to normal statistical distribution.

(iii) Allow access to and inspection of the laboratory by FSQS officials prior to a determination as to the granting of accredited status.

(3) *Standards for maintain accreditation.* To maintaining accreditation for the Accredited Laboratory Program for chemical residue analysis, a non-USDA chemistry laboratory must:

(i) Report analytical chemical residue results of official samples biweekly on MP Form 115 to the Chemistry Division, Science Program, FSQS, USDA.

(ii) Maintain laboratory quality control records for a period of 3 years.

(iii) Maintain complete records of the receipt, analysis, and disposition of official samples in a permanently bound

[3] Laboratories designated by FSQS as "recognized" on the effective date of this regulation will automatically become accredited laboratories for their current type of analysis without complying with paragraphs (c)(1) and (c)(2) of this section. However, all other requirements of this section shall be applicable to such laboratories.

book for a period of 3 years after the last entry.

(iv) Maintain a "standards book" which is a permanently bound book with sequentially numbered pages containing all readings and calculations for standardization of solutions, determination of recoveries, and calibration of instruments. All entries are to be dated and signed by the analyst and his/her supervisor within 1 working day and the book is to be maintained for a period of 3 years after the last entry.

(v) Analyze official check samples whenever requested by USDA, at no cost to USDA within 1 week of the sample receipt.

(vi) Inform Chemistry Division, Science Program, FSQS, by certified or registered mail, when a change in laboratory supervisory personnel occurs.

(vii) Permit FSQS officials access to perform both announced and unannounced on-site laboratory reviews.

(viii) Use analytical procedures designated and approved by FSQS officials on official samples.

(ix) Maintain acceptable analytical agreement of the laboratory's official sample results with split sample results from a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS. Acceptable agreement is meeting the standards of performance for continued laboratory accreditation for chemical residue analysis for the particular chemical or class of chemicals (Table I) and

(*a*) Not more than 25 percent of the samples tested minor deviations.

(*b*) Not more than 5 percent of the samples tested major deviations.

(*c*) Data conforming to normal statistical distribution.

(x) Report analytical results of official samples in accordance with the instructions of the Accredited Laboratory Coordinator before making the results available to any other party.

(d) *Refusal of accreditation.* Upon a determination by the Administrator a laboratory may be refused accreditation for the Following reasons:

(1) Laboratory may be refused accreditation for protein, moisture, fat and salt analysis for failure to meet the requirements of paragraph (b)(2) of this section.

(2) A laboratory may be refused accreditation for chemical residue analysis for failure to meet the requirements of paragraph (c)(2) of this section. The refusal may be limited to the analysis of particular chemicals or classes of chemicals if the deficiencies relate only to those chemicals or classes of chemicals and to the requirements in paragraph (c)(2)(i) or (ii) of this section.

(e) *Withdrawal of accreditation.* Upon a determination by the Administrator an accredited laboratory may have its accreditation withdrawn for the following reasons:

(1) An accredited laboratory may have its accreditation withdrawn for protein, mositure, fat and salt analysis for failure to meet the requirements of paragraph (b)(3) of this section.

(2) An accredited laboratory may have its accreditation withdrawn for chemical residue analysis for failure to meet the requirements of paragraph (c)(3) of this section.

(3) An accredited laboratory may have its accreditation withdrawn for either protein, mositure, fat and salt analysis or for chemical residue analysis if the laboratory owner or operator, or any agent or employee in the scope of his agency or employment, has:

(i) Altered any official sample or analytical findings, or,

(ii) Substituted any analysis from a non-accredited laboratory. Accredited laboratories may not send official samples to non-accredited laboratories for analysis.

(4) Withdrawals of accreditation for chemical residue analysis may be limited to the analysis of particular chemicals or classes of chemicals if the deficiencies relate only the those chemcials or classes of chemicals and to the requirements in paragraph (c)(3)(ix) of this section.

(f) *Appeal procedures.* Accreditation of any laboratory may be refused or withdrawn under the conditions previously described herein. The owner or operator of the laboratory will be sent written notice of the refusal or withdrawal of accreditation by the Administrator. In such cases, the laboratory owner or operator will be provided the opportunity to present, within 30 days of the date of the notification of the action, a statement challenging the merits or validity of such action and to request an oral hearing with respect to the denial or withdrawal decision. An oral hearing shall be granted if there is any dispute of material fact joined in such responsive statement. The proceeding shall thereafter be conducted in accordance with the applicable rules of practice which shall be adopted for the proceeding. Any such refusal shall be effective upon the notification, and shall continue in effect unitl final determination of the matter. Any such withdrawal shall be effective upon notification, but shall be held in abeyance until final determination of the matter except in cases where the Administrator determines the public health, interest, or safety requires the withdrawal to continue in effect until the final determination of the matter.

(Sec. 21, 34 Stat. 1260, as amended, 21 U.S.C. 621; 42 FR 35625, 35626)

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Furthermore, Part 381, Subpart 0, of the poultry products inspection regulations (9 CFR 381) would be amended by adding a new § 381.153, and the Table of Contents would be amended accordingly, to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

(a) Definitions:

(1) *Accredited Laboratory*—A non-USDA chemistry laboratory that has met the requirements specified in this section for accreditation. Payment for analysis of official samples is to be made by the laboratory client.

(2) *Spilt Samples*—A duplicate of an official sample, which is analyzed by an FSQS Multidisciplinary Laboratory and is used for comparison to determine the continued analytical capability of the accredited laboratory.

(3) *FSQS Form 6200-2*—The laboratory biweekly report used by FSQS and those laboratories accredited for moisture, protein, fat and salt analysis in meat and poultry products. The results of the analysis for protein, mositure, salt, and fat content are reported on this form to the Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

(4) *MP Form 115*—The laboratory biweekly report used by FSQS and those laboratories accredited for chemical residue analysis in meat and poultry food products. The results of the analysis for chemical residues are reported on this form to the Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

(5) *Minor deviation*—

(i) *Laboratories accredited for analysis of protein, moisture, fat and salt content:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds the following values: protein = ± 0.5%, moisture and fat = ± 1.0%, and salt = ± 0.3%; but does not exeed the following values: protein = ± 1.0%, moisture and fat = ± 2.0%, and salt = ± 0.6%.

(ii) *Laboratories accredited for analysis of chemical residues:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds 2 times but not 4 times the coefficient of variation times the mean of the two results.

(6) *Major deviation*—

(i) *Laboratories accredited for analysis of protein, moisture, fat and salt content:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds the following values: protein = ± 1.0%, moisture and fat = ± 2.0%, and salt = ± 0.6%.

(ii) *Laboratories accredited for analysis of chemical residues:*

A difference between the accredited laboratory sample result and the FSQS Multidisciplinary Laboratory split sample or check sample result that exceeds 4 times the coefficient of variation times the mean of the two results.

(7) *Official sample*—A sample selected by a Federal inspector at an establishment. For samples for chemical residue analysis, this term also includes any sample selected and submitted under USDA supervision by a grower of poultry or by an establishment.

(8) *Accredited Laboratory Coordinator*—The FSQS official responsible for coordinating all activites of laboratory accreditation and automatic data processing (ADP) analysis.

(9) *Minimum Proficiency Level*—The minimum level of incurred residue expected to be identified and quantified by an accredited laboratory.

(10) *COV (Coefficient of Variation)*—The standard deviation of a set of analytical results multiplied by 100, divided by the average value of those analytical results.

(11) *Accreditation Check Samples*—A set of samples prepared by an FSQS laboratory and used to ascertain a non-USDA laboratory's analytical capability for obtaining accreditation.

(12) *Official Check Samples*—Samples prepared by an FSQS laboratory and used to determine an accredited laboratory's continued analytical capability.

(13) *AOAC procedures*—Procedures of chemical analysis accepted by the Association of Official Analytical Chemists (AOAC) and published in the "Official Methods of Analysis of the Association of Official Analytical Chemists." [1]

(14) *Standards of performance for initial and continued laboratory accreditation for chemical residue analyses*—Table 1 establishes the standards of performance which must be met by non-USDA laboratories for residue analyses using analytical procedures designated and approved by FSQS:

Table 1

Residue	Minimum proficiency level	Percent expected recovery	Initial acceptance criteria*	Continued acceptance criteria*
Aldrin	0.10 ppm	80–100	<COV 15%	<COV 20%
Benzene hexachloride	0.10 ppm	80–100	<COV 15%	<COV 20%
Chlordane	0.3 ppm	80–100	<COV 15%	<COV 20%
Dieldrin	0.10 ppm	80–100	<COV 15%	<COV 20%
DDT	0.15 ppm	80–100	<COV 15%	<COV 20%
DDE	0.10 ppm	80–100	<COV 15%	<COV 20%
TDE	0.15 ppm	80–100	<COV 15%	<COV 20%
Endrin	0.10 ppm	80–100	<COV 15%	<COV 20%
Heptachlor	0.10 ppm	80–100	<COV 15%	<COV 20%
Heptachlor epoxide	0.10 ppm	80–100	<COV 15%	<COV 20%
Lindane	0.10 ppm	80–100	<COV 15%	<COV 20%
Methoxychlor	0.5 ppm	80–100	<COV 15%	<COV 20%
Toxaphene	1.0 ppm	80–100	<COV 15%	<COV 20%
Polychlorinated biphenyls	0.5 ppm	80–100	<COV 15%	<COV 20%
Hexachlorobenzene	0.10 ppm	80–100	<COV 15%	<COV 20%
Mirex	0.1 ppm	80–100	<COV 15%	<COV 20%
Nonachlor	0.15 ppm	80–100	<COV 15%	<COV 20%
Polybrominated biphenyls	0.15 ppm	80–100	<COV 15%	<COV 20%
Arsenic	0.20 ppm	N/A	<COV 15%	<COV 20%
Sulfa drugs	0.1 ppm	65–85	<COV 12%	<COV 16%
DES	2 ppb	60–90	<COV 12%	<COV 16%
Ipronidazole	2 ppb	60–900	<COV 15%	<COV 20%
Nitrosamine	5 ppb	70–110	<COV 8% at the 10 ppb level	<COV 12% at the 10 ppb level

*Proper identification of each residue present is required.

(b) *Laboratories accredited for analysis of protein, moisture, fat and salt content in poultry products.*

(1) *Applying for Accreditation.*[2] Application for accreditation shall be made by letter by the owner or operator of the non-USDA laboratory to the Accredited Laboratory Coordinator, Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. Laboratories whose accreditation has been refused or withdrawn under the circumstances described in paragraph (d) or (e) of this section may reapply for accreditation no sooner than 1 year after the effective date of that action.

(2) *Criteria for obtaining accreditation.* Non-USDA chemistry laboratories may be accredited for the Accredited Laboratory Program for the analysis of moisture, protein, fat, and salt content. This accreditation authorizes official FSQS acceptance of such analytical test results from those laboratories on official samples. To obtain FSQS accreditation for moisture, protein, fat, and salt analyses, a non-USDA chemistry laboratory must:

(i) Provide to FSQS the name and address of at least one official poultry establishment which has agreed to employ its services,

(ii) Be supervised by a person holding, at a minimum, a bachelor's degree in chemistry, and 1 year's experience in poultry chemistry, or the equivalent as determined by the Administrator, FSQS,

(iii) Successfully demonstrate analytical capability using AOAC procedures [1] by taking part in a 30 check sample accreditation study carried out between the applying laboratory and a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS, USDA. The applying laboratory will bear the costs of its analysis. If analysis of the first set of accreditation check samples does not meet FSQS standards for obtaining accreditation, a second set of samples will be provided to the non-USDA laboratory. If the analysis of the second set of sample does not meet FSQS

[1] Copies of this publication are on file with the Director, Office of the Federal Register, and are available from the Association of Official Analytical Chemists, 1111 N. 19th Street, Suite 210, Arlington, Virginia 22209.

[2] Laboratories designated by FSQS as "certified" on the effective date of this regulation will automatically become accredited laboratories for their current type of analysis without complying with paragraph (b)(1) and (b)(2) of this section. However, all other requirements of this section shall be applicable to such laboratories.

standards for obtaining accreditation, no additional set of accreditation check samples will be provided for a 1-year time period commencing from the date on which the analysis results of the second set was reported to FSQS. The applying laboratory must meet the following standards on results from analyzing the 30 accreditation check samples:

(*a*) Not more than 25 percent of samples tested shall have minor deviations.

(*b*) Not more than 5 percent of samples tested shall have major deviations.

(*c*) Data must conform to normal statistical distribution.

(iv) Allow access to and inspection of the laboratory by FSQS officials prior to a determination as to the granting of accredited status.

(3) *Standards for maintaining accreditation.* To maintain accreditation for the Accredited Laboratory Program for moisture, protein, fat, and salt analyses, a non-USDA chemistry laboratory must:

(i) Report analytical results of the moisture, protein, fat and salt content of official samples biweekly on FSQS Form 6200–2 to the Chemistry Division, Science Program, FSQS, UDSA.

(ii) Maintain laboratory quality control records for a period of 3 years.

(iii) Maintain complete records of the receipt, analysis, and disposition of official samples in a permanently bound book for a period of 3 years after the last entry.

(iv) Maintain a "standards book" which is a premanently bound book with sequentially numbered pages containing all readings and calculations for standardization of solutions, determination of recoveries, and calibration of instruments. All entries are to be dated and signed by the analyst and his/her supervisor within 1 working day, and the book is to be maintained for a period of 3 years after the last entry.

(v) Analyze official check samples whenever requested by USDA, at no cost to USDA within 1 week of sample receipt.

(vi) Inform the Chemistry Division, Science Program, FSQS, by certified or registered mail, when a change in laboratory supervisory personnel occurs.

(vii) Permit FSQS officials to perform both announced and unannounced on-site laboratory reviews.

(viii) Use official AOAC procedures [1] on official samples.

(ix) Maintain acceptable analytical agreement of the laboratory's official sample results with split sample results from a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS. Acceptable agreement is:

(*a*) Not more than 25 percent of the samples tested having minor deviations.

(*b*) Not more than 5 percent of the samples tested having major deviations.

(*c*) Data conforming to normal statistical distribution.

(x) Report analytical results of official samples in accordance with the instructions of the Accredited Laboratory Coordinator before making the results available to any other party. The Federal inspector at any establishment may assign the analysis of official samples to an FSQS-Science Multidisciplinary Laboratory if, in his/her view, there are an excessive number of delays in receiving test results on official samples from an accredited laboratory.

(c) *Laboratories accredited for chemical residue analysis in poultry products.*—(1) *Applying for accreditation.*[3] Application for accreditation shall be made by letter by the owner or operator of the non-USDA laboratory to the Accredited Laboratory Coordinator, Chemistry Division, Science Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. Laboratories whose accreditation has been refused or withdrawn under the circumstances described in paragraphs (d) or (e) of this section may reapply for accreditation no sooner than 1 year after the effective date of that action.

(2) *Criteria for obtaining accreditation.* Non-USDA chemistry laboratories may be accredited for the Accredited Laboratory Program for the analysis for the residue content of particular chemicals or classes of chemicals. This accreditation authorizes official FSQS acceptance of such analytical test results from such laboratories on official samples. To obtain FSQS accreditation for chemical residue analysis, a non-USDA chemistry laboratory must:

(i) Be supervised by a person holding, at a minimum, a bachelor's degree in chemistry from an American Chemical Society (ACS) approved college or university and having a minimum of 3 years' experience in the preceding 6 years in the residue analysis of those particular chemicals or classes of chemicals for which accreditation is sought or the equivalent as determined by the Administrator, FSQS; or 8 years' experience in the preceding 10 years in the residue analysis of those particular chemicals or classes of chemicals for which accreditation is sought, and a bachelor's degree in chemistry from any college or university.

(ii) Successfully demonstrate analytical capability for the particular chemical or classes of chemicals applied for using procedures designated and approved by FSQS by taking part in a check sample accreditation study carried out between the applying laboratory and a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS, USDA. The applying laboratory will bear the costs of its analysis. If analysis of the first set of accreditation check samples for the particular chemical or classes of chemicals does not meet FSQS standards for obtaining accreditation, a second set of samples will be provided to the non-USDA laboratory. If the analysis of the second set of samples does not meet FSQS standards for obtaining accreditation, no additional set of accreditation check samples for the particular chemical or class of chemicals will be provided for a 1-year time period commencing from the date on which the analysis results of the second set was reported to FSQS. With regard to the accreditation check samples, the applying laboratory must meet the standards of performance for initial laboratory accreditation for chemical residue analysis of the particular chemical or class of chemicals (Table 1) and

(*a*) Not more than 25 percent of the samples tested shall have minor deviations.

(*b*) Not more than 5 percent of the samples tested shall have major deviations.

(*c*) Data must conform to normal statistical distribution.

(iii) Allow access to and inspection of the laboratory by FSQS officials prior to a determination as to the granting of accredited status.

(3) *Standards for maintaining accreditation.* To maintain accreditation for the Accredited Laboratory Program for chemical residue analysis, a non-USDA chemistry laboratory must:

(i) Report analytical chemical residue results of official samples biweekly on MP Form 115 to the Chemistry Division, Science Program, FSQS, USDA.

(ii) Maintain laboratory quality control records for a period of 3 years.

(iii) Maintain complete records of the receipt, analysis, and disposition of official samples in a permanently bound

[3] Laboratories designated by FSQS as "recognized" on the effective date of this regulation will automatically become accredited laboratories for their current type of analysis without complying with paragraphs (c)(1) and (c)(2) of this section. However, all other requirements of this section shall be applicable to such laboratories.

book for a period of 3 years after the last entry.

(iv) Maintain a "standards book" which is a permanently bound book with sequentially numbered pages containing all readings and calculations for standardization of solutions, determination of recoveries, and calibration of instruments. All entries are to be dated and signed by the analyst and his/her supervisor within 1 working day and the book is to be maintained for a period of 3 years after the last entry.

(v) Analyze official check samples whenever requested by USDA, at no cost to USDA within 1 week of sample receipt.

(vi) Inform Chemistry Division, Science Program, FSQS, by certified or registered mail, when a change in laboratory supervisory personnel occurs.

(vii) Permit FSQS officials access to perform both announced and unannounced on-site laboratory reviews.

(viii) Use analytical procedures designated and approved by FSQS officials on official samples.

(ix) Maintain acceptable analytical agreement of the laboratory's official sample results with split sample results from a Multidisciplinary Laboratory, Field Service Laboratories Division, Science Program, FSQS. Acceptable agreement is meeting the standards of performance for continued laboratory accreditation for chemical residue analysis for the particular chemical or class of chemicals (Table I), and

(*a*) Not more than 25 percent of the samples tested having minor deviations.

(*b*) Not more than 5 percent of the samples tested having major deviations.

(*c*) Data conforming to normal statistical distribution.

(x) Report analytical results of official samples in accordance with the instructions of the Accredited Laboratory Coordinator before making the results available to any other party.

(d) *Refusal of accreditation.* Upon a determination by the Administrator a laboratory may be refused accreditation for the following reasons:

(1) A laboratory may be refused accreditation for protein, moisture, fat and salt analysis for failure to meet the requirements of paragraph (b)(2) of this section.

(2) A laboratory may be refused accreditation for chemical residue analysis for failure to meet the requirements of paragraph (c)(2) of this section. The refusal may be limited to the analysis of particular chemicals or classes of chemicals if the deficiencies relate only to those chemicals or classes of chemicals and to the requirements in paragraph (c)(2)(i) or (ii) of this section.

(e) *Withdrawal of accreditation.* Upon a determination by the Administrator an accredited laboratory may have its accreditation withdrawn for the following reasons:

(1) An accredited laboratory may have its accreditation withdrawn for protein, moisture, fat and salt analysis for failure to meet the requirements of paragraph (b)(3) of this section.

(2) An accredited laboratory may have its accreditation withdrawn for chemical residue analysis for failure to meet the requirements of paragraph (c)(3) of this section.

(3) An accredited laboratory may have its accreditation withdrawn for either protein, moisture, fat and salt analysis or for chemical residue analysis if the laboratory owner or operator, or any agent or employee in the scope of his agency or employment, has:

(i) Altered any official sample or analytical finding, or

(ii) Substituted any analysis from a non-accredited laboratory. Accredited laboratories may not send official samples to non-accrédited laboratories for analysis.

(4) Withdrawals of accreditation for chemical residues analysis may be limited to the analysis of particular chemicals or classes of chemicals if the deficiencies relate only to those chemicals or classes of chemicals and to the requirements in paragraph (c)(3)(ix) of this section.

(f) *Appeal procedures.* Accreditation of any laboratory may be refused or withdrawn under the conditions previously described herein. The owner or operator of the laboratory will be sent written notice of the refusal or withdrawal of accreditation by the Administrator. In such cases, the laboratory owner or operator will be provided the opportunity to present, within 30 days of the date of the notification of the proposed action, a statement challenging the merits or validity of such action and to request an oral hearing with respect to the denial or withdrawal decision. An oral hearing shall be granted if there is any dispute of material fact joined in such responsive statement. The proceeding shall thereafter be conducted in accordance with the applicable rules of practice which shall be adopted for the proceeding. Any such refusal shall be effective upon the notification and shall continue in effect until final determination of the matter. Any such withdrawal shall be effective upon notification, but shall be held in abeyance until final determination of the matter except in cases where the Administrator determines the public health, interest, or safety requires the withdrawal to continue in effect until the final determination of the matter.

(Sec. 14, 71 Stat. 441, as amended, 21 U.S.C. 463; 42 FR 35625, 35626)

Done at Washington, D.C., on November 3, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-34787 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-DM-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-17259, File No. S7-590]

Filings by Self-Regulatory Organizations of Proposed Rule Changes and Other Materials With the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of a proposed rule and withdrawal of proposed amendments to a rule and a related form.

SUMMARY: In light of amendments it has adopted to requirements applicable to the filings by Self-regulatory organizations of proposed rule changes and certain other materials, the Commission is announcing (i) withdrawal of a proposed rule that would have defined the term "rule" of a self-regulatory organization and (ii) withdrawal of proposed amendments to a rule and related form that would have provided summary effectiveness for certain proposed rule changes of a self-regulatory organization circulated, for pre-filing review, to the Commission and to persons who would be subject to the rules.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Susan Davis, Esq., (202) 272-2846 or Jeffrey Jordan, Esq., (202) 272-2847, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In a companion release issued today,[1] the Securities and Exchange Commission is announcing certain actions designed to facilitate review of proposed rule changes of self-regulatory organizations under Section 19(b)[2] of the Securities

[1] Securities Exchange Act Release No. 17258 (October 30, 1980).

[2] 15 U.S.C. 78s(b).

Exchange Act of 1934 (the "Act").[3] As part of those actions, the Commission is withdrawing certain proposals made earlier[4] relating to these matters. Specifically, for the reasons explained in the companion release, the Commission is announcing the following actions:

(1) Withdrawal of proposed Rule 3b–7, which would have defined the term "rule" of a self-regulatory organization for purposes of Sections 3(a)(27) and 3(a)(28) of the Act.

(2) Withdrawal of proposed amendments to Rule 19b–4 and related Form 19b–4A that would have provided summary effectiveness for certain proposed rule changes of a self-regulatory organization circulated, for pre-filing review, to the Commission and to persons who would be subject to the rules.

Further explanation of the above actions, and of other actions being taken concerning filings of proposed rule changes and other materials, is provided in the companion release issued today.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 30, 1980.

[FR Doc. 80–34738 Filed 11–6–80; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FRL 1596–1; FAP 9H5196/P19]

Glyphosate; Proposed Food Additive Tolerances

Correction

In FR Doc. 80–26939, appearing at page 58494 in the issue for Wednesday, September 3, 1980, make the following corrections:

(1) In the **"Summary"** paragraph, in the seventh line, "isopropylsponic" should have read "isopropylamine".

(2) In the first paragraph under **"Supplementary Information"**, in the twelfth line, the word "the" should have read "from".

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[3] 15 U.S.C. 78a et seq.

[4] Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 (May 29, 1979).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N–0357]

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes that hair grower and hair loss prevention drug products be classified in Category II as being not generally recognized as effective and as being misbranded for over-the-counter (OTC) use. The document, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, is part of the ongoing review of OTC drug products conducted by the Food and Drug Administration (FDA).

DATES: Comments by February 5, 1981. Reply comments by March 9, 1981.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFA–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on December 10, 1979 a report on hair grower and hair loss prevention drug products from the Advisory Review Panel on OTC Miscellaneous External Drug Products.

Under § 330.10(a)(6) (21 CFR 330.10(a)(6)), the agency issues (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC hair grower and hair loss prevention drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

Because the Panel's recommendations on hair grower and hair loss prevention drug products for OTC use contain no Category I or Category III conditions, FDA is therefore issuing the Panel's recommendations as a notice proposing Category II classification of hair grower and hair loss prevention drug products for OTC use.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. The Panel's findings appear in this document as a formal notice to propose classification of hair grower and hair loss prevention drug products as Category II and to obtain public comment before the agency reaches any decision on the Panel's recommendations. Should the agency accept the Panel's recommendation that the ingredients in hair grower and hair loss prevention drug products be classified as Category II, a regulation declaring the products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 321(p)) will be proposed for inclusion in Part 310, Subpart E (21 CFR Part 310, Subpart E). The agency is including the proposed regulation in this notice to obtain full public comment at this time. After FDA has carefully reviewed the comments and reply comments, submitted in response to this notice, the agency will issue a tentative final order on hair grower and hair loss prevention drug products for OTC use.

Should FDA accept the conclusions and recommendations of the Panel, the agency would propose that hair grower and hair loss prevention drug products be eliminated from the OTC market, effective 6 months after the date of publication of a final order in the **Federal Register**, regardless of whether further testing is undertaken to justify their future use.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC hair grower and hair loss prevention drug products submitted for consideration by the Advisory Review Panel. All the submitted information will be put on public display at the Hearing Clerk's Office, Food and Drug Administration, after December 8, 1980, except to the extent that the person

submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address above).

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, requests for data and information on all active ingredients used in OTC miscellaneous external drug products were issued in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179).

The Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report under § 330.10(a) (1) and (5) on the safety, effectiveness, and labeling of those products:

William E. Lotterhos, M.D., Chairman.
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976).
George C. Cypress, M.D. (resigned November 1978).
Yelva L. Lynfield, M.D. (appointed October 1977).
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978).

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union, served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D. Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D. Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for hair grower and hair loss prevention drug products in this document. The review of other categories of miscellaneous external drug products will be continued by the Panel, and its findings will be published periodically in future issues of the **Federal Register**.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on: October 29 and 30, 1978; January 14 and 15, March 11 and 12, May 18 and 19, August 3 and 4, September 28 and 29, October 28 and 29, and December 9 and 10, 1979.

The minutes of the Panel meetings are on public display in the Hearing Clerk's Office (HFA-305), Food and Drug Administration (address above).

At the Panel's request, Norman Orentreich, M.D., appeared before the Panel to express his views on hair grower and hair loss prevention drug products.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from an interested person, and has considered all pertinent information submitted through December 10, 1979 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in § 330.10, the Panel reviewed OTC hair grower and hair loss prevention drug products with respect to the following three categories:

Category I. Conditions under which OTC hair grower and hair loss prevention drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC hair grower and hair loss prevention drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel concludes that all hair grower and hair loss prevention active ingredients reviewed are safe, but none is effective for OTC use (Category II).

I. Submission of Data and Information

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or use in marketed products, as hair growers and sebum hair loss (hair loss prevention) active ingredients. Thirteen hair grower ingredients were identified as follows: Amino acids, ascorbic acid, benzoic acid, essential oils, fatty acids, hormone constituents, lanolin, oil of eucalyptus, olive oil, proteins, tar oil, vegetable oil, and vitamins. Thirteen sebum hair loss prevention ingredients were identified as follows: Allantoin (5-ureidohydantoin), ammonium lauryl sulfate, dichlorophene, di-isobutyl-phenoxy-ethoxy-ethyl-dimethylbenzyl-ammonium chloride, estradiol, isopropyl alcohol, lauric diethanolamide, methyl ethyl ketone, polyethylene glycol, propylene glycol, sulfonated vegetable and mineral oils, and tetracaine hydrochloride. Notices were published in the **Federal Register** of November 16, 1973 (38 FR 31679) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC hair growers and sebum hair loss drug products.

A. *Submissions.* Pursuant to the above notices, the following submissions were received:

Firms and marketed products

Edwards Industrial Center, Inc., Matawan, NJ 07747—Hair and Scalp Treatment
Loesch Laboratory Consultants, Inc., Houston, TX 77006—Antiseptic Dressing, Deacidizing Scalp Conditioner, L-55-A Scalp Cleanser, Special Shampoo
Shepard D. Roberts, Brooklyn, NY 11203—Hair Stimulant and Grower

B. *Ingredients Reviewed by the Panel.*

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Ammonium lauryl sulfate
Ascorbic acid
Benzethonium chloride (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl-ammonium chloride, monohydrate)
Benzoaic acid
Coconut oil
Estradiol
Isopropanol
Lanolin
Lauric diethanolamide

Methyl ethyl ketone
Mineral oil
Polyethylene glycol 400
Polysorbate 80
Sodium hydroxide
Sulfonated vegetable oil
Tetracaine hydrochloride
Vegetable olive oil
Wheat germ oil (source of vitamin E and thiamine)

2. *Other ingredients reviewed by the Panel.*

Allantoin (5-ureidohydantoin)
Amino acids
Dichlorophen (dichlorophene)
Essential oils
Eucalyptus oil
Fatty acids
Hormone constituents
Olive oil
Propylene glycol
Proteins
Tar oil
Vegetable oil
Vitamins

C. *Classification of Ingredients.*

1. *Active ingredients.*

Ascorbic acid
Benzoic acid (benzoaic acid)
Estradiol
Lanolin
Tetracaine hydrochloride
Wheat germ oil (source of vitamin E and thiamine)

2. *Inactive ingredients.*

Ammonium lauryl sulfate
Benzethonium chloride (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl-ammonium chloride, monohydrate)
Coconut oil
Isopropyl alcohol (isopropanol)
Methyl ethyl ketone
Mineral oil
Polyethylene glycol 400
Polysorbate 80
Sodium hydroxide
Sulfonated vegetable oil
Vegetable olive oil

3. *Other ingredients.* The Panel was not able to locate nor is it aware of any data demonstrating the safety and effectiveness of the following ingredients when used as OTC hair grower and hair loss prevention active ingredients. The Panel, therefore, classifies these ingredients as Category II for this use, and they will not be discussed further in this document.

Allantoin (5-ureidohydantoin)
Amino acids
Dichlorophen (dichlorophene)
Essential oils
Eucalyptus oil (oil of eucalyptus)
Fatty acids
Hormone constituents
Lauric diethanolamide
Olive oil
Propylene glycol
Proteins
Tar oil
Vegetable oil
Vitamins

D. *Referenced OTC Volumes.* The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All the information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions as set forth in § 330.10(a)(2), will be put on public display after December 8, 1980, in the Hearing Clerk's Office (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Discussion

The Advisory Review Panel on OTC Miscellaneous External Drug Products was given the responsibility to review the safety and effectiveness of single ingredients as well as combinations of such ingredients when used in OTC hair growers and sebum hair loss drug products. The Panel interpreted that request as a charge to evaluate products used for hair growers and seburm hair loss on that portion of the human head usually covered with hair. However, the Panel finds that the term "sebum hair loss" is too restrictive when OTC drug preparations for human hair loss are considered. Therefore, instead of the term "sebum hair loss," the term "hair loss prevention" was chosen by the Panel as a more general term to accurately describe any condition that contributes to the prevention of hair loss from the human scalp.

The common type of baldness, male-pattern alopecia, is inherited, as are hair color, texture, and curliness. A concern about the thinning of scalp hair resulting in hair loss may lead to the use of OTC "hair growth stimulants."

Hair growth is not continuous but rather cyclical. A hair follicle grows a hair for a specific period of time; this phase is called anagen. The hair then enters a transitional phase (catagen) and finally a resting phase called telogen. The telogen or resting hair sits in the hair follicle for several months; then it is shed. The cycle begins again with the new hair growing in the same follicle. A growing hair has specific characteristics, such as swelling and pigmentation at the tip. All growing hairs have external and internal root sheaths.

Several factors determine hair growth, i.e., the rate of growth, the duration of anagen, the duration of telogen, the thickness (diameter) of the hair, and the percentage of hairs in the growth (anagen) phase. For example, a scalp hair grows 3 to 5 years and has a much longer final length than an eyebrow hair, which grows for about 6 months. The growing cycle of body hair varies in length from site to site. Approximately 85 percent of the hair on the scalp is in the anagen phase. Because hairs in the anagen, telogen, and catagen phase can be distinguished morphically (by structure), a differential hair count can be done by looking at the roots (Ref. 1).

Hormones, with the exception of those topically applied, affect the hair cycle, the rate of hair growth, the diameter, and the pigmentation of hair. Topically applied hormones have no affect. At puberty many hairs change. A beard hair, for example, under the influence of the androgen dihydrotestosterone is converted from a very fine vellus hair, which has no pigment, is thin, and grows only to a very short length, to a coarse, long, terminal hair.

Male-pattern baldness is the exact opposite of what occurs in the development of a beard. A hair starts out coarse and goes to fine. This occurs in a certain pattern. First, there is a frontal "V" which male adolescents develop and which is really physiologic (Ref. 1). The hairline in women and children is usually straight across; adult males usually exhibit a M-shaped hairline. In people who inherit the gene for male-pattern baldness and who have a normal adult male androgen level, this frontal "V" continues to recede. The crown of the hair starts to go bald, and eventually the "V" connects with the crown. The result is a horseshoe pattern of hair. The follicle has not suddenly stopped producing a hair. Rather, the cycles of hair growth become shorter and shorter; terminal hairs are replaced by vellus hairs. Hamilton (Ref. 2) showed that baldness did not occur in the absence of male hormones, such as in men castrated before puberty, even though the tendency to baldness was inherited. When given androgens, the same subjects became bald.

Hair loss in women is not as great as that seen in men. There is some thinning of the hair in women who inherit the tendency to pattern alopecia (loss of hair) in later years, but hair loss never occurs to the extent found in men.

In certain body states, such as fever or childbirth, a conversion of a great many hairs from the anagen to the telogen phase occurs (Ref. 3). In 3 months (the duration of telogen on the scalp) these hairs are shed, and a sudden thinning of hair (diffuse alopecia) occurs. Then, new anagen hairs start to grow in the same follicle. It would be difficult to prove that this new hair growth occurred as a result of an

application of any substance to the scalp.

Diffuse hair loss can be produced by malnutrition (starvation, crash dieting, iron deficiency), exposure to radiation, and hormonal imbalance (hypothyroidism, hyperthyroidism, hypopituitarism) (Ref. 4). It is caused by a variety of drugs, especially those used for cancer chemotherapy. Alopecia areata (an inflammatory loss of hair in sharply defined areas), fungus infection, secondary syphilis, and lupus erythematosus can cause patchy or extensive baldness.

Nothing done to the hair shaft once it emerges from the surface of the scalp will influence the hair growth. Anything that would influence regeneration of the hair would have to work on the hair root. Pulling on the root, such as with tight ponytails, braids, or a great deal of hair teasing can damage the follicle and cause some alteration in hair growth. Permanent waving, bleaching, shaving, and other external trauma to the hair shaft, which does not affect the hair root, will not have a longterm effect on the hair.

Products which cling to the hair shaft will give extra bulk to the hair and make it seem thicker. The resulting effect is cosmetic and not a drug action intrinsically changing the hair. In order to demonstrate that an ingredient is a hair restorer, it must be proven that the substance gets into the hair root and causes stimulation of hair growth.

An increase in the rate of hair growth, an increase in the diameter of the hair shaft, or the duration of the anagen phase would be convincing evidence of hair growth stimulation. An easier measurement of hair growth would be the total weight of hair produced by stimulation as compared to a control over a period of time. These studies should be carried out on a portion of scalp with a matched, symmetrical area of scalp as simultaneous control, in order to allow for fluctuations of hair growth from systemic causes or from the season of the year.

Because a sudden excessive hair loss or an unusual pattern of hair loss may have an underlying medical cause, the Panel recommends that persons having such a problem consult a doctor.

References

(1) Transcript of Proceedings of the Advisory Review Panel on OTC Miscellaneous External Drug Products, January 14 and 15, 1979.

(2) Hamilton, J. B., "Male Hormone Stimulation is Prerequisite and an Incitant in Common Baldness," *American Journal of Anatomy*, 71:451–481, 1942.

(3) Kligman, A. M., "Pathologic Dynamics of Human Hair Loss," *Archives of Dermatology*, 83:175–198, 1961.

(4) Rook, A., D. S. Wilkinson, and F. J. G. Ebling, "Textbook of Dermatology," Vol. II, 2d Ed., Blackwell Scientific Publications, London, pp. 1559–1641, 1972.

III. Category II Active Ingredients

The Panel has classified the following hair grower and hair loss prevention ingredients as not generally recognized as effective and as being misbranded for OTC use.

Ascorbic acid
Benzoic acid
Estradiol
Lanolin
Tetracaine hydrochloride
Wheat germ oil

The Panel received three submissions for marketed products (Refs. 1, 2, and 3). One manufacuturer submitted a formula for review for a product containing tetracaine hydrochloride, benzoaic acid [sic] (benzoic acid), and ascorbic acid. The manufacurer claimed that this product was for use as a "hair and scalp treatment product for preventing hair loss." However, neither data on the product nor the individual ingredients were submitted. The manufacturer merely stated that the tetracaine hydrochloride was employed for its vasodilatory properties and antipruritic action for aiding in developing hair follicles. Further, the manufacturer claimed that benzoic acid was used because of its antibacterial action and ascorbic acid for the claimed effect of strengthening hair roots by activating cellular respiration of the scalp and stimulating blood circulation (Ref. 1). The Panel reviewed this submission and concluded that there is no evidence that tetracaine hydrochloride, benzoic acid, ascorbic acid, or their combination applied topically to the scalp has any effect on hair growth. A search of the scientific literature did not yield any such evidence.

Another manufacturer submitted a laboratory report for a hair stimulant and grower. The manufacturer described the ingredients as lanolin, wheat germ oil, pure coconut oil, and pure vegetable olive oil, but no data on the effectiveness of the individual ingredients or the combination of ingredients were submitted (Ref. 2). The Panel reviewed the submission and concluded that there is no evidence that these ingredients or their combination applied topically to the scalp have any effect on hair growth. A search of the scientific literature did not yield any such evidence.

A third manufacturer submitted both safety and effectiveness data for a variety of products used for sebum hair loss. Treatment includes the sequential use of the following five products: (1) A deacidizing scalp conditioner (claimed for correcting, destroying, or neutralizing an acid), (2) a scalp cleanser, (3) a shampoo, (4) a hair growth stimulator, and (5) an antiseptic dressing. The manufacturer identified the active ingredients as: estradiol 666 International Units per day (IU/day) of 0.011 milligram per fluid ounce (mg/fl oz), providing a daily dose of 0.0055 mg/day, isopropanol, methyl ethly ketone, sulfonated vegetable and mineral oils, ammonium lauryl sulfate, and benzethonium chloride (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl-ammonium chloride, monohydrate). The manufacturer claimed that this system was a treatment for "sebum hair loss," defined as "the damage or destruction of the cells and tissues responsible for the holding and synthesizing of the hair shaft in the hair follicle by the epilating agents which have been shown to be present in human sebum."

The scientific evidence cited in the third manufacturer's submission to the Panel consisted of studies, published in 1951 and 1952, showing that human sebum or squalene (a chemical in sebum) applied to the skin of rats produced epilation; no more recent studies and no human studies were available (Ref. 3).

The theory that sebum can cause hair loss is not today generally accepted by the medical profession (Ref. 4). One text described studies which measured the normal amount of sebum and the hourly production of sebum on the bald scalp, the hairy scalp of balding men, and the scalp of men who showed no baldness and found no quantitative difference in sebum between these groups. It was concluded that balding men did not have abnormally oily scalps and that no quantitative chemical difference existed between the sebum of balding subjects and balding men. Male pattern baldness may occur coincidentally with increased scalp oiliness. Except for the fact that hair loss and the stimulation of sebaceous glands are both caused by dihydrotestosterone, hair loss and increased scalp oiliness probably are otherwise unrelated.

Pochi and Strauss (Ref. 5) in 1974 reviewed the endocrinologic control of the human sebaceous gland. Estrogen given systemically reduces the size and secretion of sebaceous glands in both men and women. Ethinyl estradiol applied to the forehead of normal men was shown to reduce sebum production; however, the concentration required (1 percent or greater) to reduce sebum

production produced signs of feminization from systemic drug absorption. Attempts to inhibit sebum production with topical estradiol 17B, which is a weaker estrogen, have been unsuccessful.

Because estrogens are readily absorbed through the skin and mucous membranes, the systemic effects resulting from topical application frequently may be observed. For example, in factory workers, gynecomastia (excessive development of the male mammary glands) resulted from handling of diethylstilbestrol (Ref. 6). Masters (Ref. 7) demonstrated increased estrogen in the urine and estrogen-induced vaginal keratinization when two healthy post-menopausal women applied estrogen cream to their skins. Haznam, Mahesh, and Greenblatt (Ref. 8) reported similar effects from cutaneous application of estrogen to a 67-year-old woman. Greenblatt (Ref. 9) treated an 18-year-old girl with Turner's Syndrome with estrogen cream; she developed vaginal keratinization, breast enlargement, and an increase in pubic hair. After applying radioactive estrogen under plastic or aluminum foil to women's backs radioactive metabolites were promptly detected in their urine (Refs. 10 and 11).

Therefore, because of the risk of systemic effects, the amount of estrogen applied topically should be limited. OTC estrogen preparations are labeled with instructions not to exceed a measured amount, which contains 666 IU/day which is approximately 20,000 IU/month. The Panel agreed that estradiol in a dose of 5.5 micrograms per day (μg/day), which equals 666 IU/day, is safe. The lack of systemic effects from this dose is well documented in studies by Masters (Ref. 7), Haznam (Ref. 8), Karnaky (Ref. 12), and Greenblatt (Ref. 13). In the 30 years that these preparations have been marketed, only 3 cases of uterine bleeding (Refs. 14, 15, and 16) may be ascribed to their use. Other adverse effects of systemic estrogen therapy, such as thrombotic disorders, nausea, edema, and breast tenderness and enlargement, have not been reported at this dosage. This is in spite of the fact that when creams are purchased OTC, the user can disregard the instructions and apply far larger quantities than recommended.

The manufacturer of the estrogen-containing product further stated that "this system does purport to be effective in the treatment of male pattern baldness and was not designed for that purpose." However, the data included in this report show that in a random sample of men and women with thinning hair, at least 50 percent of the patients were helped by this treatment (Ref. 3). To support the use of the product for sebum hair loss, the manufacturer submitted a variety of animal safety data for the individual active components of the various marketed products. Effectiveness data included controlled and uncontrolled studies, documented case reports, and references to the scientific literature. The manufacturer stated that four clinical tests demonstrated effectiveness. Three uncontrolled tests were conducted by 44 dermatologists on 230 patients treated from 2 to 11 months during the years 1965 through 1971. Of the patients treated, 88 percent had their hair loss reduced to normal loss or the loss was significantly decreased; 82 percent showed an improvement in the general condition of the scalp, 58 percent showed evidence of new hair growth, and 51.6 percent showed noticeable hair thickening (Ref. 3). One controlled clinical study, conducted in a southwestern medical school, indicated that 33 percent of the patients had a significant decrease in hair loss compared with their control period. Forty-five percent of the patients showed significant evidence of new hair growth as shown by physician examination and corroborated by actual hair count. In addition, 57.5 percent of the patients reported a significant increase in hair density compared to their control period. The manufacturer claims that the studies demonstrate that the treatment "has been shown to be effective for controlling and treating sebum hair loss" (Ref. 3).

The Panel has reviewed the data submitted and concludes that the uncontrolled clinical studies were too subjective to be convincing, because they consisted of only favorable testimonials by dermatologists, as well as men and women with hair loss. Daily shampooing with any nonmedicated shampoo would remove surface oil, scale, and loose hairs. No descriptions, photographs, or quantitative data on the hair loss of individual patients were given. Since the telogen phase on the scalp averages 3 months, it would be surprising to have a real decrease in hair loss in 2 months.

The one controlled quantitative study was very well planned, but so poorly carried out that the results are not significant. Thirty-four subjects (8 women and 26 men) complaining of hair loss of either male pattern or generalized type were studied during a 2-month control period and 3 to 5 months of use of the combination treatment. Photographic assessment and telogen counts were attempted, but the results of these tests were inadequate because the photographs were unclear. Collections of hair loss were also unreliable because of changes in shampooing frequency.

The Panel has reviewed all the information submitted and concludes that the ingredients are safe when used as specified, but that the data fail to demonstrate the effectiveness of these ingredients. Based upon a review of all of the data available to the Panel, and on the fact that no data are available in the literature demonstrating the effectiveness of ingredients reviewed as hair growers and hair loss prevention drug products, the Panel concludes that all claimed hair grower and hair loss prevention active ingredients reviewed are not effective for OTC external use.

References

(1) OTC Volume 160118.

(2) OTC Volume 160232.

(3) OTC Volume 160018.

(4) Rook, A., "Common Baldness and Alopecia Areata" *in* "Recent Advances in Dermatology," Vol. 4, Churchill Livingstone, New York, pp. 223–245, 1977.

(5) Pochi, P. E., and J. S. Strauss, "Endocrinologic Control of the Development and Activity of the Human Sebaceous Gland," *The Journal of Investigative Dermatology*, 62:191–201, 1974.

(6) Murad, F., and A. G. Gilman, "Estrogens and Progestins," *in* "Pharmacological Basis of Therapeutics," 5th Ed., Edited by L. S. Goodman, and A. Gilman, MacMillan Publishing Co., Inc., New York, pp. 1423–1450, 1975.

(7) Masters, E. J., "The Percutaneous Absorption of Estrogens," *Proceedings of the Scientific Section of the Toilet Goods Association*, 33:5–11, 1960.

(8) Haznam, M. W., V. B. Mahesh, and R. B. Greenblatt, "Absorption of Topically Applied Estrogen Preparations," *Dermatologia Internationalis*, 4:86–91, 1965.

(9) Greenblatt, R. B., "Report on Helena Rubinstein Estrogen-Progesterone Cream Study," Draft of unpublished paper, in OTC Volume 160095.

(10) Goldzieher, J. W., and R. E. Baker, "The Percutaneous Absorption of Estradiol-17B and Progesterone," *The Journal of Investigative Dermatology*, 35:215–218, 1960.

(11) Baker, R. E., and J. W. Goldzieher, "A Simple Method for the Measurement of Total Urinary Radioactive Steroid Metabolites and its Application to the Study of Percutaneous Absorption," *Acta Endocrinologica*, 38: 276–284, 1961.

(12) Karnaky, K. J., "An Investigation of Possible Gynecological Changes Resulting From the Topical Use of an Estrogen-Progesterone Cream With Special Emphasis on Vaginal Epithelial Cell Height and pH," *Tri-State Medical Journal*, March, 1960.

(13) Greenblatt, R. B., et al., "Physiologic and Clinical Aspects of Ovarian Hormones," *Archives of Dermatology* 89:846–857, 1964.

(14) OTC Volume 160055.

(15) OTC Volume 160195.

(16) Goldberg, M. B., and F. Harris, "Use of Estrogen Creams," *Journal of the American Medical Association*, 150:790–791, 1952.

The agency has determined that under 21 CFR 25.24(d)(9) (Proposed in the **Federal Register** of December 11, 1979; 44 FR 71742) this proposal is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 310 by adding new § 310.527 to Subpart E, to read as follows:

§ 310.527 OTC drug products containing active ingredients offered for external use as hair growers or for hair loss prevention.

(a) Ascorbic acid, benzoic acid, estradiol, lanolin, tetracaine hydrochloride, and wheat germ oil have been present as ingredients in over-the-counter (OTC) drug products marketed for use as hair growers or for hair loss prevention. There is a lack of adequate data to establish the effectiveness of these ingredients as hair growers or hair loss prevention OTC drug products. Data on any other ingredient intended for use as a hair grower or for hair loss prevention in OTC drug products have not been submittted to the Food and Drug Administration for review for safety and effectiveness. Therefore, any OTC drug product containing an ingredient offered for use as a hair grower or for hair loss prevention cannot be considered generally recognized as safe and effective for its intended use.

(b) Any OTC drug product labeled, represented, or promoted for use as a hair grower or hair loss prevention agent is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is regarded as a new drug within the meaning of section 201(p) of the act for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD–1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for use as a hair grower or hair loss prevention agent is safe and effective for the purpose intended.

(d) After the effective date of the final regulation, any such drug product introduced in interstate commerce that is not in compliance with this section is subject to regulatory action.

Interested persons are invited to submit their comments in writing (preferably in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal on or before February 5, 1981. Comments should be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be accompanied by a supporting memorandum or brief. Comments replying to comments may also be submitted on or before March 9, 1981. Comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner for Food and Drugs.

[FR Doc. 80–34724 Filed 11–6–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Parts 700, 710, 720, and 730

[Docket No. 80N–0346]

Modification in Voluntary Registration of Cosmetic Industry Data

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reduce the reporting burden of the persons voluntarily participating in the registration of cosmetic product establishments and the filing of cosmetic product formulations, raw material compositions, and consumer adverse reactions. The proposed reductions will have no significant effect on the quality of the cosmetic registration programs.

DATES: Written comments by January 6, 1981. The proposed effective date of the final rule based on this proposal is 30 days after its date of publication in the **Federal Register.**

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: Earl L. Richardson, Bureau of Foods (HFF–444), Food and Drug Administration, 200 C ST. SW., Washington, DC 20204, 202–245–1094.

SUPPLEMENTARY INFORMATION: Regulations issued in 1972 and 1973 in response to petitions received from the Cosmetic, Toiletry and Fragrance Association, Inc., provide for the voluntary registration of cosmetic product establishments (21 CFR Part 710), voluntary filing of cosmetic product ingredient and cosmetic raw material composition statements (21 CFR Part 720), and voluntary filing of cosmetic product experiences (21 CFR Part 730).

A recently conducted review of the reporting requirements and impact of the reported information on the quality of the voluntary registration and filing programs has demonstrated that several items may be eliminated without significantly affecting the respective data files. Exclusion of these items will reduce the reporting burden of the firms currently participating in the programs and may motivate others to become participants.

The following changes in the voluntary reporting of cosmetic industry data are being proposed. These changes will not require resubmission of previously registered data.

Voluntary Registration of Cosmetic Product Establishments

It has been determined that disclosure of the kind of ownership or operation of an establishment (e.g., individually owned, partnership, or corporation) is not pertinent to the registration of manufacturers or packers of cosmetics. The purpose of this registration program is to provide FDA with information on the existence and location of an establishment. Ownership information does not help to identify establishments subject to factory inspection or support the enforcement of the Federal Food, Drug, and Cosmetic Act. FDA therefore proposes that the designation of the kind of ownership be deleted in § 710.4 (21 CFR 710.4).

FDA also proposes to delete from § 710.4 any reference to establishments which merely distribute cosmetics. Such

establishments were not intended to be, and have not been, included in the cosmetic establishment registration. Establishments where cosmetics are manufactured or packed as well as distributed will continue to be included in this registry.

Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements

Experience has shown that the listing of the published standard in cases where an ingredient complies with such a standard (e.g., "The United States Pharmacopeia," "National Formulary," etc.) is of limited value to this registration program (21 CFR Part 720). FDA therefore proposes that the request for listing of ingredient standards in §§ 720.4 and 720.5 (21 CFR 720.4 and 720.5) be discontinued. In the absence of full disclosure of the quality standards used for all ingredients of a registered product formula, the usefulness of the listing of such standards is outweighed by the reporting burden. Further, the number of firms providing this information has been too small to give statistical significance to an assessment of the quality of ingredients used by the cosmetic industry.

Voluntary Filing of Cosmetic Product Experiences

The regulation for voluntary filing of cosmetic product experiences (21 CFR Part 730) currently distinguishes between reportable experiences as defined at § 700.3(q)(21 CFR 700.3(q)) and unusual reportable experiences as defined at § 700.3(r)(21 CFR 700.3(r)). The reportable experiences are broken down on the reporting form (FD-2704) into "local irritation or allergic reaction," "skin or nail damage," "infection," and "other." The unusual reportable experiences are broken down further on the reporting form (FD-2705) according to the specific anatomical sites listed on the form.

A review of the information reported since initiation of this program has shown that very few unusual experiences have been reported over the years. Further, many of the adverse reactions reported as unusual experiences might as well have been reported as usual experiences. Almost none of the firms participating in this program reported such adverse reactions occurring under similar circumstances as unusual reportable experiences. Accordingly, FDA proposes that the procedures for reporting of unusual reportable experiences be discontinued and that the respective provisions in Part 730 and the definition of the term "unusual reportable experience" in § 700.3(r) be deleted. Should a cosmetic firm become aware of an unusually severe adverse reaction or of an unusually high number of occurrences of typical adverse reactions, the firm is urged to report this information immediately to FDA and also to include the same information in the semiannual filing of product experiences.

The agency also proposes discontinuance of the reporting of product experiences by experience category (21 CFR 730.4(a) (5)); the rate of reportable experiences per million product units estimated to have been distributed to consumers during the respective period (21 CFR 730.4(a)(7)); and the cosmetic product establishment number or numbers assigned under § 710.6 (21 CFR 730.4(a)(8)). Because most of the adverse reactions reported over the years have been identified as "local irritation or allergic reaction," too little information, either individually or collectively , could be derived from this reporting provision to justify its continuance. The reporting of the rate of reportable experiences per million units estimated to have been distributed to consumers has never been implemented. It was recognized as an unnecessary burden on the participating firms. This information can be obtained more efficiently from the computer using the data supplied elsewhere on the reporting form. The reporting of cosmetic product establishment number or numbers on experience reports also has not been implemented. The repetitious inclusion of these numbers on each experience report is an unnecessary burden because the numbers are not needed for identification of the participating firm and are otherwise readily available in FDA files.

Reporting Forms

Forms FD-2511, FD-2512, FD-2513, FD-2514, and FD-2704 have been redesigned to accommodate the proposed changes and deletions. The agency will maintain sufficient inventory of either current or redesigned forms to meet the requirements of participating firms in order to ensure a continuity of voluntary participation in the registration program.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 601, 602, 701(a), 52 Stat. 1042-1043 as amended, 1054 as amended, 1055 (21 U.S.C. 331, 361, 362, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Title 21 of the Code of Federal Regulations be amended as follows:

PART 700—GENERAL

§ 700.3 [Amended]

1. In § 700.3 *Definitions*, by deleting paragraph (r).

PART 710—VOLUNTARY REGISTRATION OF COSMETIC PRODUCT ESTABLISHMENT

§ 710.4 [Amended]

2. In § 710.4 *Information requested*, by deleting the phrase "the kind of ownership or operation (e.g., individually owned, partnership, or corporation)" and by revising the parenthetical words "(manufacturer, packer, and/or distributor)" to read "(manufacturer and/or packer)."

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

§ 720.4 [Amended]

3. In § 720.4 *Information requested about cosmetic products*, by deleting the second sentence of paragraph (d)(2) and footnotes (1) through (4) and by adding in the third sentence the parenthetical abbreviation "(CRMCS)" between the words "statement" and "number."

§ 720.5 [Amended]

4. In § 720.5 *Information requested about cosmetic raw materials*, by deleting the third sentence of paragraph (c)(1) and footnotes (1) through (4) and by adding in the fourth sentence the parenthetical abbreviation "(CRMCS)" between the words "statement" and "number."

PART 730—VOLUNTARY FILING OF COSMETIC PRODUCT EXPERIENCES

§ 730.1 [Amended]

5. In § 730.1 *Who should file*, by deleting the phrases "or a Form FD-2705 (Cosmetic Product Unusual Experience Report)," "and unusual reportable experiences," and "or unusual reportable experience."

§ 730.2 [Amended]

6. In § 730.2 *Time for filing*, by revoking paragraph (b).

§ 730.3 [Amended]

7. In § 730.3 *How and where to file*, by deleting the phrase "Form FD-2705 (Cosmetic Product Unusual Experience Report)" and the comma preceding it; by changing the name "Industry Guidance Branch" to read "Industry Programs Branch" and by deleting the last sentence.

8. In § 730.4 by revising paragraph (a)(5) and by revoking paragraphs (a)(7) and (8) and (b) as set forth below; by revoking paragraph (c)(5); by deleting in the introductory text of paragraph (d) the phrase "Form FD-2705 (Cosmetic Product Unusual Experience Report)" and the commas preceding and following it; by deleting in paragraph (d)(1) and (3) the reference "(b)" and the commas preceding and following it and by changing in paragraph (e) the reference "paragraphs (a) and (b)" to read "paragraph (a)."

730.4 Information requested.

(a) * * *

(5) Total number of reportable experiences during this reporting period and number of these experiences requiring professional medical attention.

* * * * *

(7)-(8) [Reserved]

* * * * *

(b) [Reserved]

* * * * *

§ 730.7 [Amended]

9. § 730.7 *Confidentiality of reports*, by deleting "2705."

Interested persons may, on or before January 6, 1981 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 any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order.

Dated: October 28, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34455 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 570

[Docket No. R-80-886]

Community Development Block Grants—Entitlement Grants; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This proposed rule would amend 24 CFR Part 570, § 570.302 by adding procedures which applicants must follow in applying for an exception to the general rule that a program activity must principally benefit persons of low and moderate income. The rule would also clarify the exception which applies where the applicant either has no areas in which low and moderate income persons constitute a majority or where it has so few such areas that it is inappropriate to limit grants to projects in those areas.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairman and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 570—Community Development Block Grants—Subpart D, Entitlement Grants

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535(o)), sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., October 30, 1980.

Robert C. Embry, Jr.,

Acting Secretary, Department of Housing and Urban Development.

[FR Doc. 80-34729 Filed 11-6-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 10

Practice Before the Internal Revenue Service; Proposed Regulation To Set Standards for Opinions by Practitioners Before the Internal Revenue Service Used in the Promotion of Tax Shelters

AGENCY: Department of the Treasury.

ACTION: Proposed Rule; Additional Time to Submit Written Comments.

SUMMARY: A notice of proposed rulemaking to amend the regulations governing practice before the Internal Revenue Service for the purpose of setting standards relative to opinions used in the promotion of tax shelters was published in the **Federal Register** on Thursday, September 4, 1980 (45 FR 58594. The public was invited to submit written comments on the proposal on or before November 3, 1980. In a notice published in the **Federal Register** on October 16, 1980 (45 FR 68686), the time to submit written comments was extended until November 14, 1980 and hearing on the proposed rule was scheduled for November 25, 1980. It has been determined that the time to submit written comments be extended.

DATES: The time in which to submit written comments is extended until Friday, November 21, 1980.

ADDRESS: All written comments on the proposed amendment and all requests for an opportunity to be heard, together with required statements, should be sent to the Office of Director of Practice, U.S. Department of the Treasury, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice 202-376-0767.

SUPPLEMENTARY INFORMATION: Written comments should be sent in triplicate. The public hearing remains scheduled for Tuesday, November 25, 1980, beginning at 10 a.m. in the Cash Room,

Main Treasury Building, Washington, D.C. Persons wishing to make statements at the hearing should advise the Director or Practice in writing by November 14, 1980, and should submit in triplicate the text or, at a minimum, an outline of comments they propose to make. Statements will be restricted to 10 minutes in length.

Dated: November 4, 1980.

David R. Brennan,

Acting General Counsel.

[FR Doc. 80-34802 Filed 11-06-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF EDUCATION

34 CFR Part 805

Local Advisory Committees; Overseas Dependents' Schools

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations for the first time on the qualifications for election to local advisory committees of the Overseas Dependents' Schools and on procedures for conducting elections of advisory committee members. The Defense Dependents' Education Act of 1978, as amended by the Department of Education Organization Act requires the Secretary to prescribe these regulations in consultation with the Secretary of Defense.

DATES: Comments must be received on or before January 6, 1981.

ADDRESSES: Comments should be addressed to Dr. William L. Smith, U.S. Department of Education, Room 3017, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Powers, U.S. Department of Education, Room 3017, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone No. 202/245-8011.

SUPPLEMENTARY INFORMATION: A Department of Defense (DOD) directive will establish the advisory committees for the 1980-1981 school year. Once the proposed regulations are in force, they will supersede the DOD directive with respect to rules governing qualifications for election to these committees and procedures for conducting elections of advisory committee members.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations. all comments submitted in response to these proposed regulations will be availble for public inspection, during and after the comment period, in Room 3017, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. N/A)

Dated: November 3, 1980.

Steven A. Minter,

Under Secretary of Education.

The Secretary proposes a new Part 805 of 34 CFR to read as follows:

PART 805—OVERSEAS DEPENDENTS' SCHOOLS: ADVISORY COMMITTEES

Subpart A—General

Sec.
805.1 Overseas dependents' schools: advisory committees.
805.2 What is the function of a school advisory committee?
805.3 What is the function of an installation advisory committee?
805.4 What definitions apply to overseas dependents' schools: advisory committees?

Subpart B—Establishment of Advisory Committees

805.10 Who establishes advisory committees? How many are established?

Subpart C—The Planning Committee: Functions and Composition

805.20 What is a planning committee?
805.21 Who shall serve as the initial chairperson of a planning committee?
805.22 What is the composition of a planning committee?
805.23 What are the responsibilities of a planning committee?

Subpart D—The School Advisory Committee: Composition, Qualifications, and Election

805.30 What is the composition of a school advisory committee?
805.31 What procedures apply prior to the election of a school advisory committee?
805.32 What are the qualifications for election?
805.33 What are the qualifications for voting?
805.34 What are the procedures for voting?
805.35 What is the date of election?
805.36 What is the tenure of members of a school advisory committee?
805.37 How is a vacancy filled on a school advisory committee?

Subpart E—The Installation Advisory Committee: Composition and Election

805.40 What is the composition of an installation advisory committee?
805.41 How are members chosen?
805.42 How is a vacancy filled on an installation advisory committee?

Subpart F—Fiscal Requirements

805.50 Do members of an advisory committee receive pay?

Authority: Section 1410(b) of the Defense Dependents' Education Act of 1978, as enacted by Pub. L. 95-561, 92 Stat. 2369-70 and amended by the Department of Education Organization Act, Pub. L. 96-88, 93 Stat. 693 (20 U.S.C. 928).

Subpart A—General

§ 805.1 Overseas dependents' schools: advisory committees.

The regulations in this Part 805 govern the composition and election of school advisory committees and installation advisory committees for overseas dependents' schools. (20 U.S.C. 928)

§ 805.2 What is the function of a school advisory committee?

A school advisory committee advises the principal of an overseas dependents' school on the operation of that school and makes recommendations regarding curricular and budgetary matters. (20 U.S.C. 928(a)(1))

§ 805.3 What is the function of an installation advisory committee?

(a) An installation advisory committee advises the commander of a military installation served by two or more overseas dependents' schools on matters concerning dependents' education within the jurisdiction of that commander.

(b) If a military installation is served by only one overseas dependents' school, the school advisory committee of that school shall perform—in addition to its own function as described in § 805.2—the function of the installation advisory committee. (20 U.S.C. 928(a)(2))

§ 805.4 What definitions apply to overseas dependents' schools: advisory committees?

The following definitions apply in these regulations:

"Military installation" means a local geographic area—

(a) Located outside the United States; and

(b) Under the jurisdiction of a United States military commander.

"Overseas dependents' school" means an educational institution administered by the Office of Dependents' Education in the Department of Defense under the Defense Dependents' Education Act of 1978, Pub. L. 95-561, title XIV.

"Parent" means a father, mother, legal guardian, person standing in place of a parent, or a spouse whose dependent is eligible to enroll in an overseas dependents' school because of that "parent's"—

(a) Employment;

(b) Marital status;

(c) Military status; or

(d) Payment of tuition.

"School employee" means a person employed in an overseas dependents' school.

"United States" means, for purposes of these regulations, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Island).

(20 U.S.S. 928, 932(4))

Subpart B—Establishment of Advisory Committees

§ 805.10 Who establishes advisory committees? How many are established?

The Director of Dependents' Education, Office of Dependents' Education, Department of Defense—

(a) Establishes a school advisory committee for each overseas dependents' school; and

(b) Establishes an installation advisory committee for each military installation with two or more overseas dependends' schools.

(20 U.S.C. 928)

Subpart C—The Planning Committee: Functions and Composition

§ 805.20 What is a planning committee?

Each overseas dependents' school shall have a planning committee to—

(a) Conduct the election of the school advisory committee; and

(b) Carry out the responsibilities described in § 805.23 and § 805.31(b).

(20 U.S.C. 928)

§ 805.21 Who shall serve as the initial chairperson of a planning committee?

In the 1980–81 school year or in the first year of operation of a new overseas dependents' school, the principal of the school shall perform the functions of the chairperson of the planning committee.

(20 U.S.C. 928)

§ 805.22 What is the composition of a planning committee?

A planning committee shall consist of the following:

(a) The elected chairperson of the school advisory committee, who shall form and chair the planning committee.

(b) Parents of students enrolled in the school.

(c) Professional employees of the school. For purposes of this paragraph, the term "professional employee"—

(1) Means a professional educator or other professional staff members of the school such as an education program manager, an assistant principal, a teacher, a pupil personnel specialist, a librarian, a media specialist, or a nurse; but

(2) Does not include the principal of that school except as provided in § 805.21.

(d) The commander of the military installation which the school serves or the commander's designee; and

(e) As appropriate, students enrolled in the school.

(20 U.S.C. 928)

§ 805.23 What are the responsibilities of a planning committee?

A planning committee shall be responsible for the following:

(a) The duties described in § 805.31(b), dealing with procedures prior to the election of a school advisory committee.

(b) Soliciting candidates who are eligible and willing to serve on the school advisory committee.

(c) Making necessary arrangements for conducting the election.

(d) Ensuring that the ballot includes—

(1) The names of all eligible and willing candidates; and

(2) Provision for write-in candidates.

(e) Supervising the election.

(f) Tabulating the votes.

(g) Certifying the results of the election.

(h) Publishing the results of the election as soon as possible following the election.

(20 U.S.C. 928)

Subpart D—The School Advisory Committee: Composition, Qualifications, and Election

§ 805.30 What is the composition of a school advisory committee?

(a) (1) The membership of the school advisory committee shall include an equal number of parents of students enrolled in that school and professional employees of that school, as defined in § 805.22(c).

(2) The total number of members who are parents or professional employees shall be in accord with the following:

School enrollment	Committee members
1–150	2 or 4
151–300	4 or 6
301–500	6 or 8
501–800	8 or 10
More than 800	10, 12, 14, or 16

(b) The membership of the school advisory committee may in addition include a student enrolled in that school.

(c) The school advisory committee shall invite the principal of that school and the commander of the military installation served by the school (or the commander's designee) to participate in committee meetings on a liaison (nonvoting) basis.

(20 U.S.C. 928)

§ 805.31 What procedures apply prior to the election of a school advisory committee?

(a) Prior to the election of a school advisory committee, the chairperson of the planning committee shall make generally known—through publication of an announcement or similarly effective means—the following:

(1) (i) The formation of a planning committee to nominate candidates for the school advisory committee; and

(ii) The names of members of the planning committee.

(2) Eligibility criteria for candidates for the school advisory committee.

(b) At least two weeks in advance of the election of the school advisory committee, the planning committee shall make generally known—through publication of an announcement or similarly effective means—the following:

(1) The date of the election.

(2) The hours of voting.

(3) The voting places.

(4) The names of the candidates.

(5) Information about voter eligibility.

(20 U.S.C. 928)

§ 805.33 What are the qualifications for election?

(a) To qualify for election to the school advisory committee, a person must be one of the following:

(1) A parent of a student enrolled in that school.

(2) A professional employee of that school as defined in § 805.22(c).

(b) At the discretion of the planning committee in consultation with the principal of the school, a student enrolled in that school may qualify for election. There is no minimum age qualification for a student to serve on the school advisory committee.

(20 U.S.C. 928)

§ 805.32 What are the qualifications for voting?

To vote in the election of a school advisory committee, a person must be at least 18 years of age and one of the following:

(a) A parent of a student enrolled in that school.

(b) An employee of that school.

(c) A student who is enrolled in that school.

(20 U.S.C. 928(b))

§ 805.34 What are the procedures for voting?

(a) Qualified voters shall elect members of a school advisory committee by secret ballot.

(b) (1) The names of all candidates shall be on the ballot.

(2) Each name shall be arranged alphabetically under one of the following categories, as appropriate:

(i) Parent.

(ii) School employee.

(iii) Student.

(3) The number of committee members authorized from each category shall be indicated on the ballot.

(c) In any category referred to in paragraph (b)(2) of this section, a voter may vote for as many candidates as are authorized from that category for membership on the school advisory committee.

(d) A voter may vote for fewer than the maximum number of candidates authorized from any category. However, a voter may cast only one vote for a particular candidate.

(e) The planning committee shall invalidate any ballot containing votes in excess of the maximum number authorized.

(f) The candidates with the highest number of votes are elected.

(g) In case of a tie vote, the tied candidates, under the supervision of the planning committee, shall employ some chance procedure (e.g., cast lots) to determine a winner.

(h) In any category a candidate who receives an insufficient number of votes to be elected shall be designated as an alternate committee member.

(i) In each category alternate committee members are ranked in order of the number of votes each received.

(20 U.S.C. 928)

§ 805.35 What is the date of election?

A planning committee shall conduct an election for a school advisory committee at the beginning of each school year and shall complete the election process no later than October 15.

(20 U.S.C. 928)

§ 805.36 What is the tenure of members of a school advisory committee?

(a) The term of an elected member of a school advisory committee is one year.

(b) An elected member may not serve more than three consecutive terms.

(20 U.S.C. 928)

§ 805.37 How is a vacancy filled on a school advisory committee?

If a vacancy occurs on a school advisory committee, the chairperson of the committee shall appoint, to fill that unexpired term, an alternate from the appropriate category in the order referred to in § 805.34(i).

(20 U.S.C. 928)

Subpart E—The Installation Advisory Committee: Composition and Election

§ 805.40 What is the composition of an installation advisory committee?

An installation advisory committee consists of one parent member and one school employee member of the school advisory committee of each overseas dependents' school serving that military installation.

(20 U.S.C. 928)

§ 805.41 How are members chosen?

(a) A school advisory committee shall select as its representatives to the installation advisory committee the parent member and the school employee member who received the highest number of votes in their respective categories in the election of the school advisory committee.

(b) If any person referred to in paragraph (a) of this section declines to serve on the installation advisory committee, the school advisory committee shall fill the vacancy according to the procedures in § 805.42.

(20 U.S.C. 928)

§ 805.42 How is a vacancy filled on an installation advisory committee?

If a vacancy occurs on an installation advisory committee, that position shall be filled by the person receiving the next highest number of votes in the appropriate category in the election of the school advisory committee.

(20 U.S.C. 928)

Subpart F—Fiscal Requirements

§ 805.50 Do members of an advisory committee receive pay?

A member of a school advisory committee or a member of an installation advisory committee may not receive pay for serving on that committee.

(20 U.S.C. 928(c))

[FR Doc. 80-34726 Filed 11-6-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

File Wrapper; Continuing Application Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: Patent and Trademark Office proposes amendment of the rules of practice in patent cases to provide an additional procedure for filing continuation and divisional applications. This procedure is being proposed to simplify filing and processing continuation and divisional patent applications by using the application and amendment papers filed in the abandoned parent application. The proposed procedure would eliminate many of the problems currently involved in preparing and processing new patent application papers in such applications.

DATES: Written comments by February 4, 1981. Hearing, February 4, 1981 beginning at 10:00 a.m.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The hearing will be held in Room 11C24 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia. Written coments and transcript of hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Louis O. Maassel by telephone at (703) 557-3070, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office is considering amendments to the rules of practice in patent cases to permit an applicant for patent to file a continuation or divisional application by simply filing a special request, a new set of claims, and paying the statutory filing fee. The proposed procedure would simplify filing a continuation or divisional application in those cases where the parent application is to be abandoned. If the parent application will issue as a patent, a division or continuation thereof may continue to be filed under the provisions of 37 CFR 1.60. Under the proposal, a new serial number would be assigned to the continuing application, the parent application would be abandoned and, the

specification, drawings, oath or declaration, and other papers in the file wrapper of the parent application would be used as the papers in the continuing application, along with the new set of claims. Only the payment of the filing fee, the filing of a special request containing an indication of a desire to continue prosecution and a new set of claims would be required to effect the filing of a continuation or divisional application. The procedure would be available for utility, design, plant, and reissue applications. Use of the proposed procedure will automatically result in abandonment of the parent application.

The proposed procedure could be used for either a continuation or divisional application provided that applicant wishes the parent case to become abandoned.

A continuation or divisional application is an application in which the disclosure is identical to an earlier application. However, the claims may be somewhat changed. Continuation applications are often filed in situations where the applicant feels that the issue of patentability has not been sufficiently developed before the examiner for an appeal from the final rejection to be filed with the Board of Appeals. Divisional applications are filed voluntarily or as a result of a requirement for restriction by the examiner in a prior application.

The filing of continuing applications is provided for in the patent statute at 35 U.S.C. 120. Divisional applications are provided for in 35 U.S.C. 121. Under these provisions of the patent law, a continuation or divisional application may be filed during the pendency of an earlier application and retain the benefit of the filing date of the earlier parent application. Such benefit is valuable to the applicant if prior art becomes available or another inventor made the same invention during the pendency of the first application.

A simplified method of filing of such continuation or divisional applications is presently available under 37 CFR 1.60. Under § 1.60, the applicant may pay the filing fee and either supply or ask the Office to prepare the continuation or divisional application papers by making a copy of the original papers. Section 1.60 replaced earlier, more restrictive procedures under 37 CFR 1.147 and a procedure established by Commissioner's notice known as the "Streamline Continuation" program. The procedure under § 1.60 would remain in effect in its present form, if the proposed procedure were adopted since it allows a continuation or divisional application to be filed without abandonment of the parent application. The continuation or divisional application practice under § 1.60 has resulted in a number of problems. Often the original application does not permit the reproduction of good quality copy. Sometimes applicants prematurely abandon or fail to abandon the original application or otherwise do not understand the § 1.60 procedures. Correspondence relating to such problems has become burdensome to both the applicants and the Office. Under current § 1.60, the continuation or divisional application, in addition to being copied, must be completely processed as a new application through the Application Division, Microfilming Branch and Licensing and Review Division, as well as the Examining Group's new case docketing and amendment entry procedures. The prior application is sometimes difficult to locate because of the movement and placement of the application file wrapper after it leaves the Examining Group. The proposed procedure would not require such copies to be processed and filed and should therefore result in fewer problems and less work.

The proposed procedure is set forth in proposed § 1.62 and is in compliance with the requirements of 35 U.S.C. 111. The specification and drawings from the parent application are made available for use in the continuation or divisional application. A new filing fee is required in accordance with 35 U.S.C. 41(a). The only other statutory filing requirements are claims and a signed oath or declaration. A new copy of claims, beginning with "claim 1", would be required under the proposed procedure. Since a continuation or divisional application filed under proposed § 1.62 can not contain new matter, the oath or declaration filed in the parent case should supply all the information required under the statute and rules to obtain a filing date. Accordingly, the previously filed oath or declaration would be considered to be the oath or declaration of the § 1.62 continuation or division. If the claims submitted are broadened, a supplemental oath or declaration should be filed by the applicant in accordance with 37 CFR 1.67.

The original disclosure of an application filed under § 1.62 would be the original parent application as executed by the inventor(s). However, the filing fee would be based on the new copy of claims which must accompany the request and filing fee. The Certificate of Mailing Procedure under 37 CFR 1.8 would not apply to filing such a request since the filing of such a request is considered to be the filing of an application which is excluded under 37 CFR 1.8(a)(i).

Some of the anticipated benefits of the proposed procedure are the following: 1. Formality problems should be very small.

2. All current rules relating to after final rejection practice and filing of continuing applications would remain unchanged. The proposed filing procedure is an additional alternative which would be available to applicants to use at their option.

3. A more prompt first action in the continuation or divisional application should be received in view of the reduced processing time. The Application Division will process promptly all such applications. In the examining groups, such applications will be given high priority for processing purposes.

4. Amendments made to the specification and drawings of the parent application would carry over into the continuing application and would not need to be submitted again in the continuing application.

For the public; 1. The pendency of applications should be reduced since the time delay before examination and issuance of a continuing application filed under the proposed program would be reduced.

2. The entire record of prosecution would be in one file wrapper, even if several continuation applications were filed. This would result in easier access to a series of applications by the public if a patent is later issued.

For the Patent and Trademark Office: 1. The workload of reviewing and processing new application papers in the Application Division would be reduced.

2. The examining group clerks would not be required to again enter amendments made in the parent application.

3. Less storage space would be required since there would be fewer papers.

4. The parent file history and references cited therein would be readily available to the examiner and need not be ordered from abandoned files.

5. The Office would not be required to prepared a copy of the parent application file as under the current procedures under 37 CFR 1.60

Proposed new § 1.62 outlines the requirements of the proposed procedure.

Section 1.138 is proposed to be amended so that a registered attorney or agent could, without being of record, file a § 1.60 or 1.62 application and expressly abandon the prior application. Such an action would not affect an applicant's

rights since the prior application would only be expressly abandoned if a filing date is granted to a continuing application.

Notice is hereby given that, pursuant to the authority contained in section 6 of Title 35 of the United States Code, as amended, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations by amending § 1.138 and by adding a new § 1.62. The Patent and Trademark Office has determined that these rule changes would have no potential major economic consequences requiring the preparation of a regulatory analysis under Executive Order 12044. In the text of rule 1.138 below, additions are shown by arrows and deletions are shown by brackets. It is proposed to amend Title 37 of the Code of Federal Regulations, Chapter I, Part 1, as follows: 1. By adding new § 1.62 to read as follows:

§ 1.62 File wrapper continuation or division procedure.

(a) A continuation or divisional application which discloses and claims only subject matter disclosed in a prior application may be filed before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application by filing a request to use the specification, drawings, and oath or declaration from the prior application if the following four conditions are met: (1) The prior application is to be abandoned and not issued as a patent.

(2) A new set of claims to be prosecuted in the continuing application is submitted which begins with a new claim numbered "1".

(3) The filing fee under 35 U.S.C. 41(a) for the continuation or divisional application is paid during the pendency of the prior application. Such filing fee should be based on the number of claims submitted under the previous paragraph.

(4) Information is supplied as to the title, applicant, correspondence address, prior U.S. application, foreign priority application, number of pages of specification and sheets of drawings in the prior application.

(b) The filing of an application under § 1.62 will be construed to include a waiver of secrecy by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of 37 CFR 1.14 to access to, or information concerning, either the prior application or any one of its continuation or divisional applications filed under the provisions of this section may be given similar access to, or information concerning, the other applications in the file wrapper.

(c) The filing of an application under § 1.62 will be considered to be a request to expressly abandon the parent application as of the filing date granted the continuation or divisional application filed under § 1.62.

2. By revising § 1.138 to read as follows:

§ 1.138 Express abandonment.

An application may be expressly abandoned by filing in the Patent and Trademark Office a written declaration of abandonment signed by the applicant himself and the assignee of record, if any, and identifying the application. Except as provided in § 1.262 an application may also be expressly abandoned by filing a written declaration of abandonment signed by the attorney or agent of record. ►A registered attorney or agent or agent acting under the provisions of § 1.34(a), or of record, may also expressly abandon a parent application as of the filing date granted to a continuing applicaiton by filing such a continuing application under the provision by filing such a continuing application under the provisions of § 1.60 or § 1.62. ◄Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue.

Dated: October 17, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Dated: October 31, 1980.

Approved

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology & Innovation.

[FR Doc. 80-34919 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 1660-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the San Luis Obispo County, Santa Barbara County, and Monterey Bay Unified Air Pollution Control Districts (APCDs) and the South Coast Air Quality Management District rules and regulations have been submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board for the purpose of revising the California State Implementation Plan (SIP). The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on these rules, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted up to January 6, 1981.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions and EPA's associated evaluation reports are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations:

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812

San Luis Obispo County Air Pollution Control District, County Airport, Edna Road, San Luis Obispo, CA 93406

Santa Barbara County Air Pollution Control District, 4440 Calle Real, Santa Barbara, CA 93110

Monterey Bay Unified Air Pollution Control District, 1270 Natividad Rd., Salinas, CA 93906

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556-2938.

SUPPLEMENTARY INFORMATION: The California Air Resources Board submitted the following rules and regulations on the indicated dates, as revisions to the California SIP.

San Luis Obispo

January 2, 1979

Rule 407—Organic Material Emission Standards, Limitations and Prohibitions

October 18, 1979

Rule 415—Dry Cleaning Solvents
Rule 416—Degreasing Operations
Rule 420—Cutback Asphalt Paving Materials
Rule 422—Refinery Process Turnarounds

February 25, 1980

Rule 301—Fees
Rule 302—Schedule of Fees
Rule 303—Hearing Board Fees
Rule 304—Technical Reports—Charges for:

Santa Barbara

May 23, 1979

Rule 101—Title
Rule 102—Definitions
Rule 103—Severability
Rule 104—Agricultural Burning
Rule 201 (A, B, D, E, F, & G)—Permits required
Rule 202—Exemptions to Rule 201
Rule 203—Transfer
Rule 204—Applications
Rule 205 (A & B)—Standards for Granting Applications
Rule 206—Conditional Approval of Authority to Construct or Permit to Operate
Rule 207—Denial of Application
Rule 208—Action on Applications—Time Limits
Rule 209—Appeals
Rule 210—Fees
Rule 211—Technical Reports—Charges for
Rule 301—Circumvention
Rule 302—Visible Emissions
Rule 304—Particulate Matter—Northern Zone
Rule 305—Particulate Matter Concentration—Southern Zone
Rule 306—Dust and Fumes—Northern Zone
Rule 307—Particulate Matter Emission Weight Rate—Southern Zone
Rule 308—Incinerator Burning
Rule 309—Specific Containments
Rule 311—Sulfur Content of Fuels
Rule 312—Open Fires
Rule 313—Fires Set Under Public Authority
Rule 314—Reduction of Animal Matter
Rule 315—Gasoline Specifications
Rule 317—Organic Solvents
Rule 319—Asphalt Air Blowing—Southern Zone
Rule 324—Disposal and Evaporation of Solvents
Rule 328—Continuous Emission Monitoring
Rule 401—Agricultural Burning
Rule 402—Enforcement
Rule 403—Burning Permit for Non-Burning Days: Report Requirements
Rule 501—General
Rule 502—Filing Petitions
Rule 503—Contents of Petitions
Rule 504—Petitions for Variances: Contents
Rule 505—Breakdown Conditions
Rule 505-A—Breakdown Reporting Information Form
Rule 506—Emergency Variances for Breakdowns
Rule 507—Appeal from Denial
Rule 508—Failure to Comply with Rules
Rule 509—Petition Response (APCD Requirements)
Rule 510—Withdrawal of Petition
Rule 511—Place of Hearing
Rule 512—Notice of Hearing
Rule 513—Evidence
Rule 514—Preliminary Matters
Rule 515—Official Notice
Rule 516—Continuances
Rule 517—Decision
Rule 518—Effective Date of Decision
Rule 519—Lack of Permit
Rule 601—General
Rule 602—Episodes/Disasters
Rule 603—Enforcement
Rule 604—Plans (Emergency Provisions)
Rule 605—Communication Network
Rule 606—Air Monitoring Stations
Rule 607—Air Monitoring Summaries
Rule 608—Interdistrict Coordination
Rule 609—Scientific Committee
Rule 610—Emergency Action Committee

May 29, 1979

Rule 322—Metal Surface Coating Thinner and Reducer

(Deletions)

Rule 2,b,v,w—Definitions
Rule 8—Provision of Sampling and Testing
Rule 20—Scavenger Plants

Monterey Bay Unified

January 2, 1979

Rule 301—Permit Fee Schedules

May 7, 1979

Rule 403—Individual Particles (Nuisance)
Rule 602—Contents of Petitions

May 23, 1979

Rule 617—Emergency Variance

December 17, 1979

Rule 300—Permit fees
Rule 405—Exceptions
Rule 601—Filing Petitions

February 25, 1980

Rule 422—Burning of Wood Wastes

(Deletion)

Rule 508—Fees

March 4, 1980

Rule 205—Provision of Sampling and Testing Facilities
Rule 211—Appeals
Rule 212—Public Availability of Emission Data
Rule 213—Continuous Emission Monitoring
Rule 214—Breakdown Conditions

June 2, 1980

Rule 427—Steam Drive Crude Oil Production Wells

South Coast Air Quality Management District

November 19, 1979

(Deletions)

Rule 67—Fuel Burning Equipment (Los Angeles, Orange, and San Bernardino County portions of the District)
Rule 72—Fuel Burning Equipment (Riverside County portion of the District)

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as revisions to the SIP. All the rule revisions listed above have been evaluated and determined to be in accordance with the Clean Air Act, 40 CFR Part 51 and EPA policy, with certain exceptions. Therefore, it is the purpose of this notice to propose to approve all the rule revisions listed above and to incorporate them into the California SIP, except as discussed below.

Santa Barbara

Rule 303, *Nuisance* and Rule 310, *Odorous Organic Sulfides* are not appropriate for inclusion in the SIP because they are not specifically directed at the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, no action is proposed to be taken on these rules.

Rule 8, *Provision of Sampling and Testing*, requires a person to provide and maintain such sampling and testing facilities as specified in the permit to operate. Since deletion of this rule could weaken the enforceability of the District's rules, this deletion is proposed to be disapproved.

Paragraphs B and C of Rule 312, *Open Fires*, permit the burning of residential dry vegetation and right-of-way clearance material under certain conditions. Since burning this material is not allowed under the current SIP rules, it could result in an emissions increase. Because no control strategy demonstration was submitted to show that this revision will not interfere with the attainment and maintenance of the NAAQS, these paragraphs are proposed to be disapproved.

Paragraphs D.1 and D.2 of Rule 401, *Agricultural Burning*, permit range improvement burning and burning of empty pesticide sacks on "no-burn days". As no control strategy demonstration was submitted to show

that this potential emission increase would not interfere with the attainment and maintenance of the NAAQS, these paragraphs are proposed to be disapproved.

Rules 513, *Evidence* and 519, *Lack of Permit*, are proposed to be disapproved due to typographical errors which could render the rules unenforceable. The previously approved Rules 53 and 59, submitted on February 21, 1972, are proposed to remain in effect.

Rule 602, *Episodes/Disasters*, is proposed to be disapproved because it does not include a contingency plan for the avoidance of significant harm from elevated levels of total suspended particulates as required by 40 CFR 51.16, Emergency Episode. The rule does not mandate prompt acquisition of forecasts and updating of stagnation; does not mandate source inspections; and allows for the implementation of preplanned emission reduction strategies only after a special session with the Air Pollution Board instructing the Air Pollution Control Officer to implement those plans.

Monterey Bay Unified

Rule 212, *Public Availability of Emission Data*, does not provide for the correlation of emission data with applicable emission limitations as mandated by 40 CFR 51.10(c). The rule is approved since it partially meets the requirements of 40 CFR 51.10(e). However, since the correlation requirement is not met, paragraph (b)(4) of 40 CFR 52.224—General Requirements is retained as applicable to the Monterey Bay Unified District.

Paragraph i(1) of Rule 300, *Permit Fees*, allows the District to recover its legal and other costs pertaining to the "issuance of permits and inspections thereof." This provision is proposed to be disapproved pursuant to Section 110(a)(2)(K) because it could allow recovery of legal expenses associated with permit enforcement actions. While Section 110(a)(2)(K) does not prohibit the recovery of reasonable legal expenses associated with permit administration through permit fees, it specifically excludes recovery of costs associated with enforcement actions.

Rule 402, *Nuisance*, is not appropriate for inclusion in the SIP because it is not specifically directed toward the attainment and maintenance of the NAAQS. Therefore, no action is proposed on this rule.

No action is proposed to be taken on Rule 416 *Organic Solvents*, since this rule references rules which have not been submitted to EPA for approval and may therefore be unenforceable.

Rule 214, *Breakdown Conditions* and Rule 617, *Emergency Variance*, do not provide sufficient assurance that the NAAQS will not be violated during an equipment breakdown and a subsequent emergency period. Due to the lack of sufficient NAAQS assurance in the breakdown conditions and in the emergency variance, both rules are proposed to be disapproved.

South Coast Air Quality Management District (SCAQMD)

Rules 67, *Fuel Burning Equipment*, and 72, *Fuel Burning Equipment*, specify emission limits for new sources of fuel burning equipment in the SCAQMD. Since the emission requirements for new fuel burning sources are being replaced by equivalent or better control requirements contained in the SCAQMD nonattainment area plan, the recission of Rules 67 and 72 is proposed to be approved, as applied to new sources. However, in order to prevent existing sources from removing control equipment the emission limits of Rules 67 and 72 are also proposed to be partially retained, applicable only to (existing) sources granted permits prior to final recission of Rules 67 and 72 by EPA.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been met.

The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Comments received on or before 60 days after publication of this notice will be considered. Comments received will be available for public inspection at the EPA Region IX Office and the EPA Public Information Reference Unit.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

EPA has reviewed the revisions being acted upon in this notice and has determined that it is a "specialized" revision not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)))).

Dated: October 27, 1980.

Sheila M. Prindiville,

Acting Regional Administrator.

[FR Doc. 80-34800 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

[A-5-FRL 1660-8]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: USEPA proposes to disapprove a petition for revision and request for an administrative stay of the Federally promulgated Ohio sulfur dioxide State Implementation Plan (SIP) for the Painesville Municipal Power Plant in Painesville, Ohio.

DATE: Comments must be received on or before December 8, 1980. Requests for a public hearing on this revision must be received no later than November 24, 1980.

ADDRESSES: Comments and requests for a hearing should be submitted to Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The docket (#5A-80-11) for this revision is available for inspection and copying during normal business hours at the above address and at the Central Docket Section, West Tower Lobby, Gallery 1, USEPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio Air Programs Branch USEPA, Region V 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6039.

SUPPLEMENTARY INFORMATION: On September 24, 1979 the Painesville Municipal Power Plant in Painesville, Ohio submitted a petition for revision and request for administrative stay of the Ohio sulfur dioxide SIP. The submittal requested an emission limitation for Units #1-5 of 5.7 lbs/MMBTU with the condition that no more than one coal-fired boiler operate at any time. The submittal also requested a stay of enforcement of the existing regulation pending the Agency's review and response to the SIP revision request. The existing regulations for the Painesville Municipal Power Plant were promulgated by the United States Environmental Protection Agency (USEPA) on August 27, 1976 (41 FR 36324).

After reviewing the submission, USEPA informed the City of Painesville in a March 11, 1980 letter that Boiler #5 is subject to the New Source Performance Standard (NSPS) of 1.2 lbs SO_2/MMBTU. USEPA promulgated this limit for Boiler #5 on August 27, 1976 (41 FR 36324). Therefore, the emission limitation for Boiler #5 cannot be changed through a SIP revision petition. The U.S. District Court for the Northern District of Ohio upheld USEPA's claim that Unit #5 is subject to the NSPS requirements since construction on the boiler did not commence until after August 17, 1971 (the date set by the USEPA for defining sources subject to NSPS requirements). USEPA also denied the request for a stay of enforcement since a pending petition for a SIP revision does not constitute a basis for a stay of enforcement.

After the determination that boiler #5 was subject to NSPS, USEPA analyzed the proposed emission limitation of 5.7 lbs SO_2/MMBTU for boilers 1–4 with the provision that only one of boilers 1–4 operate at any one time. USEPA found this operating scenario acceptable and informed the City of Painesville it could revise its request to reflect this scenario. On April 8, 1980, the City of Painesville responded that the alternative operating scenario was unacceptable. Therefore, since Boiler #5 is subject to the New Source Performance Standards for fossil fuel fired steam generators and is not eligible for a change in emission limitations through a SIP revision petition and since the alternative operating scenario analyzed by USEPA is unacceptable to the City of Painesville, USEPA is at this time proposing to disapprove this request for a SIP revision.

Note.—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 these other regulations "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended, 42 USC 4710)

Dated: October 16, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-34905 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-2-FRL 1661-1]

Approval and Promulgation of Implementation Plans; Proposed Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 11, 1980 (45 FR 15531) the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended in 1977. Today's notice discusses two of the conditions on EPA's approval and announces EPA's intent to find the provisions of the conditions met. The conditions require a clarification of the term "lowest achievable emission rate" as used in a New Jersey regulation dealing with the degree of air pollution control required for new or altered sources in nonattainment areas, and certification that this regulation has been finally adopted and is enforceable. The State made its submission in response to these requirements on August 5, 1980. It should be noted that additional changes made by the State to its regulation, not in response to EPA's conditional SIP approval, are being proposed for disapproval.

DATE: Comments must be submitted on or before January 6, 1981.

ADDRESSES: All comments should be addressed to: Charles S. Warren, Regional Administrator, Region II Office, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the proposed SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278.

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

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, Room 1108, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278. 212-264-2517.

SUPPLEMENTARY INFORMATION: On March 11, 1980, at 45 FR 15531, the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. The reader is referred to this **Federal Register** notice for a detailed discussion of EPA's findings. Today's notice discusses EPA's proposed action with regard to a State submittal to meet the following two conditions on EPA's approval of the New Jersey SIP:

- On or before August 1, 1980 the State must clarify its definition of "lowest achievable emissions rate" as used in N.J.A.C. 7:27-18.1 *et seq.*, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)," so as to require a degree of emission control reflecting the most stringent achievable emission limitation which is contained in the implementation plan of any state for such class or category of sources. Such a limitation must further be at least as stringent as that required by any standard of performance for a new stationary source as promulgated under Section 111 of the Clean Air Act.
- On or before August 1, 1980 the State must certify to EPA that N.J.A.C. 7:27-18.1 *et seq.* "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)," has been finally adopted and is enforceable. Copies of the adopted regulations must be submitted along with the State's certification.

Under cover of an August 5, 1980 letter, the State submitted a copy of a revised version of N.J.A.C. 7:27-18.1 *et seq.*, "Control and Prohibition of Air Pollutioin from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)." In response to the first condition the State has appropriately revised its definition of "lowest achievable emission rate" and EPA finds that the condition has been met. Insofar as the State has submitted an adopted version of its regulation, EPA finds that the second condition has also been met. Therefore, except as noted in the discussion which follows, EPA proposes to incorporate the revised regulation into the SIP and to revoke the applicable conditions.

It should be noted that in adopting N.J.A.C. 7:27-18.1 *et seq.* New Jersey

made two substantial changes to its definition of "significant emission increase" and a change to its criteria for performing an air quality impact review which cannot be approved by EPA. These changes affect whether or not a facility will be subject to the provisions of the regulation and exempt certain facilities which must be covered.

In Section 18.1 of the revised regulation, "Definitions," "signficant emission increase" is now defined in part as "an increase, since December 21, 1976, in the rate of allowable emissions, including fugitive emissions, at a facility of any criteria pollutant greater than or equal to 100 tons per year, 1,000 pounds per day, or 100 pounds per hour, not including decreases in the rates of allowable emissions except where such decreases are contemporaneous with emission increases." At issue are the changes made by New Jersey to provide for a 100 tons per year rather than the previous 50 tons per year cutoff and the addition of a provision to allow "netting" of contemporaneous emission decreases. In Section 18.2 of the regulation, "General Provisions," paragraph (e)(1) (formerly (d)(1)) has similarly been revised to reflect this higher emission cutoff of 100 tons per year. Furthermore, in Section 18.3 of the regulation, "Air Quality Impact Review," paragraphs (a) and (b)(1) (formerly (c)(1)) have been revised to incorporate a netting concept.

These changes are inconsistent with the earlier "Emission Offsett Interpretative Ruling" promulgated by EPA on January 16, 1979 (44 FR 3274) which must be used as the basis for EPA's review at this time. The Interpretative Ruling has an effective cutoff for review of 50 tons per year in allowable emissions and does not allow netting. (The revised version of the "Emission Offset Interpretative Ruling," resulting from the recent *Alabama Power Company* v. *Costle* decision and promulgated on August 7, 1980 (45 FR 52741), will be used as a basis for EPA review of a future revision to the State's new source review procedures, due to be submitted to EPA by May 7, 1981. However, these changes promulgated by New Jersey prior to August 7, 1980 are also inconsistent with this later version).

Consequently, EPA proposes to disapprove the cahnges made by New Jersey to its definition of "significant emission increase" as it appears in Section 18.1 of N.J.A.C. 7:27–18.1 *et seq.* and changes made to paragraph (e)(1) of Section 18.2 and to paragraphs (a) and (b)(1) of Section 18.3 of the regulation.

Specifically, EPA proposes to promulgate at § 52.1578, Review of new sources and modifications, of Title 40 of the *Code of Federal Regulations* the following requirements (by adding paragraph (c)):

§ 52.1578 Review of new sources and modifications.

* * * * *

(c) Subchapter 18 of the New Jersey Administrative Code, entitled, "Control and Prohibitions of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)," N.J.A.C. 7:27–18.1 *et seq.*, as submitted to EPA on August 5, 1980 by the New Jersey Department of Environmental Protection, is approved for the entire State of New Jersey, with the following provisions:

(1) The definition of "significant emission increase" as it appears in Section 7:27–18.1, entitled, "Definitions," is disapproved. The following definition of "significant emission increase" is applicable: "an increase, since December 21, 1976, in the rate of allowable emissions, including fugitive emissions, at a facility of any criteria pollutant greater than or equal to 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, not including decreases in the rates of allowable emissions. The increase in the rates of allowable emissions shall be the cumulative total of increases from all new or altered equipment for which permits have been issued on or after December 21, 1976 and for which permit applications have been received by the Department, and the fugitive emissions associated with that equipment. The hourly and daily rates shall apply only with respect to a pollutant for which a national ambient air quality standard for a period not exceeding 24 hours has been established."

(2) Subsection (e)(1) under Section 7:27–18.2, entitled, "General Provisions," is disapproved and replaced with the following: "The requirements of subsections (c)(3), (c)(4), and (c)(5) of this Section shall again become applicable when proposed new construction or alterations at the facility would cause the increase in the rate of allowable emissions of that criteria pollutant to again exceed 50 tons per year, 1,000 pounds per day, or 100 pounds per hour whichever is most restrictive. The accumulation of increases in the rate of allowable emissions shall resume from zero after each application of subsections (c)(3) and (c)(4) of this Section."

(3) Subsection (a) under Section 7:27–18.3, entitled, "Air Quality Impact Review," is disapproved and replaced with the following: "Any person who proposes to cause an increase since December 21, 1976 in the rate of allowable emissions at a facility, of any criteria pollutant, not including volatile organic substances (VOS), greater than or equal to 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, not including decreases in the rates of allowable emissions; such increase in the rates of allowable emissions to be the cumulative total of increases from all new or altered equipment, for which permits have been issued on or after December 21, 1976 and for which permit applications have been received by the Department; must determine, by use of an air quality simulation model approved by the Department, whether the emission increase would cause:".

(4) Subsection (b)(1) under Section 7:27–18.3, entitled, "Air Quality Impact Review," is disapproved and replaced with the following: "Consider all increases in the rate of allowable emissions since December 21, 1976 at the facility except for increases offset under the provisions of subsections 18.2(c)(3) and 18.2(d) of this Subchapter; and."

If finalized, this proposed promulgation would have the effect of maintaining in the SIP the original version of the provisions being proposed for disapproval today. Because the SIP so approved by EPA would remain consistent with the requirements of Part D of the Clean Air Act, the funding and growth limitations provided for by the Act would not be applied.

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether the proposed revision to the New Jersey State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Sections 110 and 172 of the Clean Air Act and applicable EPA requirements in 40 CFR Part 51. This current SIP revision request was submitted to EPA in accordance with the appropriate CFR requirements.

Comments received by January 6, 1980 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 1005, New York, New York 10278.

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

procedural requirements of Executive Order 12044.

(Secs. 110, 172, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601))

Dated: October 14, 1980.

Charles F. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 80-34900 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A5 FRL 1662-2]

Approval and Promulgation of Ohio State Implementation Plan; Carbon Monoxide and Ozone

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

ACTION: Supplemental Notice of Proposed Rulemaking (NPR).

SUMMARY: On July 27, 1979, the State of Ohio submitted to USEPA, pursuant to Part D of the Clean Air Act as amended in 1977, a plan for the implementation of a vehicle emission control inspection and maintenance (I/M) program in the Ohio portion of the Cincinnati metropolitan area and in the Cleveland urbanized area. USEPA proposed disapproval of the State's I/M program in the March 10, 1980 **Federal Register** (45 FR 15192). On September 17, 1980, the State of Ohio submitted a revised I/M program. The purpose of today's notice is to announce receipt of the September 17, 1980 submission, to discuss the results of USEPA's review, and to repropose rulemaking.

DATE: Comments on this revision and on USEPA's proposed action must be received by USEPA no later than December 8, 1980.

ADDRESSES: Copies of these revisions to the SIP are available for inspection at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, 230 South Dearborn, Chicago, Illinois 60604.

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 E. Broad Street, P.O. Box 1049, Columbus, Ohio 43216.

WRITTEN COMMENTS SHOULD BE SENT TO: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Perrecone, Air Planning Section, Air Programs Branch Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6081.

SUPPLEMENTARY INFORMATION:

General Introduction

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 carbon monoxide, ozone, sulfur dioxide, particulates and nitrogen oxides. 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 standards as expeditiously as practicable, but not later than December 31, 1982. Under certain circumstances that date may be extended to no later than December 31, 1987 for ozone or carbon monoxide.

The requirements for an approval SIP are described in a **Federal Register** notice published on April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979, notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67182).

To satisfy these requirements, the State of Ohio submitted proposed revisions to its SIP on July 27, 1979. Among other things, this submission provided for the establishment of an I/M program in two areas of Ohio that will not attain the National Ambient Air Quality Standards (NAAQS) for ozone (O3) and carbon monoxide (CO) by December 31, 1982. Due to specific deficiencies in this program, USEPA proposed disapproval of it in the March 10, 1980 **Federal Register** (45 FR 15192). On September 17, 1980, the State of Ohio submitted an I/M SIP revision addressing the deficiencies noted by the USEPA in the March 10, 1980 **Federal Register** (45 FR 15192).

USEPA has completed its review of the September 17, 1980 I/M submission and today is reproposing rulemaking on the State's I/M program. USEPA solicits public comments on the provisions of the I/M program as well as on USEPA's proposed rulemaking. In the discussion below, USEPA specifies portions of the proposed revisions to the Ohio SIP which it considers approvable or conditionally approvable. For minor deficiencies, USEPA proposes to approve the SIP on condition that the State provide firm assurances that the deficiencies will be corrected by the specified dates. The schedules must be negotiated between the USEPA and the State prior to final rulemaking on these revisions. The negotiated schedules will be announced for public comment in a separate Notice of Proposed Rulemaking. A conditional approval means that the restrictions of section 110(a)(2)(I) of the Act on major source construction do not apply unless the State fails to submit the necessary revisions by the scheduled date, or if the revisions are not approved by USEPA. The July 2, 1979 (44 FR 38583) and November 23, 1979 (44 FR 39583) **Federal Register** Notices discuss conditional approval in more details.

A thirty day comment is being provided to enable publication of final action on this submission as expeditiously as possible. Final action approving this revision would satisfy one of the requirements of a Part D SIP. Until the State has an approved Part D, it is subject to the new source growth prohibitions of section 110(a)(2)(I) of the Clean Air Act. USEPA believes that thirty days will provide the public with ample time to review and comment on today's supplemental proposed rulemaking.

To assist the public in preparing comments on the proposed SIP revision, USEPA includes the following summary of the principal requirements for an approval motor vehicle inspection and maintenance program.

Vehicle Inspection and Maintenance

"Inspection/Maintenance" (I/M) refers to a program that requires motor vehicles to be given periodic inspection to check their exhaust emission control systems. Vehicles which have excessive emissions must correct the problem through maintenance. Generally, I/M programs include only passenger cars although other classes of vehicles can be included as well. Operation of noncomplying vehicles is prohibited. This can be accomplished by requiring proof of compliance to purchase license plates or to register a vehicle. A windshield sticker system, much like that of many safety inspection programs, can be used is it can be demonstrated that equal effectiveness can be achieved.

Section 172(b)(11) of the Act requires the establishment of a specific schedule for the establishment of a vehicle emission control inspection and maintenance I/M program when attainment of the primary standards for carbon monoxide (CO) or ozone (03) is not possible in an area prior to December 31, 1982, even if all other reasonable emission control measures

are used. USEPA issued guidance on February 24, 1978 (43 FR 21673) on the genral criteria for SIP approval, including I/M, and on July 17, 1978 describing the specific criteria for I/M approval. Both of those items are part of the SIP guidance material referred to in the General Preamble for proposed rulemaking, 44 FR 23072, 23073, n.6. The July 17, 1978 guidance should be consulted for details. The requirements for approval of an I/M program are:

(1) Legal Authority—According to section 172(b)(10), states or local governments must have adopted the necessary statutes, regulations, ordinances, or other legally enforceable requirements to implement and enforce the I/M program. To be acceptable, I/M legal authority must be adequate to implement and effectively enforce the program and must not be conditioned upon further legislative approval or any other substantial contingency. However, the legislation can delegate certain decision making to an appropriate regulatory body. For example, a state department of environmental protection or department of transportation may be charged with implementing the program, selecting the type of test procedures as well as the type of program to be used, and adopting all necessary rules and regulations. I/M legal authority must be included with any plan revision which must include I/M (i.e., a plan which establishes an attainment date beyond December 31, 1982) unless an approved extension to certify legal authority is granted by EPA. The granting of such an extension, however, is an exceptional remedy to be utilized only when a state legislature has had no opportunity to consider enabling legislation.

(2) Commitment To Implement—Section 172(b)(10) of the Act also requires written evidence of a commitment by the appropriate governmental units to implement and enforce the appropriate elements of the program.

(3) Identification and Commitment To Resources—Section 172(b)(7) of the Act requires that the state identify and commit the necessary finances and resources to carry out the I/M program.

(4) Schedules for the Implementation of the Plan—Section 172(b)(11)(B) requires a specific schedule for establishing an I/M program. The July 17, 1978, guidance memorandum established as USEPA policy the key milestones for the various types of I/M programs. These milestones were specified in accordance with the general SIP requirement of 40 CFR 51.1(c) that increments of progress be incorporated for compliance schedules over one year in length.

(5) Program Effectiveness—In the July 17, 1978 I/M Policy Memorandum USEPA stated that each State must commit itself to achieve a reduction of at least 25 percent in light duty vehicle exhaust emissions by 1987. This reduction is measured by comparing the levels of emission projected to December 31, 1987 with and without the I/M program. This policy is based on section 172(b)(2) which states that the plan provisions shall ". . . provide for the implementation of all reasonably available control measures as expeditiously as practicable."

At the time of the passage of the Clean Air Act Amendments of 1977 several I/M programs, including mandatory programs in New Jersey and Arizona, were already operating at about 20 percent stringency. (The stringency of a program is defined as the initial proportion of vehicles which would have failed the program's standards if the affected fleet has not undergone I/M before. In other words, it is the expected failure rate. Because some motorists tune their vehicle before I/M tests, the actual proportion of vehicles failing is usually a smaller number than the stringency of the program.) Depending on program type (private garage or centralized inspection), a mandatory I/M program may commence as late as December 31, 1982 with attainment as late as December 31, 1980. Based on an implementation date of December 31, 1982, and a 20 percent stringency factor, USEPA predicts that the required reductions of both CO and HC exhaust emissions of 25 percent can be achieved by December 31, 1987. Earlier implementation of I/M will produce greater emission reductions. Thus, because of the Act's requirement for the implementation of all reasonably available control measures and because New Jersey and Arizona have effectively demonstrated practical operation of I/M programs with 20 percent stringency factors, it is USEPA policy to use a projected 25 percent emission reduction as the criterion to determine compliance of the I/M portion with section 172(b)(2).

Synopsis of Actions

In the March 10, 1980, **Federal Register** (45 FR 15192) USEPA noted that the State of Ohio demonstrated that attainment of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide and ozone in the Ohio portion of the Cincinnati metropolitan area and in the Cleveland urbanized area is not possible by December 31, 1982 despite implementation of all other reasonable emission control measures. Therefore, the State has requested an extension until Debember 31, 1987 for these areas. According to the requirements of section 172(b)(11) of the Act, a schedule for implementation of an I/M program is required before such an extension can be granted. In a letter dated July 27, 1979 transmitting the State's SIP O3 and CO submission, the Governor of Ohio requested an extension of the statutory deadline for these areas and submitted a document describing the State's progress in the development of the necessary legal authority required for an I/M program in these areas.

The July 27, 1979 submission was discussed in the March 10, 1980 **Federal Register** (45 FR 15192). At that time, USEPA identified deficiences in the Ohio plan and said that it could not approve the proposed implementation plan until these deficiencies were corrected.

On September 17, 1980 the State responded to the deficiencies identified by USEPA in the March 10, 1980 **Federal Register** (45 FR 15192) concerning the I/M portion of Ohio's July 27, 1979 SIP submission. The September 17, 1980 submission addressed all five of the key elements for I/M SIP approval. It included Amended Substitute Senate Bill 240 which enacts section 3704.14 of the Ohio Revised Code (ORC). ORC 3704.14 allows the Director of the Ohio Environmental Protection Agency (OEPA) to adopt rules for the implementation and enforcement of a motor vehicle inspection and maintenance program in Ohio. The purpose of today's notice is to discuss USEPA's review of this submission, and to repropose rulemaking on the I/M section of the nonattainment plan for Ohio.

Review and Evaluation Ohio's I/M Program

1. Legal Authority—In the September 17, 1980 SIP submission, the Governor of Ohio submitted a copy of Amended Substitute Senate Bill 240 as evidence that the State has the necessary legal authority to adopt and implement an I/M program in those parts of the State where the NAAQS for ozone and carbon monoxide will not be attained by December 31, 1982. Amended Substitute Senate Bill 240 grants the Director of the Ohio Environmental Protection Agency the authority to adopt rules for the implementation and enforcement of an I/M program in those parts of the State which are required to implement the program. This bill constitutes adequate legal authority to implement and enforce an I/M program. Therefore, USEPA proposes to approve Ohio's I/M legal authority. If such authority is later

withdrawn or found to be inadequate to authorize implementation or enforcement of the required program, the SIP would no longer satisfy the requirements of Part D of the Clean Air Act.

2. Commitment to Implement—Section 172(b)(10) of the Act requires that the appropriate governmental body must be committed to implement and enforce the I/M program. USEPA considers Amended Substitute Senate Bill 240 and the Governor's submission of an I/M implementation schedule to be an adequate commitment to implement an I/M program. Therefore, USEPA proposes to approve this portion of the submission.

Even though USEPA is proposing to approve this portion of the SIP, in the event that the report to the Ohio legislature, required under Amended Substitute Senate Bill 240, should result in a recommendation that there is no I/M program which is feasible for implementation in Ohio, and subsequently result in no program being implemented according to the specified schedule, the SIP will no longer satisy the requirements of Part D of the Clean Air Act.

3. Identification and Commitment of Resources—Section 172(b)(7) of the Act requires the identification and commitment of the necessary finances and resources to carry out the I/M program. The State's submission of September 17, 1980 states that Amended Substitute Senate Bill 240 gives the I/M Study Board (created under the authority of Amended Substitute Senate Bill 240) and the Ohio Environmental Prortection Agency specific duties to execute. The State's submission of September 17, 1980 states that appropriate staff and financial commitments will occur as are necessary to comply with Ohio's I/M legal authority. USEPA recognizes that the State cannot at this time be more specific in the identification and commitment of the resources required to carry out and enforce the I/M program until the completion of the report by the I/M Study Board. Therefore, USEPA proposes to approve this portion of the I/M program on the condition that the State, by a specified date, submit an identification of the manpower and financial resources necessary to carry out and enforce the program and a commitment to obtain those resources. The date for this submission must be agreed to by the State and the USEPA prior to final rulemaking. At the time of final rulemaking USEPA will propose this date for public comment.

4. Schedule for the Implementation of the Plan—In the March 10, 1980 **Federal Register** (45 FR 15192), USEPA noted that pursuant to section 172(b)(11) of the Act, an I/M program must contain a legally enforceable schedule for the implementation of the plan and a commitment to the schedule by the State. USEPA further noted that the duties in the schedule must include the milestones listed in the July 17, 1978 memorandum by David G. Hawkins, Assistant Administrator for Air, Noise and Radiation.

As part of the September 17, 1980 submission, Ohio submitted implementation schedule consistent with Amended Substitute Senate Bill 240 which includes milestones such as the appointment of the I/M Study Board, required public hearings pursuant to the I/M report; issuance of the I/M study report, execution of any necessary contracts, construction and acquisition of facilities for the program, and full implementation of the program by December 31, 1982. While this bill does not address all the milestones outlined in the July 17, 1978 Hawkins memorandum, USEPA recognizes that the State cannot commit itself to a more detailed schedule until completion of the report by the I/M Study Board. In the September 17, 1980 submission, the State of Ohio indicated that a more detailed schedule would be prepared after the completion of the I/M Study Board Report of July 1, 1981. USEPA proposes to approve this portion of the Ohio I/M program on the condition that the State submit, by a specified date, a schedule which addresses all the milestones prescribed by the July 17, 1978 I/M Policy Memorandum. In the event that the State decides to implement a decentralized program, the schedule must indicate that full implementation should occur by December 31, 1981. The date for submission of the I/M schedule must be agreed to by the State and the USEPA prior to final rulemaking. At the time of final rulemaking, USEPA will propose for public comment the date for the submission of the I/M implementation schedule.

5. Program effectiveness—The July 17, 1979 Hawkins memo states that an approvable I/M program must demonstrate that the program will reduce light duty vehicle exhaust emissions in 1987 by 25 percent as compared to the level of emissions without the I/M program. In the Septmeber 17, 1980 submission, the State committed itself to a percentage reduction goal consistent with current USEPA guidance for both hydrocarbons and carbon monoxide exhaust emissions for light duty vehicles.

USEPA acknowledges that Ohio cannot provide USEPA with specific programmatic details to document a 25 percent reduction until the completion of the I/M Study Board Report. In order to insure that Ohio establishes an I/M program which meets USEPA's minimum requirements for program effectiveness, USEPA is proposing to approve this portion of the submittal on the condition that Ohio submits detailed program information relating to the specific geographic coverage of the program, enforcement mechanisms and procedures to be used, those vehicle categories to be included in the inspection program, and other factors which allows program effectiveness to be determined.

If the appropriate state officials provide USEPA with assurances that this deficiency will be corrected according to a date negotiated between the State and the USEPA, prior to final rulemaking USEPA will conditionally approve this portion of the submission. USEPA will propose the negotiated date for public comment in a subsequent **Federal Register** Notice.

Interested persons are invited to comment on these revisions to the Ohio SIP and on USEPA's proposed actions. Comments should be submitted to the address listed in the front of this Notice. All comments received will be available for inspection at the Region V Office, Air Programs Branch, 230 South Dearborn Street, Chicage, Illinois 60604.

Under Executive Order 12044 (43 FR 12681), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to contain procedural requirements of the order whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator, and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Notice of Proposed Rulemaking is issued under the authority of Sections 110, 172, and 301(a) of the Clean Air Act as amended.

Dated: October 10, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-34912 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-5-FRL 1661-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: This notice proposes to promulgate an alternative compliance schedule for Columbus and Southern Ohio Electric Company's Conesville power plant in Coshocton County, Ohio. The compliance schedule incorporates the installation of a coal washing facility that will allow the utility to continue to use Ohio coal and meet its current sulfur dioxide (SO_2) emission limitation of 5.66 lbs. SO_2/MBTU. Compliance with the Conesville SO_2 emission limitation was stayed pending EPA's response to the Court's remand in *Cincinnati Gas and Electric Company v. EPA*, 578 F.2d 660 (6th Cir. 1978). The agency responded to the remand on June 19, 1980 (45 F.R. 41501). In the rules section of today's **Federal Register**, EPA is restarting the original compliance schedule for Conesville as of June 19, 1980. In addition, the agency is proposing to promulgate CSOE's coal washing compliance schedule as an alternative to the original compliance schedule for the Conesville plant. This means that if CSOE chooses to comply with its emission limitation by installing the coal washing facility, it will have to meet the interim dates set forth in the alternative schedule rather than those in the original compliance schedule. EPA is also proposing to start the coal washing schedule on the same date as the original schedule, June 19, 1980. EPA solicits comments on the Conesville coal washing schedule.

DATE: Comments must be received on or before December 8, 1980.

ADDRESSES: Written comments should be sent to: Steve Rothblatt, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The docket for this revision, 5A.80.14, is on file at the above address and at Central Docket Section, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The docket may be inspected and copied during normal business hours.

FOR FURTHER INFORMATION CONTACT: Deborah Marcantonio, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604, 8-886-6088.

SUPPLEMENTARY INFORMATION: On June 29, 1978, the U.S. Court of Appeals for the Sixth Circuit remanded to EPA for its further consideration the agency's use of the Pasquill-Gifford dispersion coefficients in setting emission limitations for isolated rural sources in Ohio. *Cincinnati Gas and Electric Company v. EPA*, 578 F.2d 660 (1978). The emission limitation for the Columbus and Southern Ohio Electric Company's Conesville plant was determined by the P-G class A dispersion coefficients. See 44 FR 7798. On February 7, 1979, EPA solicited comment on its preliminary findings on the class A issue. The agency stated in the February 7, 1979 notice that the Court's remand stayed compliance with the original emission limitations for four Ohio power plants including Conesville pending the agency's final determination. 44 FR 7798.

On June 19, 1980, EPA published its final determination on use of the P-G class A dispersion coefficients in setting emission limitations for the four Ohio plants. 45 FR 41501. EPA found that the scientific data supported the agency's original decision to use the P-G class A coefficients. Thus, the agency reaffirmed the emission limitations for the four plants on June 19, 1980. Those sources are now required to come into compliance with their original emission limitations.

In order to bring Conesville and the other plants into compliance, EPA is restarting the original compliance schedules for these plants as of June 19, 1980. Accordingly the attainment date for these plants is revised to three years from June 19, 1980. The agency is publishing a final rule in today's **Federal Register** to accomplish this.

EPA is proposing to promulgate CSOE's coal washing compliance schedule as an alternative to the original compliance schedule for the Conesville plant based on CSOE's stated intention to install a coal washing facility to meet its emission limitation. CSOE submitted the coal washing program and schedule to EPA on January 23, 1980. The coal washing program will allow CSOE to continue using Ohio coal and still meet its emission limitation. EPA has reviewed the CSOE schedule and determined that it is as expeditious as practicable and provides for compliance within three years of approval. EPA is proposing to make the coal washing schedule effective as of June 19, 1980 for the reasons set forth more fully in the notice of final rulemaking on the original compliance schedules published in today's **Federal Register.** That notice is incorporated herein by reference.

Approval of CSOE's coal washing schedule as an alternative to the original schedule means that if CSOE chooses to comply with its emission limitation by installing the coal washing facility, it will have to meet the interim dates in the coal washing schedule. If CSOE chooses not to install the coal washing facility, it will have to comply with the original compliance schedule. Interested parties are invited to comment on the proposed alternative schedule.

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

Dated: October 14, 1980.

John McGuire,

Regional Administrator.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

In § 52.1882, new section subpart kk-Ohio (i) is proposed to be added as follows:

§ 52.1882 Compliance schedules.

* * * * *

(i) If the owner or operator of the Columbus and Southern Ohio Electric Company's Conesville plant in Coshocton County elects to comply with the emission limitation set forth in § 52.1881 by installing a coal-washing facility, the owner or operator shall met the following compliance schedule in lieu or meeting the compliance schedule set forth in § 52.1882 (b).

(1) 17 weeks from June 19, 1980: Notify the Administrator of intent to use washed coal to comply with sulfur dioxide emission limitations for the Conesville stem plant; Submit a projection for ten years of the amount of coal necessary to enable compliance at this facility; Submit the quality specifications of the fuel that is to be used. Such specifications shall include sulfur content, as content, heat and moisture content.

(2) 31 weeks from June 19, 1980: Submit data to the Administrator demonstrating the availability of fuel necessary to achieve compliance at the Conesville steam plant. Such data shall consist of copies of signed contracts with coal suppliers and/or signed contracts with a vendor pursuant to which the utility shall construct a coal preparation facility; submit statement to the Administrator as to whether boiler modifications at the Conesville steam plant will be required for combustion of

the prepared (washed) complying coal. If boiler modifications are required, submit plans for such modifications.

(3) 40 weeks from June 19, 1980: If a coal preparation facility is to be constructed by the utility for preparing all or a portion of the fuel for combustion at the Conesville steam plant, submit to the Administrator a plan detailing actions to be taken to ensure completion of construction and startup in sufficient time to provide complying fuel for the final compliance date.

(4) 52 weeks from June 19, 1980: Complete engineering and specifications for the coal preparation facility.

(5) 64 weeks from June 19, 1980: Award contract for construction of the coal preparation facility providing incentives to the contractor to expedite the project.

(6) 108 weeks from June 19, 1980: Initiate on-site construction of the new coal preparation facility.

(7) 152 weeks from June 19, 1980: Complete construction of the coal preparation facility.

(8) 52 weeks from June 19, 1980: Submit to the Administrator a continuous monitoring plan detailing the equipment to be installed, equipment locations, and data reduction techniques as well as schedule of installation.

(9) 104 weeks from June 19, 1980: Complete installation and certification of sulfur dioxide monitors on stacks 1, 2 and 3 at the Conesville steam plant.

(10) 152 weeks from June 19, 1980: Complete any necessary boiler modifications to the Conesville steam plant units 1–4.

(11) 156 weeks (three years) from June 19, 1980: Achieve and demonstrate compliance at units 1–4 of the Conesville steam plant with the applicable emission limitation in § 52.1881 of this chapter.

[FR Doc. 80-34908 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 123

[SW-9-FRL 166-7]

Arizona's Application for Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region IX.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations was published in the **Federal Register** on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal Program.

Today EPA is announcing the availability for public review of the Arizona application for Phase I interim authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: To be considered as a part of the administrative record of this proceeding, comments on the Arizona interim authorization application must be received at or before the close of business at 4:30 P.M. on December 11, 1980. Written comments will also be accepted at the public hearing.

PUBLIC HEARING: EPA will conduct a public hearing on Arizona's interim authorization application at 1:30 P.M. and 7:30 P.M. sessions, December 11, 1980. The State of Arizona will participate in the public hearing. The hearing may be continued from time to time or from place to place to accommodate EPA or witnesses.

ADDRESSES: Written comments should be sent to:
Laura Yoshii, Hazardous Materials Section (A-3-2), Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Public hearing location: The public hearing will be held at:
Maricopa County Board of Supervisors Auditorium, 205 West Jefferson Street, Phoenix, AZ.

Copies of the Arizona interim authorization application are available at the following addresses for inspection and copying by the public:

Arizona Department of Health Services, 1740 West Adams, Phoenix, Arizona 85007, (602) 255-1170
Maricopa Association of Governments, 111 South Third, Phoenix, Arizona 85003, (602) 262-8528
Pima Association of Governments, 405 Transamerica Building, Tuscon, Arizona 85701, (602) 792-1093
Northern Arizona Council of Governments, 119 East Aspen Avenue, Flagstaff, Arizona 86001, (602) 774-1895
District IV Council of Government, 1020 4th Avenue, Suite No. 201, Yuma, Arizona 85364, (602) 782-1886
Environmental Protection Agency, Region IX, Hazardous Materials Branch, 215 Fremont Street, San Francisco, CA 94105, (415) 556-4606
EPA Headquarters Library, Room 2404, 401 M Street S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Paul Blais, Air and Hazardous Materials Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556-5455.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for interim authorization, the State hazardous waste program must, among other things: (1) have been in existence prior to August 17, 1980 and

(2) be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F, (45 FR 33479).

The State of Arizona has submitted a complete application to EPA for Phase I interim authorization. Copies of the State submittal are available for public inspection and comment as noted above.

Dated: November 3, 1980.

Sheila M. Prindiville,

Acting Regional Administrator.

[FR Doc. 80-34941 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 123

[SW-9-FRL 1661-6]

California's Application for Interim Authorization; Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region IX.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations was published in the **Federal Register** on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of California's application for Phase I interim authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: To be considered as a part of the administrative record of this proceeding, comments on the California interim authorization application must be received before or by the close of the public hearing on December 9, 1980.

PUBLIC HEARING: EPA will conduct a public hearing on California's interim authorization application at 1:30 p.m. and 7:30 p.m. on December 9, 1980. The State of California will participate in the public hearing. The hearing may be continued from time to time or from place to place to accommodate EPA or witnesses.

ADDRESSES: Written comments should be sent to: Environmental Protection Agency, Region IX, Air and Hazardous Materials Division, Laura Yoshii (A-3-2), 215 Fremont Street, San Francisco, CA 94105

Public Hearing Location: The public hearing will be held at: Environmental Protection Agency, Region IX, 215 Fremont Street, 6th Floor, San Francisco, CA 94105.

Copies of the California interim authorization application are available at the following addresses for inspection and copying by the public:

California Department of Health Services, Hazardous Materials Management Section, 714 P Street, Sacramento, CA 95814, (916) 322-2337

California Department of Health Services, Hazardous Materials Management Section, 107 South Broadway, Room 7012, Los Angeles, CA 90012, (213) 620-2380

California Department of Health Services, 2151 Berkeley Way, Berkeley, CA 94704, (415) 540-2043

Environmental Protection Agency, Region IX, Hazardous Materials Branch (A-3-2), 215 Fremont Street, San Francisco, CA 94105, (415) 556-4606

EPA Headquarters Library, Room 2404, 401 M Street S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Paul Blais, Hazardous Materials Section, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556-5455

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for interim authorization, the State hazardous waste program must, among other things: (1) Have been in existence prior to August 17, 1980, and

(2) Be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F, (45 FR 33479).

The State of California has submitted a complete application to EPA for Phase I interim authorization. Copies of the State submittal are available for public inspection and comment as noted above.

Dated: November 3, 1980.

Sheila M. Prindiville,

Acting Regional Administrator.

[FR Doc. 80-34940 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

41 CFR Part 101-6

Federal Advisory Committee Management; Extension of Comment Period

AGENCY: National Archives and Records Service, General Services Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for the proposed rule on Federal Advisory Committee Management for 30 days beyond October 20, 1980, the original expiration date for submission of comments on the proposed rule published in the August 21, 1980, **Federal Register** (45 FR 55769). This action is necessary because many Federal agencies and other commenters were unable to respond within the original 60 day comment period. The intended effect of this action is to permit those Federal agencies and other interested parties an opportunity to comment on the proposed rule.

DATE: Comments must be received on or before November 19, 1980. Comments received after this date will not be considered in the development of the final rule.

ADDRESS: Comments should be addressed to: General Services Administration (NF), Washington, DC 20408. Copies of comments that have been received are available for public inspection in the Committee Management Secretariat, Room 9403, 1100 L Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Clancy, Jr., Director, Committee Management Secretariat (202-357-0019).

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)); Pub. L. 92-463, (5 U.S.C. App. 1))

Dated: November 4, 1980.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 80-34904 Filed 11-6-80; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control
Health Care Financing Administration
Public Health Service

42 CFR Parts 74 and 405

Clinical Laboratories; Personnel Standards

AGENCIES: Center for Disease Control, Public Health Service; and Health Care Financing Administration, HHS.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: HHS withdraws the notice of proposed rulemaking, relating to supervisory technical personnel in clinical laboratories, which was published in the **Federal Register** on October 12, 1979 (44 FR 58923).

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Louis C. LaMotte (404) 329–3824 or FTS: 236–3824.

SUPPLEMENTARY INFORMATION: The background information in the Notice of Proposed Rulemaking of October 12, 1979, is still current and provides useful information with respect to divisions of program responsibilities among the Health Care Financing Administration (HCFA), the Public Health Service (PHS), and the Center for Disease Control (CDC).

The licensure program for clincial laboratories in interstate commerce was established by Section 353 of the Public Health Service Act (42 U.S.C. 263a) enacted by the Clinical Laboratories Improvement Act of 1967, Pub. L. 90–174. The implementing regulations for this Act are stated in Part 74, Title 42, of the Code of Federal Regulations. Departmental authority with respect to the setting of standards for independent and hospital laboratories is stated at Section 1861(s)(3), (10), and (11) and at Section 1861(e)(9) of the Social Security Act (42 U.S.C. 1395x(s)(3), and (10), and (11) and 42 U.S.C. 1395x(e)(9)). The implementing regulations for the cited provisions of the Social Security Act are stated in Part 405, Title 42, of the Code of Federal Regulations.

On October 12, 1979, PHS and HCFA proposed personnel standards (44 FR 58923) applicable to supervisory technical personnel in clinical laboratories licensed under the Clinical Laboratories Improvement Act of 1967 and clinical laboratories certified for reimbursement under the Medicare program. Public input was sought on all aspects of the proposal as well as comments and objective data on seven specific issues.

Approximately 6,175 comments were received in response to the Notice of Proposed Rulemaking (NPRM). Almost no objective data were provided, and a majority of comments were in opposition to one or more of the provisions in the NPRM. The Department created an interagency work group to determine an appropriate course of action. The work group concluded that insufficient data were available and that additional information should be sought.

On April 18, 1980, a notice of a public meeting and a call for comments was published in the **Federal Register** (45 FR 26387). CDC distributed the Notice to 62 professional groups and subsequently provided an agenda of the public meeting. The public meeting was attended by representatives of 34 professional groups. Several major organizations objected to the format of the meeting. The major purpose of the meeting was to identify and develop consensus among the scientific and technical community on certain options and to receive their recommendations.

The public meeting was held as scheduled on June 9 and 10, 1980. While a number of constructive purposes were served by the meeting, very little additional data were provided. Further, little or no consensus was developed with respect to specific personnel standards.

The Department has decided to intensify its efforts to assess the type and extent of problems that exist in clinical laboratories and to measure the costs and benefits of applying personnel standards. Included in this effort will be a careful review of whether and how to revise existing regulations.

The Department has determined that further rulemaking is not appropriate at the present time and that the NPRM of October 12, 1979 (44 FR 58923), corrected October 23, 1979 (44 FR 61059), should be withdrawn. The withdrawal of the NPRM, however, does not preclude the Department from issuing similar notices in the future or commit the Department to any particular course of action.

Accordingly, the specified Notice of Proposed Rulemaking to 42 CFR Parts 74 and 405 is withdrawn.

Dated: September 12, 1980.

Julius B. Richmond,
Assistant Secretary for Health.

Dated: September 19, 1980.

Howard Newman,
Administrator, Health Care Financing Administration.

Approved: October 31, 1980.

Patricia Roberts Harris,
Secretary.

[FR Doc. 80-34744 Filed 11-6-80; 8:45 am]
BILLING CODE 4110-86-M

42 CFR Parts 405 and 447

Medicare and Medicaid Programs; Reimbursement for Services Furnished by Rural Health Clinics; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment Period.

SUMMARY: This notice extends the period for public comment on a proposed rule published on September 10, 1980 (45 FR 59734), regarding Medicare and Medicaid reimbursement for services furnished by rural health clinics. In that document, we proposed to establish a prospective method of payment for clinic services, and to revise our current clinic productivity and overhead cost guidelines and payment limit. An opportunity for public comment was provided through November 10, 1980.

In order to ensure that we have the benefit of all useful public comment on the issues raised by that document, we are planning to hold a series of public meetings to explain the changes we are proposing. We have scheduled these meetings as follows:

November 7, 1980

HHS Region IV, Hilton Inn—Airport, 1 International Plaza, Nashville, TN 37217, (615)–361–7666, 9:00 a.m.–5:00 p.m.

November 14, 1980

HHS Regions VI–X, Plaza Cosmopolitan Hotel, 1780 Broadway, Denver, CO 80202, 800–525–3082, 9:00 a.m.–5:00 p.m.

November 21, 1980

HHS Regions I–V, William Penn Hotel, Mellon Square, Pittsburgh, PA 15230, 9:00 a.m.–5:00 p.m.

For further information about these meetings, contact William Bake, HCFA, 301-597-2953; or Alice Hersh, National Rural Center, 202-331-0258.

To allow participants in the meetings adequate time to prepare and submit their comments, we are extending the comment period for the proposed rule through December 10, 1980.

DATE: To assure consideration, comments should be mailed by December 10, 1980.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., in Washington, D.C.; or to Room 789, East High Rise Building, 6401 Security Boulevard, in Baltimore.

In commenting, please refer to BPP-22-P.

Agencies and organizations are requested to submit comments in duplicate.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

Comments will be available for public inspection in Room 309-G of the Department's office at 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: William Bake, 301-597-2953.

(Secs. 1102, 1833, 1861(aa), 1871, 1902(a) and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395l, 1395x(aa), 1395hh, 1396a(a), and 1396d(a)))

(Catalog of Federal Domestic Assistance Program No. 13,774, Medicare-Supplementary Medicare Insurance; No. 13,761 Medical Assistance Program)

Dated: November 4, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: November 5, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-34932 Filed 11-5-80; 12:43 pm]

BILLING CODE 4110-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 90

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068]

Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Supplemental notice of proposed rule making.

SUMMARY: Federal Communications Commission adopts Supplemental Notice of Proposed Rule Making, proposing alternative allocation plan to original Notice of Proposed Rule Making. The original notice had proposed an allocation of one MHz for private paging systems, one MHz for common carrier paging systems, and one MHz to be placed in a reserve for advanced technology paging systems. Due to some concern that the original plan may have been too rigid, the alternative plan proposes flexible private and common carrier paging bands, and also proposes that forced sharing and restrictions on message length in a common carrier system be eliminated.

DATE: Comments on the original notice and this supplemental notice are due by December 15, 1980, and reply comments by January 30, 1981.

ADDRESSES: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney T. Small (Office of Science and Technology) (202) 653-8169; Michael D. Sullivan (Common Carrier Bureau) (202) 632-6450; or Eugene Bowler (Private Radio Bureau) (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Adopted: October 21, 1980

Released: November 4, 1980

By the Commission:

1. On April 24, 1980 (45 FR 32013; May 15, 1980) the Commission adopted a *Notice of Proposed Rule Making* in this proceeding which proposed the allocation of three MHz of spectrum for private and common carrier paging systems in the 929-932 MHz band. In so doing we followed the traditional administrative approach to spectrum allocation; *i.e.*, we attempted to determine the need for given types of service and then allocated separate blocks of frequencies for each. In this *Supplemental Notice*, we are proposing to make the allocation plan for paging stations more flexible. Parties are invited to comment on this proposal as well as on the proposal in our earlier *Notice*.

2. The alternative proposed here would retain the basic allocation of two MHz for private and common carrier users and would continue to reserve one MHz for advanced technology systems. We would change the earlier proposal, however, by placing the private and common carrier bands next to each other. We would also allow each type of user access to the whole two MHz of spectrum at 900 MHz after a five year lag time if the one MHz band initially allotted to the particular class of user becomes too congested to meet additional demand. Thus, common carriers would be allowed to use the private band and private paging systems would be allowed to use the common carrier band. Except for the lag time, this approach is similar to that proposed for the Instructional Television Fixed Service, the Miltipoint Distribution Service, and the Private Operational Fixed Microwave Service.[1]

3. We are proposing a lag time because of the different ways in which common carrier and private channels are loaded. A new common carrier channel in a given area can be authorized even when another common carrier channel in that same area is lightly loaded. In the private services, on the other hand, a channel must generally have met threshold loading standards before another channel in that area is authorized. Private channels, therefore, are likely to remain available for a longer period of time than common carrier channels. While procedural problems (state certification, petitions to deny) may cause delays in utilization of channel by common carriers, we want to allow an adequate amount of time for development of private systems if there is demand for such systems. We request comments as to whether a time lag is needed and what the appropriate period should be.

4. Under the alternative being proposed here, demand conditions in each geographic area would ultimately determine the number of private, as opposed to common carrier, channels. In one area, for example, the number of private channels might be double the number of common carrier channels, while in another area the reverse might be true. In addition, in order to allow market forces to determine how the channels are used, we would not

[1] General Docket No. 80-112, FCC 80-136 (Adopted March 19, 1980; released May 2, 1980).

earmark specific channels in the respective services for particular types of paging use. Rather, all channels would be available for *any* type of paging use.[2] These procedures overcome the inherent rigidities of the allocation plan proposed in our original *Notice*, wherein private users and common carriers were each allocated a compartmentalized band of one MHz, and many channel were earmarked for a particular type of use.

5. Under this alternative proposal, we would not impose restrictions on message length in a common carrier system. A common carrier may well find that it is in its own financial self-interest to limit message length. However, it may also wish to allow the customer the option of sending a longer (or shorter) message for an additional (or lesser) charge. We therefore believe that the most efficient use of a common carrier channel can be achieved by allowing the carrier itself to make a decision on message length.

6. Under the proposal in this *Supplemental Notice*, we would not prescribe sharing among common carriers in the event that a new application is received in an area where all channels are already occupied. Prescribed sharing among common carriers can force the marketplace into a common mold, where no carrier has the option of offering a higher quality service at a higher price or a lower quality service at a lower price. However, we request comments on our view that prescribed sharing would be inappropriate under this alternative.

7. Under this alternative, all other regulations proposed in our original *Notice* would be retained. Therefore, the technical, loading, and sharing standards for private radio users would remain as originally proposed. We invite comments as to the appropriate technical and processing criteria to be applied under this alternative.

8. Authority for this *Supplemental Notice of Proposed Rule Making* is contained in 47 U.S.C. §§ 154(i), (j), 303, 307, and 308.

9. In accordance with the provisions of 47 CFR § 1.419(b), an original and five copies of all comments, replies, pleadings, briefs and other documents filed in this proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters in Washington, DC (1919 M Street, NW).

10. All interested persons are invited to file written comments on both the original *Notice* and this *Supplement* on or before December 15, 1980, and reply comments on or before January 30, 1981. Any person wishing to file a reply to a comment before the close of the formal comment period is encouraged to do so. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

11. The Secretary shall cause this *Supplemental Notice of Proposed Rule Making* to be published in the **Federal Register.**

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 80-34732 Filed 11-6-80; 8:45 am]

BILLING CODE 6712-01-M

[2] We do, however, retain the proposal that up to three channels be reserved for nationwide or regional paging networks. Two petitioners have already expressed an interest in establishing such a network, and we believe it will simplify matters considerably to have up to three channels reserved for this purpose. However, should one or more of these network channels remain unutilized after assignment of all other channels (or after the time lag discussed above), the network channels would be made available for any paging use.

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47 CFR Part 73

[BC Docket No. 80-667; RM-3354]

FM Broadcast Station in St. Johnsbury, Vermont; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of a first FM channel to St. Johnsbury, Vermont, in response to a petition filed by Twin State Broadcasters, Inc.

DATES: Comments must be filed on or before December 29, 1980, and reply comments on or before January 19, 1981.

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

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

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b) *Table of Assignments*, FM Broadcast Stations. (St. Johnsbury, Vermont), BC Docket No. 80-667, RM-3354.

Adopted: October 28, 1980.

Released: November 4, 1980.

1. Before the Commission is a petition filed by Twin State Broadcasters, Inc. ("Twin State")[1] seeking the deletion of Channel 272A at Randolph, Vermont,[2] substitution of Channel 292A at Randolph and assignment of Channel 272A to St. Johnsbury, Vermont, as that community's first FM assignment. Channel 272A, if deleted from Randolph, can be assigned to St. Johnsbury in conformity with the minimum distance separation requirements. However, Channel 292A at Randolph would be short-spaced to Station WECM licensed to Claremont, New Hampshire, and newly assigned Channel 292A at Littleton, New Hampshire (Docket No. 20576).[3] Twin State has affirmed its interest in applying for Channel 272A, if assigned to St. Johnsbury. No other comments have been received in this proceeding.[4]

2. St. Johnsbury (population of 8,409)[5] located in northeastern Vermont, is the seat of Caledonia County (population 22,789). St. Johnsbury is served locally by fulltime AM Station WSTJ only. Twin State reports that St. Johnsbury is the major retail trading center for several surrounding communities, a major distribution and service center for the surrounding area, and that it enjoys an expanding tourist trade.

3. It is our opinion that a first FM channel assignment of a Class A frequency is warranted at St. Johnsbury. Although Twin State seeks Channel 272A, we are reluctant to delete this channel from Randolph, in light of Stokes' stated interest in this frequency at Randolph and the unavailability of a substitute channel there. While we are not bound to honor such an expression of interest before an application for a construction permit has been filed, we believe the public interest would be better served, were we able to facilitate two first local FM outlets, at both Randolph and St. Johnsbury. Since

[1] Public Notice was given on April 16, 1979, Report No. 1172.

[2] Channel 272A is assigned to Randolph, but currently unoccupied.

[3] *Report and Order*, published October , 1980, 45 FR.

[4] However, we note that Edward H. Stokes, II ("Stokes") filed several pleadings in Docket No. 20576 indicating his intent to apply for a construction permit on Channel 272A at Randolph.

[5] Population figures are based upon 1970 U.S. Census data.

Channel 287 has been deleted from Plymouth, New Hampshire, in the recently decided Docket No. 20576 (See fn. 3 *supra*), a staff analysis reveals that Channel 288A may be assigned to St. Johnsbury in conformity with the minimum distance separation requirements to all United States assignments. However, this assignment represents a minor short spacing to a Canadian assignment at Thetford Mines, Quebec. Thus, Canadian concurrence has been sought and obtained prior to consideration herein.

4. Accordingly, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, as it relates to St. Johnsbury, Vermont, as follows:

City	Channel No.	
	Present	Proposed
St. Johnsbury, Vt.		288A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before December 29, 1980, and reply comments on or before January 19, 1981.

7. For further information concerning this proceeding, contact Molly Pauker, Broadcast Bureau, (202) 632-6302. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-667 RM-3354]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented ininitial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-34849 Filed 11-6-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte MC 43 (Sub-11)]

Lease and Interchange of Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is revising its leasing regulations to require that the lease shall specify who is responsible for loading and unloading the property to be transported onto and from the motor vehicle. This action is being taken to bring the leasing rules into conformance with recent statutory changes enacted in Section 15 of the Motor Carrier Act of 1980.

DATES: Written comments are due on or before December 22, 1980.

ADDRESS: An original and 15 copies, if possible, should be sent to: Ex Parte No. MC-43 (Sub-No. 11), Room 7417, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Lewis R. Teeple, Phone: (202) 275-7612.

SUPPLEMENTARY INFORMATION: Section 15 of the Motor Carrier Act of 1980 (49 U.S.C. 11107(b)) requires the Commission to prescribe a rule that any arrangement, between a motor carrier of property providing transportation subject to Commission regulation and any other person who provides any portion of such transportation by a motor vehicle not owned by the carrier shall specify in writing who is responsible for loading and unloading the property onto and from the motor vehicle. Section 15 (49 U.S.C. 11109(a) and (b)) of the new law, which is now in effect, deals with lumping practices and represents an intent on the part of Congress to eliminate coercion in loading and unloading of cargo and to require the parties in transportation to agree in writing who will be responsible for loading and unloading cargo. The proposed rule would implement the requirement that equipment leases contain such an agreement for regulated traffic. Furthermore, the Commission proposes that the amount of compensation, if any, to be paid to the lessee by the regulated carrier for loading and unloading shall be specified in the lease. The legislative history indicates that Congress expected owner-operator leases to specify loading and unloading responsibilities, including compensation, H.R. Rep. No. 1069, 96th Cong., 2nd Sess. 31 (1980).

In commenting on this section of the Act the House Committee on Public Works and Transportation also stated, "The purpose of this provision is not to suggest or endorse any particular apportionment of loading or unloading responsibilities between and among shippers, receivers, carriers, and owner-operators. In fact, it is the Committee's belief that this apportionment of responsiblity is a market decision to be determined by the parties to the transaction."

This reflects a clear intent to rely on competitive factors. At the same time, the Congress in concerned in Section 15 that all parties, and particularly owner-operators, be aware of, and agree to, the allocation of responsibility for loading and unloading cargo onto and from the motor vehicle. This is akin to Section 16 (49 U.S.C. 10527(a)) of the Motor Carrier Act which requires the Commission, where appropriate, to establish rules setting forth minimum contract requirements and conditions for contracts of haul entered into by carriers and other parties in the transportation of commodities exempt by reason of Section 10526(a)(6) of the Act. This section requires that arrangements for loading and unloading, including compensation, shall be included in all contracts of haul. In this connection, anyone with an interest in this proceeding should also review the proposed rulemaking in Ex Parte No. MC-147, *Information Required on Receipts and Bills—Responsibility for Loading and Unloading Motor Vehicles,* served October 23, 1980, which would require that all loading and unloading arrangements by regulated motor carriers be set forth in writing in their bills of lading or freight bills.

This proposed action does not significantly affect the quality of the human environment or the conservation of energy resources.

We propose: To amend Title 49 of the Code of Federal Regulations by revising Section 1057.12(f) of the CFR as set forth in the appendix.

This notice and action are issued under authority contained in 49 U.S.C. 10321 and 11902a and 5 U.S.C. 553.

Decided: October 16, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix

Revision of 49 CFR 1057.12(f)

§ 1057.12 [Amended]

In § 1057.12, paragraph (f), revise to read as follows:

* * * * *

(f) *Items specified in lease.* The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portion of such items. The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service.

[FR Doc. 80-34801 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 45, No. 218
Friday, November 7, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

[Pay Order 81-1]

Rates of Pay for Certain Officers and Employees of the Judicial Branch

Pursuant to the authority vested in me as Director of the Administrative Office of the United States Courts by the laws of the United States of America, I hereby ascertain, adjust, fix, and/or provide notice of pay rates for certain officers and employees of the Judicial Branch as follows:

1-1. *Rates of Pay.*

1-101. *Pay Rates Adjusted by Operation of Law.*

(a) The per annum pay rates for officials whose rates the Executive Salary Cost-of-Living Adjustment Act adjusts are set forth in Table 1.

(b) The per annum pay rates for officials whose rates are linked to rates which the Executive Salary Cost-of-Living Adjustment Act adjusts are set forth in Table 2.

1-102. *Pay Rates Fixed by Administrative Action.*

(a) The maximum per annum pay rates for officials whose maximum rates the Executive Salary Cost-of-Living Adjustment Act adjusts are set forth in Table 3.

(b) The maximum per annum pay rates for officials whose maximum rates are linked to rates which the Executive Salary Cost-of-Living Adjustment Act adjusts are set forth in Table 4.

(c) The maximum pay rates for officials whose maximum rates may be adjusted pursuant to section 5307 of title 5, United States Code, are set forth in Table 5.

(d) The maximum per annum pay rates for officials whose maximum rates are linked to rates which may be adjusted pursuant to section 5307 of title 5, United States Code, are set forth in Table 6.

(e) The maximum pay rates for officials whose maximum rates are linked to rates which are adjusted pursuant to section 5305 of title 5, United States Code, are set forth in Table 7.

(f) The per annum pay rates for officials whose rates the Judicial Conference of the United States fixes are set forth in Table 8.

(g) The per annum pay rates for officials whose rates are fixed in accordance with the Judicial Salary Plan are set forth in Table 9.

(h) The hourly pay rates for certain employees whose rates the Director of the Administrative Office of the United States Courts fixes in accordance with section 5349 of title 5, United States Code, are set forth in Table 10.

1-103. *The General Schedule.*

(a) The per annum pay rates for employees of the Judicial Branch whose rates are fixed in accordance with subchapter III of chapter 53 of title 5, United States Code, are set forth in Table 11.

(b) Table 11 is the General Schedule as adjusted by the President on October 16, 1980. Exec. Order No. 12,248 45 FR 69119 (1980).

1-2. *General Provisions.*

1-201. *Incorporation of Tables.*

Each of the tables referenced above is attached hereto and made a part hereof.

1-202. *Effective Dates.*

(a) Except as otherwise provided, all adjustments of pay rates in the attached tables are effective as of the beginning of the first applicable pay period commencing on or after October 1, 1980. Implementing adjustments as a consequence of adjustments to maximum rates in the attached tables shall be effective in accordance with the action of the entity possessing pay-fixing responsibility.

(b) The adjustments of pay rates in Table 10 are effective as of the date of this order, except that the adjustments shall be retroactive to October 6, 1980, for each employee who satisfies the criteria of section 5344(b) of title 5, United States Code.

1-203. *Determination of Adjustments.*

Certain adjustments in sections 1-101 and 1-102 depend on the overall percentage of the adjustment in the rates of pay under the General Schedule. According to the President's August 29, 1980, message to the Congress of the United States, that figure is 9.12 percent. 16 Weekly Comp. of Pres. Doc. 1596 (Sept. 1, 1980). However, the Executive Branch advises that the actual overall percentage of the adjustment in the rates of pay under the General Schedule is 9.11 percent and that the President will so notify the Congress. Accordingly, all appropriate calculations to determine adjustments employ this correct figure.

1-204. *Payment of Cost-of-Living Adjustments.*

The payment of pay, including cost-of-living adjustments, in full through normal payroll disbursement procedures on regular paydays for the duration of fiscal year 1981 is dependent on the availability of appropriated funds.

1-205. *Superseded Orders.*

Pay Order 80-1 of May 12, 1980, is superseded.

Done at Washington, D.C., this 31st day of October 1980.

William E. Foley,

Director.

BILLING CODE 2210-01-M

Table 1

PER ANNUM PAY RATES FOR OFFICIALS WHOSE RATES
THE EXECUTIVE SALARY COST-OF-LIVING ADJUSTMENT ACT ADJUSTS [1]

OFFICIAL	RATE	BASIC AUTHORITY	ADJUSTMENT AUTHORITY
Chief Justice of the United States	$92,400	28 U.S.C. §5 (1976)	28 U.S.C. §461 (1976)
Associate Justices of the Supreme Court of the United States	$88,700	28 U.S.C. §5 (1976)	do
Judges, United States Courts of Appeals	$70,900	28 U.S.C. §44(d) (1976)	do
Judges, United States Court of Claims	$70,900	28 U.S.C. §173 (1976)	do
Judges, United States Court of Customs and Patent Appeals	$70,900	28 U.S.C. §213 (1976)	do
Judges, United States District Courts	$67,100	28 U.S.C. §135 (1976)	do
Judges, United States Customs Court	$67,100	28 U.S.C. §252 (1976)	do
Commissioners (Trial Judges), United States Court of Claims	$59,800	28 U.S.C. §792(b) (1976)	do
Bankruptcy Judges (formerly Referees in Bankruptcy) (Full-time)	$58,400	Act of Nov. 6, 1978, Pub. L. No. 95-598, title IV, §§404(d), 411, 92 Stat. 2549, 2684, 2688.	do

1. The rates in this table exclude any October 1977 adjustment.

81-1-1

Table 2

PER ANNUM PAY RATES
FOR OFFICIALS WHOSE RATES ARE LINKED TO RATES WHICH
THE EXECUTIVE SALARY COST-OF-LIVING ADJUSTMENT ACT
ADJUSTS [1]

OFFICIAL	RATE	AUTHORITY
District Judge, United States District Court for the District of the Canal Zone	$67,100	3 P.C.C. §5(b)
Judges, District Court of the Virgin Islands	$67,100	48 U.S.C. §1614(a) (1976)
Judge, District Court of Guam	$67,100	48 U.S.C. §1424b(a) (1976)
Judge, District Court for the Northern Mariana Islands	$67,100	48 U.S.C. §1694(b)(1) (Supp. II 1978)
Director, Administrative Office of the United States Courts	$67,100	28 U.S.C. §603 (1976)
Director, Federal Judicial Center	$67,100	28 U.S.C. §626 (1976)
Deputy Director, Administrative Office of the United States Courts	$58,500	28 U.S.C. §603 (1976)

1. The rates to which the rates in this table are linked exclude any October 1977 adjustment.

81-1-2

Table 3

PAY FIXED BY ADMINISTRATIVE ACTION

MAXIMUM PER ANNUM PAY RATES
FOR OFFICIALS WHOSE MAXIMUM RATES
THE EXECUTIVE SALARY COST-OF-LIVING ADJUSTMENT ACT
ADJUSTS

RATES WHICH THE JUDICIAL CONFERENCE FIXES[1]

OFFICIAL	MAXIMUM RATE	AUTHORITY	ADJUSTMENT AUTHORITY
Bankruptcy Judges (formerly Referees in Bankruptcy) (Part-time)	$29,200	Act of Nov. 6, 1978, Pub. L. No. 95-598, title IV, §§404(d), 411, 92 Stat. 2549, 2684, 2688.	28 U.S.C. §461 (1976)

1. In accordance with the September 1974 resolution of the Judicial Conference of the United States concerning cost-of-living adjustments for part-time bankruptcy judges and 5 U.S.C. §5307 (1976), the per annum pay rate for each part-time bankruptcy judge is adjusted as follows:

Level 1	$29,200
Level 2	26,400
Level 3	24,000
Level 4	4,300

These adjustments are effective October 1, 1980.

81-1-3

Table 4

PAY FIXED BY ADMINISTRATIVE ACTION[1]

MAXIMUM PER ANNUM PAY RATES FOR OFFICIALS
WHOSE MAXIMUM RATES ARE LINKED TO RATES
WHICH THE EXECUTIVE SALARY COST-OF-LIVING ADJUSTMENT ACT ADJUSTS[2]

RATES WHICH THE CHIEF JUSTICE FIXES

OFFICIAL	MAXIMUM RATE	AUTHORITY
Administrative Assistant to the Chief Justice of the United States	$67,100	28 U.S.C. §677(a) (1976)

RATES WHICH THE JUDICIAL CONFERENCE FIXES[3]

OFFICIAL	MAXIMUM RATE	AUTHORITY
Magistrates (Full-Time)	$58,400	28 U.S.C. §634(a) (1976)[4]
Magistrates (Part-Time)	$29,200	28 U.S.C. §634(a) (1976)[4]

RATES WHICH THE JUDICIAL COUNCILS FIX

OFFICIAL	MAXIMUM RATE	AUTHORITY
Circuit Executives	$58,500	28 U.S.C. §332(f) (1976)
Federal Public Defender for the Central District of California	"[C]ompensation received by the United States attorney for the district where representation is furnished. . . ."	18 U.S.C. §3006A(h)(2)(A) (1976); 5 U.S.C. §5315 (Supp. III 1979)

RATES WHICH THE DIRECTOR OF THE FEDERAL JUDICIAL CENTER FIXES

OFFICIAL	MAXIMUM RATE	AUTHORITY
Professional Personnel, Federal Judicial Center	$58,500	28 U.S.C. §625(b) (1976)

Continued

Table 4 (Continued)

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1. The actual pay rates of officials included in this table are not subject to automatic adjustment. The entity possessing pay-fixing responsibility must act to adjust actual pay rates. The adjustments may be retroactive to the beginning of the first pay period commencing on or after October 1, 1980, when such adjustments are made pursuant to 5 U.S.C. §5307 (1976).

2. The rates to which the rates in this table are linked exclude any October 1977 adjustment.

3. The Judicial Conference will have the opportunity to consider adjustments for Fiscal Year 1981 at its March 1981 session. Pending any further adjustments, in accordance with the March 1980 resolution of the Judicial Conference of the United States concerning cost-of-living adjustments for magistrates, the per annum pay rates for magistrates, effective as of the beginning of the first pay period commencing on or after October 1, 1979, will remain as follows:

Level I (Full-time)	$51,900	Level 7 (Part-time)	$11,800
Level II (Full-time)	45,500	Level 8 (")	10,000
Yosemite National Park (Full-time)	34,250	Level 9 (")	8,200
		Level 10 (")	6,400
Level 1 (Part-time)	$25,950	Level 11 (")	4,500
Level 2 (")	23,100	Level 12 (")	3,600
Level 3 (")	20,300	Level 13 (")	2,700
Level 4 (")	17,900	Level 14 (")	1,800
Level 5 (")	15,500	Level 15 (")	900
Level 6 (")	13,600		

4. Section 232 of the Act of Nov. 6, 1978, Pub. L. No. 95-598, title II, 92 Stat. 2549, 2665, which amends 28 U.S.C. §634(a) (1976), will not become effective until April 1, 1984, in accordance with section 402(b) of the Act.

81-1-4 (cont.)

Table 5

PAY FIXED BY ADMINISTRATIVE ACTION[1]

MAXIMUM PAY RATES FOR OFFICIALS
WHOSE MAXIMUM RATES MAY BE
ADJUSTED PURSUANT TO 5 U.S.C. §5307 (1976)

RATES WHICH THE DISTRICT COURTS FIX

OFFICIAL	MAXIMUM RATE	BASIC AUTHORITY	ADJUSTMENT AUTHORITY
Jury Commissioner	$72.64 per day	28 U.S.C. §1863(b)(1) (1976)	5 U.S.C. §5307 (1976)

1. The actual pay rates for officials included in this table are not subject to automatic adjustment. The entity possessing pay-fixing responsibility must act to adjust actual pay rates. The adjustments may be retroactive to the beginning of the first pay period commencing on or after October 1, 1980, when such adjustments are made pursuant to 5 U.S.C. §5307 (1976).

81-1-5

Table 6

PAY FIXED BY ADMINISTRATIVE ACTION[1]

MAXIMUM PER ANNUM PAY RATES FOR OFFICIALS
WHOSE MAXIMUM RATES ARE LINKED
TO RATES WHICH MAY BE ADJUSTED
PURSUANT TO 5 U.S.C. §5307 (1976)

RATES WHICH THE JUDICIAL COUNCILS FIX

OFFICIAL	MAXIMUM RATE	AUTHORITY
Federal Public Defenders (except as provided in Table 4)	"Compensation received by the United States attorney for the district where representation is furnished. . . ."	18 U.S.C. §3006A(h)(2)(a) (1976), 28 U.S.C. §548 (1976)

1. The actual pay rates for officials included in this table are not subject to automatic adjustment. The entity possessing pay-fixing responsibility must act to adjust actual pay rates. The adjustments may be retroactive to the beginning of the first pay period commencing on or after October 1, 1980, when such adjustments are made pursuant to 5 U.S.C. §5307 (1976).

81-1-6

Table 7

PAY FIXED BY ADMINISTRATIVE ACTION

MAXIMUM PAY RATES FOR OFFICIALS
WHOSE MAXIMUM RATES ARE
LINKED TO RATES WHICH ARE
ADJUSTED PURSUANT TO 5 U.S.C. §5305 (1976)

RATES WHICH THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FIXES[1]

OFFICIAL	MAXIMUM RATE	AUTHORITY
Land Commissioners	$192.72 per day	5 U.S.C. §3109 (1976); 28 U.S.C. §604(a)(5) (1976); H.R.J. Res. 610, Pub. L. No. 96-369, §101(a)(4), 94 Stat. 1351 (Oct. 1, 1980); Judiciary Appropriation Act, 1980, Pub. L. No. 96-68, title IV, 93 Stat. 416, 429 (1979).

1. The Director has delegated authority to district courts to fix the pay rates of officials included in this table, subject to the limitations that: (a) The hourly rate cannot exceed $40.00, and (b) notwithstanding the hourly rate, pay for any calendar day cannot exceed the maximum rate above. The district court must act to adjust actual pay rates.

81-1-7

Table 8

PAY FIXED BY ADMINISTRATIVE ACTION

PER ANNUM PAY RATES WHICH
THE JUDICIAL CONFERENCE OF
THE UNITED STATES FIXES[1]

OFFICIAL	RATE	AUTHORITY
Court Reporters, District Courts of the United States		28 U.S.C. §753(e) (1976)
Level I	$31,615	
Level II	30,178	
Level III	28,741	

1. In accordance with the March 1971 resolution of the Judicial Conference of the United States concerning the General Plan of Qualification and Compensation for Court Reporters, the Director of the Administrative Office of the United States Courts makes the adjustments reflected in this table.

81-1-8

Table 9

THE JUDICIAL SALARY PLAN[1,2]

JSP Grade	Steps 1	2	3	4	5	6	7	8	9	10
	Annual Rates									
1	$7960	$8225	$8490	$8755	$9020	$9175	$9437	$9699	$9712	$9954
2	8951	9163	9459	9712	9820	10109	10398	10687	10976	11265
3	9766	10092	10418	10744	11070	11396	11722	12048	12374	12700
4	10963	11328	11693	12058	12423	12788	13153	13518	13883	14248
5	12266	12675	13084	13493	13902	14311	14720	15129	15538	15947
6	13672	14128	14584	15040	15496	15952	16408	16864	17320	17776
7	15193	15699	16205	16711	17217	17723	18229	18735	19241	19747
8	16826	17387	17948	18509	19070	19631	20192	20753	21314	21875
9	18585	19205	19825	20445	21065	21685	22305	22925	23545	24165
10	20467	21149	21831	22513	23195	23877	24559	25241	25923	26605
11	22486	23236	23986	24736	25486	26236	26986	27736	28486	29236
12	26951	27849	28747	29645	30543	31441	32339	33237	34135	35033
13	32048	33116	34184	35252	36320	37388	38456	39524	40592	41660
14	37871	39133	40395	41657	42919	44181	45443	46705	47967	49229
15	44547	46032	47517	49002	50487	51972	53457	54942	56427	57912
16	52247	53989	55731	57473	58500	58500	58500	58500	58500	
17	58500	58500	58500	58500	58500					
18	58500									

1. Notwithstanding the rates in this table, the basic pay of clerks of court and of probation officers is limited to a rate which is $2,000 less than the maximum rate for circuit executives.

2. Notwithstanding the rates in this table, the basic pay payable to any employee whose pay is fixed in accordance with the Judicial Salary Plan shall not exceed the pay which may be payable, from time to time, to an employee classified at JSP Grade 18.

81-1-9

Table 10

PAY FIXED BY ADMINISTRATIVE ACTION

HOURLY PAY RATES FOR CERTAIN EMPLOYEES WHOSE RATES THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS FIXES PURSUANT TO 5 U.S.C. §5349 (1976)

ADMINISTRATIVE OFFICE WAGE SYSTEM

Part A. Graded Tradesmen and Craftsmen (excluding lithographers and printers)

AO-G Grade	Steps 1	2	3	4	5
	Hourly Rates				
1	4.97	5.18	5.39	5.59	5.80
2	5.40	5.62	5.84	6.07	6.29
3	5.82	6.06	6.30	6.54	6.79
4	6.34	6.60	6.86	7.13	7.39
5	6.84	7.13	7.42	7.70	7.99
6	7.36	7.67	7.98	8.28	8.59
7	7.87	8.20	8.53	8.86	9.18
8	8.35	8.70	9.05	9.40	9.74
9	8.80	9.17	9.54	9.90	10.27
10	9.26	9.65	10.04	10.42	10.81
11	9.72	10.13	10.54	10.94	11.35
12	10.19	10.61	11.03	11.46	11.88
13	10.63	11.07	11.51	11.96	12.40
14	11.09	11.55	12.01	12.47	12.94
15	11.55	12.03	12.51	12.99	13.47

Part B. Supervisors of Tradesmen and Craftsmen

AO-S Grade	Steps 1	2	3	4	5
	Hourly Rates				
1	7.80	8.12	8.44	8.77	9.09
2	8.22	8.56	8.90	9.24	9.59
3	8.64	9.00	9.36	9.72	10.08
4	9.16	9.54	9.92	10.30	10.68
5	9.67	10.07	10.47	10.88	11.28
6	10.19	10.61	11.03	11.46	11.88
7	10.68	11.12	11.56	12.01	12.45
8	11.14	11.60	12.06	12.53	12.99
9	11.59	12.07	12.55	13.04	13.52
10	12.04	12.54	13.04	13.54	14.04
11	12.31	12.82	13.33	13.85	14.36
12	12.66	13.19	13.72	14.25	14.77
13	13.10	13.65	14.20	14.74	15.29
14	13.61	14.18	14.75	15.31	15.88
15	14.23	14.82	15.41	16.01	16.60

81-1-10

Table 11

THE GENERAL SCHEDULE

GS Grade	Steps 1	2	3	4	5	6	7	8	9	10
	Annual Rates									
1	$7960	$8225	$8490	$8755	$9020	$9175	$9437	$9699	$9712	$9954
2	8951	9163	9459	9712	9820	10109	10398	10687	10976	11265
3	9766	10092	10418	10744	11070	11396	11722	12048	12374	12700
4	10963	11328	11693	12058	12423	12788	13153	13518	13883	14248
5	12266	12675	13084	13493	13902	14311	14720	15129	15538	15947
6	13672	14128	14584	15040	15496	15952	16408	16864	17320	17776
7	15193	15699	16205	16711	17217	17723	18229	18735	19241	19747
8	16826	17387	17948	18509	19070	19631	20192	20753	21314	21875
9	18585	19205	19825	20445	21065	21685	22305	22925	23545	24165
10	20467	21149	21831	22513	23195	23877	24559	25241	25923	26605
11	22486	23236	23986	24736	25486	26236	26986	27736	28486	29236
12	26951	27849	28747	29645	30543	31441	32339	33237	34135	35033
13	32048	33116	34184	35252	36320	37388	38456	39524	40592	41660
14	37871	39133	40395	41657	42919	44181	45443	46705	47967	49229
15	44547	46032	47517	49002	50487	51972	53457	54942	56427	57912
16	52247	53989	55731	57473	59215*	60957*	62699*	64441*	66183*	
17	61204*	63244*	65284*	67324*	69364*					
18	71734*									

* Basic pay is limited by section 5308 of title 5, 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.

81-1-11

[FR Doc. 80-34777 Filed 11-6-80; 8:45 am]
BILLING CODE 2210-01-C

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

U.S. Border Animal Import Inspection Facility, Sweetgrass, Montana; Issuance of Negative Declaration

AGENCY: Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

ACTION: Notice of availability of Environmental Assessment and Negative Declaration.

SUMMARY: This gives notice that the Animal and Plan Health Inspection Service is not preparing an environmental impact statement concerning the construction of a new U.S. Border Animal Import Inspection Facility to replace the existing facility at Sweetgrass, Montana. The existing animal import inspection facility occupies a small building in Sweetgrass owned by the Great Northern Railroad Company which serves as an office for the Animal and Plant Health Inspection Service veterinary medical officer. There is no shelter for the veterinary medical officer to perform his inspection duties. The railroad company has also advised the Animal and Plant Health Inspection Service that it intends to terminate the present lease agreement. It is proposed to construct a new facility on property to be purchased by the General Services Adminstration adjacent to the U.S. Customs SErvice facility in Sweetgrass that will be large enough for the veterinary medical officer to perform his inspection duties under adequate shelter and conditions. No significant controversy has been associated with this project. As a result of these findings, it has been determined that the preparation and review of an environmental impact statement is not needed for this action.

FOR FURTHER INFORMATION CONTACT: Copies of the environmental assessment are available upon request from Dr. John H. Green, Energy and Environmental Staff, Administrative Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301–463–8237).

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

The Animal and Plant Health Inspection Service is responsible for operating U.S. Border Animal Import Inspection Facilities along both the U.S. Canadian and U.S. Mexican borders. At these facilities, U.S. Department of Agriculture veterinary medical officers, in accordance with regulations (9 CFR 92), inspect the health certificates and look for visual signs of illness in animals which are being imported to, or returned to (e.g., race horses or show animals), the United States.

The present facility at Sweetgrass is inadequate in that it does not offer the veterinary medical officer proper facilities to unload, restrain and examine animals. In addition, the exposure to inclement weather is undesirable for both humans and animals. The proposed new U.S. Border Animal Import Inspection Facility would be built on property adjacent to the U.S. Customs Service facility in Sweetgrass. No administrative action will be taken until 15 days after date of this publication.

Done at Washington, D.C., this 30th day of October 1980.

Harry C. Mussman,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 80-34740 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Basin Electric Power Cooperative; Intent To Prepare a Draft Environmental Impact Statement and Announcement of Public Scoping Meetings

Notice is hereby given that the Rural Electrification Administration (REA), if lead agency, intends to prepare an Environmental Impact Statement (EIS) in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, in connection with a possible loan guarantee commitment to Basin Electric Power Cooperative (Basin), 1717 East Interstate Avenue, Bismarck, North Dakota 58501. In connection with the proposed project, REA intends to hold two (2) public scoping meetings to aid in the Federal decisionmaking process and formulation of issues to be addressed in the EIS.

The EIS will address the need for, alternatives to, and environmental impact of, a proposed 345 kV transmission line approximately 112 kilometers (70 miles) in length and associated substation facilities. The transmission line will extend from Basin's Antelope Valley Station near Beulah, North Dakota, to the existing Western Area Power Administration's Charlie Creek Substation in eastern McKenzie County, North Dakota. The study area where this transmission line may be located includes Mercer, Dunn, Billings, and McKenize Counties of North Dakota. Interested persons are invited to submit comments which may be helpful to REA in the preparation of a Draft EIS. Comments should be sent to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Public scoping meetings will be held on December 9, 1980, at 7:00 p.m. MST in the Beulah Civic Center, 250 7th Street, NE, Beulah, North Dakota, and on December 10, 1980, at 7:00 p.m. MST in the Killdeer Public High School, Killdeer, North Dakota. These public scoping meetings will be chaired by a representative of the REA. The meetings will be held in order to receive public input and comments concerning the need for the project, alternatives to the project, significant issues that should be addressed in the EIS, and other matters concerning the proposed project. A record will be made of the meetings and comments received will be addressed in the Draft EIS.

The REA encourages the public to attend these public scoping meetings for their information and to provide their input. All local, state, and Federal agencies having an interest in the project are invited to attend and participate in the meetings. Any person, group, or agency which desires to make its comments, questions, or recommendations in writing may do so either at the meetings or by submitting them to the REA at the address noted above. Requests for additional information or questions concerning the meetings may be directed to Mr. J. Michael Donovan of REA at the address given above, telephone (202) 447–7447.

Any REA financing assistance to Basin will be subject to, and release of funds thereunder will be contingent upon, the REA reaching satisfactory conclusions with respect to the environmental effects of the proposed projects, and final action will only be taken after compliance with the environmental impact statement procedures required by the National Environmental Policy Act of 1969.

This Federal assistance program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 30th day of October 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-34553 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-15-M

North Carolina Electric Membership Corp.; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $921,200,000 to North Carolina Electric Membership Corporation of Raleigh, North Carolina. These funds will be used to finance a 56.25 percent undivided ownership interest in the 1145 MW Catawba Nuclear Generating Station Unit No. 1. The Catawba Project is being constructed by Duke Power Company in York County, South Carolina.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. J. W. Stephenson, Manager, North Carolina Electric Membership Corporation, P.O. Box 27306, Raleigh, North Carolina 27611.

In order to be considered, proposals must be submitted on or before December 8, 1980 to Mr. Stephenson. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as North Carolina Electric Membership Corporation and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 30th day of October, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-34554 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-15-M

Saluda River Electric Cooperative, Inc., South Carolina; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider (a) providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $307,000,000 to Saluda River Electric Cooperative, Inc., of Laurens, South Carolina. These funds will be used to finance an 18.75 percent undivided ownership interest in the 1145 MW Catawba Nuclear Generating Station Unit No. 1. The Catawba project is being constructed by Duke Power Company in York County, South Carolina.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Henry M. Faris, President, Saluda River Electric Cooperative, Inc., 207 Sherwood Drive, Laurens, South Carolina 29360.

In order to be considered, proposals must be submitted on or before December 8, 1980 to Mr. Faris. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Saluda River Electric Cooperative, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 30th day of October, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-34555 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-15-M

Office of the Secretary

Human Nutrition Advisory Committee; Intent to Reestablish

Notice is hereby given that the Secretary of Agriculture proposes to reestablish the Human Nutrition Advisory Committee.

The purpose of the Committee will be to obtain necessary public advice and participation in the development of policies and programs relating to nutrition in an effort to identify and meet the nutritional needs of the public.

The reestablishment of the Committee is necessary and in the public interest in connection with duties imposed on the Department of Agriculture by law.

The Committee will be composed of 20 public members appointed by the Secretary for 1-year terms. The members will be selected from the following categories:

—Four members representing consumers;

—Four members representing beneficiaries of food assistance and/or nutrition education programs;

—Four members representing State and local food assistance programs and/or education institutions and agencies;

—Four members representing the agricultural industry, including producers, processors, and retailers; and

—Four scientists in the food and nutrition area.

Persons wishing to comment on the proposed reestablishment of the Committee or desiring additional information concerning it may contact the Coordinator for Human Nutrition Policy, Office of the Secretary, U.S. Department of Agriculture, Room 419-A, Administration Building, Washington, D.C. 20250 by November 24, 1980. All written comments made pursuant to this notice will be available for public inspection at the above office during regular business hours.

Joan S. Wallace,

Assistant Secretary for Administration.

November 3, 1980.

[FR Doc. 80-34741 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-01-M

Performance Review Boards; Membership

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Boards.

DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Riley, Jr., Performance Appraisal Systems Unit, Civil Service Reform Act Implementation Group, Office of Personnel, Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250 (202–447–6905).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314 (c)(1) through (5) requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. These boards shall review and evaluate the initial appraisal of a senior executive's performance; the response, if any, by the senior executive; the review of the initial appraisal by the higher level executive; and recommend the final scale and adjective rating for the performance of the senior executives. These boards will recommend the position coefficient for each SES position and make recommendations concerning probation, retention, rewards, award of rank, position level changes, or removal of individual senior executives. In addition, the Secretary's Performance Review Board will monitor the recommendations made by the program Boards.

This Notice supersedes the Notice published on April 1, 1980, 45 FR 21323.

Dated: November 4, 1980.

Bob Bergland,

Secretary.

The names and membership of the Performance Review Boards are:

I. Secretary's

1. Jim Williams, Deputy Secretary, Chairperson
2. Dale E. Hathaway, Under Secretary, International Affairs and Commodity Programs
3. Alex P. Mercure, Assistant Secretary for Rural Development
4. Carol Tucker Foreman, Assistant Secretary for Food and Consumer Services
5. P. R. Smith, Assistant Secretary for Marketing and Transportation Services
6. Ned D. Bayley, Acting Assistant Secretary for Natural Resources and Environment
7. Joan S. Wallace, Assistant Secretary for Administration
8. Thomas F. McBride, Inspector General
9. Howard W. Hjort, Director of Economics, Policy Analysis and Budget
10. Anson R. Bertrand, Director of Science and Education
11. James C. Webster, Assistant Secretary for Governmental and Public Affairs
12. James H. Starkey, Deputy Under Secretary for International Affairs
13. Sally H. Greenberg, Associate Director, Executive Personnel and Management Development Group, Office of Personnel Management
14. Daniel Marcus, General Counsel
15. Director of Personnel, Executive Secretary

II. Office of the Secretary and Administration

1. Jim Williams, Deputy Secretary, Chairperson
2. Joan S. Wallace, Assistant Secretary for Administration
3. James C. Webster, Assistant Secretary for Governmental and Public Affairs
4. John W. Fossum, Director of Personnel
5. Dean K. Crowther, Director, Office of Operations and Finance
6. James Frazier, Director, Office of Equal Opportunity
7. Daniel Marcus, General Counsel
8. Thomas F. McBride, Inspector General
9. OP Representative, Executive Secretary

III. Economics, Policy Analysis and Budget

1. Susan Sechler, Deputy Director of Economics, Policy Analysis and Budget, Chairperson
2. Kenneth R. Farrell, Administrator, Economics and Statistics Service
3. Stephen B. Dewhurst, Director, Office of Budget, Planning and Evulation
4. J. Dawson Ahalt, Chairperson, World Food and Agricultural Outlook and Situation Board
5. Jerome A. Miles, Deputy Chief, Administration, Forest Service
6. Dean K. Crowther, Director, Office of Operations and Finance
7. Charles A. Bucy, Deputy Director of Personnel
8. Margaret J. Gates, Deputy Inspector General
9. OP Representative, Executive Secretary

IV. Rural Development

1. Alex P. Mercure, Assistant Secretary for Rural Development, Chairperson
2. Gordon Cavanaugh, Administrator, Farmers Home Administration
3. Robert W. Feragen, Administrator, Rural Electrification Administration
4. James O. Lee, Jr., Associate Administrator, Animal and Plant Health Inspection Service
5. John S. Bottum, Assistant Administrator, Rural Development, Science and Education Administration
6. William T. Cherry, Executive Assistant to the Administrator, Agricultural Stabilization and Conservation Service
7. Richard L. Fowler, Associate General Counsel, Community Development and Natural Resources, Office of the General Counsel
8. Clare I. Harris, Deputy Administrator, Agriculture, Rural Development, Family and Consumer Services, Science and Education Administration
9. OP Representative, Executive Secretary

V. Food and Consumer Services

1. Sydney J. Butler, Deputy Assistant Secretary for Food and Consumer Services, Chairperson
2. Donald L. Houston, Administrator, Food Safety and Quality Service
3. Bob Greenstein, Administrator, Food and Nutrition Service
4. John G. Stovall, Deputy Assistant Director, Joint Planning and Evaluation, Science and Education Administration
5. Lawrence Wachs, Deputy Director for Program Review, Office of Budget, Planning and Evaluation
6. William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service
7. Pierre A. Chaloux, Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service
8. David R. Galliart, Deputy Administrator, Program Operations, Federal Grain Inspection Service
9. OP Representative, Executive Secretary

VI. Marketing and Transportation Services

1. Jerry C. Hill, Deputy Assistant Secretary for Marketing and Transportation Services, Chairperson
2. Barbara L. Schlei, Administrator, Agricultural Marketing Service
3. Harry C. Mussman, Administrator, Animal and Plant Health Inspection Service
4. Leland E. Bartelt, Administrator, Federal Grain Inspection Service
5. Randall E. Torgerson, Acting Administrator, Agricultural Cooperative Service
6. Ronald F. Schrader, Director, Office of Transportation
7. J. B. Penn, Deputy Administrator for Economics, Economics and Statistics Service
8. Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Food Safety and Quality Service
9. Luverne L. Gast, Deputy Administrator, Compliance, Food Safety And Quality Service
10. OP Representative, Executive Secretary

VII. International Affairs and Commodity Programs

1. James H. Starkey, Deputy Under Secretary for International Affairs, Chairperson.
2. James Michael Kelly, Associate General Counsel, Legislation, Litigation, Research and Operations, Office of the General Counsel.
3. Ray Fitzgerald, Administrator, Agricultural Stabilization and Conservation Service.
4. Thomas R. Hughes, Administrator, Foreign Agricultural Service.
5. Everette Sharp, Acting Manager, Federal Crop Insurance Corporation.
6. Kelly M. Harrison, General Sales Manager, Foreign Agricultural Service.
7. Quentin M. West, Special Assistant for International Scientific and Technical Cooperation and Director, Office of International Cooperation and Development.
8. Thomas C. Nelson, Deputy Chief, National Forest System, Foreign Service.
9. OP Representative, Executive Secretary.

VIII. Science and Education.

1. Anson R. Bertrand, Director of Science and Education, Chairperson.

2. Keith Shea, Associate Deputy Chief for Research, Forest Service.
3. Thomas N. Shiflet, Director, Ecological Sciences, Soil Conservation Service.
4. Douglas R. Leisz, Associate Chief, Forest Service.
5. Melvin L. Cotner, Director, Natural Resources Economics division, Economics and Statistics Service.
6. David G. Unger, Associate Chief, Soil Conservation Service.
7. Robert E. Buckman, Deputy Chief, Research, Forest Service.
8. Ronello M. Davis, Special Assistant for International Scientific and Technical Cooperation, Office of International Cooperation and Development.
9. OP Representative, Executive Secretary.

IX. Natural Resources and Environment

1. Ned D. Bayley, Deputy Assistant Secretary for Natural Resources and Environment, Chairperson.
2. Weldon Barton, Director, Office of Renewable Resources, Farmers Home Administration.
3. R. Max peterson, Chief, Forest Service.
4. Barry R. Flamm, Director, Office of Environmental Quality.
5. Weldon B. Denny, Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service.
6. Normal A. Berg, Chief, Soil Conservation Service.
7. Ralph J. McCracken, Associate Director, Science and Education.
8. Edward L. Hastey, Associate Director, Bureau of Land Management, Department of Interior.
9. OP Representative, Executive Secretary.

[FR Doc. 80-34858 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 31, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed, Docket No. and Description

10-27-80, 38900—Muse Air Corporation, Post Office Box 1685, Dallas, Texas 75221. Applications of Muse Air Corporation, pursuant to Section 401(b) of the Act and Subpart Q of the Board's Procedural Regulations, requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled air transportation of passengers, property, and mail, as follows: Between the terminal point Atlanta, Georgia; the intermediate points: Austin, Texas, Brownsville, Texas, Chicago, Illinois, Cincinnati, Ohio, Cleveland, Ohio, Corpus Christi, Texas, Dallas-Ft. Worth, Texas, Detroit, Michigan, Harlingen, Texas, Houston, Texas, Indianapolis, Texas, Kansas City, Missouri, Little Rock, Arkansas, Louisville, Kentucky, McAllen, Texas, Memphis, Tennessee, Nashville, Tennessee, New Orleans, Louisiana, Oklahoma City, Oklahoma, Pittsburgh, Pennsylvania, St. Louis, Missouri, San Antonio, Texas, and the terminal point: Tulsa, Oklahoma. Conforming Applications and Answers are due November 24, 1980.

10-29-80, 31937—Eastern Provincial Airways, c/o John J. McLaughlin, Penleton & McLaughlin, 888 Seventeenth Street, NW., Suite 504, Washington, D.C. 20006. Application of Eastern Provincial Airways, pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests renewal of its permit which authorizes "charter flights with respect to persons and their accompanied baggage, and planeload charter flights with respect to property, between any point or points in Canada and any point or points in the United States" (Order 74-12-19). Applicant wishes to amend its permit so as to authorize the operation of Fifth Freedom charters:

1. Charter flights of persons and their accompanying baggage between a point or points in Austria, Belgium, Cyprus, Denmark, Finland, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and any point or points in the United States, limited to charter flights which originate in a named European country.

2. Circle tour charter flights of persons and their accompanying baggage which originate and terminate at the same point or points in Austria, Belgium, Cyprus, Denmark, Finland, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and serve a point or points in the United States and a point or points in any country other than a named European country and the United States.

Answers may be filed by November 28, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-34863 Filed 11-6-80; 8:45 am]

BILLING CODE 6210-01-M

Air International Application; For Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80-10-196 application of Air International under Subpart Q for a certificate of public convenience and necessity for 25 Erie, Pa. markets; Docket 38718.

SUMMARY: The Board is proposing to grant a certificate of public convenience and necessity to Air International, subject to a favorable determination of its fitness, to authorize it to provide service in 25 Erie, Pa. markets listed in its application. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below no later than December 3, 1980, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 38718, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5009.

SUPPLEMENTARY INFORMATION: Objections should be served upon Air International; all certificated carriers;

the mayors of Philadelphia, Pa., Chicago, Ill., South Bend, Ind., Tampa, Fla., Denver, Colo., Atlanta, Ga., Baltimore, Md., Cleveland, Ohio, Detroit, Mich., Washington, D.C., Newark, N.J., Binghamton, N.Y., Johnson City, N.Y., Pittsburgh, Pa., Kansas City, Mo., Allentown, Pa., Bethlehem, Pa., Easton, Pa., Little Rock, Ark., Oklahoma City, Ok., Tulsa, Ok., Memphis, Tenn., Erie, Pa., Toledo, Ohio; the managers of the airports in Philadelphia, Pa., Atlanta, Ga., Baltimore, Md., Cleveland, Ohio, Detroit, Mich., Washington, D.C., Newark, N.J., Pittsburgh, Pa., Ft. Wayne, Ind., Kansas City, Mo., Allentown, Pa., Little Rock, Ark., Oklahoma City, Ok., Toledo, Ohio, Tulsa, Ok., Memphis, Tenn., Erie, Pa.; the managers of Chemung County Airport, Horseheads, N.Y., Akron-Canton Regional Airport, North Canton, Ohio, and the Capital City Airport, New Cumberland, Pa.; Toledo-Lucas County Port Authority; Colorado Department of Highways, Aviation Transportation Section; Georgia Department of Transportation, Bureau of Aeronautics, Illinois Division of Aeronautics; Indiana Aeronautics Commission; Maryland Department of Transportation; Michigan Aeronautics Commission; Florida Department of Transportation, Pennsylvania Department of Transportation; New Jersey Department of Transportation; Arkansas Division of Aeronautics; Oklahoma Aeronautics Commission; Tennessee Department of Transportation; and the Port Authority of New York and New Jersey.

The complete text of Order 80–10–196 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a post card request for Order 80–10–196 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 3, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–34862 Filed 11–6–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket 38866]

Air International Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 17, 1980, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Administrative Law Judge.

Order 80–10–120, served October 23, 1980, defined the issues for this proceeding, and decided that requests for additional evidence should be filed no later than November 3, 1980. Matters to be discussed at the prehearing conference will include evidence requested, future procedural dates, and such other matters as will contribute to the orderly and prompt conduct of this proceeding.

Dated at Washington, D.C., November 3, 1980.

William A. Pope, II,

Administrative Law Judge.

[FR Doc. 80–34890 Filed 11–6–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket 38449]

Air Micronesia, Inc., and Continental Air Lines, Inc.; Complaint Against The Japan Civil Aeronautics Bureau and Japan Air Lines Co., Ltd., Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 31st day of October, 1980.

Complaint of Air Micronesia, Inc. and Continental Air Lines, Inc. against the Japan Civil Aeronautics Bureau Japan Air Lines Co., Ltd. under the Federal Aviation Act of 1958, as amended, and section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974, as amended.

On July 9, 1980, Air Micronesia, Inc., and Continental Air Lines, Inc. filed a complaint with the Board against the Japan Civil Aeronautics Bureau (JCAB) and Japan Air Lines Co., Ltd. (JAL). The complaint stated that the JCAB had imposed unjustifiable and unreasonable restrictions on the access of Air Micronesia to Japan, and had unjustly discriminated against Air Micronesia and in favor of its flag carrier JAL, and that the actions of the JCAB and JAL violated the Federal Aviation Act (Act) and the International Air Transportation Fair Competitive Practices Act of 1974 [IATFCPA].

The Board issued Order 80–7–144 on July 23, 1980, inviting interested persons to comment on the Air Micronesia complaint. We received comments on the complaint from JAL, the U.S. Department of Transportation, Northwest Airlines, Inc., Pan American World Airways, Inc., the Government of the Northern Mariana Islands, the Government of the Federated States of Micronesia, and the Palau Commission on Status and Transition. After careful consideration of the complaint, the comments and replies, and all other evidence of record, and after consulting with the Departments of State and Transportation, we issued Order 80–9–25 on September 5, 1930, in which we set forth our findings and conclusions on Air Micronesia's complaint. In that order we determined that Japan had improperly denied Air Micronesia's request for access to Osaka and its request for increased frequencies in the Saipan-Tokyo market. We further found that these denials, made over the objections of the United States, have had a substantial adverse impact on Air Micronesia and warranted remedial action under the Act and the IATFCPA, as amended. We nevertheless decided to defer the question of specific sanctions pending the outcome of informal civil aviation consultations scheduled for September 15, 1980, in order to give the United States and Japan the opportunity to resolve this problem through negotiations.

Representatives of the United States and Japan met in Tokyo in September 1980, to discuss the issues raised in the Air Micronesia complaint and other aviation issues. These negotiations led to the Memorandum of Consultations (MOC) of September 20, 1980 in which Japan agreed to promptly authorize Air Micronesia to provide an additional seven roundtrip flights weekly by B–727 aircraft between Tokyo and Saipan, and to approve an additional increase of four roundtrip Tokyo-Saipan B–727 flights weekly on October 1, 1981 or at a later date chosen by Air Micronesia. The MOC also describes the circumstances under which Japan will permit Air Micronesia to operate seven roundtrip flights weekly by B–727 aircraft between Saipan and Nagoya: Upon notification by the Government of Japan that Air Micronesia may operate Saipan-Nagoya service, the Government of the United States will promptly authorize a Japanese designated airline to commence two roundtrip scheduled cargo flights per week, between Tokyo and Chicago. The MOC further records an understanding that Air Micronesia may operate fewer than the maximum number of flights allowed. In addition, the MOC includes procedures for future additional increases in Guam/Saipan-Japan service, in which approval of additional increases by one country triggers approval of equal increases by the other country.

Following the signing of the MOC, Air Micronesia applied for additional slots at Narita Airport to serve Tokyo from Saipan. Air Micronesia applied for three additional slots weekly to be available December 1, 1980 and for four additional slots for January 1, 1981. Japan has granted these Air Micronesia

applications. Air Micronesia has also filed the necessary schedule changes with the JCAB.

The signing of the MOC, and its subsequent implementation by Japan and the United States, have significantly changed the situation which provided the basis for our determination in Order 80-9-25. Apparently, the circumstances which gave rise to this proceeding have been resolved satisfactorily through negotiations. Japan has agreed to remedy Air Micronesia's problems by increasing the carrier's frequencies between Tokyo and Saipan and by providing, under specified conditions, for Air Micronesia's access to Nagoya. Therefore, we believe that no further action is warranted on our part and that the complaint should be dismissed. The U.S. Departments of State and Transportation concur in this decision.

In recent correspondence, Air Micronesia has expressed a concern that Japan might not abide by the terms of the MOC, thus injuring Air Micronesia's competitive position in the Japanese markets. However, we have no basis for assuming that Japan will not honor its commitments and grant Air Micronesia all of the authority that it is entitled to under the Agreement and the MOC. Furthermore, we have ample power to take remedial action in the event that Japan does not satisfy both the letter and the spirit of the MOC and the Agreement. We will therefore dismiss the complaint without prejudice to refiling should circumstances warrant.

Accordingly,

1. We dismiss without prejudice the complaint of Air Micronesia, Inc. and Continental Air Lines, Inc., against the Japan Civil Aeronautics Bureau and Japan Air Lines Co., Ltd.; and

2. We are serving this order upon Air Micronesia, Inc., Continental Air Lines, Inc., Japan Air Lines Co., Ltd., the Ambassador of Japan in Washington, D.C., the representative to the United States of the Commonwealth of the Northern Mariana Islands in Washington, D.C., the Micronesia Liaison Office of the Federated States of Micronesia in Washington, D.C., the President of the Marshall Islands, the Speaker of the Palau Legislature, the Governors of Guam, Kusai, Ponape, Truk, and Yap, and the Departments of the Interior, State and Transportation.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

All Members concurred except Member Smith who did not participate.

[FR Doc. 80-34889 Filed 11-6-80; 8:45 am]

BILLING CODE 6320-01-M

Baltimore Airways, Inc.; Proceeding To Revoke All-Cargo Certificate

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80-11-12. Order To Show Cause, Docket 31835.

SUMMARY: The Board is proposing to revoke the All-Cargo Air Service Certificate of Baltimore Airways, Inc. of Glen Burnie, Maryland. This action is being proposed because the carrier apparently no longer exists.

DATES: Objections: All interested persons having objections to the Board issuing an order revoking the All-Cargo Air Service Certificate of Baltimore Airways, Inc. shall file no later than December 5, 1980, a statement of objection together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 31835, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: John McCamant, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5082.

The complete text of Order 80-11-12 is available from the Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Person outside the metropolitan area may send a postcard request for Order 80-11-12 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 3, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-34861 Filed 11-6-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37554]

Establishment of the Standard Foreign Fare Level; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 3rd day of November, 1980.

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base [1] periodically by percentage changes in actual operating costs per available seat-mile (ASM). The SFFL thus computed becomes the benchmark for measuring the statutory no-suspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in section 1002(d) of the Federal Aviation Act of 1958 (the Act). Order 80-2-69 established the first interim SFFL and subsequent Order 80-8-178 established the currently effective two-month SFFL applicable through November 30, 1980.

In establishing the SFFL for the two-month period commencing December 1, 1980, we have projected non-fuel costs based on the year ended June 30, 1980, and we have adjusted fuel prices to reflect the experienced monthly rate of fuel cost escalation.

Our calculations measure inflation from October 1, 1979, to January 1, 1981. The midpoint of the December-January projection period, for the three ratemaking entities: Atlantic, Latin America, and Pacific. The four-month average of June-September fuel cost increases produces the following rates of escalation: .81 cents per gallon in the Atlantic; (.02) cents per gallon in Latin America; and 1.10 cents per gallon in the Pacific. The resulting projections are fuel prices of 111.67 cents in the Atlantic, 94.33 cents in Latin America, and 110.37 cents in the Pacific at January 1, 1981.

Consequently, based on our calculations, we find the projected cost adjustment factor to be 16.83 percent in the Atlantic, 22.09 percent in Latin America, and 14.90 percent in the Pacific, over the October 1, 1979, level (See Appendix A).[2] This results in negligible changes since the rate of escalation in the price of fuel went down during the latest four months.

We calculated both a two-month and a four-month SFFL effective October 1, 1980 in Order 80-8-178. The four-month period continues through January 31, 1981, and carriers whose filings utilized the higher four-month figures may not rely upon the increases permitted by this Order. The next four-month SFFL, along with the usual two-month projection, will be effective February 1, 1981.

Accordingly, pursuant to sections 102, 204(a), 403, 801 and 1002(j) of the Federal Aviation Act of 1958, as amended:

1. Effective December 1, 1980, fares may be increased by the following adjustment factors over the October 1, 1979, level:

[1] As defined in section 1002(j)(7) of the Federal Aviation Act of 1958.

[2] Appendix A is on file with the original at the Office of the Federal Register.

Atlantic, 1.1683
Latin America, 1.2209
Pacific, 1.1490

2. We shall serve a copy of this order upon all U.S. certificated air carriers and all foreign air carriers; and

3. We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

All Members concurred except Member Smith who did not participate.

[FR Doc. 80-34892 Filed 11-6-80; 8:45 am]

BILLING CODE 6320-01-M

[Dockets 33363, 38666, 38667]

Former Large Irregular Air Service Investigation (Phase III); Application of Imperial Enterprises Corp., d.b.a. Imperial International Airlines; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled proceeding is assigned to be held on December 11, 1980, at 10 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C. November 3, 1980.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 80-34891 Filed 11-6-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38819]

Trans World Airlines, Inc.; Civil Penalties for Violations of Part 250; Assignment of Proceeding

This proceeding is hereby assigned to Chief Administrative Law Judge Joseph J. Saunders. Future communications should be addressed to him.

Dated at Washington, D.C., October 31, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-34860 Filed 11-6-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

Approval of Federal Information Processing Standard Optical Character Recognition (OCR) Inks

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On July 22, 1980, notice was published in the **Federal Register** (45 FR 48935-48936) that a standard for Optical Character Recognition (OCR) Inks was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 85. The provisions of the standard are effective on the date of publication of this notice in the **Federal Register.**

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

The objective of this standard is to define the spectral band for read inks and to provide spectrophotometric curves for red and blue nonread inks that are used by optical readers in order to facilitate the interchange of information among compatible OCR equipment.

The approved FIPS contains two portions: (1) an announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. This FIPS represents the adoption of American National Standard X3.86M-1980, Optical Character Recognition (OCR) Inks.

By arrangement with the American National Standards Institute interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. Thomas Bagg, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3723.

Dated: November 4, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-34754 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-13-M

Federal Information Processing Standards Publication

Announcing the Standard for Optical Character Recognition (OCR) Inks

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Optical Character Recognition (OCR) Inks.

Category of Standard. Hardware Standard, Media.

Explanation. This standard defines the special band for read inks and provides spectrophotometric curves for red and blue nonread inks.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Techology).

Cross Index. American National Standard for Optical Character Recognition (OCR) Inks (ANSI X3.86M-1980).

Related Documents. a. Federal Information Processing Standards Publication (FIPS PUB) 32, Optical Character Recognition Character Sets.

b. Federal Information Processing Standards Publication (FIPS PUB) 40, Guideline for Optical Character Recognition Forms.

c. American National Standard for Character Set for Optical Character Recognition (OCR-A), ANSI BSR X3.17-1980.

d. American National Standard for Character Set for Optical Character Recognition (OCR-B), ANSI X3.49-1975.

Applicability. This standard is applicable to the acquisition and use of inks and preprinted forms by Federal agencies that will be read by optical character recognition techniques where the interchange of machine readable information between different systems may be required.

Users of existing materials are encouraged to employ this standard. Materials not in accordance with this standard should be evaluated periodically by Federal agencies because information to be read by optical character recognition techniques which has inadequate image quality causes misreading (errors).

Specifications. This standard adopts in whole the American National Standard for Optical Character Recognition (OCR) Inks (ANSI X3.86M-1980).

Qualifications. None.

Implementation Schedule. All applicable inks and preprinted forms ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below.

Exceptions to this standard are made in the following cases: a. For materials in stock or on order prior to the effective date of this standard.

b. Where procurement actions are in the solicitation phase (i.e., Requests for Proposals or Invitations for Bids have been issued) prior to the effective date of this standard.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment unless it has already obtained such approval.

Where To Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute). When ordering, refer to Federal Information Processing Standards Publication 85 (FIPS-PUB 85), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-34754 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Fishery Conservation and Management Act; Operations Handbook

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

ACTION: Notice of availability of Fishery Conservation and Management Act (FCMA) Operations Handbook.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA/National Marine Fisheries Service (NMFS)) announces the availability of a handbook to serve as a central reference on implementing the FCMA. It includes information on: a. The legislative and legal background of the Act; b. guidelines for operating standards for the eight Fishery Management Councils; c. foreign fishing oversight responsibilities; d. fishery management plan (FMP) development; and e. the promulgation and enforcement of fishery management regulations.

This notice informs the general public of its opportunity to obtain the handbook and comment on it. All comments received will be considered by NMFS in annual revisions of this handbook.

ADDRESS: Send comments to: National Marine Fisheries Service, Office of the Executive Director, 3300 Whitehaven Street, NW., Washington, D.C. 20235

FOR FURTHER INFORMATION CONTACT: Mr. Howard L. Hochman, National Marine Fisheries Service, Office of the Executive Director, Budget Operations Staff, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-7444.

SUPPLEMENTARY INFORMATION: Copies of the handbook are available for review at the places listed below:

National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-7444

Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, (617) 281-3600

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893-3141

Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, North, Seattle, Washington 98109, (206) 442-7575

Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2575

Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586-7221

New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massacuhsetts 01906

Mid Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901, (302) 674-2331

South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407, (803) 571-4366

Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, (809) 753-6910

Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, (813) 228-2815

Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201, (503) 221-6352

North Pacific Fishery Management Council, Suite 32, 333 West Fourth Avenue, Anchorage, Alaska 99510, (907) 274-4563

Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Streets, Honolulu, Hawaii 96813, (808) 523-1368

Copies of the handbook may be obtained by writing to the place indicated in the "Address" section of this notice.

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

Signed in Washington, D.C., this 4th day of November 1980.

Robert K. Crowell,

Deputy Executive Director National Marine Fisheries Service

[FR Doc. 80-34894 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council's and Pacific Fishery Management Council's Inter-Council Salmon Coordination Subcommittees; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council and the Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), have established Inter-Council Salmon Coordinating Subcommittees, which will meet to discuss the coordination and implementation of salmon management objectives with respect to fishery management plan development.

DATES: The meeting, which is open to the public, will convene on Monday, November 24, 1980, at approximately 1 p.m., and will adjourn at approximately 5 p.m.

ADDRESS: The meeting will take place at the Oregon Department of Fish and Wildlife, Main Floor—Commission Room, 524 SW Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:
North Pacific Fishery Management Council, 333 W. Fourth Avenue, Suite 32, P.O. Box 3136 DT, Anchorage, Alaska 96813, Telephone: (907) 274–4562;

or

Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: November 4, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-34895 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Public Telecommunications Facilities Program

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

ACTION: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications for planning and construction grants for public telecommunications facilities are invited under the Public Telecommunications Facilities Program (PTFP) of NTIA.

AUTHORITY: The Public Telecommunications Financing Act of 1978 (Pub. L. No. 95–567, 92 Stat. 2405, 47 U.S.C. § 390, *et seq.*) [the Act].

For further information, contact: John Cameron, Director, Public Telecommunications Facilities Division, 608 13th Street, N.W., Washington, D.C. 20004. Telephone: (202) 724–3307.

The purpose of this program, as stated in Section 390 of the Act, is:

> * * * [T]o assist, through matching grants, in the planning and construction of, public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, or operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

Closing date for filing of applications: January 19, 1981.

Applications delivered by mail: Applications delivered by mail must be postmarked no later than midnight, January 19, 1981, and be addressed to: Public Telecommunications Facilities Division, NTIA/DOC, 608 13th Street, N.W., Washington, D.C. 20004.

As a proof of mailing, NTIA prefers a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service.

Note.—Not all U.S. Postal Service offices uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method. Applicants are encouraged to use registered or at least first class mail.

Applicants whose applications are postmarked after midnight, January 19, 1981, will be notified that their applications will not be considered in the current competition.

Applications delivered by hand: Applications may be delivered by hand to the above address between 8:00 a.m. and 4:30 p.m. (Eastern Standard time) daily, except Saturdays, Sundays and Federal holidays, through January 19, 1981.

Application forms and regulations: Approval for a revised application form has not been obtained as yet, and would not be forthcoming soon enough to be useful in the next round of grants. In order to minimize the prospect of delayed grants or insufficient time to prepare applications for the January 19 deadline, the PTFP will continue to use, the existing form (Standard Form No. 424) for all 1981 grant requests. That form is presently being reprinted and will be available shortly. All persons and organizations on our mailing list will receive a copy of the application form shortly after the printing is completed. All persons not on that list or lacking one or more of the three documents relating to the PTFP may obtain a copy of the application form, the *Public Telecommunications Financing Act of 1978* and/or the *PTFP rules and regulations* by contacting: John Cameron, Director, Public Telecommunications Facilities Division, NTIA/DOC, 608 13th Street, N.W., Washington, D.C. 20004. Telephone: (202) 724–3307. NTIA anticipates that grant awards will be announced by the end of June 1981.

Special Consideration: Applicants are advised that under Section 392(f) of the Public Telecommunications Financing Act of 1978, NTIA is required to give special consideration to applications that foster the role of minorities and women in public telecommunications. A policy statement on Section 392(f) was published in the **Federal Register** on June 7, 1979, 44 FR 33,032. A detailed description of how special consideration is awarded was published in the **Federal Register** on January 9, 1980 (45 FR 1988, 1991). Copies may be obtained by contacting the PTFP at the above address.

Priorities of the Public Telecommunications Facilities Program

Pursuant to Section 392(e) of the Act, the PTFP adopted certain priorities to govern the FY 1980 funding round. *See* 44 FR 1991 (January 9, 1980). These same priorities will continue to govern the consideration of grant applications filed on or before January 19, 1981, and are set out below.

Priority I—Provision of Telecommunications Facilities for First Service to a Georgraphic Area

Within this category, we establish two subcategories:

A. *Projects to establish telecommunications facilities which include local origination capacity.*—This category includes the activation of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects to extend existing telecommunications delivery systems.*—This category includes projects such as increase in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters. No local origination capacity is required.

Priority II—Activation or Expansion of Telecommunications Facilities for Significantly Different Additional Service

This priority includes the planning and construction of facilities to provide additional complementary program services for which a clear and substantial community need can be demonstrated. Eligible projects include service to identifiable ethnic or linguistic minority audiences; service to the blind or deaf; instructional service; electronic text; or significantly different alternative service to a general audience.

Priority III—Improvement of Existing Broadcast Station Facilities

Two subcategories are listed under this priority:

A. *Projects to provide first local origination capacity for existing broadcast stations.*—This category includes projects to bring basic local program service to repeater transmitters and other licensed broadcast facilities now bringing in distant signals. Origination equipment may be fixed or mobile, but must be locally based.

B. *Projects to upgrade existing origination or delivery capacity to current industry performance standards.*—This category includes conversions to color, stereo, etc.; improvements in signal quality; and significant improvements in equipment flexibility or reliability.

Priority IV—Augmentation of Existing Broadcast Station Facilities

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.*—An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.*—This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases

In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose applications, by virtue of their unique or innovative nature, would further the overall objectives of the Act.

Deferred Applications: Applications accepted for filing in prior fiscal years but which were deferred and not funded may be reactivated for consideration in the FY 1981 funding round. A deferred application that retains substantially the same purpose may be reactivated by notifying NTIA, at the above address, in writing, that reactivation is requested. Notice must be given, either by mail or by hand by the January 19, 1981 closing date as outlined above.

The notice to reactivate must include updated pages 4 and 5 of the application, and an undated narrative statement. The applicant must also update: (1) the availability of operating funds and any necessary non-Federal match; (2) the list of current eligible project costs; (3) the inventory of public telecommunications facilities owned by the applicant; (4) the five-year plan of the applicant's projected facilities needs and associated costs; (5) the evaluation of alternate technologies available within the applicant's service area; and (6) information detailing the basis for any request for special considerations under Section 392(f) of the Act. *See* 15 CFR 2301.7 of the PTFP Rules.

It is not necessary that local newspaper notice be published in the area served or proposed to be served under 15 CFR 2301.11. *See also* 45 FR 35,970, 36,027 (May 28, 1980).

Channel 6/FM interference: On October 3, 1980, NTIA rejected a petition for rulemaking filed by the Association of Maximum Service Telecasters. The petition sought changes in PTFP rules designed to reduce noncommercial FM interference to television channel 6 service. (A copy of the letter rejecting the petition is printed in Appendix A. *See* letter from Gregg P. Skall, Chief Counsel, NTIA, to Paul J. Berman, Esq.)

In large part, NTIA rejected the petition on the grounds that under the PTFP Rules, no grant project requiring an authorization from the Federal Communications Commission will be accepted for filing unless the applicant has filed an application with the FCC and the Commission has accepted that application for a filing. Moreover, no PTFP grant will be made unless any necessary FCC authorization has been issued. The rules also require that the staff terminate any grant made by the agency, if the Commission revokes the license or denies the application on which the PTFP grant was based. *See*, 15 CFR 2301.8(f), 13(b), and .32(a)(3).

NTIA also noted that the FCC has the sole responsibility and authority to evaluate the technical quality of the construction proposed by the FM applicant. It is inappropriate, therefore, for NTIA to review such technical licensing considerations. *Cf. Northeastern Educational Television of Ohio, Inc.*, 47 R.R.2d 1207, 1209 (1980). Under 15 CFR 2301.13(b) and .32(a)(3) of the PTFP Rules, we defer to the FCC for these judgments. Thus, in the absence of an official FCC policy on the channel 6/FM interference problem, it would be improper for NTIA to refuse to award grants on the basis of NTIA views on the acceptable level of interference once the entity has received its FCC authorization.

NTIA is, as we said in footnote 5 of the October 3rd letter, sympathetic to the potential interference problem between channel 6 television and noncommerical FM stations. Therefore, we have urged the FCC to expedite action on this problem. *See* Response of NTIA to Request for Expedited Action, filed in Docket No. 20735 on August 6, 1980. Additionally, NTIA said in the October 3rd letter that "in situations where the FM and the channel 6 stations serve the same areas, we * * * expect as a matter of course that that two parties have discussed potential [interference] problems and solutions such as collocation * * *. [We] wish to emphasize here, however, that our goal is to foster dialogue and we will *not* require collocation." [Emphasis Original.]

Appendix A:

As we did with the January 9, 1980, document adopting the FY 1980 funding priorities, *supra*, we are publishing in Appendix A a number of legal memoranda, opinions and decisions that relate to PTFP. (The attachments to all of the correspondence that follows has been deleted. To obtain copies of any of the deleted materials, contact the PTFP at the address above).

(Catalog of Federal Domestic Assistance Number 11.550.)

Henry Geller,

Assistant Secretary for Communications and Information.

U.S. Department of Commerce
National Telecommunications and Information Administration,
Washington, D.C., May 30, 1980.

To: John Cameron.
From: Gregg Skall/s/.

Subject: Use of PTFP Granted Funds for Experimentation.

You have asked us to determine whether approximately $3,500 of any FY 1979 PTFP construction grant awarded to Southern Oregon State College, licensee of non-commercial FM radio station KSOR, may be used to pay for parts, and the salary of a station employee during the time he is employed to design a more efficient and reliable radio translator for use in the KSOR system. Having reviewed the Act and the PTFP regulations, I find that no portion of the PTFP grant may be used to pay the salary of any personnel employed by KSOR.*

The stated purpose of the KSOR application was to construct 18 translators that would make public radio programming available to presently unserved areas in California and Oregon—and it was for this purpose that a construction grant was awarded. However, in its letter of March 13, 1980, to Mary Dinota of the PTFP, KSOR stated, in part, that it desired to use $3,000 of its grant to pay a portion of the salary of its technical director, John Patton, for the four to six-month period during which he would devote approximately 25 percent of his time to the research and of development of a translator that meets KSOR's unique specifications.

KSOR is an operating public broadcasting station and, therefore, is an "existing public telecommunications entity" (PTE) under Section 397(l) of the Public Telecommunications Financing Act of 1978. (Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. §§ 390, *et seq.*). As such, KSOR is eligible for an expansion grant under Section 393(b)(2) of the Act and may, in part, use a portion of its PTFP grant to pay "preoperational expenses" associated with the expansion project prior to the activation of the expanded facilities. By definition, however, such preoperational expenses "shall not include any portion of the salaries of any personnel employed by an operating" PTE. Section 397(10) of the Act. *See also* Section 2301.35(b)(2) of the PTFP Rules. Therefore, Mr. Patton's salary is, by definition, an ineligible expense under both the Act and the PTFP Rules. In addition, the proposed use of the PTFP grant funds to conduct research to develop a more reliable and efficient translator is not consistent with the specific purpose for which the grant was made—*i.e.*, the construction of 18 translators to bring programming to presently unserved areas in California and Oregon.

Development of a more efficient and reliable translator is a worthwhile project. Perhaps KSOR could seek a grant from the Office of Telecommunications Applications. Prior to such a grant, however, it will be necessary to resolve the question of patent rights in any resulting improvement. In this regard, the Senate very recently passed and sent to the House, a bill on patent rights under *research* grants. We are obtaining a copy of that bill to see how it would affect PTFP grants in the event that it becomes law.

*Mary Dinota has advised us that the insufficiency of translators currently on the market was discovered by KSOR after its grant had been awarded.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C., May 28, 1980.

To: John Cameron.
From: Gregg P. Skall.
Subject: Excess Grants.

You have asked whether the Public Telecommunications Facilities Program (PTFP) may allow grant recipients to retain excess grant awards and to purchase additional eligible equipment with those funds rather than requiring the reduction of the grant and the return of any excess funds as presently provided in Section 2301.22(d) of the PTFP rules. The purpose of allowing recipients to retain such funds would be to encourage them to economize by rigorous procurement and bulk purchases. All additional equipment purchased with these excess funds would then become part of the final grant and subject to the ten year federal interest. Having reviewed the Public Telecommunications Financing Act of 1978 (the Act),[1] the rules of the PTFP,[2] and the Office of Management and Budget (OMB) Circulars A-110 and A-102, I find that, although there is no explicit directive requiring the reduction of the amount of the grants, the Act and Circulars A-110 and A-102 implicitly demand that any excess awards be recovered from grant recipients. However, nothing in the Act, the rules, or the OMB Circulars prohibits the PTFP from altering its grants to include equipment not initially within the grants' specific terms.

As stated above, there is no specific statutory directive contained in the Act that requires recipients to return excess grant funds to the Federal Government. Nevertheless, the clear intention of the Act is to encourage efficiency and economy on the part of the grantees and the agency as a whole. Section 393(c) of the Act provides in part that: "In choosing among applicants for grants, the Secretary shall compare the advantages of alternate technologies on the basis of costs and benefits." While this language specifically relates to the use of alternate technologies, the underlying theory is the promotion of cost-efficient technologies—*i.e.*, technologies that would serve the most people for the least cost to the program. Combining this language with the requirement of Section 392(a)(6) that each applicant give adequate assurance that it will "make the most efficient use of the grant," it is clear that Congress intended for the Secretary to make efficient use of the funds for this program.

Toward this end, Section 2301.22(d) of the PTFP rules requires that: "If the actual costs incurred in completing the project are less than the estimated costs which constitute the basis for the Administrator's determination of the Federal grant award, the amount of the final grant shall be the amount of the actual total project cost . . . ."* In addition, Attachment K of Circular A-110 provides that: "The recipient shall immediately refund any balance of unobligated (unencumbered) cash that the Federal sponsoring agency has advanced or paid and that is not authorized to be retained by the recipient for use in other grants or other agreements."[3] Thus, while we could delete or amend Section 2301.22(d) of the rules, Circular A-110 would still require recipients to return unobligated funds, unless the agency has authorized the grantee to retain them for use in "other grants or agreements". (By "other grants or agreements", the circulars refer to concurrently existing grants or cooperative agreements between the grantor agency and the grantee.) For example, if the PTFP makes a planning grant to an organization that later applies for and receives a construction grant before the planning grant is closed out, the PTFP may authorize the grantee to retain any funds that the PTFP has already paid to the grantee for use in the construction grant. In that situation the funds would be advance payments on the subsequent (construction) grant and would redcuce the initial (planning) grant to the amount of the actual costs.[4]

The PTFP may still accomplish its desired goal of allowing recipients to use excess grant funds however, by altering its grants to include any additional equipment prior to closing out the grants. In making any revisions to a grant, however, it is necessary for the grantees and the agency to follow the provisions of Attachment J of Circular A-110 and Attachment K of Circular A-102. Copies of those attachments are enclosed and provide in part that certain types of revisions require advanced approval from the federal agency while other types of revisions do not. Additionally, they provide that the Federal Agency must require its grantees to "promptly notify [the agency] whenever the amount of Federally authorized funds is expected to exceed the needs of the recipient by more than $5,000 or five percent of the Federal award, whichever is greater."[5]

[1] Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. § 390 (1978).

[2] 15 C.F.R. Part 2301 (1975).

* For the purposes of the PTFP, the amount of the final grant is the amount of the actual total costs less any required matching funds.

[3] Attachment K at ¶3. *See also* Attachment L to OMB Circular A-102.

[4] I have confirmed this opinion with George Northway of the Office of Management and Budget.

[5] OMB Circular A-110, Attachment J at ¶9.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C., June 10, 1980.

To: John Cameron, Director.
From: Gregg Skall Chief Counsel.
Subject: Eligibility of Nonprofit Corporations for Grants Under the PTFP.

We have now completed eligibility determinations for two rounds of applications, the issuance of several opinion letters and the first decision of the Grant Appeals Board of the Public Telecommunications Facilities Program (PTFP). I feel it would be helpful to you and your staff for the Office of Chief Counsel to outline eligibility standards for nonprofit corporations[1] for grants under the Public

[1] For convenience, we are using the term "nonprofit corporation[s]" to mean a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes." 47 U.S.C. § 392(a)(1)(D). The term does *not* include corporations that qualify as "public telecommunications entities," *i.e.*, a public broadcast station or a noncommercial

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Telecommunications Financing Act of 1978, 47 U.S.C. §§ 390 *et seq.* (Act). Simply stated, it is our view that nonprofit corporations (*i.e.*, entities that are organized primarily for educational and cultural purposes), but which fail to qualify under the Act as "public" or "noncommercial" telecommunications entities, are only eligible for PTFP grants, that would provide "new telecommunications facilities to extend service to areas currently not receiving public telecommunications services." Section 393(b)(1) of the Act.

Section 392(a)(1) of the Act establishes five categories of entities that are eligible for grants.[2] Under Section 393(b) of the Act, however, the Secretary is directed to base determinations of whether to fund particular applications on criteria designed to achieve—

(1) the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) the expansion of the service areas of *existing public telecommunications entities;*

(3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women; and

(4) the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services. (Emphasis added)

The provisions of subsections (1), (2) and (4) of Section 393(b) have been interpreted by my office and the PTFP staff as establishing priorities *and restrictions* on the eligibility of various types of entities for grants under the PTFP. For the purposes of this memorandum, we will examine the effect of only subsections (1) and (2) of Section 393(b). The first priority of the Act, found in Section 393(b)(1), is the provision of public telecommunications services to areas that currently do not receive these services. Reflecting this goal is the fact that the broadesst scope of applicants are eligible to apply for a grant to extend service through activation of a new facility. Thus, any of the organizations described in Section 392(a)(1) may apply for and receive funds to "extend service to" areas currently not receiving public telecommunications services. For such a grant, a nonprofit entity must be "primarily organized for educational or cultural purposes."[3] This a broader scope than that required for a non-commercial telecommunications entity which must be created "primarily for the purpose of disseminating public telecommunications services."[4] To determine whether a non-profit, non-governmental entity is organized "primarily for educational or cultural purposes," its articles or incorporation (or other organic charter) must be examined. Ordinarily, the primary purpose for which an entity is organized will be readily apparent in its articles. We have interpreted "primary purpose" liberally. Therefore, as long as *one* of the entity's enumerated purposes is of an *educational* or *cultural nature*, it should be considered a nonprofit entity under Section 392(a)(1)(D) and eligible for grants to "extend" public telecommunications services to presently unserved areas.[5]

The second priority, established in Section 393(b)(2), is "the expansion of the service areas of existing public telecommunications entities." To achieve this goal, monies can only be granted to "existing public telecommunications entities." Consequently, for an existing entity to obtain funds to expand its service area, it must not only be "nonprofit," as defined in Section 397(8), but it must also be a "public telecommunications entity," as defined in Section 397(12). For all entities other than public broadcast stations, this means that they must be "primarily organized for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station . . . ."[6] A nonprofit foundation that does not include as a primary purpose in its articles or charter the dissemination of noncommercial educational and cultural programs to the public may not, therefore, be awarded a grant to "expand the service area of an existing public telecommunications entity."

To some extent, the application of this distinction between nonprofit foundations and noncommercial or public telecommunications entities may lead to anomalous results—for instance, a nonprofit foundation may obtain a grant to establish a first service in an area, but in later years it would be ineligible to obtain a grant to expand its service area. It may be that Congress did not consider the possible inconsistencies arising from this language. Moreover, since they actually provide public telecommunications services, we could recognize nonprofit organizations that disseminate programming as public telecommunication entities as a matter of fact. In any event, the PTFP can easily resolve any anomalies by requesting the nonprofit organization to amend its articles or charter to include the dissemination of noncommercial educational and cultural programs as one of its primary purposes. Such an amendment would merely reflect that with the activation of its first service facility, it has, in fact, become a public telecommunications entity. Nevertheless, it probably would be advisable for NTIA to propose a clarifying amendment to Section 393(b)(2) when we submit reauthorizing legislation next year.

Once an organization has met the test of eligibility under Section 393(b) of the Act, the applicant must also assure that it is authorized to engage in the proposed activity—*i.e.*, that is has the organic authority "to plan, construct and operate the public telecommunications facility for which funds are requested * * * ." Section 2301.6(a) of the PTFP Rules. As indicated earlier, problems with the scope of an organization's authority will generally arise only in the context of a nonprofit foundation, corporation, or association that does not qualify as a noncommercial or public telecommunications entity. We suggest that in reviewing organizations' articles of incorporation, the staff should look for language in the purposes section that states that: "The [corporation, foundation, association, etc.] is authorized to operate, a public telecommunications [*e.g.*, cable, SCA, radio or television broadcasting or other] facility." If this or a similar statement is not contained in the articles, the organization likely would be exceeding its authority in applying for a PTFP grant.

As indicated earlier, an organization's initial failure to qualify under Section 393(b)(2) as a public or noncommercial telecommunications entity, or lack of authority to engage in the functions for which a grant is sought can be easily remedied by an amendment which adds the necessary language. Please contact either Robert Hunter or Ken Salomon of my office if you have any questions.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C., June 30, 1980.

RE: PTFP File No. 1138–T, American Indian Satellite Project.

Arnold P. Lutzker, Esquire,
Dow, Lohnes & Albertson,
1225 Connecticut Avenue., N.W.,
Washington, D.C.

Dear Mr. Lutzker: The Wiconi Project of the South Dakota United Indian Association (Wiconi), through you, has petitioned the National Telecommunications and Information Administration (NTIA) for extraordinary relief. Wiconi requests that it be substitued as the sponsoring organization for a FY 1980 grant application that, until March 13, 1980, was pending before the Public Telecommunications Facilities Program (PTFP). That application, submitted by First American's Commission for Telecommunications (FACT), sought funds for planning the American Indian Satellite Project (Project). We have considered your petition and supporting material, together with FACT's opposition and other information on the record, and have concluded that the petition must be denied.

By way of brief background, on January 9, 1980, FACT reactivated for the FY 1980 funding round, its deferred FY 1979 PTFP planning grant application. However, in a March 13, 1980, letter to the PTFP, Lee Piper, Chairperson of FACT's board of directors, asked that the application by withdrawn from consideration "for this funding year"

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telecommunications entity—which disseminates programming by means other than a primary TV or radio station. 47 U.S.C. § 397(7).

[2] The eligible categories are:

(A) a public broadcast station;

(B) a noncommercial telecommunications entity;

(C) a system of public telecommunications entities;

(D) a nonprofit foundation, corporation, institution or association organized primarily for educational or cultural purposes; or

(E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State.

Each of these categories is defined in 47 U.S.C. §§ 397(6), (7), (17), (8) and (16), respectively.

[3] *See* Section 392(a)(1)(D). The entity must, nevertheless, be authorized by its articles of incorporation to carry out the functions it desires to accomplish with PTFP funds.

[4] *See* Section 397(7) of the Act.

[5] *See* Office of Chief Counsel Opinion Letter to Molly Richardson, dated December 31, 1979.

[6] Section 397(7)(b) of the Act.

because the board felt that "the proposal as submitted, is inadequate. . . . It will be better to regroup and do a more thorough job next time around." (In our view, FACT was asking that consideration of its application be *deferred* for one year. Section 2301.7 (a) and (b) of the PTFP Rules—FACT's application had been accepted for filing during the FY 1979 funding cycle. 44 FR 46,712, 46,720 and (published August 8, 1979). The language of the March 13th letter clearly shows that FACT is not withdrawing its interest in proceeding with the Project. Indeed, FACT explicitly states that it will amend its application and resubmit it next year).

In light of FACT's letter and the importance of the Project to the American Indian people, Wiconi, in a March 21, 1980 letter, asked to be substituted as the Project's sponsoring organization so that the application could remain in contention for a grant this year.

Based on the two letters, the Office of Chief Counsel tentatively concluded that NTIA could not grant the substitution in the absence of either FACT's endorsement or a showing by Wiconi that FACT was acting for another organization or agency which had the authority to substitute another party in its stead for the purpose of applying for a grant.[1] This position was made clear over a period of several days to Wiconi leaders, representatives, and spokesmen. As a result, Wiconi filed a petition for extraordinary relief on April 18, 1980. NTIA granted the petition to the extent that processing of the application could continue pending resolution of sponsorship. The burdens of initially presenting us with facts in support of its agency theory and of proof were placed on Wiconi. 45 Fed. Reg., *Supra*, n.1, at 36,032.

Wiconi has alleged two bases on which NTIA can grant the substitution request: (1) FACT is the agent of 100 Indian leaders; and (2) the government's "trust responsibility" to Indians. To support the agency theory, Wiconi argues that the Project was conceived by Jerry Chris Elliot, who presented the idea to the leaders of 40 Indian nations, tribes and organizations. These leaders, Wiconi continues, created FACT "solely for the purpose of applying to NTIA . . ." for a planning grant, that this is FACT's only purpose and that FACT's board of directors "report to a constituency which consists of leaders of the now 100 nations and tribes concerned with the Project." Wiconi's April 25, 1980 Statement in Support of the Petition for Extraordinary Relief at 2–3 (Statement in Support). Wiconi cites Section 274 of Williston on Contracts (Third Edition) for the proposition that an agency relationship can be created—"if the facts fairly disclose" one is acting for or representing another. And, it is argued that because of the manner in which FACT was created; the limitations of its responsibilities to merely apply for a PTFP grant; that Barbara Gilbert actually prepared the application for FACT's board, but was not affiliated with FACT; and the FACT's board reports to the Indian leaders shows that the leaders are the principal and FACT their agent. From this, Wiconi concludes that the leaders substituted it as the sponsoring organization after FACT deferred the application so that the Project would continue to be considered for a grant this year.

In phone conversations NTIA's Deputy Chief Counsel starting on April 17th and in a May 7, 1980 telegram, FACT representatives Lee Piper and Bernie Whitebear opposed the substitution request [2] as well as the possibility of filing jointly with Wiconi this year.[3]

As you know, we gave Wiconi the burden of presenting evidence to support its agency theory. After reviewing Wiconi's material, we conclude that they have not met this burden. Wiconi has given us unsupported and unverified allegations rather than providing us with facts—names, dates, resolutions, etc.,—and supporting affidavits from those involved. For example, throughout the April 25, 1980 Statement in Support, Wiconi makes the following claims:

FACT was created by the leaders of 100 Indian nations and tribes for the purpose of applying for PTFP funds for the Project.

FACT's three original directors were not fully familiar with the scope of the Project or the field of telecommunications.

FACT's board of directors reports to the leaders of 100 Indian tribes and nations, and without the continuing support of the leaders, FACT would not be able to implement the Project

FACT'staff work has been performed by Ms. Barbara Gilbert and FACT has not sought funds from any source other than PTFP.

FACT's PTFP application was prepared by Barbara Gilbert who was acting on behalf of Indian organizations. This work stemmed from Ms. Gilbert's relationship with the leaders of the 100 nations and tribes.

After FACT withdrew, the Indian leaders substituted Wiconi for FACT so that the application could continue to be considered and that action, combined with FACT's withdrawal, terminated the agency relationship between FACT and the Indian people.

Several of these factors would be relevant to our decision to grant the substitution if they had been proven. Unfortunately, Wiconi had failed to provide us with names, dates, or documents to support its allegations. Neither the Indian leaders nor their organizations are identified; no date is given for the meetings at which FACT was selected, and subsequently dismissed, as agent and Wiconi substituted; no copies of résolutions or minutes of meetings were provided; and no written statements from Indian leaders, sworn or unsworn, in support of Wiconi's claims were given to NTIA. The only verification is an affidavit from Barbara Gilbert, who is not an Indian leader. She only states that the facts set out in Wiconi's Statement in Support are true to the best of her knowledge and belief.

In many respects, FACT's FY 1979 and 1980 applications appear to be substantially alike, using the same basic technology to achieve the same goals. Contrary to Wiconi's assertions of the lack of knowledge or familiarity with the Project on the part of FACT's directors, FACT's FY 1979 application was signed by Lawrence Tekala, a FACT director, and he is listed as the contact person for the application. The FY 1979 application does not indicate that Barbara Gilbert was the preparer. (Barbara Gilbert is listed as the project director and contact person on FACT's FY 1980 application.) And, nowhere in that application, or for that matter, in the FY 1980 application, does it indicate that FACT's only purpose is to apply for a PTFP grant or that FACT's board is to report to the Indian leaders. The applications state that the Project was conceived and FACT was formed on April 20, 1979, by several Indian individuals and organizations, FY 1979 application, 150–P, Program Narrative at 2; FY 1980 application, 1138–T, Program Narrative at 8. The Wiconi application's Program Narrative is essentially identical and the statement of the background of the Project does *not* say that FACT was formed by 40 to 100 Indian leaders. At most, FACT's application states that the organization was "created to direct and pursue the development of a National Telecommunications Network controlled by Indian and Native People." FY 1979 application, 150–P, Program Narrative at 5. This is hardly an indication that FACT is a surrogate of the Indian leaders and not an idependent legal entity.

In short, Wiconi's supporting materials are insufficient, in light of FACT's opposition and the statements in its applications, to establish, by even a preponderence, the existence of the agency relationship and NTIA's authority to ratify the removal FACT from its timely filed application.[4]

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[1] Early conversations with Wiconi spokespersons indicated that the March 21st request was for waiver of the January 9, 1980, application closing date so that Wiconi could submit *its own* application for a grant. PTFP has never waived the closing date and we refused to do so in this case. 45 Fed. Reg. 35970, 36032 (May 28, 1980); and note 3, *infra*. We have consistently stated that waiver of a closing date would only be considered under the most compelling circumstances. A sufficient demonstration has not been made to distinguish this situation so as to merit such a waiver.

[2] Wiconi asks that we reject FACT's May 7th opposition because it was late and no excuse was offered for the late filing. (We had requested that FACT comment on the Wiconi's pleadings by May 6, 1980. 45 Fed. Reg., *supra* at 36,032). We will not reject the opposition. Wiconi has neither claimed nor shown that any harm or prejudice resulted from the one day delay. Moreover, Wiconi overlooks that FACT had clearly stated its opposition to the substitution in several phone coversations with NTIA;s Deputy Chief Counsel, and that this fact was promptly relayed to Wiconi representatives, including Barbara Gilbert and yourself, in phone conversations with the Deputy Chief Counsel, starting on April 17.

[3] In ther May 7th telegram, FACT also asked that its application be reactivated for this year, and that it be given until May 19th to submit amendments that earlier had been requested by the PTFP. Except in extraordinary circumstances, the time for filing amendments to applications, Section 3201.5(b) of the PTFP Rules, is strictly adhered to both for the administrative convenience of the PTFP and, more importantly, for fairness to applicants who comply with our filing deadlines. FACT offered no justification for this request and, accordingly, we reject the effort to reactivate the application and to waive, by nearly one month, the time for filing amendments.

[4] We also note that Wiconi was advised repeatedly, and as early as April 16th, that it was

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Accordingly, we conclude that the facts provided by Wiconi do not "fairly disclose" that an agency relationship ever existed between FACT and the Indian leaders. See Williston, *supra*, page2.

Independent of the agency theory, Wiconi argues that NTIA, and all Federal agencies, are "legally bound to act in the best interests of the American Indian people" because of the "unique legal responsibilities" the Federal government owes to the Indian peope; *i.e.*, the trust relationship. Statement in Support at 6, citing *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) and *Federal/Indian Relationship* from *Old Problems—Present Issues: Nine Essays on American Indian Law* (Inst. for Development of Indian Law). Specifically, Wiconi argues that FACT's failure to amend its application in response to a PTFP request (and its "withdrawal" of the application) jeopardizes the Project's chances for funding. Therefore, NTIA, acting in the best interests of the American Indian people, should allow Wiconi to prosecute the application in place of FACT. In addition, Wiconi representatives have stated to us that the coalition supporting the Project is fragile and that failure to continue the application this year dramatically reduces the chances of it being refiled next year.

Wiconi has failed to show that the generalized theory of trust responsibility applies specifically to telecommunications and the Interior Department has advised us that it does not. NTIA recognizes the potential merit of such a satellite project and the benefits that it might bring to the Indian people. But, even if we were able to concede that the trust responsibility does apply, we would still be unable to conclude, based on Wiconi's generalized and undocumented arguments, that substituting Wiconi for FACT would be in the best interests of those people. Aside from an allegation, there is no indication that the one year deferral of the application will preclude the fulfillment of the Project. Indeed, this is the second year that FACT has submitted an application for the Project. It has not withdrawn from the Project but merely deferred its application in order to, in FACT's words, "regroup and do a more thorough job" in the FY 1981 funding round. Letter of March 13, 1980, from Lee Piper to the PTFP. Wiconi has not challenged the truth of that statement beyond saying that it did not believe FACT would have the continued support of the Indian leaders. Absent affidavits from a number of leaders and the existence of an agency relationship, we cannot conclude that the best interests of the Indian people would be served by our terminating FACT's interest in its application and substituting Wiconi.

NTIA has been impressed by the desire of both FACT and Wiconi to plan and construct the Project. We also recognize the potential benefits to the Indian people of such a project. We deeply regret the division between two important Indian organizations and sincerely hope that representatives of the American Indian community will be able to file for the next round of facilities grants in January 1981.

———Sincerely,

John Cameron,

Director, Public Telecommunication Facilities Division.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C., August 8, 1980.

To: John Cameron.
From: Gregg Skall.
Subject: Overhead expenses and capital expenditures of PTFP grantees.

You have asked whether the Public Telecommunications Facilities Program (PTFP) may distinguish between planning grants and construction grants for the purpose of refusing to allow "overhead" expenses as eligible costs in situations involving construction grants. In addition, you question whether the program may allow the use of its funds for the purchase of office equipment in the case of planning grants, and if so, what disposition should be made of such equipment when the grant is completed. Both of these questions relate to the management of the grant-in-aid program by the agency and are controlled by the Office of Management and Budget (OMB) Circulars A-21 and A-122, and Federal Management Circular (FMC) 74-4. (Copies of these circulars are attached). Having reviewed these materials, I find that the PTFP may not distinguish between planning grants and construction grants for the purpose of "overhead" expenses. Many of these expenses, however, may be disallowed at the agency's discretion regardless of the type of grant involved. As for the purchase of office equipment for use in the execution of PTFP planning grants, both OMB Circulars A-21 and A-122, and FMC 74-4 treat the purchase of equipment as a capital expenditure that may be disallowed by the agency.[1] However, Circulars A-21 and A-122 define equipment as property having a per unit acquisition cost of $500 or more.

The circulars cited above divide recipients of Federal grants into three categories: State and local governments (FMC 74-4), educational institutions (Circular A-21), and nonprofit organizations (Circular A-122). Since Circulars A-21, A-122 and FMC 74-4 all relate to the cost principles applicable to grants, and since they overlap to a great extent, I will limit discussion of FMC 74-4 and Circular A-122 to noting any substantial differences between them and Circular A-21. The purpose of these circulars, as stated in Circular A-21 is to "[establish] the principles for determining costs applicable to grants, contracts, and other agreements. . . . Agencies are not expected to place additional restrictions on individual items of cost." Thus, agency compliance with the cost accounting procedures and principles of Circular A-21 is necessary, and agency discretion in matters of cost allowability is limited to situations in which such discretion is specifically granted.

The PTFP has treated "overhead expenses" for planning grants as eligible costs. The question has been raised whether the PTFP may treat "overhead expenses" for construction grants as ineligible costs. The general provisions relating to the allowability of selected items of cost are found in ¶J of the Attachment to Circular A-21.[2] Since none of the circulars make any distinction in allowable costs based on whether the grant is for planning or for construction, the cost accounting principles of ¶J must be applied to both planning and construction grants in the same manner, unless ¶J gives the PTFP the discretion to allow or disallow a certain type of cost. Thus, as a general rule, whatever costs are allowable under ¶J for planning grants are also allowable under ¶J for construction grants.

Paragraph J lists a multitude of allowable and unallowable costs and does not use the term "overhead expenses." It is, therefore, necessary to examine each item of cost to determine whether it is allowable. Rather than presenting each item of cost here and trying to determine whether that item could be labeled "overhead," I have attached a copy of each circular. In doing so, you should refer to an accepted definition of that term: "Those general charges or expenses, collectively, in any business which cannot be charged up as belonging exclusively to any particular part of the work or product, as rent, taxes, insurance, lighting, heating, accounting, and other office expenses. . . ."[3] If you have any question, as to whether a specific "overhead" cost is allowable or disallowable, please let me know.[4]

The purchase of office equipment by a recipient of a planning grant is by and large discretionary with the agency. The circulars do not make any distinction between planning grants and construction grants. But ¶J § 13 of the Attachment to Circular A-21 states that "[c]apital expenditures for general purpose equipment, . . . are allowable as direct charges, except where approved in advance by the sponsoring agency." "Equipment," for the purposes of ¶J § 13, means "nonexpendable tangible personal property having a useful life of more than two years, and an acquisition cost of $500 or more per unit. . . ." "General purpose equipment" is defined to mean "equipment, the use of which is not limited to research, medical, scientific, or other technical activities"—a definition that would seem to encompass office equipment. Thus, for educational institutions and nonprofit organizations the cost of office equipment with a per unit price of less than $500 is allowable without the advance approval of the agency. For State

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ineligible under the PTFP Rules because it articles of incorporation did not authorize it to provide public telecommunications services nor state that it was, at least in part, organized for cultural or educational pruposes. *See* 47 U.S.C. Sections 392(a)(1), 397(7)(B) and (11), as amended by the Public Telecommunications Financing Act of 1978; and Section 2301.4(a)(4) of the PTFP Rules. This fact, however, is not controlling of our decision here.

[1] Circular A-21 also states: "All Federal agencies that sponsor research and development, training, and other work . . . shall apply the provisions of this Circular in determining the costs incurred for such work."

[2] *See also* Attachment B to FMC 74-4, and Attachment B to Circular A-122.

[3] Webster's 2nd Unabridged Dictionary.

[4] To aid applicants and grantees it would be possible for the PTFP to establish a list of eligible and ineligible costs, but such a list would have to conform to the circulars.

and local governments, however, the requirements are somewhat different. FMC 74–4 provides that the cost of equipment is allowable "when such procurement is specifically approved by the Federal grantor agency." [5] "Equipment" is not defined and no dollar amount is established for the requirement of prior agency approval of a purchase of equipment. Thus, for State and local governments prior approval to spend PTFP funds for office equipment must be obtained, even if the cost of the equipment is less than $500.

Assuming that the PTFP approves the purchase of office equipment for use in connection with a planning grant—or in the case of an educational institution or a nonprofit organization, that the institution purchases office equipment without the approval of the agency—a question arises as to what happens to the property at the end of the project. The Public Telecommunications Financing Act of 1978 (Act),[6] requires that the PTFP maintain a ten-year interest in the facilities of a public telecommunications entity constructed with a PTFP grant. However, that interest only attaches to funds "for [the] construction [not for the planning] of public telecommunications facilities" and begins to run only after the completion of the project.[7] Neither the Act nor Circular A–21 has any specific provision regarding the treatment of office equipment purchased in connection with grants.[8]

Since Circular A–21 and FMC 74–4 generally apply only to the agency's determination of allowable costs, it is necessary to examine Circulars A–102 and A–110 to see whether these circulars provide any guidance. Attachment N to Circulars A–102 and A–110 states, that title to property[9] acquired with Federal funds is conditionally vested in the grantee. When a grantee ceases to need the property in connection with Federally sponsored activities, it may dispose the property and retain any proceeds, unless the property had a per unit acquisition cost of $1,000 or more. If the per unit acquisition cost was $1,000 or more, the grantee may retain the property for its use provided that it reimburses the Federal government for its share of the current fair market value of the property. If the grantee cannot use the item, the agency may (at the request of the grantee) either sell the property or take the property for use of the Federal government. In either case, the agency must reimburse the grantee for the grantee's share of the property's current fair market value.

[5] Attachment B to FMC 74–4, ¶C § 3. *See also* Attachment B to Circular A–122, ¶13 § b(1).

[6] Pub. L. No. 95–567, 92 Stat 2405, 47 U.S.C. § 390, *et seq.* (1978).

[7] 47 U.S.C. § 392(g).

[8] FMC 74–4, however, provides that:

When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a Federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the assets will be refunded in the same proportion as the Federal participation in its costs.

[9] For the purposes of Circulars A–102 and A–110, the term "property" refers to nonexpendable personal property as defined in § 2(c) of Attachment N—*i.e.*, "tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit."

Attachments:
Circular A–21
Circular A–122
FMC 74–4

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C., September 9, 1980.

Mr. William H. Kroll,
Indiana University Radio and Television Services, Radio and Television Building, Bloomington, Ind.

Dear Mr. Kroll: Dr. John Cameron, Director of the Public Telecommunications Facilities Program (PTFP), has asked me to respond to your letter of June 27, 1980, in which you inquired whether WTIU–TV could obtain remuneration from commercial television stations for the use of programs produced by WTIU–TV with PTFP funded equipment.

The Public Telecommunications Financing Act of 1978 [1] provides that each applicant for a PTFP grant must give assurances that "[the] public telecommunications facilities will be used only for the provision of public telecommunications services." 47 U.S.C. § 392(a)(4). We have interpreted this provision to be a condition of eligibility, such that if a grantee would cease to be eligible the grant would have to be terminated. *See* 15 C.F.R. § 2301.32 (1979). This does not mean, however, that a PTFP grantee is totally prohibited from allowing a commercial organization to use a program that it had orginally produced for distribution through public telecommunications facilities.

Since one of the PTFP's objectives is to extend delivery of Public Telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, we encourage the widest distribution of the noncommercial educational and cultural programs produced with PTFP-funded equipment. Therefore, in our *Notice of Proposed Rulemaking*, 44 FR 13,262, 13,267 (1979), we expressed our belief that the critical factor for us to consider in determining whether a use conforms with § 392(a)(4) is whether the program "was produced and will be used *primarily* by the grantee or other noncommercial entity." (Emphasis added.) Thus, a grantee may allow a commercial organization to use programs produced with PTFP-funded equipment and may charge the commercial organizations for that use, provided that it first "make a substantial effort to make the program available to other noncommercial entities and cultural and educational groups." *PTFP Report and Order*, 44 FR 30,898, 30,911 (1979). Once those avenues of distribution have been explored, the grantee may distribute the program to commercial organizations.

Since it is unclear from your letter exactly what actions WTIU-TV intends to undertake to make the program available to other noncommercial entities, I cannot issue binding opinion as to whether those efforts are "substantial" enough to permit WTIU-TV to sell the programs to commercial organizations. If you would provide us in greater detail with the information as to the type of distribution that WTIU-TV intends and how WTIU-TV will go about making the program available to other noncommercial entities. I would be willing to provide the opinion you request. If you have further questions prior to preparation of that material please feel free to call me or Kenneth Salomon, Deputy Chief Counsel at (202) 377-1866.

Sincerely,
Gregg P. Skall, *Chief Counsel.*

[1] Pub. L. No. 95–567, 92 Stat. 2405, 47 U.S.C. § 390, *et seq.* (1978).

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C. September 10, 1980.

To: John Cameron, Director.
From: Gregg Skall, Chief Counsel.
Subject: Bonding, financial management, reporting and record keeping requirements for PTFP grantees.

In order to establish consistent and uniform practices among the various Federal agencies and departments administering grant-in-aid programs, the Office of Management and Budget (OMB) has issued two circulars which prescribe uniform administrative requirements for each agency to follow.[1] In accordance with these circulars and the proposed Department of Commerce (DoC) administrative order on grant administration, 44 Fed. Reg. 54,910 (September 21, 1979), NTIA has adopted certain policies and reporting requirements in its Interim Grant Regulations with which all grantees must comply.

First, every grantee must establish a Financial Management System that meets the requirements of the applicable circular (Attachment G to Circular A–102 or Attachment F to Circular A–110). Although the particulars of the system are left for the most part to the individual grantee, each system must at a minimum provide for: (1) the accurate, current, and complete disclosure of financial results to the grantor agency; (2) records adequate to identify the source of funds and the use made of the funds; (3) systems for the grantee's effective control over and accountability for all funds, property or other assets; (4) systems which allow for a comparison of budgeted amounts against actual expenditures; (5) a method of minimizing the time elapsing between the transfer of funds from the Government and their disbursement by the grantee; (6) a method of determining reasonableness, allowability or allocability of costs; (7) accounting records supported by a source documentation; (8) a system of audits (internal or otherwise); and (9) a systematic method for quickly and accurately resolving any audit findings.

Second, as a part of this system, each grantee must comply with minimum prescribed financial reporting requirements. (Attachment H to Circular A–102 or Attachment G to Circular A–110). Under those attachments the PTFP has the option to permit grantees to file only a "Request for

[1] OMB Circulars A–102 (for grants to State and Local Governments) and A–110 (for grants to institutions of higher education, hospitals and other non-profit organizations).

Advance or Reimbursement" form (S.F. 270) in lieu of either a "Financial Status Report" form or an "Outlay Report and Request for Reimbursement" form. However, in order to exercise this option the PTFP must examine each of the forms involved and make a written determination that the information contained in the "Request for Advance or Reimbursement" form provides adequate financial accountability. Once the PTFP makes such a determination, grantees may use the "Request for Advance or Reimbursement" form instead of either the "Financial Status Report" form or the "Outlay and Request for Reimbursement" form. Grantees must file an original and two copies of the "Request for Advance or Reimbursement" form when they desire to obtain reimbursement for any expenses they incur in performing a grant. (A copy of this form is attached as Exhibit A. In the event that the "Request for Advance or Reimbursement" form is used by the PTFP *solely* for advances, grantees must file a "Financial Status Report" form (S.F. 269), regardless of the PTFP determination to use only the "Request for Advance or Reimbursement" form. (A copy of the "Financial Status Report" form is attached as Exhibit 2.)

Third, all grantees that receive advances (no matter how short the period) are also required to file a "Report on Federal Cash Transactions" form (S.F. 272). In cases where assistance is provided solely by reimbursement, after funds have been spent by grantees, this form is not required. The frequency of this report is to be determined by the PTFP, but the PTFP may not require more than original and two copies to be filed on a quarterly basis. (A copy of this form is attached as Exhibit 3.)

Fourth, grantees must continually monitor the performance of projects that are paid for with PTFP grant funds. To assure that time schedules are being met, Attachment I to Circular A-102 and Attachment H to Circular A-110 place great reliance on each grantee to manage the day-to-day operations of grant supported activities. In discharging this obligation, grantees must submit performance reports at least annually (at most quarterly) during execution of the grant project and must submit a final technical or performance report, at a time specified by the PTFP after the completion of the project. (If there is a change in circumstances that has a substantial impact on the completion of the project, grantees must notify the agency immediately, even if a progress report is not immediately due.) Attachment I (Attachment H) provides the PTFP with the option of waiving the required performance reports:

(a) When the grantee is required to submit a performance report with a continuation or renewal application.

(b) When the Federal agency determines that on-site technical inspections and certified completion data will be sufficient to evaluate construction projects.

(c) When the Federal agency requests annual financial reports on a fiscal year basis but it is necessary to get annual progress reports on a calendar year basis.

Of these three bases for waiving the filing of performance reports, subparagraph (b) seems to be particularly appropriate. That subparagraph, however, relates only to construction projects and would not be a sufficient basis to waive performance reports for recipients of PTFP planning grants. In order to waive the filing of performance reports for planning grants, the PTFP staff must make a determination that one of the remaining subparagraphs is applicable to planning grants. That determination should also be in writing and precede or coincide with the issuance of any memorandum from the Office of Chief Counsel to PTFP grantees on the reports that the grantees must file.

Fifth, each grantee is required to establish a procedure for obtaining bonding and insurance (bid guarantees, performance bonds and payment bonds) from contractors and subcontractors for the construction or improvement of facilities. Where the contract between the grantee and/or contractor (or between a contractor and a subcontractor) is for $100,000 or less, the PTFP will presume that the grantee's procedures of bonding and insurance are adequate. If the contract exceeds $100,000, the grantee must either obtain PTFP approval of its bonding and insurance procedures or must follow the requirements set on in paragraph 2 of Attachment B to Circulars A-102 and A-110. Under that attachment grantees must obtain: (a) a bid guarantee from each bidder that is equivalent to five percent of the price bid; [2] (b) a performance bond from the contractor for 100 percent of the contract price; [3] and (c) a payment bond from the contractor for 100 percent of the contract price.[4]

Sixth, Attachment K to Circular A-102 and Attachment J to Circular A-110 require that the grantee immediately notify the PTFP in any case where the grantee expects the amount of the grant to exceed his or her actual needs by $5,000 or five percent of the total grant (whichever is greater).

Finally, all grantees are required to maintain records (financial records, supporting documents, statistical records, and all other records pertinent to the grant) for a period of three years. See Attachment C to Circulars A-102 and A-110. The retention period generally begins to run on the date of the submission of the final expenditure report. However, the retention period for nonexpendable property does not begin to run until the property has been finally disposed of.[5] Thus, grantees must retain records of all property with an acquisition price of more than $300 obtained with PTFP grant funds for three years after the ten-year period of Federal interest expires or for three years after the property is otherwise sold and ceases to be subject to any Federal interest. If any litigation, claim or audit is started before the expiration of the three-year period, the grantees must retain the records until the litigation, claim or audit has been resolved. To assist grantees in understanding the required forms, I have drawn up a chart that is attached as Exhibit 4. The specifics of this chart will, of course, change with the final decisions that are made regarding "advances" and the frequency of performance reports.

Attachments.

[2] A bid guarantee consists of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid.

[3] A performance bond is a bond to assure that the contractor fulfills all the obligations under a contract.

[4] A payment bond is a bond to assure the payment of all persons supplying labor and materials in performing the contract.

[5] Attachment N to Circulars A-102 and A-110 defines nonexpendable personal property (as distinquished from real property) to the "tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C., September 15, 1980.

To: John Cameron.
From: Gregg Skall.
Subject: Eligibility of solar power sources for PTFP grants.

You have asked whether the Public Telecommunications Facilities Program (PTFP) may alter Section 2301.35(a)(12) [1] of the rules to allow the funding of "electrical power sources other than those supplied by utility companies." In particular you want to know whether any provision of the Public Telecommunications Financing Act of 1976 (Act) [2] prohibits the funding of solar-powered translators.

Upon review I conclude that nothing in the Act prohibits the funding of solar-powered translators or, for that matter, any other electrical power source. Congress left to the Department of Commerce (hence, the National Telecommunications and Information Administration) the determination as to what types of equipment should be eligible for PTFP funds. As I understand it, the staff developed Section 2301.35(a)(12) because they perceived a need to conserve the Agency's funds for program purposes. Since the Act does not prohibit the PTFP from funding electrical power sources, there is no reason why the PTFP could not amend or waive Section 2301.35(a)(12) to allow the funding of solar-powered translators. In doing so, however, the PTFP must base its funding of solar-powered translators on some rational distinction between solar-power sources and other electrical power sources, and must articulate that distinction in amending the rules or granting a waiver.[3]

The PTFP may also achieve its goal of funding solar-powered translators (at least in part) without altering the rules by distinguising between the funding of a translator in which photo-electric power is an integral part of the translator itself and the funding of a solar-energy source that is a piece of equipment separate and distinct from

[1] 5 C.F.R. § 2301.35(a)(12) states that "[e]quipment providing power to the facility, including transformers, regulators, generators and related equipment [is ineligible for funding].

[2] Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. § 390 (1978).

[3] Since our funding of solar-powered translators would further the announced Federal policy of encouraging the development of solar technology, that announced policy would provide a sound basis on which to distinguish between solar-power sources and other electrical power sources.

the translator (or other telecommunications equipment). Section 2301.35(a)(12), as presently written, only prohibits the funding "[e]quipment providing power to the facility. . . ." Where the power source is an integral part of the eligible equipment—*e.g.*, where a translator is powered by photo-electric cells that are attached to (otherwise incorporated as a part of) the translator itself—the question of eligibility would depend on whether the underlying equipment was in fact eligible.

Before the PTFP amends its rules or otherwise funds solar-powered translators, however, I believe it would be advisable for the PTFP to investigate the extent to which grants for similar equipment could be obtained through other agencies or departments. In particular, I believe that the Department of Energy (DoE) presently operates a Small Grants Program through which PTFP grantees might obtain grants for solar-powered translators. I have attached a summary that DoE has developed to explain its Small Grants Program for "Appropriate Technology." Robert Hunter of this office has spoken with Hal Devoe of DoE (252-9104) relating to the possibility of the joint funding of several projects by NTIA and DoE. Although Mr. Devoe was not sure of the extent to which DoE would be able to coordinate its activities with NTIA, he indicated a desire to discuss possible NTIA/DoE cooperative efforts. If you would like to further investigate joint NTIA/DoE activities, please let either Robert Hunter or Kenneth Salomon of this office know, so they might attend any meeting.

I also believe that DoE is developing a demonstrations program for solar technologies that may be available for PTFP grantees in the near future. If you desire more information on this program, you should contact Andrew Krantz of DoE (376-1956).

Attachment.

U.S. Department of Commerce,
National Telecommunications and Information Administration
Washington, D.C., September 17, 1980.

Robert A. Woods, Esq.,
Schwartz, Woods & Miller,
Suite 206, The Palladium,
1325 Eighteenth St., N.W.,
Washington, D.C.

Re: NTIA File No. 1001CTB.

Dear Mr. Woods: Thank you for your letter to the National Telecommunications and Information Administration (NTIA) on behalf of WVIZ-TV regarding the application of WEAO-TV for a grant to expand its coverage area from the Public Telecommunication Facilities Program (PTFP). Dr. John Cameron, Director of the PTFP has consulted with this office and asked me to respond. In reviewing that application, the PTFP staff has considered WVIZ-TV's objections and the response to them from Richard D. Marks and Michael Goldstein on behalf of WEAO-TV. For the reasons stated below, the PTFP has granted WEAO.TV's application.

In your letter, you state that WEAO-TV's application as presently proposed would expand WEAO-TV's coverage area to serve many citizens of the greater Cleveland area (already served by WVIZ-TV) as well as the citizens in many areas that are not presently receiving any public television services (such as significant portions of Stark and Wayne Counties, including the communities of Canton, Massilon, Wooster, Rottman and Orrville). The essence of WVIZ-TV's objection to WEAO-TV's application is the belief that such coverage is undesirable because both WVIZ-TV and WEAO-TV would have to compete on an expanded basis for contributions from the viewing public and such competition represents "poor planning" for public television.[1]

While it is unfortunate that public television stations with overlapping service areas must compete against one another for contributions from the public, the responsibility for noncommercial educational television assignments rests solely with the Federal Communication Commission (FCC). Under Section 1 of the Communications Act of 1934, as amended (47 U.S.C. § 51), the FCC is authorized and directed to provide of the development of a "Nation-wide and world-wide" system of wire and radio communications. In exercising this authority the Commission issues licenses for the construction, operation and expansion of public television stations throughout the United States. WVIZ-TV has already recognized the Commission's jurisdiction in this area had has raised this matter before the FCC. In a recent decision the Commission ruled that WVIZ-TV;s allegations are completely unsupported by economic data . . . [WVIZ-TV] has failed to relate its allegations of economic harm to specific harm to the public. We conclude, therefore, that [WVIZ-TV's] claim of economic harm fails to raise a substantial and material issue." [2] In the same way that the FCC defered to NTIA's judgment in matters that are entrusted to us under the Public Telecommunications Financing Act of 1978 (Pub. L. No. 95.567 92 Stat. 2405, 47 U.S.C. § 390, *et seq.*), we must defer to the Commission's judgment in matters that are entrusted to it—*viz.*, the licensing of public television stations.

Moreover, it is not at all clear that extension of service, such as that proposed by WEAO-TV, should be discouraged as a matter of public policy. While lower in priority than a first public telecommunications service, the expansion of service areas of existing public telecommunications entities is recognized as a priority consideration in our rules. *See* 15 C.F.R. § 2301.20(2). *See also* Priority I.B. for the FY 1980 grant round. 45 Fed. Reg. 1988 (January 9, 1980). Even when that expansion extends a second service to an area, it is our general belief that the increased competition for audience will result in better program service to the communities served. Therefore, although we share your concern over your continued ability to obtain contributions in a competitive environment, those conncerns should not take precedence over NTIA's primary obligation under 47 U.S.C. § 390(1) of extending public telecommunications services to areas that are presently unserved.

Sincerely,

Gregg P. Skall,
Chief Counsel.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C. 20230, September 18, 1980.

To: John Cameron, Director, PTFD.
Thru: Gregg Skall, Chief Counsel.
From: Kenneth Salomon, Deputy Chief Counsel.
Subject: Appalachian Regional Commission Supplements to PTFP Grants.

On July 7, 1980, two representatives of the Appalachian Regional Commission (ARC) called me about a potential problem involving a Public Telecommunications Facilities Program (PTFP) construction grant. It was explained to me that the ARC was proposing to contribute a certain percentage of the grantee's eligible costs in order to reduce the amount of the local match required to be provided by the grantee. The combined Federal share of PTFP and ARC funds would not exceed 80 percent of eligible project costs. Dan Falk, the PTFP program officer involved, apparently has questioned the propriety of the ARC contribution. I have examined the relevant ARC legislation and conclude that such contributions are permissible.

You will recall that on September 9, 1979, the Office of Chief Counsel sent you a memorandum on a closely related issue: the permissibility of contributions to the Federal share of grant-in-aid programs by Regional Planning Commissions created under the authority of Regional Development Act of 1975, 42 U.S.C.A. §§ 3181 *et seq.* In that memorandum we concluded that these Commissions have authority under 42 U.S.C.A. § 3188a, to make such contributions. The only limitation is that the total Federal involvement may not exceed 80 percent of eligible project costs. *See* 45 FR 1988, 1994 (January 9, 1980). Footnote 1 of the memorandum, however, specifically stated that we were not addressing the question of whether the ARC has similar authority, and that a subsequent memorandum would follow on that issue. We now have the opportunity to provide you with our advice on the ARC.

The ARC was created by the Appalachian Regional Development Act of 1965, as amended, (ARDA), 40 U.S.C.A. App. §§ 1 *et seq.* Section 214 of ARDA is identical in purpose and intent (although there are some wording variations) to 42 U.S.C.A. § 3188a discussed in the September 9, 1979, memorandum. Thus, § 214(a), in part, permits the ARC's Federal Co-chairman to use ARC funds "for increasing the Federal contribution to projects under [specific Federal grant-in-

[1] In this regard it should be noted that WVIZ-TV and WEAO-TV already compete for contributions from the viewing audience because WVIZ-TV's coverage area presently includes the city of Akron, Ohio (WEAO-TV's city of license).

[2] *In re Application of Northeastern Educational Television, Inc.* (WEAO-TV), *Memorandum Opinion and Order*, File No. BPET-790720KF (released, June 26, 1980). We note that the FCC declined to examine WVIZ-TV's allegation as to the sufficiency of WEAO-TV's application for a grant from the PTFP stating that the FCC would not "second guess the governmental agency having the ultimate funding responsibility to rule on [WEAO-TV's] funding request." *Memorandum Opinion and Order*, supra at ¶ 6.

aid] . . . programs . . . above the fixed maximum portion of the cost of such projects otherwise authorized by the applicable law." 40 U.S.C.A. § 214(a). *Compare* 42 U.S.C.A. § 3188a(a). Under both the Regional Development Act (42 U.S.C.A. § 3188a(b)) and ARDA (40 U.S.C.A. App. § 214(b)), the total Federal contribution may not exceed 80 percent of eligible project costs. Both ARDA and 42 U.S.C.A. § 3188a define Title III, Part IV of the Communication's Act of 1934, as amended—the authorizing legislation for the PTFP—as one of the Federal grant-in-aid programs eligible for such contribution. *Compare* **40 U.S.C.A. App. § 214(c) with 42 U.S.C.A. § 3188a(c).**

The ARC contribution is to be made available "to enable the people, States, and local communities of the region . . . to take maximum advantage of [a] Federal grant-in-aid program . . ." for which they are eligible but, "because of their economic situation, they cannot supply the required matching share . . . ." 40 U.S.C.A. App. § 214(a).[1] The Regional Development Act uses the following phrase to define the scope of eligible entities: "the state and other entities within economic development regions . . . ." 42 U.S.C.A. § 3188a.

Section 214(a) requires, as does 42 U.S.C.A. § 3188a(a), that where the ARC's contribution is to the basic Federal share, the administrator of the grant-in-aid program must certify that the program or project to receive ARC's supplemental funds meets the requirements of the Federal grant-in-aid act and that the program or project could have been approved for funding under that act if funds were available.

In conclusion, the ARC may contribute supplementary funds towards either the basic Federal share or to reduce the local match under the PTFP. However, the combined Federal share may not exceed 80 percent of the costs of the project. I have attached copies of ARDA and the Regional Development Act for your information.

Attachments.

cc: William Lucas, Associate Administrator, for Applications, NTIA. Robert L. McClosky, Esq., General Counsel, ARC.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C. September 22, 1980.

Lawrence M. Miller, Esq.,
Schwartz, Woods & Miller,
The Palladium, Suite 206,
1325 Eighteenth Street, N.W.,
Washington, D.C.

Dear Mr. Miller: Dr. John Cameron, Director of the Public Telecommunications Facilities Program (PTFP), has forwarded your request for guidance to me. Since you have not presented a specific proposal, as required under Section 2301.4(c) of the PTFP rules, 15 CFR 2301.4(c) (1979), I cannot give you a binding opinion as to the eligibility of your client on its proposal to obtain a PTFP grant to construct its share of a broadcast tower that it would jointly own with a commercial broadcasting entity.

It is clear from the discussion of the rules contained in the PTFP *Report and Order*, 44 FR 30898, 30911 (1979), that noncommercial entities may obtain PTFP funds to construct a tower jointly with a commercial entity. The major factors that NTIA considers in determining whether a particular application is eligible for funding are the extent to which the applicant's percentage of ownership is sufficient to secure the Federal interest and the extent to which the applicant has satisfactory use of the tower.

As a general rule, the applicant's percentage of ownership in the tower should be no less than the percentage which the applicant contributes to the tower's construction through a PTFP grant. The Federal interest in PTFP-funded equipment continues for 10 years from the completion of the project. Therefore, any contract between a commercial entity and a PTFP grantee for the joint construction, maintenance and operation of a tower would have to include specific provisions as to the manner in which the Federal interest would be protected if either entity cannot continue the joint relationship or in the event that the PTFP must terminate the grant for any reason.[1]

The contract must also include specific provisions guaranteeing that the PTFP grantee would have satisfactory use of the tower. "Use" not only means that the grantee must have access to the tower site for its employees and those of the Federal government, but also that the grantee's signal must not be interfered with by that of the commercial entity or any other entity using the tower.

In your letter you describe several aspects of the agreement that your client is developing with a commercial entity to jointly construct a tower. You state, among other things, that the noncommercial entity would have an ownership interest equal to its contribution toward the tower's construction and a right of first refusal in the event that the commercial entity later desires to sell its interest. According to your letter, any sale by the commercial entity would be subject to the sharing arrangement. In the event that the noncommercial entity ceases to operate its facility (or, presumably, that the noncommercial entity otherwise ceases to be eligible for a PTFP grant), you state that a successor noncommercial entity would be proposed or the commercial entity would be required to buy out the noncommercial entity's interest and repay the Federal interest. Generally, I believe the concepts you outline in your letter would provide adequate security for the Federal interest in a tower partly funded with a PTFP grant. However, without reviewing the specific language of the contract, I cannot give you a more definite answer.

If you desire a more specific opinion, it will be necessary for you to comply with the requirement of Section 2301.4(c) of the PTFP rules regarding opinion letters. *See* 15 CFR 2301.4(c). *See also Report and Order, supra* at 30903 and 30914.

Sincerely,

Gregg P. Skall,
Chief Counsel.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C. 20230, October 2, 1980.

To: Michael Natoli, Budget Examiner, OMB.
From: Gregg P. Skall, Chief Counsel.
Subject: Public Telecommunications Facilities Program Replacement Grants.

The Office of Management and Budget (OMB) has questioned under what legal authority the Public Telecommunications Facilities Program (PTFP) of the National Telecommunications and Information Administration (NTIA) can make grants to existing public broadcast stations for the replacement of equipment where that replacement will not necessarily result in an expansion of the station's service area. The purpose of this memorandum is to briefly outline the bases for that authority.

The PTFP was created by the Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. §§ 390 *et seq.* Authority for the issuance of grants to replace existing equipment is derived from two provisions of that Act. In Section 390(3), Congress declared that one of the purposes of the 1978 Act was to "strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public."[1] More importantly, in Section 393, Congress stated the priorities that are to govern the approval of applications and the amount of grant awards. Section 393(b)(4) provides specific authority for grants that will result in "the *improvement of the capabilities* of existing public broadcast stations to provide public telecommunications services." (Emphasis added). Section 393(c) of the 1978 Act directs that 75 percent of appropriated funds shall be available to "extend delivery of public telecommunications services to areas not receiving such services. . . ." Thus, only 25 percent of appropriated funds may be used to improve the capabilities of existing public television and radio stations.

Pursuant to Section 392(e) of the Act, NTIA, on behalf of the Secretary of Commerce, adopted regulations and funding priorities for the PTFP. *Report and Order*, 44 FR 30,898 (1979). The priorities were amended on January 4, 1980, 45 FR 1988 (1980). Copies of these documents are attached.

The first two funding priorities, based on Sections 390(1) and 393(b) (1) and (2) of the 1978 Act, relate to the expansion or extension of service to unserved or underserved areas or populations. The third and fourth priorities are based on Sections 390(3) and 393(b)(4) and, therefore, relate to the 25 percent of funds available for non-extension or non-expansion projects. Priority III reads as follows:

[1] ARC funds may also be used where there are insufficient Federal funds available under the grant-in-aid act which authorizes the program to meet a pressing need of the region. *Compare* 40 U.S.C.A. App. § 214(a) with 42 U.S.C.A. §3188a(a).

[1] *See* 15 CFR 2301.32 (1979).

[1] Section 397(14) defines these "services" as "noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material. . . ."

Priority III—Improvement of Existing Broadcast Station Facilities

Two subcategories are listed under this priority:

A. *Projects to provide first local origination capacity for existing broadcast stations.*—This category includes projects to bring basic local program service to repeater transmitters and other licensed broadcast facilities now bringing in distant signals. Origination equipment may be fixed or mobile, but must be locally based.

B. *Projects to upgrade existing origination or delivery capacity to current industry performance standards.*—This category includes conversions to color, stereo, etc.; improvements in signal quality; and significant improvements in equipment flexibility or reliability.

It is under Priority III(b) that replacement grants are awarded.

In our view, the language of Sections 390(3) and, especially, 393(b)(4), is broad enough to encompass the replacement of obsolete, inefficient, worn-out, or outmoded equipment because such grants serve to improve the capabilities of existing stations. A review of the legislative history reinforces this construction.

Two of the major substantive changes made by the 1978 Act were the broadening of eligibility to nonbroadcast distribution systems and setting as the primary purpose of the Act the extension or expansion of service. Sections 390(1), 393 (b)(1), (b)(2), and (c) of the 1978 Act. The latter represented a 180 degree change in priorities from previous legislation. *See* former Section 392(d)(1) of Title 47 of the United States Code.

In changing the thrust of the program, Congress recognized that "existing stations must be able to expect a reasonable measure of Federal assistance to maintain and improve their facilities." Also recognized were the "difficulties which existing broadcasters face in financing . . . [the] improvement of their facilities. . . ." Senate Rept. No. 858, 95th Cong., 2nd Sess. 7 (1978). To assist existing stations to deal with these difficulties, Congress, in light of the 75 percent extension requirement of Section 393(c), increased the authorization for the program by $10 million dollars over its FY 1978 level. *See* Section 391 of the 1978 Act. With respect to the 25 percent of appropriated funds, the Senate Report also said that the purpose of those funds was to assure "that existing entities be adequately *maintained* and improved." *Id.* at 8. (Emphasis added).

On the day that the bill passed the Senate, Senator Hollings further clarified the scope of Sections 390(3) and 393(b)(4) stating that while 75 percent of the funds are to be used for expansion or extension, "[t]he remaining funds would be used to *replace equipment* or obtain new equipment to better serve the station's present audience." 124 Cong. Rec. S. 15,440 (Daily Ed. September 19, 1979). (Emphasis added). On the same day, Senator Cannon explained that the $10 million increased authorization level "is necessary in order to insure that *equipment replacement activities can continue* at adequate levels" while increased funds are being devoted for expansion and extension. *Id.* at S. 15,448. (Emphasis added).

NTIA submits that the language of Sections 390(3) and 393(b)(4) of the 1978 Act, combined with the broad authority delegated to the Secretary in Section 392(e), clearly confer authority for the PTFP to award a limited number of grants for the replacement of worn-out equipment. This conclusion is buttressed by the cited references to the legislative history.

Attachments.

U.S. Department of Commerce,
National Telecommunications and Information Administration,
Washington, D.C. October 3, 1980.

Re: Petition for rulemaking of the Association of Maximum Service Telecasters.

Paul J. Berman, Esq.,
Covington & Burling, 8888 Sixteenth Street, N.W., Washington, D.C.

Dear Mr. Berman: Assistant Secretary Geller has received the Petition for Rulemaking (*Petition*) that you filed on behalf of the Association of Maximum Service Telecaster (MST) and has asked me to respond to it. In its *Petition* MST seeks two changes in the rules of the Public Telecommunications Facilities Program (PTEP) that it believes would reduce noncommercial FM interference to television channel six service. First, MST asks the National Telecommunications and Information Administration (NTIA) to alter the rule of the PTFP to prohibit the grant of funds to construct a new, or to improve an existing noncommercial FM station that would case any "interference to television broadcast reception . . . ." [1] Second, MST believes that the PTFP rule should require existing noncommercial FM stations to use PFTP "improvement" funds to eliminate or reduce channel six interference that those stations cuase.

To support the proposed rule changes above, MST states that "[g]ranting public funds for new or 'improved' educational FM stations that cause interference simply cannot be squared with the statutory mandate to extend the delivery of public television services by the 'most efficient' means. 47 U.S.C. § 309(1)." [2] However, MST mistakes the basic purposes of the PTFP. That purpose, as stated in Section 390 of the Public Telecommunications Financing Act of 1978 (PTFA),[3] is:

. . . [T]o assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States and possible *by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies* . . . . (Emphasis added.)

When Congress used the term "efficient," it referred to the provision of public telecommunications services to the greatest number of people at the lowest possible cost to the agency. *See* Senate and House Reports on the PTFA, Sen. Rep. No. 858, 95th Cong., 2nd. Sess., 7 (1978); H.R. Rep. No. 1178 95th Cong., 2nd Sess., 14–15 (1978), respectively. Congress did not authorize NTIA to make grants based on our perception of technical standards for acceptable levels of interference to broadcast television by noncommercial FM radio stations. The setting of such standards have been and is not exclusively within the purview of the Federal Communications Commission (FCC). Section 1 of the Communications Act of 1934, as amended, [4] States that the purpose of that Act was the creation of a commission that would "make available, so far as possible, to all the people of the United States a rapid, *efficient*, Nation-wide wire and radio communications service. . . ." (Emphasis added.) Toward that end, the Commission is authorized to "assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate." 47 U.S.C. § 303(c) (1934). *See also* 47 U.S.C. § 307(b), as amended (1936), and 308(b)(1939). Thus, the PTFP rules state that the PTFP staff will not accept an application for a proposal that requires FCC approval, unless the applicant has filed an application with the FCC and the Commission has accepted that application for a filing. Moreover, no PTFP grant will be made unless any necessary FCC authorization has been issued. The rules also require that the staff terminate any grant made by the agency, if the Commission revokes the license or denies the application on which the PTFP grant was based. *See* 15 C.F.R. §§ 2301.8(f), 13(b), and .32(a)(3)(1979).

To be sure an existing noncommercial FM station may obtain a PTFP grant to "improve" its facilities by eliminating or reducing any interference caused broadcast television reception. But, the authority (and obligation) to judge the technical quality or feasibility of the construction of a new or the "improvement" of an existing noncommercial FM station, lies solely with the FCC, as the PTFP rules already recognize. Consequently, is its not appropriate for NTIA to reach such technical licensing conditions. As we stated in our rules, 15 C.F.R. §§ 2301.13(b) and .32(a)(3), we defer to the Commission for such judgments in its licensing process. Accordingly, your concerns should be raised with the FCC (as MST and the National Association for Broadcaster have, in fact, already done). Absent an officially adopted FCC pronouncement on the matter, NTIA believes it would be improper to refuse to issue grants to entites on the basis of our view of the proper levels of interference for efficient spectrum utilization, if that entity has received the necessary approval from the agnecy specifically charged by Congress with adminstering the spectrum.[5]

[1] *Petition* at 2.

[2] *Petition* at 4.

[3] Pub. L. No. 95–567, 92 Stat. 2405, 47 U.S.C. § 390, *et seq.* (1978).

[4] 47 U.S.C. § 151, *et seq. (1934), as amended.*

[5] This is not to say, that NTIA is unsympathetic to the potential interference problem that exists between noncommercial FM and channel six stations. On August 6th, we filed comments in support of the National Association of Broadcaster's request for expedited action in Docket No. 20735. A copy of that pleading was previously mailed to you. More specifically, in situations where the FM and the channel 6 stations serve the same areas, we will in future grants rounds expect as a matter of course that the two parties have discussed potential

Footnotes continued on next page

Since the Administrative Procedure Act does not require that the agency issue a public notice requesting comment on the petitions filed with it, I am responding to MST's *Petition* in this letter, but have not put the matter on public notice.

Sincerely,

Gregg P. Skall,

Chief Counsel.

The Comptroller General of the United States,

Washington, D.C., October 14, 1980.

File: B-194151.

Matter of: The Harris Corporation—Reconsideration.

Digest: Prior decision is affirmed upon reconsideration as earlier decision did not find grantee could not waive minor irregularities, as alleged by requester, thereby restricting competition. Items offered which were functionally equivalent to design specification were accepted by grantee except in two areas. We did not decide merits since such decision would be on purely technical dispute as to equivalency of two items and only possible recommendation was propriety of funding Federal portion of program.

The Harris Corporation (Harris) has requested reconsideration of our decision of July 16, 1980, in the matter of *The Harris Corporation—Reconsideration*, B-194151, July 16, 1980, 80-2 CPD 31.

The July 16 decision was a reconsideration of our decision (The Harris Corporation, B-194151, April 22, 1980, 80-1 CPD 282) on Harris' request for review of the award of a contract to the RCA Corporation for television broadcast equipment by the Milwaukee Area Technical College (MATC). The contract was funded, in part, by a Federal grant.

Our initial decision of April 22, 1980, found that since MATC had, in the solicitation, specifically reserved the right to waive any discrepancies or irregularities in the equipment offered, it appeared MATC had overstated its minimum needs in the specifications and that particular features of the RCA equipment were not essential. Because we concluded that MATC did not obtain maximum open and free competition, we recommended that the grant administrator, National Telecommunications and Information Administration (NTIA), Department of Commerce, determine whether to withhold the Federal grant funds or whether extenuating circumstances may make it appropriate to fund the grant notwithstanding the degree of competition.

Upon a request for reconsideration by MATC, our July 16 decision stated:

"We note that Wisconsin's VTAE (Vocational, Technical, and Adult Education) Procurement Policy was applicable to this procurement. VTAE provides that minor irregularities in bids may be waived but that irregularities which could substantially change the bids made by other vendors may not be waived. The VTAE example is a specification calling for swivel chairs and a bid offering non-swivel chairs. According to VTAE, this irregularity could not be waived since bids could change substantially if other vendors were allowed to rebid on the non-swivel chairs.

"Although it remains our position that the above-quoted clause, standing alone, is objectionable for the reasons stated in our prior decision, we are persuaded that MATC could not waive other than minor irregularities under the clause because of the applicable local law on the matter. Upon reconsideration, therefore, we conclude that the clause did not prevent open and free competition for this procurement."

We found it unnecessary to resolve the merits of Harris' original complaint—whether the specifications were restrictive—because of our original recommendation only affected the administration of the grant by NTIA (i.e., grant funding) and the contract had been substantially performed. We withdrew the prior recommendation that NTIA consider withholding of the grant funds.

Harris contends that our July 16 decision ignores other clauses in the solicitation that invited offerors to take exception to the specifications. Harris cities paragraph 9 of the Standard Conditions of bid and section IV.A.4 of the Specifications which read as follows:

Paragraph 9

"Any deviation from Standard Condition of Bid or Specifications or exceptions taken shall be described fully and appended to the bid form on the bidder's letterhead over the signature of the persons signing the bid form. In the absence of any statement of deviation or exception, the bid shall be accepted as in strict compliance with all terms, conditions, and specifications, and the bidder shall be liable therefor."

Section IV.A.4

"The equipment bid must be new and of current manufacture, and must conform to the requirements of the pertinent specifications. A point by point relpy, indicating compliance or deviation from the specifications shall be included as a part of the bid. If the equipment bid does not meet the requirements of the specifications, the bidder must take exception to the specification(s) and provide details and explanation of the extent to which the equipment bid deviates from the specification.

Further, Harris argues that it was given assurances by MATC, which is disputed by MATC, prior to the submission of bids that equipment offering performance characteristics similar to the specified equipment would be considered even if it did not meet the detailed specifications. Finally, Harris states that because of the above contentions, our Office must decide the merits of Harris' request for review (i.e., restrictive nature of the specifications), notwithstanding the advanced stage of performance.

We think Harris has misconstrued our July 16 decision. In that decision we did not conclude that MTAC could only waive minor irregulatities. As Harris pointed out in its request for reconsideration, the report from NTIA, on the original request for review, made clear that functionally equivalent items could not be rejected merely because of noncompliance with design specifications. We agree that the invitation permitted such bids. The purpose of the clauses cited by Harris was to obtain an item which was functionally equivalent and to place the burden on the bidder to demonstrate equivalency of the offered item. Our initial decision found the clause regarding waiver of irregularities to be too broad but upon reconsideration, when the clause was read in conjuction with the VTAE policy, we found it to be acceptable. Under the VTAE policy, those deviations which could substantially change the bids (i.e., swivel versus nonswivel chairs) could not be waived.

In fact, MTAC did accept the proposed Harris equipment where it was functionally equivalent. The consulting engineers who reviewed the bids for MATC found that the Harris equipment did not meet the exact specifications in numerous areas, but concluded that the intent of the specifications had been met. However, in two areas, the type of antenna proposed (batwing versus the required traveling wave antenna) and the transmission line equipment (lack of wristband expansion joint), the consulting engineers did not find the equipment offered by Harris to be functionally equivalent.

Harris contends that since the specifications were based on RCA equipment, only RCA equipment could comply because there was no listing of salient characteristics. However, we do not agree with the contention since the IFB made clear that design specifications were waivable if the item retained functional equivalency.

Finally, Harris complains about our failure to rule on the merits of its complaint. Initially, when we concluded that the invitation was defective, we recommended that MATC should consider withholding its funding of the project even though the contract had been substantially performed. However, upon reconsideration, we did not find the invitation to be defective. As a result, the remaining question was the propriety of the technical evaluation of MATC's consulting engineers regarding equivalency of the offered equipment. Our concern in connection with the instant request for review relates to the propriety of expending Federal grant funds. Where, as here, there was no allegation of bad faith and the grantee had agreed with the views of the engineers, we do not consider that Federal grant funds should be withheld on the grounds of differences in the *bona fide* technical judgments made.

While Harris has cited several cases where performance was completed in a contract under a grant and we still ruled on the merits, those cases either involved specifications which were restrictive as written in the invitation or other matters of general concern to the administration of the agency's grant program.

Footnotes continued from last page

problems and solutions such as collocation. We will have more to say in this in the notice of closing date for the FY 1981 grant round. I wish to emphasize here, however, that our goal is to foster dialogue and we will *not* require collocation.

Accordingly, our decision of July 16, 1980, is affirmed.

Milton J. Scolar,

For the Comptroller General of the United States.

[FR Doc. 80-34807 Filed 11-6-80; 8:45]

BILLING CODE 3510-60-M

Office of the Secretary

Privacy Act of 1974; Adoption of Proposed System of Records

The purpose of this notice is to adopt in final form an additional system of records, COMMERCE/NBS-7, NBS Emergency Locator System. This new system of records was initially proposed in a new system report submitted to Congress and the Office of Management and Budget on August 18, 1980, and in a **Federal Register** notice published August 22, 1980 (45 FR 56123).

No public comments were received in response to the notice. However, the Chairman of the House Government Information and Individual Rights Subcommittee commented on the proposed system in a September 17, 1980 letter to the Department. The Chairman questioned the need to provide for any disclosures outside the agency and, therefore, suggested that Department-wide routine uses should not be applied to this system.

Departmental staff reviewed the proposed routine uses for COMMERCE/NBS-7. The staff determined that no disclosures outside the agency were necessary. Accordingly, the routine use section has been revised to delete the reference to the Department-wide routine uses. A fuller explanation of the Department's internal uses of the information is offered. The revised routine use section reads as follows (new text in solid capitals beginning with "Home Telephone Numbers," deletions in double parentheses):

COMMERCE/NBS-7

SYSTEM NAME:

NBS Emergency Locator Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

HOME TELEPHONE NUMBERS WILL BE USED BY DEPARTMENT OF COMMERCE STAFF TO CONTACT NBS EMPLOYEES OR INDIVIDUALS USING NBS FACILITIES IN THE CASE OF AN EMERGENCY (E.G., FIRE, EXPLOSION, POWER OUTAGE, HEAVY SNOW). THOSE CONTACTED WILL TYPICALLY BE SCIENTISTS OR ENGINEERS WHOSE EXPERIMENTS MIGHT BE AFFECTED BY SUCH AN EMERGENCY OR OTHER EMPLOYEES WHO WILL BE REQUIRED TO DEAL WITH THE EMERGENCY. ((See Prefatory Statement of General Routine Uses)).

* * * * *

The Department hereby adopts the new system of records effective November 7, 1980.

Authority: 5 U.S.C. 552a, Sec. 3, Privacy Act of 1974 (Public Law 93-579, 88 Stat 1986).

Dated: November 4, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-34856 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-17-M

Committee for Purchase From the Blind and Other Severely Handicapped

Procurement List 1980; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1980 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: November 7, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 8, 1980 and May 16, 1980, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (45 FR 52860 and 45 FR 32362) of proposed additions to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities and service are hereby added to procurement List 1980:

Class 7530

Paper Set, Manifold and Carbon
7530-00-880-9154 (For GSA Regions W,1,2,3,5)
7530-00-401-6910 (For GSA Regions W,1,3,5)
7530-01-072-2536 (For GSA Regions W,1,2,3,5)
7530-01-073-2537 (For GSA Regions W,1,2,3,5)
7530-01-072-2538 (For GSA Regions W,1,2,3,5)
7530-00-072-2539 (For GSA Regions W,1,2,3,5)
7530-00-205-0511 (For GSA Regions W,1,2,3,5)

SIC 0782

Grounds Maintenance at the following locations in Washington, D.C.: LBJ Memorial Grove, Constitution Gardens, RFK Stadium.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-34743 Filed 11-6-80; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 3, 1980.

The USAF Scientific Advisory Board Division Advisory Group, Aeronautical Systems Division, will hold a meeting on November 24, 1980 from 8:30 a.m. to 5:00 p.m. and November 25, 1980 from 8:30 a.m. to 5:00 p.m., at Wright-Patterson Air Force Base, Ohio, in Room 222, Building 14, Area B. The Group will review aircraft engine programs, the Long Range Combat Aircraft, and status of the C-X.

This meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly the meeting will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-34775 Filed 11-6-80; 8:45 am]

BILLING CODE 3910-01-M

Proposed Deployment and Operation of the M-X; Supplemental Notice of Intent to Prepare Environment Impact Statement

The United States Air Force, Department of Defense, is preparing an environmental impact statement (EIS) for use in decisionmaking regarding the selection of a basing area or areas, withdrawing Federal lands from the operation of specified general land and mineral laws, and the acquisition of land areas and sites to be used for the proposed deployment and operation of the M-X, an advanced land based, intercontinental ballistic missile system. A previous Notice of Intent regarding the preparation of this EIS was published on November 27, 1979. The EIS will analyze the comprehensive effects of constructing and operating the missile system in geotechnically suitable

areas and indicates a proposed location in Nevada/Utah. This Notice of Intent provides for the addition of Texas/New Mexico area as an alternative to be studied in the EIS.

The Department of the Air Force is the lead agency and will supervise the preparation of the EIS. The Bureau of Land Management, U.S. Department of the Interior, is a cooperating agency in development and preparation of the EIS. This EIS will be the third in a series prepared on the M–X program. The second, issued in October, 1978, covered the engineering development of the system.

The draft EIS is scheduled to be published in late 1980. Upon issuance of the draft statement, a public comment period and public hearings will be provided to obtain comments. The final environmental statement is scheduled to be released in 1981. Final decisions on site selection, withdrawal of Federal lands, and acquisition of other land areas required for the system would follow later in 1981.

The Department of the Air Force, with the cooperating agency, will conduct meetings in Texas and New Mexico with State officials to determine if there are any environmental issues and concerns which are not being addressed in the Environmental Impact Statement related to the proposed action and alternatives. These meetings will be held in Santa Fe, New Mexico, and Austin, Texas. Depending on the issues raised at these meetings, additional public meetings may be held in locales which could be affected by the selection of areas within New Mexico and Texas for M–X deployment. Individuals, organizations and government agencies are invited to submit views on issues to be included in the environmental statement and on the Department of the Air Force's approach to analyzing and evaluating the identified issues. Notice of the details of public meetings will be made available to public officials and announced in the news media in the areas of interest as appropriate.

For further information concerning the M–X program and the environmental impact statement activities, contact the following: M–X Regional Civil Engineering Office, Norton Air Force Base, California, 92405. Telephone (714) 386–4891.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-34779 Filed 11-6-80; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent to Prepare a Draft Environmental Impact Statement for the Proposed Maintenance Dredging and Overboard Disposal at Tylers Beach Federal Navigation Channel and Harbor of Refuge, Isle of Wight County, Virginia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The Federally maintained navigation channel and harbor at Tylers Beach, Virginia must be periodically redredged to keep them at the depth required for most efficient and economical use. This depth is 6-feet with 1-foot required premaintenance and 1-foot allowable overdepth. This gives a total minimum of 8-feet mean sea level as the depth to be maintained in the Tylers Beach Channel to a harbor of refuge of the same depth. The proposed maintenance dredging requires the removal of approximately 35,000 cubic yards of material with subsequent overboard disposal of dredged material into a 31-foot deep water trough in the James River near the project.

Alternatives to be considered in this statement include no action, upland disposal and overboard disposal.

3a. The scoping process for this statement has already taken place, in large part, in bimonthly coordination meetings with Federal, State and local agencies. Written comments of interested agencies or private groups which have not yet responded to the proposed project are requested to do so, so that all pertinent issues may be examined in the DEIS.

3b. The intent of the process has been to resolve the continuing problem of the disposal of dredged material from Tylers Beach harbor and channel. It is expected that the various interested agencies or citizens will comment on some or all of the suggested alternatives, most of these agencies have already had varying degrees of input. The major issue to be considered will be the suitability of the proposed overboard disposal operations, particularly from an environmental perspective. Other major alternatives will be considered on the basis of long term effects on the local environment and economic cost.

3c. Requests will be or have been made of the following Federal and State agencies for assistance within their area of expertise during the scoping portion of the Draft EIS: The U.S. Fish and Wildlife Service; The National Marine Fisheries Service; The U.S. Environmental Protection Agency; The Virginia State Water Control Board; The Virginia Department of Health; The Virginia Marine Resources Commission; The Virginia Institute of Marine Science.

Other Federal and State agencies may be requested to provide information for the draft document if necessary.

3d. Water Quality permits from the state (Virginia State Water Control Board and Virginia Marine Resources Commission) which satisfy the requirements of Section 401 and 404(r) of the Federal Water Pollution Control Act will be applied for. A Record of Decision (ROD) will be issued by the District Engineer at the end of the EIS process unless unresolved questions still remain between the Corps and the Federal agencies mentioned in 3c.

4. Bimonthly coordination meetings, during which the proposed action has been discussed at length, have satisfied the objectives of a scoping meeting and therefore, no further scoping meetings are scheduled at this time.

5. It is estimated that the Draft EIS will be available for public review within 1 month following the date of this notice.

ADDRESS: Questions about the proposed action and DEIS can answered by: Craig L. Seltzer, Oceanographer, NAOEN-RE, Norfolk District, Corps of Engineers, 803 Front Street, Norfolk, VA 23510. Tel: (804) 441-3766.

Dated: November 3, 1980.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 80-34776 Filed 11-6-80; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF ENERGY

Gasoline Rationing Preimplementation Project Office

Solicitation of Grant Proposals To Preimplement a State Ration Reserve in Each State Under DOE's Standby Gasoline Rationing Plan

AGENCY: Gasoline Rationing Preimplementation Project Office, Department of Energy.

ACTION: Notice of Solicitation to States and Availability of Grant Awards for Proposals to Preimplement State Ration Reserve Functions.

SUMMARY: The Gasoline Rationing Preimplementation Project Office (GRPPO) of the Department of Energy (DOE) hereby gives notice of a solicitation to the fifty States, the

District of Columbia and the Commonwealth of Puerto Rico (hereinafter collectively referred to as the States) for proposals to preimplement a State Ration Reserve in each State under DOE's Standby Gasoline Rationing Plan. DOE will provide a grant award to each State that agrees to complete a preimplementation plan to administer the State Ration Reserve in its State.

FOR FURTHER INFORMATION CONTACT:

GRPPO Contact—Eve Hilgenberg, Director, Intergovernmental and Interagency Requirements, Gasoline Rationing Preimplementation Project Office, Vanguard Building, 1111 20th Street, N.W., Room 4070, Washington, D.C. 20461, (202) 653-4145.

IR Contact—William Brennan, Director, State Affairs Branch, Department of Energy, 1000 Independence Avenue, S.W., Room 8G-024, Washington, D.C. 20585, (202) 252-5660.

GC Contact—Peter Schaumberg, Acting Deputy Assistant General Counsel for Petroleum Regulations, Department of Energy, 1000 Independence Avenue, S.W., Room 6A-127, Washington, D.C. 20585, (202) 252-6754.

SUPPLEMENTARY INFORMATION:

On June 12, 1980 (45 FR 41330, June 18, 1980) the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued final regulations for the Standby Gasoline Rationing Plan. This Plan was deemed approved by Congress on July 30, 1980, in accordance with the provisions of the Energy Policy and Conservation Act (Pub. L. 94-163, EPCA), as amended by the Emergency Energy Conservation Act of 1979 (Pub. L. 96-102, EECA). Subpart I of the Plan provides for a State Ration Reserve (a percentage of each State's total of ration coupons, hereafter referred to as SRR) which would be administered by each State to meet special needs and hardships. Under § 570.82 of the Plan regulations, in order to receive a delegation of authority from DOE to administer the SRR, each State must submit a plan to administer the SRR.

The purpose of this Notice is to inform the public that the Gasoline Rationing Preimplementation Project Office (GRPPO) of the Department of Energy has issued a solicitation to the States for proposals to preimplement the SRR. Each State that submits an approved proposal would be provided with a grant award to complete the task of preimplementing, within a prescribed period, the management and operation plan for the SRR. Copies of the solicitation may be obtained by writing: Document Control Specialist, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, S.W., Room 1J-009, Washington, D.C. 20585.

The appropriate total amount available for grant awards to States is $8,000,000. The maximum award to each State will be determined by using a fixed amount of $100,000 for each State plus a share of remaining funds in proportion to motor vehicle registrations as reported in *Highway Statistics 1978*, the U.S. Department of Transportation, Federal Highway Administration. This distribution is intended to take into account both the fixed planning costs for development of a standby operating system for gasoline rationing and the variable costs of States with a high number of vehicle registrations and potential hardship applications. See the solicitation for the amount of the grant award available to each State.

The Department of Energy has determined that of the Possessions and Territories, only Puerto Rico shall be included at this time in this program solicitation. Other entities may be included at a later date, in which case notice thereof will be given in the **Federal Register**.

This solicitation is subject to the availability of funds now pending in the Congressional appropriations process. The Catalog of Federal Domestic Assistance program number is 81.069. entitled, "Gasoline Rationing-State Preimplementation Activities." The provisions of OMB Circular A-95 do not apply.

Issued in Washington, D.C. November 3, 1980.

John A. Hewitt, Jr.,

Chief Financial Officer.

[FR Doc. 80-34866 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful USES of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Brazil.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/BR(EU)-3, from West Germany to Brazil, 5.125 kilograms of uranium, enriched to approximately 19.9% in U-235, in the form of uranium-aluminum prototype fuel elements for the IEAR-1 reactor, San Paulo, Brazil.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 4, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-34812 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Northwest Montana/North Idaho Support and Libby Integration Draft Facility Location Supplement; Notice of Availability of Draft Supplement

Notice is hereby given that the Bonneville Power Administration (Bonneville), in compliance with the National Environmental Policy Act of 1969, has prepared a Draft Facility Location Supplement to its Fiscal Year 1980 Proposed Program Environmental Impact Statement (EIS). The Northwest Montana/North Idaho Support and Libby Integration Draft Supplement assesses possible environmental impacts of a proposal to rebuild a transmission line. Rebuilding of the present facilities is needed in order to (1) maintain the quality and reliability of electrical service to the Northwest Montana/North Idaho area; and (2) integrate into the Federal Columbia River Power System the additional generation being added by the U.S. Army Corps of Engineers at Libby Dam.

Copies of the draft facility location supplement are available for public inspection at designated Federal depositories (for location, contact the Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208) and at Department of Energy public document rooms located at:

Library, FOI—Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.;

Bonneville Power Administration, Washington, D.C. Office, Room 3352,

Federal Building, 12th & Pennsylvania Avenue NW., Washington, D.C.;

Library, Bonneville Headquarters, 1002 NE. Holladay Street, Portland, Oregon; and in the following Bonneville Area office:

Spokane Area, Room 561, U.S. Court House, W. 920 Riverside Avenue, Spokane, Washington.

The draft facility location supplement is being distributed to various Federal, State, and local agencies with environmental expertise, or which are otherwise likely to be interested in, or affected by, the proposed facility. Copies are also being furnished to State and local clearinghouses and to other interested groups and individuals.

Single copies are available upon request; contact the Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208, or the Spokane Area Manager.

Dated at Portland, Oregon, this 15th day of September 1980.

Sterling Munro,

Administrator.

[FR Doc. 80–33832 Filed 10–29.80; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 80–CERT–034]

Air Products and Chemicals, Inc.; Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On October 8, 1980, Air Products and Chemicals, Inc. (Air Products), P.O. Box 538, Allentown, Pennsylvania 18105, filed an application pursuant to 10 CFR Part 595 for recertification of an eligible use of up to 7,500 Mcf of natural gas per day to displace 66,400 gallons (1,581 barrels) of No. 2 fuel oil (0.3 percent sulfur) per day at its complex of chemical plants in New Orleans, with the Administrator of the Economic Regulatory Administration (ERA). The eligible seller of the natural gas is Tenneco Oil Company and the gas will be transported by Tennessee Gas Pipeline Company, Transcontinental Gas Pipe Line Corporation, and Columbia Gas Transmission Corporation. Notice of that application was published in the **Federal Register** (45 FR 70542, October 24, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On November 6, 1979, Air Products received the original certification (ERA Docket No. 79–CERT–093) of an eligible use of natural gas purchased from Tenneco Oil Company for use at the New Orleans complex for a period of one year. This recertification is being made effective on November 6, 1980, in order to provide continuity with the original certificate which expires on November 5, 1980.

The ERA has carefully reviewed Air Products' application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Air Products' application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information including a copy of the application, transmittal letter, and the actual recertification are available for public inspection at the Division of Natural Gas Docket Room 7108, RG–55,. 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 3, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80–34813 Filed 11–06–80; 8:45 am]

BILLING CODE 6450–01–M

TOCO Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of a final Consent Order.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, 1075 South Yukon Street, Lakewood, Colorado, 80226, Phone: (303) 234–3195.

SUPPLEMENTARY INFORMATION: On September 19, 1980, 45 FR 62528 (1980), the Office of Enforcement of the ERA published notification in the **Federal Register** that it executed a proposed Consent Order with TOCO Corporation on August 27, 1980 which would not become effective sooner than thirty days after publication. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the proposed Consent Order.

Although interested persons were invited to submit comments regarding the proposed Consent Order to the DOE, no comments were received. The proposed Consent Order has therefore been finalized.

Issued in Lakewood, Colorado on the 31st day of October, 1980.

Kenneth E. Merica,

District Manager of Enforcement.

Concurrence by:

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80–34815 Filed 11–6–80; 8:45 am]

BILLING CODE 6450–01–M

Puget Sound Power & Light Co.; Application for Amendment to Presidential Permit PP–6A

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application by Puget Sound Power & Light Company for Amendment to Presidential Permit PP–6A for International Transmission Line.

SUMMARY: Puget Sound & Light Company filed an application for amendment to Presidential Permit PP–6A to allow the applicant to increase the voltage of its international transmission line from 12 kilovolts to 25 kilovolts, and to import additional amounts of electric energy annually from Canada into the United States.

FOR FURTHER INFORMATION CONTACT: James M. Brown, Jr., System Reliability & Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3825. Lise Courtney M. Howe, Office of the General Counsel, Department of Energy, Forrestal Building, Room 5E–064, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On October 14, 1980, the Puget Sound Power & Light Company (Puget Sound) filed an application with the Economic Regulatory Administration (ERA) for amendment of its Presidential Permit PP–6A, dated April 23, 1942. In that Permit, Puget Sound is authorized to operate a 12-kilovolt international transmission line at the boundary line between the United States and Canada near Point Roberts, Washington, and to import no more than 4,380,000 kilowatt-hours per year at a rate not in excess of 500 kilowatts. In its application for amendment, Puget Sound requests that the transmission line be increased to 25 kilovolts and that the import limit be

raised to no more than 43,800,000 kilowatt-hours per year at a rate not in excess of 5,000 kilowatts. According to the applicant, the amendments are necessary because demand for electric energy in the Point Roberts area has increased steadily over the years. Importation from Canada is the only feasible method of supplying electricl energy to Point Roberts due to its unique geographic location.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the System Reliability and Emergency Response Branch, Economic Regulatory Administration, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with section 1.8 or 1.10 of the Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10).

Any such petitions and protests should be filed on or before December 26, 1980. Protests will be considered by ERA 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 ERA and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street, N.W., Washington, D.C., and at the System Reliability and Emergency Response Branch, Room 4110, 2000 M Street, N.W., Washington, D.C.

Dated: November 1, 1980.

Jerry L. Pfeffer,

Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 80-34804 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 51388-9006-21-77]

Rockwood Unit No. 1; Imperial Irrigation District

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the Imperial Irrigation District Rockwood Unit No. 1 as an Existing Facility.

SUMMARY: On May 18, 1979, the Imperial Irrigation District (IID) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Rockwood Unit No. 1 (Rockwood 1) as an existing facility pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act). The Final Rule published on October 19, 1979 (44 FR 60695) became effective November 30, 1979. Additional information was required by ERA and a revised request was submitted on April 1, 1980. On June 9, 1980, ERA published a summary of IID's request for classification and requested comments by interested persons on or before June 30, 1980. ERA has not received any comments in response to this notice.

ERA has completed its analysis of IID's request for Rockwood 1 and has determined that IID has satisfactorily demonstrated that it would suffer a substantial financial penalty. IID had expended, in nonrecoverable outlays, more than 25 percent of the total projected project costs as of November 9, 1978, for Rockwood 1 within the meaning of Section 515.6 of the Final Rule.

ERA has classified IID's Rockwood 1 as an existing facility. Therefore this unit is subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3012 B, Washington, D.C. 20461, Phone (202) 653-4208.

James Renjilian, Office of General Counsel, Department of Energy, 1000 Independence Ave., S.W., Room 6G-087, Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION:

(1) On May 18 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, IID requested that ERA classify IID's Rockwood Unit No. 1 (Rockwood 1) as an "existing" facility. The Final Rule published on October 9, 1979 (44 FR 60695) became effective November 30, 1979. Additional information was required by ERA and a revised request was submitted on April 1, 1980. On June 9, 1980, ERA published a summary of IID's request for classification in the **Federal Register** (45 FR 16524) and requested comments by interested persons on or before June 30, 1980. ERA has not received any comments in response to this notice.

(2) ERA has analyzed the material submitted by IID applicable to Rockwood 1 and has classified the unit as an existing facility on the basis that IID has satisfactorily demonstrated that it would suffer a substantial financial penalty because it has expended, in nonrecoverable outlays, more than 25 percent of the total projected project cost as of November 9, 1978, for Rockwood 1 within the meaning of Section 515.6 of the Final Rule.

A copy of ERA's Summary of Analysis dated October 14, 1980, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., October 30, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-34803 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Baltimore Gas and Electric Co., Application

[Docket No. ES81-7-000]

November 3, 1980

Take notice that on October 24, 1980, Baltimore Gas and Electric Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $275,000,000 principal amount of short-term debt to be issued from time to time with maturities not later than December 31, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34819 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ST81-6-000]

Cabot Corp.; Application for Approval of Rates

November 3, 1980.

Take notice that on October 7, 1980, Cabot Corporation (Applicant), 1400 Charleston National Plaza, Charleston, West Virginia 25325, filed in Docket No. ST81-6-000 an application pursuant to Section 284.123(b)(2) of the Commission's Regulations for approval

of rates charged for transporting natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that under a gas transportation agreement dated October 2, 1980, Cranberry Pipeline Corporation (Cranberry) has agreed to provide a transportation service for Tennessee of gas Tennessee purchases in West Virginia from Appalachian Exploration & Development, Inc. and Cabot Oil & Gas Corporation. Applicant further states that Cranberry has agreed to provide such a service when the Public Service Commission of West Virginia grants permission for the transfer of ownership of the natural gas transportation system located in West Virginia from Applicant to Cranberry. Until such time it is asserted that Applicant, Tennessee, and Cranberry have entered into interim transportation agreements dated October 2, 1980, in order to begin deliveries of gas prior to the authorization to transfer facilities to Cranberry. It is asserted that such interim agreements provide that the term of such transportation services by Applicant would begin with the date of initial deliveries and extend to the earlier of a period not exceeding two years or until Cranberry accepts a certificate of public convenience and necessity from the Commission.

Applicant states that it would accept gas for Tennessee's account at mutually agreeable wellhead delivery points in West Virginia on Applicant's facilities and redeliver such gas to Tennessee at a mutually agreeable redelivery point in Kanawha County, West Virginia, or at such other redelivery points in West Virginia which are acceptable to both parties. Applicant further states that it would redeliver each day a quantity of gas equivalent to the thermal value of the gas it receives at the delivery points less volumes consumed as compressor fuel or unaccounted volumes.

Applicant proposes a transportation charge of $.60 per Mcf of gas redelivered to Tennessee as a fair and equitable charge for the service rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34838 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3462]

Cascade Waterpower Development Corp. Application for Preliminary Permit

November 3, 1980

Take notice that Cascade Waterpower Development Corporation (Applicant) filed on September 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3462 to be known as Three Mile Falls Diversion Dam Project located on the Umatilla River in Umatilla County, Oregon. The proposed project lies wholly on lands owned by the U.S. Water and Power Resources Service (WPRS). Correspondence with the Applicant should be directed to: Mr. David Holzman, P.O. Box 246, June Lake, California 93529.

Project Description.—The proposed project would consist of: a penstock through the existing WPRS 24-foot high, concrete multiple arch Three Mile Falls Divesion Dam, a powerhouse, and transmission line. The project would utilize excess irrigation water.

Purpose of Project.—Applicant intends to market the power generated by the project to local public utilities.

Proposed Scope and Cost of Studies Under Permit.—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would conduct studies and surveys, perform preliminary designs, quantity, and cost estimates, and a feasibility analysis, conduct environmental studies and assessments, and prepare an FERC license application. No new roads are required to complete the studies.

The estimated cost of the work to be performed under the preliminary is $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 31, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 2, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before December 31, 1980.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Petition To Intervene", as

applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3462. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St, N.E., Washigton, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., N.W., Wash., D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34829 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3461]

Cascade Waterpower Development Corp. Application for Preliminary Permit

November 3, 1980.

Take notice that Cascade Waterpower Development Corporation (Applicant) filed on September 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3461 to be known as the Scoggin Dam Project located on the Scoggin Creek in Washington County, Oregon. The proposed projects lies wholly on lands owned by the U.S. Water Power Resources Service (WPRS). Correspondence with the Applicant should be directed to: Mr. David Holzman, P.O. Box 246, June Lake, California 93529.

Project Description.—The proposed project would consist of: a penstock connecting to the existing outlet works of the 131-foot high, earthfill WPRS' Schoggin Dam, a powerhouse, and a transmission line. The project would utilize excess irrigation water.

Purpose of Project.—Applicant intends to market the power generated by the project to local public utilities.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would conduct studies and surveys, perform preliminary designs, quantity and cost estimates, and a feasibility analysis, conduct environmental studies and assessments, and prepare an FERC license application. No new roads are required to complete the studies.

The estimated cost of the work to be performed under the preliminary permit is $47,000.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before January 2, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 3, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b)d and (c), *(as amended* 44 *Fed. Reg.* 61328, October 25, 1979). A competing application must conform with the requirements of 18 C.F.R. § 4.33(a) and (d), *(as amended,* 44 *Fed. Reg.* 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 2, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3461. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., N.W., Wash., D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34839 Filed 11-06-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-52-000]

Central Louisiana Electric Co.; Filing

November 3, 1980.

The filing Company submits the following:

Take notice that on October 24, 1980, Central Louisiana Electric Company (CLECO) tendered for filing a letter agreement dated November 14, 1979, which provides for the sale of 150 MW of unit capacity from CLECO's Rodemacher Unit No. 1 to Gulf States Utilities, Inc. for the 12-month period commencing January 1, 1981.

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. All such petitions or protests should be filed on or before November 21, 1980. Protests will be considered by the Commission in obtaining 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. 80-34820 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-50-000]

Cliffs Electric Service Co.; Filing

November 3, 1980

Take notice that on October 24, 1980 Cliffs Electric Service Company filed a change in its incidental energy rate to the City of Marquette, Michigan. The effect of the change will be to increase the rate from 29.1 mills to 30.1 mills/kwh.

An effective date of January 1, 1981 is requested.

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, 1.10). All such petitions or protests should be filed on or before *November 21, 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. 80-34821 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-51-000]

Cliffs Electric Service Co., Rate Schedule Filing

November 3, 1980

Take notice that on *October 24, 1980,* Cliffs Electric Service Company ("Service Co.") filed a change in the Incidental Energy Service Schedule in its Interconnection and Energy Agreement with Wisconsin Electric Power Company. The effect of the change will be to increase the rate from 30.3 to 31.4 mills/kwh.

Service Co. requests an effective date of January 1, 1981.

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, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before *November 21, 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. 80-34822 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-23-000]

El Paso Natural Gas Co.; Application

November 3, 1980.

Take notice that on October 17, 1980, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP81-23.000 an application pursuant to Section 7 of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon during the calendar year 1981 and operation of various field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed facilities would not exceed $3,000,000. Applicant requests waiver of the single-project cost limitation of $500,000 prescribed by Section 157.7(g). It proposes to increase the single project limitation to $1,000,000. Such a waiver is necessary, states Applicant, because of continuing increases in the cost of equipment and expenses incident to the installation of equipment. Such costs, it is asserted would be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34830 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER77-516, ER77-549, ER77-550]

Florida Power Corp.; Filing

November 3, 1980.

The filing company submits the following:

Take notice that on October 23, 1980, Florida Power Corporation submitted for filing a refund report pursuant to the Commissions's order in the above referenced proceeding.

Any person desiring to be heard or to protest said filing should file a 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

protests should be filed on or before November 21, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34823 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-66]

Holiday Gulf; Filing of Petition for Review Under 42 U.S.C. 7194

November 3, 1980.

Take notice that Holiday Gulf on February 25, 1980 filed a Petition for Review under 42 U.S.C. 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 18, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 18, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34831 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE80-69]

Interstate Power Co.; Application for Waiver

November 3, 1980.

Take notice that Interstate Power Company (Interstate), on July 1, 1980, filed an application for waiver of certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Waiver is sought from the requirement to file on or before June 30, 1982, certain jurisdictional load data pertaining to its costs of providing electric service as specified in § 290.401(b), separately by retail regulatory jurisdiction.

In its application for waiver, Interstate states that it should not be required to file the specified data for the following principal reasons:

(1) The Interstate system contains no geographic or distributional characteristics that are unique to any of the three retail regulatory jurisdictions included.

(2) The installation of independent load research metering in each jurisdiction would not enhance the information recovered although it would triple the cost borne by its customers.

Copies of the application for waiver are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for waiver must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, on or before December 22, 1980. Within that 45-day period such person must also serve a copy of such comments on Interstate addressed to: Interstate Power Company, Attention: Fred E. Horton, Jr., Esquire, 1000 Main Street, Dubuque, Iowa 52001.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80.34824 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE80-67]

Iowa-Illinois Gas & Electric Co.; Application for Waiver

November 3, 1980.

Take notice that Iowa-Illinois Gas & Electric Company (Iowa-Illinois), on June 27, 1980, filed an application for waiver of certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Waiver is sought from the requirements to file on or before June 30, 1982, certain jurisdictional load data pertaining to its costs of providing electric service as specified in Section 290.401(b) by separate retail regulatory jurisdiction.

In its application for waiver Iowa-Illinois states that it should not be required to file the specified data for the following principal reasons:

(1) There is no significant difference in load data between its two retail regulatory jurisdictions.

(2) Both the Iowa State Commerce Commission and the Illinois Commerce Commission have waived the separate load reporting requirement.

Copies of the application for waiver are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for waiver must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45-day period such person must also serve a copy of such comments on Iowa-Illinois, addressed to: Iowa-Illinois Gas & Electric Company, Attention: Brent E. Gale, Esquire, 206 East Second Street, Davenport, Iowa 52808.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34825 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER77-578]

Kansas Gas and Electric Co.; Filing

November 3, 1980.

The filing company submits the following:

Take notice that on October 2, 1980, Kansas Gas and Electric Company submitted for filing a statement of compliance pursuant to Commission Opinion No. 80-A, issued in the above-referenced proceeding.

A copy of this filing has been sent to the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a 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 protests should be filed on or before November 21, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34826 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. TA80-1-25, et al.]

Mississippi River Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

November 3, 1980.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of the filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 18, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date and company	Docket no.	Type filing
9/16/80—Mississippi River Transmission Corp.	TA80-1-25	Report.
10/17/80—South Georgia Natural Gas Co.	RP77-32-008	Report.
10/17/80—El Paso Natural Gas Co.	RP79-12-009	Report.
10/21/80—Texas Eastern Transmission Corp.	RP81-5-000	Plan.

[FR Doc. 80-34840 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE80-73]

New England Power Service Co.; Application for Waiver

November 3, 1980.

Take notice that the New England Power Service Company (NEPSC), on behalf of its subsidiaries the Massachusetts Electric Company and the Narragansett Electric Company, on July 23, 1980, filed an application for waiver of certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Waiver is sought from the requirement to file on or before June 30, 1982, certain jurisdictional load data pertaining to its costs of providing electric service as specified in § 290.401(b), separately by retail regulatory jurisdiction.

In its application for waiver, NEPSC states that it should not be required to file the specified data for the following principal reasons:

(1) NEPSC proposes to do joint system-wide load research and submit this in lieu of separate data for each retail regulatory jurisdiction.

(2) The two retail regulatory jurisdictions, the Rhode Island Public Utilities Commission (RIPUC) and the Massachusetts Department of Public Utilities (MDPU) held joint hearings in Rhode Island and Massachusetts on May 22 and 23, 1980, on the subject of doing load research for the NEPSC system-wide and no party to the proceeding opposed the Company's request.

(3) The RIPUC and MDPU have given tentative approval to NEPSC to proceed with system-wide load research.

Copies of the application for waiver are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for waiver must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45-day period such person must also serve a copy of such comments on NEPSC, addressed to:

New England Power Service Company,
Attention: Mr. Gerald R. Browne,
Executive Vice President,
20 Turnpike Road,
Westborough, Massachusetts 01581.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34841 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RE80-70, 71, and 72]

Northeast Utilities; Application for Waiver

November 3, 1980.

Take notice that Northeast Utilities (NU) on behalf of its subsidiaries, the Western Massachusetts Electric Company, the Connecticut Light and Power Company, and the Hartford Electric Light Company, on July 1, 1980, filed an application for waiver of certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Waiver is sought from the requirements to file on or before June 30, 1982, certain jurisdictional load data pertaining to its costs of providing electric service as specified in § 290.401(b), separately by retail regulatory jurisdiction.

In its application for waiver, NU states that it should not be required to file the specified data for the following principal reasons:

(1) In lieu of furnishing the load data by separate retail regulatory jurisdiction, NU proposes to submit data for the NU system companies as a whole.

(2) NU subsidiary companies have received orders from the Massachusetts Department of Public Utilitles (MDPU) and the Connecticut Division of Public Utility Control (CDPUC) to undertake research regarding the load characteristics of groupings of commercial and industrial customers.

(3) NU has submitted a system-wide load research plan to MDPU and CDPUC and they have approved it.

(4) NU states that since the number of load research metering devices needed by NU to do load research on a system-wide basis is significantly reduced it is prudent to request this waiver.

Copies of the application for waiver are on file with the Commission and are

available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for waiver must file such information with the Federal energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the

Federal Register. Within that 45-day period such person must also serve a copy of such comments on NU, addressed to:

Northeast Utilities
Attention: Mr. Richard H. Brown,
Director of Consumer Economics,
P.O. Box 270,
Hartford, Connecticut 06101.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34842 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA-81-1-59-000]

Northern Natural Gas Co.; Purchased Gas Cost Adjustment Rate Change

November 3, 1980.

Take notice that on October 27, 1980, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1:
Twenty-fourth Revised Sheet No. 4a.
Fourteenth Revised Sheet No. 4b.
First Revised Sheet No. 4c.
Original Volume No. 2:
Twenty-fourth Revised Sheet No. 1c.

Such revised tariff sheets are required in order that Northern may place into effect the proposed rates on December 27, 1980 to reflect:

(1) the estimated increase in the cost of purchased gas pursuant to Paragraph 18 of Northern's FERC Gas Tariff, Third Revised Volume No. 1. Additionally, this PGA reflects the flow-through of certain refund obligations pursuant to Commission Orders in Docket No. RP78-56;

(2) the decrease in Northern's costs associated with Research, Development and Demonstration Expenditures;

(3) the increase in Gas Research Institute unit charge pursuant to Paragraph 19 of Northern's FERC Gas Tariff, Third Revised Volume No. 1; and

(4) the estimated decrease in Louisiana First Use Tax surcharge pursuant to Paragraph 20 of Northern's FERC Gas Tariff, Third Revised Volume No. 1.

The Company states that copies of the filing have been mailed to each of the Gas Utility customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before Dec. 5, 1980. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34843 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-19-000]

Northwest Pipeline Corp.; Application

November 3, 1980.

Take notice that on October 17, 1980, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP81-19-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Southwest Gas Corporation (Southwest) at a new point of delivery to Southwest in LaPlata County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that with the exception of sales made to Southwest pursuant to Applicant's Rate Schedule WS-1 and Applicant's Special Rate Schedule X-46, all of the natural gas which Applicant is authorized to sell to Southwest is presently delivered to Southwest at a point of interconnection between the facilities of Applicant and Southwest on the Idaho-Nevada border in Owyhee County, Idaho. Applicant further states that it is also presently authorized to transport and deliver to El Paso Natural Gas Company (El Paso) for the account of Southwest up to 22,000 Mcf of gas per day which Southwest has or may develop and/or purchase in the States of Utah and Colorado.

Applicant proposes herein to establish a new point of delivery for the sale and delivery of natural gas to Southwest at an existing point of interconnection between the facilities of Applicant and El Paso in LaPlata County, Colorado.

Applicant proposes to provide Southwest with an additional delivery point in order to permit Southwest to purchase and take delivery of gas purchased from Applicant under Applicant's Rate Schedule ODL-1 and that the volumes of natural gas not required by Southwest to meet its northern Nevada (Reno) requirements would then be made available to serve the natural gas requirements of Southwest's other market areas.

Applicant asserts that it presently has a gas supply in excess of its firm contractual requirement and that the sale and delivery to Southwest at the proposed delivery point would help to defer the prepayment of gas by Applicant and permit the orderly attachment of new gas reserves.

Applicant states that any revenues received from the sale to Southwest at the proposed delivery point would be subject to the gas sales revenue tracking provision of Applicant's rate settlement approved May 15, 1980, in Docket RP79-57. The application also states that no additional facilities are required to provide the proposed service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34832 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE80-68]

Oklahoma Gas and Electric Co.; Application for Waiver

November 3, 1980.

Take notice that Oklahoma Gas and Electric Company (OG&E), on July 1, 1980, filed an application for waiver of certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Waiver is sought from the requirements to file on or before June 30, 1982, certain jurisdictional load data pertaining to its costs of providing electric service as specified in Section 290.401(b), separately by retail regulatory jurisdiction.

(1) Preliminary sampling of the kWh characteristics of consumers in its two retail regulatory jurisdictions exhibit stratistically similar patterns.

(2) The benefits received from load research metering in the two jurisdictions separately would not be warranted when considering the doubling of cost, the limited improvement of results, and the relatively small percentage (less than 10%) of total OG&E sales made to retail customers in Arkansas.

Copies of the application for waiver are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for waiver must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45-day period such person must also serve a copy of such comments on OG&E, addressed to:

Oklahoma Gas and Electric Company,
Attention: Mr. Leon C. Smith, Manager of Rates and Assistant Secretary,
Post Office Box 321,
Oklahoma City, Oklahoma 73101.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34833 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE80-65]

Potomac Electric Power Co.; Application for Exemption

November 3, 1980.

Take notice that Potomac Electric Power Company (Pepco), on June 30, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file as to its Virginia retail jurisdiction, on or before June 30, 1982, certain jurisdictional load data pertaining to its costs of providing electric service as specified in § 290.401(b).

In its application for exemption, Pepco states that it should not be required to file the specified data for the following principal reasons:

(1) The proportion of all of Pepco's business done in Virginia is extremely small; and the proportion of all of Virginia's electricity sales made by Pepco is extremely small.

(2) The cost of complying is substantial and, in view of the data's limited usefulness, unduly burdensome.

Copies of the application for exemption are on file with the Commission and are available for public inspection. Any person desiring to present written views, arguments, or other comments on the application for exemption must file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45-day period such person must also serve a copy of such comments on Pepco, addressed to:

Potomac Electric Power Company,
Attention: Edward A. Caine, Esquire, Deputy General Counsel,
1900 Pennsylvania Avenue NW., Rm. 841,
Washington, D.C. 20068.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34834 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-54-000]

Public Service Company of Oklahoma; Filing

November 3, 1980.

The filing Company submits the following:

Take notice that the Public Service Company of Oklahoma (PSO) submitted on October 28, 1980, for filing with this Commission an Agreement entered into between PSO and the United States of America acting through the Secretary of Energy as represented by the Administrator, Southwestern Power Administration dated October 16, 1980, which provides for the sale of conservation energy and emergency service by Public Service and Southwestern Power Administration desires to purchase said energy.

PSO contends that Southwestern would be entitled under that Agreement to purchase conservation energy only to the extent that it has alternate sources of dependable hydroelectric capacity which it could otherwise use. Such conservation energy purchased by Southwestern would replace energy which could otherwise be generated by the hydroelectrice projects of Southwestern so as to conserve and maintain their electric generating capability and environmental quality. PSO further contends that the rates set forth in this Agreement are based upon the rates which generally prevail in the area. Drought conditions and low water levels combined to make the Agreement necessary.

PSO requests that the Commission waive the 30 day minimum notice period and accept the Agreement effective on October 16, 1980.

PSO indicates that copies of the proposed Agreement have been forwarded to the Oklahoma Corporation Commission as well as the Southwestern Power Administration.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34844 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-10-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Application

November 3, 1980.

Take notice that on October 9, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-10-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities necessary to connect gas purchased by Applicant from Conoco Inc. (Conoco), Getty Oil Company (Getty), Arco Oil and Gas Company (Arco)and Cities Service Company (Cities), in the Vermilion Area, Blocks 119 and 104, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate 9.9 miles of 12¾-inch O.D. pipeline and 1.4 miles of 8⅝-inch pipeline. Applicant asserts that the proposed 12¾-inch O.D. pipeline would permit the attachment of gas purchased by Applicant from Conoco, Arco, Cities and Getty to Applicant's existing pipeline system. It is stated that such facilities would originate at Conoco's, Arco's, Cities' and Getty's Platform "G" in the Vermilion Area Block 119, offshore Louisiana, and would extend to Vermilion Block 116 where it would interconnect with the existing Blue Water Project facilities. It is further stated that the proposed 8⅝-inch O.D. pipeline would permit the attachment of gas produced by Arco in Vermilion Block 104, offshore Louisiana.

Applicant estimates that as a result of the construction of the proposed facilities approximately 60,700,000 Mcf of recoverable gas reserves would be available to it from Vermilion 119 and 104 and that the total deliverability from Vermilion 119 and 104 would be approximately 50,000 Mcf of gas per day.

The cost of proposed facilities is estimated to be $7,963,000 which cost would be financed from general fund and/or borrowings on Applicant's revolving credit agreements, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34845 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-17-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Application

November 3, 1980.

Take notice that on October 16, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-17-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of East Tennessee Natural Gas Company (East Tennessee) in connection with an underground storage service proposed to be rendered for East Tennessee by Consolidated Gas Supply Corporation (Consolidated), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to receive up to 4,546 Mcf of gas per day plus a volume equal to Applicant's fuel and use requirements from East Tennessee each day during the injection period that Applicant's existing Greenbrier No. 2 Sales Meter Station delivery point to East Tennessee in Robertson County, Tennessee, and to transport and deliver an equivalent volume to Consolidated at Applicant's existing Ellisburg Sales Meter Station delivery point to Consolidated in Potter County, Pennsylvania.

During the withdrawal period, Applicant proposes to receive a like amount of gas per day from Consolidated at the aforementioned Ellisburg delivery point and to transport and deliver such volumes to East Tennessee at the aforementioned Greenbrier No. 2 delivery point. It is asserted that the maximum volume which Applicant proposes to transport for East Tennessee during each injection and withdrawal period would be 500,000 Mcf.

For the transportation service proposed herein, Applicant states that it would initially change East Tennessee 40.71 cents for each Mcf received from Consolidated and transported and delivered to East Tennessee during the withdrawal period.

The proposed transportation service, it is stated, is for a primary term ending March 31, 2000, and from year to year thereafter. Applicant states it would transport the gas on a best-efforts basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the

matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34846 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-26-000]

Trunkline Gas Co.; Application

November 3, 1980.

Take notice that on October 20, 1980, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP81-26-00 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport and redeliver to United a firm quantity of 10,000 Mcf of natural gas per day purchased by United from Getty Oil Company (Getty) and Conoco, Inc. (Conoco). It is stated that Applicant and United have entered into a transportation contract dated September 17, 1980, under which Applicant would receive gas for United's account from Getty and Conoco at the existing point of interconnection between the facilities of Applicant and Conoco on Conoco's production platform in South Timbalier Block 148, offshore Louisiana. Applicant states that it understands that United has arranged to purchase volumes of natural gas from Getty and Conoco in South Timbalier Block 146, offshore Louisiana. It is stated that Applicant would transport equal quantities of said gas, less 3 percent fuel usage, to United at the existing point of interconnection between the facilities of Applicant and United in St. Mary Parish, Louisiana. Applicant asserts that it has sufficient capacity in its system to transport these volumes and that this arrangement would be the most efficient and economical means of transporting United's gas.

It is stated that under the agreement, United would pay Applicant $10,000 per month subject to adjustment based on the firm 10,000 Mcf of natural gas per day. If Applicant receives more than the firm quantity the monthly charge would be increased by 3.28 cents per Mcf and if it receives less the charge would be reduced by 3.28 cents per Mcf, it is stated. Furthermore, it is stated the monthly charge would be subject to adjustment as a result of Applicant's rate proceedings.

It is asserted that the term of the transportation service is ten years and from year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34847 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-53-000]

Tucson Electric Power Co.; Cancellation

November 3, 1980

Take notice that on October 24, 1980, Tucson Electric Power Company (Tucson) tendered for filing a notice of cancellation of FERC Rate Schedule No. 24. The proposed effective date of the cancellation is December 1, 1980.

Tucson states that the aforementioned Rate Schedule is identified as "Colorado-TGE 1979-1980 Power Sale Agreement" between Tucson and Public Service Company of Colorado, dated March 3, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34835 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3350]

Turlock Irrigation District; Application for Exemption for Small Conduit Hydroelectric Facility

November 3, 1980.

Take notice that on August 25, 1980, Turlock Irrigation District (District) filed an application under Section 30 of the Federal Power Act [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Federal Power Act. The proposed Drop No. 6—SHPG Power Plant (FERC Project No. 3350) would be located on the District's Main Canal at the sixth control structure (Drop No. 6), downstream of Turlock Lake, the District's regulating reservoir, in Stanislaus County, California. Water is diverted into the Turlock Main Canal from the Tuolumne River approximately 16 miles from the project site at LaGrange Diversion Dam. Correspondence with the District should be directed to Mr. Ernest Geddes, General Manager, Turlock Irrigation

District, P.O. Box 949, Turlock, CA 95380.

Purpose of Project—Project energy would be utilized to meet the total future requirements of the District's electric service area.

Estimated Cost—The cost of the proposed project is estimated by the District to be $452,000.

Project Description—The District proposes to install a powerplant, at one end of and below the existing control structure, containing a turbine-generator unit that is a prototype design of the Schneider Hydrodynamic Power Generator with a rated capacity of 200 kW. Because the unit will be located at one end of the control structure, there will be room to add three units if such additions are deemed feasible in the future. The power plant would be locally monitored and controlled manually.

Agency Comments—The U.S. Fish and Wildlife Service and the California Department of Fish and Game are requested, pursuant to Section 30 of the Federal Power Act, to submit appropriate terms and conditions to protect any fish and wildlife resources. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comment, protest, or petition to intervene must be received on or before December 15, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34836 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-49-000]

Upper Peninsula Power Co.; Filing

November 3, 1980.

Take notice that on October 24, 1980, Upper Peninsula Power Company (Upper Peninsula) tendered for filing a revised Service Schedule III (Energy Interchange Rate) to the 1978 Basic Agreement. Upper Peninsula states that Paragraph 1.07 of the 1978 Basic Agreement provides for an annual review and adjustment of the Energy Interchange Rate for each calendar year.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34827 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3270]

Water Power Development Corp.; Application for Preliminary Permit

November 3, 1980.

Take notice that Water Power Development Corporation (Applicant) filed on July 29, 1980, and revised on September 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3270 to be known as the Goodwin-Colebrook Dam Project located on the West Branch of the Farmington River in Hartford and Litchfield Counties, Connecticut. The proposed project would utilize Federal lands and a Federal dam under the jurisdiction of the U.S. Army Corps of Engineers. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Kenneth E. Mayo, President, Water Power Development Corporation, 23 Temple Street, Nashua, New Hampshire 03060. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wished to file.

Project Description—The proposed project would consist of the Goodwin Dam and the Colebrook River Lake Dam development. The Goodwin Dam is located 57 river miles upstream of the confluence of the Connecticut River and the West Branch of the Farmington River. The Colebrook River Lake Dam is located approximately 2 miles upstream of the Goodwin Dam.

The proposed Goodwin Dam development would consist of: (1) an existing earth dam having a height of 135 feet and a length of 900 feet; (2) a reservoir with a storage capacity of 6.5 billion gallons; (3) a proposed penstock extending 300 feet from six existing gate openings to; (4) a proposed powerhouse having an installed generating capacity of 3,200 kW; and (5) appurtenant works. Existing project facilities are currently owned by the Metropolitan District of the City of Hartford. The proposed Colebrook Dam development would utilize the U.S. Army Corps of Engineers' existing Colebrook River Lake Dam and Reservoir. The devlopment would consist of: (1) a proposed penstock; (2) a proposed powerhouse having an installed generation capacity of 1,800 kW; and (3) appurtenant works.

It is estimated that the combined operation of both developments could provide an average annual net generation of 20,000 MWh.

Purpose of Project—Project power would be sold to a local public utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would investigate the hydraulic, power generation, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would decide how to proceed with further environmental studies, project designs, and an application for an FERC license. Applicant estimates the cost of studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the

Permittee undertakes the necessary studies and examinations to determine the engineering, economic and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consitant with the purpose of a permit as described in this notice. No other formal request for comments will be made. If any agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 6, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before January 5, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Petition To Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3270. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34837 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-57-000 (PGA81-1)]

Western Transmission Corp.; Proposed Changes

November 3, 1980.

Take notice that Western Transmission Corporation (Western), on October 28, 1980, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet:

Fourteenth Revised Sheet No. 3-A, superseding Thirteenth Revised Sheet No. 3-A.

The proposed changes would increase the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is December 1, 1980.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 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 proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34828 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Week of September 22 Through September 26, 1980

During the week of September 22 through September 26, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receivers actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved partywho fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Document Room of the Office of Hearings and Appeals, Room B120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 31, 1980.

Amerada Hess Corporation, Washington, D.C., BEE-1310
Ashland Oil, Inc., Ashland, Kentucky, BEE-1377
Atlantic Richfield Company, Los Angeles, California, BEE-1301
Chevron U.S.A. Inc., San Francisco, California, BEE-1359
Cities Service Company, Tulsa, Oklahoma, BEE-1400
Exxon Company, U.S.A., Houston, Texas, BEE-1411
Getty Refining and Marketing Co., Tulsa, Oklahoma, BEE-1320
Gulf Oil Corporation, Houston, Texas, BEE-1304
Mobil Oil Corporation, Washington, D.C. BEE-1281
Shell Oil Company, Houston, Texas, BEE-1309
Standard Oil Company of Indiana (AMOCO), Chicago, Illinois, BEE-1314
Standard Oil Company of Ohio (SOHIO), Cleveland, Ohio BEE-1391
Sun Oil Company of Pennsylvania, Philadelphia, Pennsylvania, BEE-1349
Tenneco Oil Company, Houston, Texas, BEE-1401
Texaco Inc., White Plains, New York, BEE-1246, motor gasoline, propane

Each of the above-named firms filed Applications for Exception from the provisions of 10 CFR 212.83(c) and (h). The exception request, if granted, would permit the applicants to include in their selling prices for covered petroleum products sold in the State of Connecticut the cost of a gross receipts tax recently imposed by that State on sales of petroleum products by integrated refiners. On September 24, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception requests should be granted.

Hempstead Resources Recovery Corporation, Washington, D.C., BEE-1407
Arizona Chemical Company, Wayne, New Jersey, BEE-1273
Powerine Oil Company, Santa Fe Springs, California, BEE-1289
Laketon Asphalt, Refining, Evansville, Indiana, BEE-1312
Peerless Petrochemicals, Inc., Washington, D.C., BEE-1251
Giant Industries, Inc., Washington, D.C., BEE-1406
Coastal Petroleum Refiners, Inc., Santa Ana, California, BEE-1405
Colonial Oil Industries, Inc., Savannah, Georgia, BEE-1364
Cadence Chemical Resources, Inc., Michigan City, Indiana, BEE-1360
Milwaukee Metropolitan Sewerage District, Milwaukee, Wisconsin, BEE-1361
Northeast Petroleum Industries, Inc., Washington, D.C., BEE-1350
County Sanitation Districts of Orange County California, Fountain Valley, California, BEE-1374
Nashville Thermal Transfer Corp., Nashville, Tennessee, BEE-1371
American Can Company, Greenwich, Connecticut, BEE-1372
Yetter Oil Company, Burlington, Iowa, BEE-1367
Midwest Solvents Co., Inc., Atchison, Kansas, BEE-1370
Irving Oil Corporation, Washington, D.C., BEE-1370
Western Refining Company, Los Angeles, California, BEE-1408
Coral Petroleum, Inc., Houston, Texas, BEE-1387
City of Los Angeles, Los Angeles, California, BEE-1388
Val Verde International, Inc., Laredo, Texas, BEE-1380, crude oil

Each of the above-named firms filed Applications for Exception from the provisions of the Entitlements Program, 10 CFR 211.67. The exception requests, if granted, would permit the applicants to sell additional entitlements to compensate for entitlements which Sector Refining, Inc. has failed to purchase. On September 25, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception requests should be granted.

Koch Exploration Company, Wichita, Kansas, BXE-1297, crude oil

Koch Exploration Company filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted would result in an extension of exception relief previously granted and would permit the firm to sell at market prices a certain portion of the crude oil which it produced from the Sink Draw #1 Lease for the benefit of the working interest owners. On September 22, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted with respect to the applicant's Sink Draw #1 Lease.

Vanway Gasohol, Inc., Brantley, Alabama, BEE-0978, gasohol

Vanway Gasohol, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211, Subpart F. The exception request, if granted, would result in the issuance of an Order assigning to the firm a base period allocation and supplier of unleaded motor gasoline for the purpose of blending gasohol. On September 23, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

PETITIONS INVOLVING THE MOTOR GASOLINE ALLOCATION REGULATIONS

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company name, Location, and Case No.

King & King Enterprises, Inc., Carl King d/b/a King Gas & Oil Co., Kansas City Missouri; DEE-2240
Moore's Gulf, Melbourne, Florida; BEE-1412

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company name, Location, Case No.

Advanced Sales Corp., St. Petersburg, Florida; BXE-1348
E. L. Yeager Construction Co., Inc., Riverside, California, DEE-5939

[FR Doc. 80-34806 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed With the Office of Hearings and Appeals; Week of September 8 through September 12, 1980

During the week of September 8 through September 12, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 31, 1980.

Proposed Decisions and Orders

Beacon Bay enterprises, Santa Ana, California, et al., BRO-1308, gasoline

On September 8, 1980, Beacon Bay Enterprises d/b/a Sierra Auto Wash, 2015 North Tustin Avenue, Santa Ana, CA 92680; d/b/a Newport Center Car Wash, 150 Newport Center Drive, Newport, Beach, CA

92660; d/b/a Lido Car Wash, 481 East Seventeenth Street, Costa Mesa, CA 92626; d/b/a Laguna Car Wash, 540 South Pacific Coast Highway, Laguna Beach, CA 92651; d/b/a Orange Car Wash, 2355 North Tustin, Orange, CA 92665; d/b/a El Toro Car Wash, 23602 El Toro Road, El Toro, CA 92630; d/b/a Newport Place Car Wash, 4200 Birch, Newport Beach, CA 92660; d/b/a Anaheim Auto Wash, 216 South Euclid, Anaheim, CA 92801; d/b/a Southcoast Auto Wash, 1501 South McArthur Boulevard, Santa Ana, CA 92704; d/b/a Lake Forest Auto Wash, 23581 Rockfield Boulevard, El Toro, CA 92630 filed a Notice of Objection to a Proposed Remedial Order (PRO) the DOE Western District Office of Enforcement issued to the firm on July 29, 1980. In the PRO, the Western District found that during August 1, 1979 to March 31, 1980 the firm committed pricing violations of $22,340.95 in connection with the sale of motor gasoline in the State of California.

Glen Cove yacht services, Glen Cove, New York, BRO-1309, gasoline

On September 10, 1980, Glen Cove Yacht Service, 88 Shore Road, Glen Cove, New York 11542, filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on August 15, 1980. In the PRO, the Northeast District found that during the period January 2, 1980 through May 30, 1980, Glen Cove Yacht Service charged prices in excess of its maximum allowable selling price for one or more grades of gasoline in violation of 10 CFR 212.93. According to the PRO, the firms's violation resulted in $510.80 of overcharges.

Sheldon Hanson (H & B Texaco), Wichita Falls, Texas, BRO-1306, gasoline

On September 8, 1980, Mr. Sheldon Hanson d/b/a H & B Texaco and Broadstreet Texaco, c/o Bryant Pump and Equipment Co., 1903 Austin, Wichita Falls, Texas 76301, filed a Notice of Objection to a Proposed Remedial Order which the Office of Enforcement, Southwest District Office issued to the firm on August 21, 1980. In the PRO the Office of Enforcement found that during the period August 15, 1979 to February 26, 1980, the firm charged prices significantly in excess of its maximum allowable selling price for one or more grades of gasoline. According to the PRO the Hanson violation resulted in $11,202.18 of overcharges.

[FR Doc. 80-34805 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed, Week of September 26 through October 3, 1980

During the week of September 26 through October 3, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: October 31, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Sept. 26 through Oct. 3, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 26, 1980	DeMartin Truck Lines, Inc., Bakersfield, CA	BEH-1420 and BED-1420.	Request for Evidentiary Hearing and Motion for Discovery. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by DeMartin Truck Lines, Inc. in response to the August 6, 1980 Proposed Decision and Order issued to the firm (Case No. DEE-1420).
Sept. 26, 1980	Exxon Company, U.S.A., Houston, TX	BFA-0481	Appeal of Information Request Denial. If granted: The August 18, 1980 Information Request Denial issued by the Office of Special Counsel would be rescinded, and Exxon Company, U.S.A. would receive access to an "issues paper" relating to the definition of the term "property".
Sept. 26, 1980	Genico Distributors and John C. Gabbert, Austin, TX.	BSG-0035	Petition for Special Redress. If granted: Genico Distributors and John C. Gabbert would receive a response to their request under the Freedom of Information Act regarding access to documents relating to the audit or investigation of Genico Distributors and John C. Gabbert.
Sept. 26, 1980	L. S. Riggins Oil Company, Washington, D.C.	BMR-0062	Request for Modification. If granted: The July 28, 1980 Decision and Order (Case Nos. DEE-3603 and DST-3603) issued to L. S. Riggins Oil Company by the Office of Hearings and Appeals would be modified.
Sept. 26, 1980	Total Petroleum, Inc., Washington, D.C	BEE-1417	Price Exception. If granted: Total Petroleum, Inc. would receive an exception from the provisions of 10 CFR 212.83 which would permit Total Petroleum and Vickers Energy Corporation to be treated as separate firms for the purposes of the DOE Price Regulations.
Sept. 26, 1980	U.S. Oil and Refining Company, Washington, D.C.	BEE-1418 and BEL-1418.	Exception and Temporary Exception from the Entitlements Program. If granted: U.S. Oil and Refining Company would receive an exception and a temporary exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
Sept. 29, 1980	Atlantic Richfield Company, Los Angeles, CA	BFA-0483	Appeal of Information Request Denial. If granted: Atlantic Richfield Company would receive a waiver from payment of fees, in connection with the firm's August 14, 1980 Freedom of Information Request filed with Economic Regulatory Administration, Region V.
Sept. 29, 1980	Cedar Springs Marina, Inc., Vernal, UT	BEE-1419	Price Exception. If granted: Cedar Springs Marina, Inc. would receive an exception from the provisions of 10 CFR 212.93 which would permit the firm to sell motor gasoline at prices which exceed the applicable ceiling prices.
Sept. 29, 1980	Duncan, Allen and Mitchell, Washington, D.C.	BFA-0482	Appeal of Information Request Denial. If granted: The August 29, 1980 Information Request Denial issued by the Office of Power Marketing Coordination, Resource Applications would be rescinded, and Duncan, Allen and Mitchell would receive access to certain documents relating to the Colorado River Storage Project.
Sept. 29, 1980	Freddie Herbert, Jennings, LA	BEE-1483	Allocation Exception. If granted: Freddie Herbert would receive an exception from the provisions of 10 CFR Part 211 which would permit the firm to receive an allocation of unleaded motor gasoline for the purpose of blending gasohol.
Sept. 29, 1980	J. D. Streett Company, Inc., Washington, D.C.	BRT-0107	Request for Temporary Stay. If granted: J. D. Streett Company, Inc. would receive a temporary stay of the obligation to file a response to a Notice of Probable Violation issued to the firm, pending a final determination on its Application for Stay (Case No. BRS-0107).
Sept. 29, 1980	L. O. Ward, Enid, OK	BRD-1235	Motion for Discovery. If granted: Discovery would be granted to L. O. Ward in connection with the firm's Statement of Objections (Case No. BRO-1235) submitted in response to a Proposed Remedial Order issued to the firm.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Sept. 26 through Oct. 3, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 29, 1980	Mobil Oil Corp./Little America Refining Company, Washington, D.C.	BEJ-0139	Motion for Protective Order. If granted: Mobil Oil Corporation and Little America Refining Company would enter into a Protective Order regarding the exchange of proprietary information in connection with Little America's Applications for Exception, Temporary Exception and Stay (Case Nos. BEE-1064, BEL-1064, BES-0085 and BEL-0085).
Sept. 29, 1980	Village Standard Service, Elk Grove Village, IL	BRW-0069	Proposed Remedial Order Finalization. If granted: A Proposed Remedial Order issued to Village Standard Service on June 2, 1980 would be issued as a final Remedial Order.
Sept. 29, 1980	Wisconsin's Environmental Decade, Madison, Wisconsin.	BFA-0484	Appeal of Information Request Denial. If granted: Wisconsin's Environmental Decade would receive from DOE Region V a response to its request for documents on the subject of granite as a geological host medium for radioactive waste.
Sept. 30, 1980	Amerada Hess Corp. et al., Washington, D.C	BEX-0101 to BEX-0115.	Supplemental Order. If granted: Amerada Hess Corp. et al. would be permitted to add the cost of a Connecticut gross receipts tax on refined petroleum products incurred during July and August 1980 to maximum lawful selling prices for those products sold in Connecticut during October and November 1980.
Sept. 30, 1980	Benson-Montin-Greer Drilling Corp., Washington, D.C.	BEE-1475	Price Exception. If granted: Benson-Montin-Greer Drilling Corp. would be permitted to sell at market prices the crude oil produced from the Canada Ojitos Unit located in Rio Arriba County, New Mexico.
Sept. 30, 1980	Caribou Four Corners Inc., Afton, WY	BEE-1477	Exception from the Entitlements Program. If granted: Caribou Four Corners Inc. would receive an exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
Sept. 30, 1980	Cities Service Company, Tulsa, OK	BRJ-0140 and BRD-0140.	Motion for Discovery and Protective Order. If granted: Discovery would be granted to Cities Service Company and Cities Service would enter into a Protective Order with Giant Industries, Inc. regarding the release to Cities Service of proprietary information in connection with Giant Industries' Statement of Objections (Case No. BRO-1281) to the June 25, 1980 Proposed Remedial Order issued to Giant Industries by the Economic Regulatory Administration.
Sept. 30, 1980	Eagle Refining Company, Washington, D.C	BST-0010	Request for Temporary Stay. If granted: Eagle Refining Company would receive a temporary stay of the provisions of 10 CFR 211.67, regarding its entitlements purchase obligations for the month of July 1980.
Sept. 30, 1980	Energy Development Board of Mercer County, Hazen, ND.	BEN-1121	Request for Interim Order. If granted: Energy Development Board of Mercer County would receive exception relief on an interim basis, pending a final determination on the firm's Application for Exception (Case No. BEE-1121).
Sept. 30, 1980	Mallard Resources, Inc., Washington, D.C	BED-0537	Motion for Discovery. If granted: Discovery would be granted to Mallard Resources, Inc. in connection with its Statement of Objections submitted in response to the July 24, 1980 Proposed Decision and Order (Case Nos. BEE-0537, BST-0537, BES-0537) issued to the firm.
Sept. 30, 1980	Mallard Resources, Inc., Washington, D.C	BRD-1277	Motion for Discovery. If granted: Discovery would be granted to Mallard Resources, Inc. in connection with its Statement of Objections (Case No. BRO-1277) submitted in response to the Proposed Remedial Order issued to the firm.
Sept. 30, 1980	Newmac Mfg., Inc., Woodstock, Ontario	BXE-1420	Extension of Relief granted in Newmac Mfg., Inc., 4 DOE ¶81,229 (1979). If granted: Newmac Mfg., Inc. would not be required to perform energy efficiency tests of its wood/oil and wood/coal/oil furnaces and boilers as required under 10 CFR Part 430.
Sept. 30, 1980	Southland Oil Co./VGS Corp., Washington, D.C	BXE-1476	Exception from the Entitlements Program. If granted: Southland Oil Co./VGS Corp. would receive an exception from the provisions of 10 CFR 211.67 which would relieve the firm of a portion of its entitlements purchase obligations.
Sept. 30, 1980	Telum, Inc., Washington, D.C	BRD-1244	Motion for Discovery. If granted: Discovery would be granted to Telum, Inc. in connection with its Statement of Objections (Case No. BRO-1244) submitted in response to the May 12, 1980 Proposed Remedial Order issued to the firm.
Sept. 30, 1980	Warrior Asphalt Co. of Alabama, Washington, D.C	BXE-1477	Exception from the Entitlements Program. If granted: Warrior Asphalt Co. of Alabama would receive an exception from the provisions of 10 CFR 211.67 which would relieve the firm of a portion of its entitlements purchase obligations.
Oct. 1, 1980	Mid-America Refining Co., Inc., Washington, D.C	BER-0063	Request for Modification. If granted: The June 18, 1980 Decision and Order issued to Mid-America Refining Co., Inc. by the Office of Hearings and Appeals would be modified.
Oct. 1, 1980	Plateau, Inc., Washington, D.C	BEE-1480	Exception from the Entitlements Program. If granted: Plateau, Inc. would receive an exception from the provisions of 10 CFR 211.67 which would relieve the firm of a portion of its entitlements purchase obligations.
Oct. 1, 1980	Young Refining Corp., Washington, D.C	BEE-1479	Exception from the Entitlements Program. If granted: Young Refining Corp. would receive an exception from the provisions of 10 CFR 211.67 which would relieve the firm of a portion of its entitlements purchase obligations.
Oct. 2, 1980	Giant Industries, Inc., Los Angeles, CA	BRD-0141 and BRJ-0141.	Motion for Discovery and Protective Order. If granted: Discovery would be granted to Giant Industries, Inc. and Giant Industries would enter into a Protective Order with Graves Oil Company and Standard Oil Company (Indiana) concerning the release to Giant Industries of proprietary information in connection with Giant Industries' Statement of Objections (Case No. BRO-1281) to the June 25, 1980 Proposed Remedial Order issued to Giant Industries by the Economic Regulatory Administration.
Oct. 2, 1980	Giant Industries, Los Angeles, CA	BRJ-0142 and BRD-0142.	Motion for Discovery and Protective Order. If granted: Discovery would be granted to Giant Industries, Inc. and Giant Industries would enter into a Protective Order with Texaco, Inc. concerning the release to Giant Industries of proprietary information in connection with Giant Industries' Statement of Objections (Case No. BRO-1281) to the June 25, 1980 Proposed Remedial Order issued to Giant Industries by the Economic Regulatory Administration.
Oct. 2, 1980	Marlex Oil and Refining, Inc., Washington, D.C	BEE-1481	Exception from the Entitlements Program. If granted: Marlex Oil and Refining, Inc. would receive an exception from the provisions of 10 CFR 211.67 which would relieve the firm of a portion of its entitlements purchase obligations.
Oct. 2, 1980	Vic and Lou's Union, San Leandro, CA	BRX-0116	Motion for Supplemental Order. If granted: Vic and Lou's Union would receive an extension of time in which to file a notice of intent to appeal a May 30, 1980 Remedial Order to the Federal Energy Regulatory Commission.
Oct. 3, 1980	Blex Oil Company, Minneapolis, MN	BFA-0485	Appeal of Information Request Denial. If granted: The September 4, 1980 Information Request Denial issued by DOE Region VII would be rescinded, and Blex Oil Company would receive access to documents concerning complaints filed with the DOE against Blex Oil Company.
Oct. 3, 1980	EnDevCo, Inc., Oxford, MS	BEA-0487	Appeal of Assignment Order. If granted: The August 12, 1980 Assignment Order issued to EnDevCo, Inc. by the Economic Regulatory Administration, Region IV, denying EnDevCo's application for assignment of supplier and base period volume would be modified.

List of cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of 9/26/80 to 10/3/80

If Granted: The following firms would be granted relief which would increase their base period allocation of motor gasoline.

Name, Case No., Date, and State(s)

Lakeside Marathon, *et al.*—BEE-1422 to 1474—9/30/80—Indiana, Illinois, Ohio
H. L. Mills Petroleum Products—BXE-1482—10/1/80—Washington, D.C.

Notices of Objection Received

Week of September 26 through October 3, 1980

Date, Name and Location of Applicant, and Case No.

9/30/80—Glenn Martin Heller, Boston, Massachusetts—DEE-2142
10/1/80—A. Smith Bouman Distillery, Washington, D.C.—BEE-1096
10/1/80—Fannon Petroleum Service, Inc., Washington, D.C.—BXE-1318
10/2/80—Laketon Asphalt Refining, Inc., Washington, D.C.—BXE-1260
10/2/80—The Hartley Company, Cambridge, Ohio—BEE-0417.

[FR Doc. 80-34814 Filed 11-6-80; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 21 through July 25, 1980

During the week of July 21 through July 25, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 31, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

Appeals

Cotten, Day & Doyle, Washington, D.C., BFA-0366, Freedom of Information

Cotten, Day & Doyle filed an Appeal from a denial by the Director of the Special Investigations Division, Office of General Counsel, Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE fund that release of the documents which were initially withheld under Exemption 7(A) would interfere with ongoing enforcement proceedings and therefore was not required by law. The Decision and Order affirmed that a specific index of documents need not be made available to a requester when the index itself would interfere with the enforcement proceedings, particularly when the requester has access to copies of documents and the index might disclose the focus of the enforcement case.

Floridan Oil Co., Orlando, Fla., BEA-0241, motor gasoline

Floridan Oil Company filed an Appeal of an Assignment Order issued to a retail outlet which it owns by ERA Region IV on December 17, 1979. In its appeal, Floridan sought to increase the allocation of motor gasoline granted to its outlet. However, the DOE found that ERA correctly limited the amount of motor gasoline it assigned Floridan to the adjusted base period volume of the largest existing station in Floridan's market area in order to protect existing stations in the area. Accordingly, the Appeal was denied.

Remedial Orders

Lupe A. Arias, Piru, Calif., BRO-0066-motor gasoline

Lupe A. Arias objected to a Proposed Remedial Order which the Western District Office of Enforcement issued to him on October 15, 1979. In the Proposed Remedial Order, the Western District found that Arias had made retail sales of motor gasoline at prices which exceeded his maximum lawful selling prices. In considering Arias' objections, the DOE determined that the Proposed Remedial Order did not explain how it had calculated Arias' costs of acquiring motor gasoline. In addition, the DOE found that there was no support for the allegations in the Proposed Remedial Order that Arias had engaged in discriminatory and unlawful business practices. The DOE therefore concluded that the Proposed Remedial Order should be rescinded in part and remanded to the Western District.

L. E. Jones Production Co., Duncan, Okla., DRO-0203, crude oil

L. E. Jones Production Company (Jones) filed a Statement of Objections to a Proposed Remedial Order which the DOE Southwest Enforcement District issued to the firm on March 27, 1979. In the Proposed Remedial Order, the Office of Enforcement determined that a 40-acre lease operated by Jones was part of a single 80-acre property with an established BPCL, and that Jones had erroneously classified all of the crude oil produced from its 40-acre lease as "new crude oil". On the basis of these findings, Jones was directed to refund the overcharges. In its Statement of Objections, Jones argued that its acquisition in 1974 of oil and gas leases on the west 40 acres of the 80-acre lease divided the 80-acre lease into two separate properties. In the alternative, Jones contended that the establishment in 1965 of a 20-acre drilling and spacing unit around the sole producing well on the 80-acre lease had the effect of establishing a separate property with respect to that 20-acre unit. In considering the Appeal, the DOE found that Ruling 1975-15's prohibition against the establishment of a new property through the post-1972 subdivision of a single right to produce applied even when a portion of a property is conveyed to a new working interest owner who had no prior dealings with the former working interest owner. The DOE further found that this broad prohibition on dividing properties is consistent with the regulatory definition of "property" and the underlying purpose of the DOE regulations. The DOE also determined that the establishment of a drilling and spacing unit within a leased premises comprising a single, effective "right to produce" crude oil does not create a separate "right to produce" and consequently a separate "property" on those premises. Accordingly, the Jones Appeal was denied.

Request for Modification and/or rescission

Union Carbide Caribe, Inc., New York, N.Y., DMR-0074 naphtha

Union Carbide Caribe, Inc. (Union Carbide) filed an Application for Modification of a Decision and Order issued to the firm on August 15, 1979. *See Commonwealth Oil Refining Co., Inc.*, 4 DOE ¶ 81,118 (1979). Union Carbide requested that the protion of the August 15 Decision which denied the firm an increase in the benefits which it receives under the Naphtha Entitlements Program, 10 C.F.R. § 211.67(d)(5) be reversed. In considering the request, the DOE found that the Naptha Entitlements Program did not adequately compensate Union Carbide for its increased feedstock costs, thereby discouraging continued petrochemical operations by the firm and adversely affecting the economy of Puerto Rico. Accordingly, exception relief was granted which enables the firm to earn up to 2.2 runs credits for each barrel of naphtha in excess of 405,000 barrels which it imports into Puerto Rico in a particular month.

Request for Exception

Adler, Ledoux Tire and Supply, Inc., Opelousas, La., DEE-5964, motor gasoline

Adler, Ledoux Tire and Supply Inc. filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had not suffered a gross inequity because it had not demonstrated that it had been adversely affected to a significant degree by the updating of the base period for motor gasoline allocation. Accordingly, exception relief was denied.

Apex Oil Co., Bonita Springs, Fla., BEO-0339, motor gasoline

Apex Oil Company filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it would experience a gross inequity as a

result of DOE regulations if exception relief were denied. The DOE did find, however, that the firm could attempt to adjust its base period volumes pursuant to 10 C.F.R. § 211.25(c) to enable it to satisfy any increased seasonal demand by tourists. Accordingly, exception relief was denied.

Associated Master Barbers & Beauticians, Charlotte, N.C., BEE-0372, temperature restrictions

Associated Master Barbers & Beauticians filed an Application for Exception from the provisions of 10 C.F.R. Part 490 in which the firm sought permission to raise the maximum heating temperature above 65° F in its members' facilities. In considering the request, the DOE found that the applicant had not demonstrated that its members' customers face a health risk at a temperature level of 65° F. Accordingly, exception relief was denied.

Atlanta Stove Works, Inc., Atlanta, Ga., BEE-0983, consumer products

Atlanta Stove Works, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 430, Appendix O in which the firm sought to market gas-fired vented space heaters with manual and modulating controls without regard to the testing procedures set forth in those provisions. In considering the request, the DOE found that exception relief was necessary to prevent a gross inequity because the prescribed testing procedure does not properly account for the variable heating output of these heaters.

Bingaman's Exxon, Lykens, Pa., BEO-0484, motor gasoline

Bingaman's Exxon filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increased allocation of motor gasoline. In considering the request, the DOE found that although the firm had made an investment to purchase an existing retail outlet, it had done so after the DOE updated the base period for motor gasoline on February 28, 1979. Accordingly, exception relief was denied.

Carlos Chevron, Glendale, Calif., DEE-7676, motor gasoline

Carlos Chevron filed an Application for Exception from the provisions of 10 C.F.R. 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was experiencing a serious hardship or gross inequity as a result of the motor gasoline allocation program. Accordingly, exception relief was granted.

City of Long Beach, California, Long Beach, California BXE-0908, crude oil.

The City of Long Beach, California filed an Application for Exception from the provisions of 10 C.F.R. Part 212, Subpart D. Exception relief was granted to permit Long Beach to sell at upper tier ceiling prices 58.67 percent of the crude oil produced form the Fault Block III Unit.

Clark Oil and Refining Corporation, Milwaukee, Wisconsin BEE-1166, gasohol.

Clark Oil and Refining Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 212 in which the firm requested that it be permitted to classify gasohol as a separate grade of motor gasoline for purposes of the Petroleum Price Regulations. In considering the request, the DOE found that exception relief was necessary to further the important national policy objective of increasing the production and use of gasohol. Accordingly, exception relief was granted.

Driftwood Dairy, El Monte, California, BEO-0650 motor gasoline.

Driftwood Dairy filed an application for exception in which it sought an increase in its base period allocation for motor gasoline. In considering the firm's request, the DOE found that Driftwood had failed to show that it is unable to acquire its additional motor gasoline requirements at retail outlets. Consequently, the DOE concluded that Driftwood was not suffering a hardship or inequity and therefore denied the firm's exception request.

Energy Cooperative Incorporated, East Chicago, Indiana, DXE-8112, crude oil.

Energy Cooperative, Inc. (ECI) filed an Application for Exception from the provisions of 10 C.F.R. 211.65 and 211.67 in which the firm sought, for the period October through December 1979, either to purchase crude oil under the Buy/Sell Program or to receive additional runs credits under the Entitlements Program. In considering the request, the DOE found that (1) ECI, when treated as a separate firm from its member-owners, would experience serious financial difficulties if it were forced to absorb its excessively high crude oil costs, (2) ECI's agricultural customers would suffer an unfair distribution of burdens if the firm reduced its crude oil runs to stills or passed through its high crude oil costs to those customers, and (3) the eligibility requirements of the Buy/Sell Program were imposing a gross inequity on ECI. Accordingly, exception relief was granted.

F&P Market, Jackson, Tennessee, DEE-8314, gasoline.

F&P Market filed an Application for Exception from the provisions of 10 C.F.R. 211.105 in which the firm sought to have a portion of its base period allocation transferred from E. L. Morgan & Company, a Citgo distributor, to Weeks & Frazier Oil Company, a Shell distributor. In considering the request, the DOE found that exception relief was necessary to permit F&P Market to continue to operate as a Shell branded retailer of motor gasoline. Accordingly, exception relief was granted. (An important issue discussed in the Decision and Order is the Treatment to be accorded to an independent branded reseller who could have designated its February 28, 1979 supplier as its sole supplier but who may have failed to give the notice required by 10 C.F.R 211.105(d).

Farm Fuel Products Corporation, Fostoria, Iowa, DEE-7059, gasohol.

Farm Fuel Products Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought a base period volume and supplier of unleaded motor gasoline for use in its alcohol production plant. In considering the request, the DOE found that exception relief was necessary to alleviate the gross inequity which would result if the application of the allocation regulations for motor gasoline were allowed to frustrate the national objective of increasing the use of alcohol-related fuels. Accordingly, exception relief was granted.

Gulf Oil Corporation, Houston, Texas, BEE-0990, DEE-6314, motor gasoline.

Gulf Oil Corporation (Gulf) filed Applications for Exception from the provisions of 10 C.F.R. § 212.83. Because Gulf had sold certain consignee operations, it requested permission to eliminate costs from those operations from its May 1973 base period marketing costs. In considering the exception requests, the DOE found that the Petroleum Price Regulations are not specifically designed to apply to the unusual circumstances arising from the divestiture of a portion of a refiner's operations. Accordingly, exception relief was granted.

Helmerich & Payne, Inc., Tulsa, Oklahoma, BEE-0842, crude oil.

Helmerich & Payne, Inc. (Helmerich) filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. In considering Helmerich's exception request, the DOE determined that the application of the provisions of 10 C.F.R. § 212.79 to the firm's Dwight Leonard "A" No. 1 Well does not result in a gross inequity and that no other basis for exception relief had been provided. Accordingly, the DOE concluded that exception relief should be denied.

Lonny's Standard Service, Moline, Illinois, BEO-0578, motor gasoline.

Lonny's Standard Service filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that neither the firm nor the residents of Moline had been shown to be experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Mohave Petroleum Co., Pampa, Texas, DEE-2743, motor gasoline.

Mohave Petroleum Company filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm's difficulties apparently have been caused by its own business decisions rather than by the DOE regulatory program. Accordingly, exception relief was denied.

Publix Oil Co., Morristown, Tenn., DEE-8115.
Chevron U.S.A. Inc., San Francisco, Cal., BEA-0065, BEA-0137.
Exxon Company, U.S.A., Houston, Texas, BEA-0058, BEA-0132.
Marathon Oil Co., Findlay, Ohio, BEA-0050.
Gulf Oil Company, Houston, Texas, BEA-0140.
Mobil Oil Company, Fairfax, Va., BEA-0168, Motor gasoline.

Publix Oil Company filed an Application for Exception from the provisions of 10 C.F.R.,

Part 211 in which the firm requested the DOE to issue orders directing new, lower-priced suppliers to furnish the firm with portions of its base period use of motor gasoline. The DOE upheld the tentative findings, which it had reached in a November 30 Proposed Decision, that during the months December 1979 through April 1980: (1) a significant price disparity existed between the prices charged by the firm's Gulf Coast suppliers and the prices charged by suppliers to Publix's competitors in Tennessee, and (2) the firm would experience a serious hardship in the absence of exception relief. The DOE also found that after April 30, 1980 the jobbers and retail stations supplied directly and indirectly by Publix would not be able to market gasoline purchased by Publix from the Gulf Coast. In addition, the DOE found that the implementation of the new base period has seriously frustrated the firm's efforts to rehabilitate its business and that logistical and financial difficulties have prevented the firm from obtaining the product available to it from the Gulf Coast. Accordingly, exception relief was granted.

The DOE also discussed the following other arguments raised by the parties in their Statement of Objections: (1) the Office of Hearings and Appeals exceeded its authority by granting the exception relief; (2) the findings in the November 30 Decision do not support price disparity relief for a six-month period of time; (3) the award of exception relief for more than three months is an abuse of discretion and an error of law; (4) Publix has failed to demonstrate that it could not sell the higher priced Gulf Coast product; and (5) the proposed relief is excessive.

In this consolidated proceeding, the DOE also considered appeals of October 12 and December 6, 1979 Orders issued by the Region IV Office of ERA pursuant to directions in the December 5 Temporary Exception Decision and the November 30 Proposed Decision issued to Publix. In these appeals the parties advanced the following arguments:

(1) the Region failed to provide adequate and reasonable notice prior to issuance of the December 6 Order; (2) the Region departed from the directions contained in the Decisions issued by the Office of Hearings and Appeals on October 5 and November 30, 1979; (3) the December 6 and October 12 Orders failed to set forth sufficient facts and legal bases; and (4) the December 6 Order does not comply with the provisions of Section 205.39(a).

Smitty's Arco Mini-Mart, San Diego, California, BEO-0205, motor gasoline.

Smitty's Arco Mini-Mart filed an Application for Exception from the provisions of 10 C.F.R., Part 211, in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to alleviate the gross inequity the firm was experiencing as a consequence of the joint operation of the mandatory allocation regulations and the imposition of rent increases by its supplier. Accordingly, exception relief was granted. The important issues discussed in the Decision and Order is the use of the *Anger* standard in cases in which the applicant did not make an investment but nevertheless bears the economic burden of an investment through increased station rent.

Webber Chevron, Corinna, Maine, BEO-1173, motor gasoline.

Webber Chevon filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that the community it served was experiencing an unfair distribution of burdens as a result of DOE regulations. Accordingly, exception relief was denied.

Requests for Temporary Exception

Atlantic Richfield Co., Los Angeles, California, BEL-1294, Crude Oil.

The Atlantic Richfield Company filed an Application for Temporary Exception in which it requested that Chevron USA Inc. be directed to purchase additional entitlements so as to equalize the latter firm's imported crude oil costs with those of the refining industry as a whole. Arco contended that it was incurring a gross inequity as a result of the Entitlements Program's failure to equalize refiners' costs of imported crude oil. The Department of Energy rejected this argument, noting that Arco did not attempt to show that its overall crude oil costs exceed those of the refining sector as a whole. The Application for Temporary Exception was denied.

Drug Abuse Preventive Center, San Luis Obispo, California, BEL-0050, motor gasoline.

Drug Abuse Preventive Center (Center) filed and Application for Temporary Exception from the Mandatory Petroleum Allocation Regulations (10 C.F.R. Part 211). Because Center had been compelled by its supplier, pursuant to an interim allocation agreement, to promise not to sell gasohol, it requested relief that would permit it to receive motor gasoline that would not be subject to such a condition. In considering the Application, the DOE determined that the granting of the Application would be in the national interest because it would permit Center to expand its supplies of motor fuel by adding ethanol and because no party would be harmed by granting the relief. Center's Temporary Exception request was therefore granted.

Energy Cooperatives, Inc., Washington, D.C., BEL-1127, BES.1127, crude oil.

Energy Cooperatives, Inc. (ECI) filed an Application for Temporary Exception in which it requested that its entitlement obligations for the period December 1979 through April 1980 be recalculated to reflect additional revenues which the firm would have received had Alaska North Slope crude oil been treated as upped tier crude oil for purposes of that program during that month. The Department of Energy determined that ECI failed to show that it was likely to succeed on the merits of its underlying exception request or that it would suffer an irreparable injury absent immediate exception relief. The request was therefore denied.

MOCO, Inc., Malvern, Arkansas, BEL-0056, crude oil.

MOCO, Inc. filed an Application for Temporary Exception from the provisions of 10 C.F.R., Part 212, Subpart D. The temporary exception request, if granted, would permit the firm to sell the waste crude oil that it reclaims at market price levels. On July 24, 1980, the Department of Energy issued a Decision and Order in which it was determined that the reclamation of waste crude oil was in the national interest and that temporary exception relief should be granted.

Requests for Stay

Copano Refining Company, San Antonio, Texas, BES-1249, BEL-1249, crude oil.

Copano Refining Company filed and Application for Stay and an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.65. If granted, the relief that was requested would permit the firm to participate in the DOE Crude Oil Buy/Sell Program. In considering the applications, the DOE determined that Copano had failed to meet the criteria for a stay or temporary exception. Copano's requests were therefore denied.

Smith's Petroleum Marketing Company, Incorporated, West Plains, Missouri, BES-0397, BST-0397, motor gasoline.

Smith's Petroleum Marketing Company, Inc. filed Applications for Stay and Temporary Stay of a March 21, 1980 Decision and Order of the ERA's Region VII Office of Petroleum Operations. That Decision and Order concluded that Getty Refining and Marketing Company ("Getty") should become the base period supplier of the Orval Davis Tire Company's ("Orval Davis") Ava, Missouri bulk plant, which it had acquired from Matney Oil Company. The bulk plant's base-period allocation of motor gasoline had been received from Smith's Petroleum. The DOE found that Smith's Petroleum had failed to satisfy the criteria for the granting of a stay or temporary stay and denied the Applications. Although Smith's claimed that it, and not Orval Davis, had acquired the ongoing business and allocation entitlement of the Matney Oil Company, the DOE concluded that Smith's had not demonstrated a strong likelihood of eventual success on the merits of its Appeal. In particular, the DOE found that Smith's had not clearly demonstrated either that it acquired the entire business activity of Matney Oil Company or that the challenged Decision and Order Lacked appropriate authority.

Universal Utilities, Inc., Great Neck, New York, BST-0084, BES-0084, BMR-0052, No. 2 heating oil.

Universal Utilities, Inc. filed Applications for Temporary Stay, Stay and Modification of a Consent Order which it entered into with ERA Region II on January 30, 1978. The Consent Order required Universal to refund a total of $117,639 to six classes of residential purchasers of No. 2 heating oil. The DOE determined that the standards for temporary stay and stay had not been met. Thus the applications were denied. The DOE also concluded that the Application for Modification should have been filed with ERA, Region II rather than with the Office of

Hearings and Appeals. Accordingly, it was dismissed without prejudice.

Motion for Evidentiary Hearing

Texas Recovery Company, Palestine, Texas, DRH-0267, crude oil.

On September 12, 1979, Texas Recovery Company (TRC) filed a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order issued to it by the DOE Southwest Enforcement District on June 18, 1978. In its Motion, TRC requested permission to present testimonial evidence in support of the contentions raised in its Statement of Objections. In considering the request, the DOE determined that none of these contentions involved a relevant and material factual dispute which could not be fairly resolved without the direct questioning of witnesses at an evidentiary hearing. Accordingly, the Motion for Evidentiary Hearing was denied.

Supplemental Orders

San-Ann Service, Inc., Washington, D.C., BEX-0079, motor gasoline.

The Office of Hearings and Appeals issued an Order to supplement a Decision and Order which it had issued to San-Ann Service, Inc., on July 3, 1980. (Case No. DXE-5354). In its Supplemental Order, the DOE corrected an error inadvertantly made in an ordering paragraph of its July 3, 1980 *San-Ann* determination.

TOSCO Corporation, Washington, D.C., DEX-0054, crude oil.

In two separate decisions, the Department of Energy granted TOSCO exceptions from the provisions of 10 C.F.R. 211.67, the Entitlements Program. These decisions relieved TOSCO of a part of its projected entitlement purchase obligations during the fiscal year ending December 1977. Based on actual data which the firm submitted for its 1977 fiscal year, the DOE conducted a year-end review and determined that the relief granted to TOSCO for that fiscal year was appropriate and that no adjustment should be made.

Interim Orders

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case Number, and Location

Alger Oil Co., BEN-0920, Rising Sun, MD.
Brock Exploration Corp., BEN-0066, Washington., DC.
City of Philadelphia/Federal Bureau of Investigation, BEN-1080, Philadelphia, PA.
Fort Oglethorpe Tire & Service Center, Inc., BEN-0044, Rossville, GA.
Melvin's Sunoco, BEN-0045, Crisfield, MD.
The Oasis, BEN-0046, Catheys Valley, CA.
Southern Oil Co., BEN-0043, Geiger, AL.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Orders as an Order of the Department of Energy:

Name, Case Number, and Location

Chevron USA, Inc., BEJ-0105, Washington, D.C.
Seaview Pet., Inc., BEJ-0107, Washington, D.C.
International Processors., BEJ-0108, Washington, D.C.
United Ref. Co., BEJ-0104, Findlay, OH.
Marathon Oil Co., BEJ-0104, Findlay, OH.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE Issued Decisions and Orders which determined that the requests be denied.

Company Name, Case Number and Location

Airport Limo. Service, BEO-0990, Norfolk, VA.
Budd's Standard Serv., BEO-0089, Platteville, WI.
Camino Car Wash., DEE-6592, San Fran., CA.
Captain Beans' Cruises BEO-0696, Kailua-Kona, HI.
Cottonwood Heights Chevron, BEO-0757, Salt Lake City, UT.
Davcon Ltd., DEE-4650, N. Haven, CT.
Gray Bros. Oil Co., DEE-5237, Ashland, MS.
Howard's Self Serv. Oil Co., BEO-0069, Belgrade, MN.
Industrial Metal Supply Co., BEO-1084, Burbank, CA.
Jay Jay's Service, BEO-0776, Houston, TX.
Jed's Exxon, BEO-0777, Clarksville, TN.
Main Street Automotive, DEE-6828, Boston, MA.
Redwood Enterprises, BEO-0586, Santa Rosa, CA.
Sparta Exxon, BEO-0720, Sparta, NJ.
Sunnyvale Mobile Stat., BEO-1110, Sunnyvale, CA.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be granted.

Company Name, Case Number and Location

Boulder Valley Oil Co., DEE-2495, Lafayette, Co.
Cash 'N' Dash, BEO-0151, Nevada, MO.
Oasis Trading Post, DEE-5369, Oasis, NV.

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name, Case and Number

Commonwealth Oil, BIE-1089.
Gulf Oil Products, BEE-0530.
J. C. Texaco, BEE-0801.
James Wilson Oil Co., DEE-2338; DES-2338; DST-2338.
Kreiner Bros. Motor & Implement Co., BEE-0707.
Norman H. Singer, BEE-1272.
Petro-Plus-Tobacco Ltd., BEE-1279.
Stoch Nolle Oil Co., Inc., BEE-0848.
Vantage Pet. Corp., DES.6605; DST-6605; DES-7132; DST-7132.
Workingman's Friends Oil, Inc., BEE-1261; BEL-1261.
Tommy Oil Co., Inc., BEE-1262; BEL-1262.
Hi-Lo Oil Co., Inc., BEE-1263; BEL-1263.
Highway Oil, Inc., BEL-0058.

[FR Doc. 80-34916 Filed 11-6-80; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP OG2300/T260; FRL 1586-3]

Mobay Chemical Corp.; Establishment of Temporary Tolerances

Correction

In FR Doc. 80-25811, appearing on page 56431, in the issue for Monday, August 25, 1980, in the first paragraph of **"SUPPLEMENTARY INFORMATION"**, in the tenth line, please delete the last "l" from the chemical now reading "chlorophenoxyl".

BILLING CODE 1505-01-M

[A-9-FRL 1660-6]

Issuance of PSD Permit to Mobil Oil Corp.

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to: Mobil Oil Corporation, Kern County, California, EPA Project number SJ 78-41.

SUPPLEMENTAL INFORMATION: Notice is hereby given that on February 27, 1980, the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to install the following equipment for enhanced oil recovery to be located in Section 14, T28S, R27E in the Young and Wetmore leases of the Kern Front Oil Field, Kern County, California: Three (3) MMBTU/hr steam generators, two (2) 22 MMBTU/hr steam generators, one (1) 8.4 MMBTU/hr heater treater, and forty-two (42) production wells.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations and is subject to certain

conditions including allowable emissions of NO_x at 246 tons/year.

Best Available Control Technology (BACT) requirements include use of low NO_x burners and excess oxygen control.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Permits Clerk, E-4-1, U.S. Environmental Protection Agency, Region IX, Permits Branch, 215 Fremont Street, San Francisco, California 94105.

Carl C. Kohnert Jr.,

Acting Director, Enforcement Division, Region IX.

Dated: October 27, 1980.

[FR Doc. 34782 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

[SA-FRL 1661-8]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on November 25, 1980, in Conference Room 3906-08, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:00 a.m. Adjournment will be not later than 4:30 p.m.

The purpose of the meeting will be (1) to discuss Agency plans for consulting the Committee on several health risk assessments and other health-related scientific issues currently under consideration; and (2) to hear reports of the Committee's Subcommittees (Health Effects Research Review; Energy-Related Health Effects Research; and Health Risk Assessment). The Agenda will also include brief reports and informational items of current interest to the members.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper, or wishing further information should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. November 21, 1980. Please ask for Ms. Patricia Howard or Ms. Lindeke Trumbly. The telephone number is (202) 472-9444.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80-34781 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-34-M

[ER-FRL-1662-4]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EISs) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of October 27, 1980 to October 31, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from November 7, 1980 and will end on December 22, 1980. The 30-day review period for final EIS's as calculated from November 7, 1980 will end on December 8, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact this Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source:

Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270

SUMMARY OF NOTICE: This notice sets forth a list of EISs' filed with EPA during the week of October 27, 1980 to October 31, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA; the title of the EIS, the state(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EISs' such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245-3006.

Dated: November 4, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

Department of Agriculture

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Building, Washington, D.C. 20250, (202) 447-3965.

Forest Service

Final

Thompson Creek Molybdenum Project, Challis NF, Custer County, Idaho, October 31: Proposed is an operating plan for the mining and processing of molybdenum disulfide in the Challis National Forest, Custer County, Idaho. The project will include an open pit mine, waste dumps, concentrator facilities and tailings impoundment. These components will be connected by transportation, pipeline and/or utility corridors. The alternatives considered are: (1) Locating the concentrator at a different site, (2) use of the Upper Bruno Creek watershed for waste dumps and tailing impoundment, (3) use of Upper and Lower Bruno Creek for tailing impoundment, and (4) no action. The cooperating agency is the Bureau of Land Management. Comments made by: USDA, HUD, DOT, EPA, DOC, DOE, AHP, DOI, FERC, State and local agencies, individuals and businesses. (EIS Order No. 800829.)

Rural Electrification Administration

Draft

Sherco-Benton 345 KV Transmission Line, Loan, Sherburne and Benton Counties, Minn., October 31: Proposed is the issuance of a loan guarantee for the financing of the Sherco to Benton 345 KV transmission line in Sherburne and Benton Counties, Minnesota. The line would connect the Sherco generating station and the Benton County substation. The alternatives consider: (1) No action, (2) alternative routes, and (3) alternative electrical systems. (USDA-REA-EIS-(ADM)-80-10-D.)(EIS Order No. 800833.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314 (202) 272-0121.

Final

Cordell Hull Dam and Reservoir, Disposal, Jackson County, Tennessee, October 30: Proposed is the sale of 65 acres, presently

part of the Cordell Hull Dam and Reservoir, for the development of a public port and industrial facilities. The deed would be conditioned by the COE. The alternatives consider: (1) public recreation, (2) public sale of the site, (3) use of other sites, and (4) no action. The project is located in Jackson County, Tennessee. (Nashville District). Comments made by: EPA, TVA, HEW, USDA, DOI, FPC, HUD, ORBC, State and local agencies (EIS Order No. 800828).

Redbank and Fancher Creeks Flood Control, Fresno County, California, October 28: The proposed plan involves construction of flood control facilities east of the Fresno-Clovis metropolitan area in Fresno County, California, to provide increased flood protection to eastern Fresno, Clovis, and surrounding rural and agricultural lands. The plan calls for a dam on Fancher Creek, enlargement of the existing Big Dry Creek Project, and construction of three detention basins, one on Pupcreek, one on Redbank Creek, and one in Alluvial Drain. The alternatives consider: Construction of reservoirs, channel modification, levees, diversions, enlargement of existing dams, construction of a detention basin, and nonstructural measures. (Sacramento District). Comments made by: DOI, USDA, EPA, AHP, FPC, State and local agencies, groups (EIS Order No. 800822).

Final Supplement

Manteo (Shallowbag) Bay Project (FS-1), Dare County, North Carolina, October 30: This statement supplements a final EIS, No. 790384, filed 4-11-79 concerning the Manteo (Shallowbag) Bay Project located in Dare County, North Carolina. This supplement discusses: (1) Disposal of dredged material by combination of controlled effluent and diked upland disposal, (2) reduction of spacing between the jetties, (3) elimination of the jetty doors, (4) designation of disposal area, and (5) dredging the Oregon inlet ocean bar channel by hydraulic pipeline dredge during project construction. (Wilmington District). Comments made by: DOI, DOC, EPA, and State agencies (EIS Order No. 800827).

DEPARTMENT OF COMMERCE

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7641, Department of Commerce, Washington, D.C. 20230.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Correction: Published in the October 31, 1980 FR was an inaccurate description of the final EIS entitled Taking of Marine Mammals, Tuna Purse Seining Operations. Below is a correct description of the project as it was addressed in the final EIS.

Final

Taking of Marine Mammals, Tuna Purse Seining Operations, Regulatory, October 22: Proposed are amendments establishing conditions for the issuance of a general permit to allow the taking of a maximum of 20,500 porpoises, as apportioned into individual stock quotas, for each of the five years 1981-1985 within the tuna fishery of the Eastern Tropical Pacific. Proposed regulations add to or modify gear and procedural requirements, clarify observer responsibilities, and modify importation documentation requirements. Comments made by: DOI, EPA, DOC, State agencies, groups and businesses (EIS Order No. 800805).

DEPARTMENT OF DEFENSE, ARMY

Contact: Col. Kenneth Halleran, Chief of the Environmental Office, Headquarters DAEN-ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310 (202) 694-4269.

Final

Tripler Medical Center addition/alteration, Oahu Honolulu County, Hawaii, October 28: Proposed is the hospital addition and alterations to the Tripler Army Medical Center located in the County of Honolulu, Oahu, Hawaii. The project will involve the construction of a new, 438,000-square foot hospital wing housing major outpatient clinics, diagnostic and treatment facilities, and supply department; the construction of a new, 24,000-square foot central plant housing chillers, emergency generators, and other mechanical equipment; construction and realignment of roadways, parking areas, utility lines, and other support facilities to serve the new construction or eliminate existing deficiencies; and the renovation and structural upgrading of wings within the hospital. Comments made by: DOI, USN, USAF, USDA, EPA, State and local agencies (EIS Order No. 800821).

DEPARTMENT OF DEFENSE, NAVY

Contact: Mr. Ed Johnson, Head, Environmental Impact Statement/RDT&E Branch, Office of the Chief of Naval Operations, Department of the Navy, Washington, D.C. 20350 (202) 697-3689.

Final

Atlantic fleet weapons training facility, Vieques, Puerto Rico, October 27: Proposed is the continued use of the Atlantic fleet weapons training facility inner range located on the island of Vieques, Commonwealth of Puerto Rico. The activities of the facility include: Air-to-ground and naval gunfire support training, Marine landings, maneuver and artillery training operations, and storage of ammunition. The alternatives consider: (1) Continuation of activities; (2) ceasing all or some activities, excessing land and transferring activity; and (3) ceasing all or some activities without excessing land or transferring activity. Comments made by: AHP, DOI, HEW, EPA, and local agencies (EIS Order No. 800819).

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, D.C. 20585, (202) 252-4600.

Correction: Published in the October 24, 1980 FR was an inaccurate description of the final EIS entitled Wasted Isolation Pilot Plant, Construction. Below is a correct description of the project as it was addressed in the final EIS.

Final

Waste isolation pilot plant, Construction, Eddy County, New Mexico, October 17: Proposed is the construction and operation of a waste isolation pilot plant for the defense transuranic nuclear wastes (TRU), and experimental research and development with high level waste forms. The site under consideration is located in Eddy County, New Mexico. Four alternatives are considered which include: No action, alternatives to tru-waste disposal, alternative time schedules, and potential alternative locations. (DOE/EIS-0026). Comments made by: HEW, DOI, EPA, NRC, State and local agencies (EIS Order No. 800794).

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, N.W., Washington, D.C. 20405, (202) 566-1416.

Final

Smithsonian Institution quadrangle development, District of Columbia, October 31: Proposed is development of the Smithsonian Institution quadrangle located in the District of Columbia. The Development consists, of a 460,000 square foot structure principally housing underground museum programs including an extension to the Freer Gallery of Art and New Center for Eastern Art, an education center, and the museum of African Art. Also to be included will be related program functions, facilities, offices, and a small above-ground pavilion for each museum. Comments made by: HUD, HHS, EPA, DOI, USDA, and local agencies (EIS Order No. 800831).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6300.

Draft

Lakewood Estates development, mortgage insurance, McLean County, Illinois, October 29: Proposed is the issuance of HUD home mortgage insurance for the lakewood Estates development in the city of Bloomington, McLean County, Illinois. The development would encompass 203 acres and consist of approximately 1,400 housing units. Also included are park sites and a neighborhood retail center. (HUD-R05-EIS-79-09-(D)). (EIS Order No. 800825).

Wellington Hill development, mortgage insurance, Hillsborough County, New Hampshire, October 31: Proposed is the issuance of HUD home mortgage insurance for the Wellington Hill Development in the city of Manchester, Hillsborough County, New Hampshire. The Development will encompass 250 acres and contain in excess of 700 residential units, and will also include a recreation area, communitiy center and possibly a light industrial complex. (EIS Order No. 800835).

Final

Treehouse Apartments, mortgage insurance, Cook County, Illinois, October 29:

The proposed action is the issuance of HUD home mortgage insurance for the Treehouse Apartments to be located at the northeast quadrant of the intersection of Algonquin and Old Plum Roads in Schaumburg, Cook County, Illinois. The proposed Project includes 752 multifamily units on 39.41 acres of land. The units will be constructed in a total of 16 buildings of 2 and 3 stories and parking will include 1,680 uncovered spaces. Open space areas include proposed recreation facilities. (HUD-R05-FEIS-78-17 (F)). Comments made by: COE, EPA, DOI, USDA, DOT, State and local agencies (EIS Order No. 800826).

Final

Copperfield Subdivision, mortgage insurance, Harris County, Texas, October 31: Proposed is the issuance of HUD home mortgage insurance for the Copperfield Subdivision located in Harris County, Texas. The development would encompass approximately 1,800 acres and contain 5,178 detached single houses in four villages. The development will also contain apartments, schools, commercial and retail sites, church sites, and recreational facilities. (HUD-R06-EIS-80-11F). Comments made by: AHP, DOI, USDA, VA, FEMA, State agencies (EIS Order No. 800830).

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

Sutherlin City water and sewerage facilities, CDBG, Douglas County, Oregon, October 27: Proposed is the awarding of a CDBG to the city of Sutherlin in Douglas County, Oregon, for water and sewerage facilities including the installation of water and sewage lines, a 1,000,000 gallon water storage reservoir, and two sewage pump stations. The facilities would be used for industrial development in the southern portion of the city. The grant would specifically apply to two major sections of water main. The alternatives include: (1) No action, (2) relocation of various components of water and/or sewage systems, (3) alternate sources of water, and (4) alternate sewage disposal methods. (EIS Order No. 800817).

Final

San Buenaventura downtown redevelopment, UDAG, Ventura County, California, October 28: Proposed is the awarding of a UDAG grant to the city of Buenaventura, Ventura County, California. The plan would include: (1) A combined supermarket and superdrug unit, (2) a home improvement center, and (3) ancillary community-oriented commercial shops. The alternatives consider: (1) Integration of new commercial development with upgraded existing development, (2) new commercial development with removal of existing development, (3) upgraded and expanded industrial development, and (4) no project. Comments made by: EPA, HUD, HHS, and State agencies (EIS Order No. 800820).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Coal slurry pipeline transportation project, several counties, October 31: Proposed is the approval of right-of-way for the construction of a 1,664 mile main coal slurry pipeline. The pipeline would extend from Wyoming, through South Dakota, Colorado, Nebraska, and Kansas, to power plant customers in Oklahoma, Arkansas and Louisiana. The alternatives consider: (1) Pipeline routes, (2) transportation modes, and (3) water sources. The cooperating agencies are the Fish and Wildlife Service, Geological Survey, Forest Service, and Corps of Engineers. (DES-80-69), (EIS ORDER No. 800834).

Extension: The review period for the above EIS has been extended until January 6, 1981. (No. 800834).

FISH AND WILDLIFE SERVICE

Draft

Big Boggy National Wildlife Refuge, Matagorda County, Texas, October 29: Proposed is the establishment of the Big Boggy National Wildlife Refuge in Matagorda County, Texas. Establishment of the refuge would require the acquisition in fee simple of 4,500 acres which would be managed primarily for wintering waterfowl. All or part of the area may be opened to the public for waterfowl hunting and other forms of wildlife-oriented recreation. The alternatives consider: (1) No action, (2) acquisition of nondevelopment easements, (3) acquisition by the State of Texas, and (4) protection via local, State and Federal Regulations. (EIS Order No. 800824).

Extension: The review period for the above EIS has been extended until December 31, 1980. (No. 800824).

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P-518, Washington, D.C. 20555 (301) 492-8446.

Draft

Smelted alloys licensing requirements, exemption, regulatory, October 28: Proposed are exemptions from licensing requirements for smelted alloys containing residual technetium-99 and low enriched uranium at concentrations of 5 ppm and 17.5 ppm, respectively. The contaminated metals considered for smelting are the scrap copper, nickel, and iron resulting from the improvement and upgrading of gaseous diffusion plants. The alternatives consider: Sale of surface scrap, recycle of equipment, burial of scrap, surface storage of scrap, and issuance of either a general or specific license for scrap disposal. (NUREG-0518), (EIS Order No. 800823).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Saftey, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

I-90 completion, city of Wallace, Shoshone County, Idaho, October 31: Proposed is the completion of I-90 through the city of Wallace, Shoshone County, Idaho. The facility would extend for 1.7 miles connecting existing portions of I-90 east and west of the city. The facility would have four travel lanes and be built to full interstate standards. The alternatives consider: (1) No action, (2) four interchange alternatives, (3) four alignments through the city, and (4) three alignments for the east segment of the project. The cooperating agency is the State of Idaho. (FHWA-IDA-EIS-80-02-D), (EIS Order No. 800832).

Extension: The review period for the above EIS has been extended until January 1, 1981. (No. 800832).

Final

Port Orchard Bypass, WA-160 to WA-16, Kitsap County, Washington, October 27: Proposed is the construction of the Port Orchard Bypass between WA-160 and WA-16 in Kitsap County, Washington. The project would involve an east-west route beginning at the intersection of Lund Street and Bethel Road extending approximately one mile via a bridge crossing the Blackjack Creek Ravine at Tremont Street to the intersection of Tremont and Port Orchard Boulevard. The alternatives consider: (1) Improvement of the existing facility, (2) the Tremont-Lund connector, (3) the Tremont-Lincoln connector, and (4) the Melcher-Bethel connector. (FHWA-WA-EIS-79-02-F). Comments made by: DOT, EPA, DOI, DOE, DOC, State and local agencies and groups (EIS Order No. 800818).

[FR Doc. 80-34903 Filed 11-6-80; 8:45]

BILLING CODE 6560-37-M

[A-5-FRL 1661-4]

Reconsideration of the Use of Pasquill-Gifford Dispersion Coefficients for Stability Class A in Setting Emission Limitations for Four Ohio Power Plants; Petitions for Reconsideration

AGENCY: Environmental Protection Agency.

ACTION: Denial of petitions for reconsideration and requests for stay.

On June 19, 1980, the U.S. Environmental Protection Agency (EPA or agency) affirmed its original decision to use the Pasquill-Gifford dispersion coefficients for stability class A in setting emission limitations for four Ohio power plants. 45 FR 41501. The Ohio Power Company and Columbus and Southern Ohio Electric Company

(CSOE) have petitioned the agency to reconsider its June 19, 1980 decision as it relates to the Cardinal, Muskingum River, and Conesville power plants.[1] Based on EPA's evaluation of the petitions and the supporting evidence, EPA finds that these petitions do not present new information which would warrant reconsideration of the agency's decision. EPA therefore denies the petitions and reaffirms the original emission limitations for these plants. *See* 40 CFR 52.1881 (21), (34)(viii), and 63(i). Elsewhere in today's **Federal Register**, EPA is restarting the original compliance schedules for petitioners' class A power plants. These schedules begin to run as of June 19, 1980, and allow petitioners up to three years to comply. The new attainment date specified for these plants is June 19, 1983.

Petitioners also requested that the agency stay its June 19, 1980 decision pending reconsideration, or if reconsideration is denied, pending judicial review.[2] Petitioners, however, fail to present sufficient grounds for granting a stay of compliance with their emission limitations. Petitioners do not show that a stay of compliance would be in the public interest, that they would be irreparably harmed during the time necessary for judicial review, or that they are likely to prevail on the merits. EPA therefore denies petitioners' requests for a stay of compliance pending judicial review.

Background

The agency promulgated emission limitations for the Cardinal, Muskingum River and Conesville power plants on August 27, 1976, as part of the federally-promulgated Ohio sulfur dioxide plan. 41 FR 36324 (August 27, 1976).[3] The emission limitations for these three sources and Dayton Power and Light Company's Stuart power plant,[4] were determined by the P-G class A stability. 45 FR 41502 (col. 1) (June 19, 1980). This means that the agency's dispersion modeling calculated that the highest pollution levels caused by these sources occurred during meteorological conditions that the model classified as class A stability. Based on the model calculations, the agency set emission limitations for these sources to assure that pollution levels would not exceed the national ambient air quality standards.

Following promulgation of the federal SO_2 plan, thirty-three companies including Ohio Power and CSOE petitioned for judicial review of the plan. The United States Court of Appeals for the Sixth Circuit issued two major decisions in these cases affirming the agency's use of dispersion modeling in setting emission limitations in urban and rural areas. *Cleveland Electric Illuminating Company* v. *EPA*, 572 F.2d 1150 (6th Cir. 1978), *cert. denied*, 436 U.S. 911 (1978) and *Cincinnati Gas and Electric Company* v. *EPA*, 578 F.2d 660 (6th Cir. 1978), *cert. denied* 439 U.S. 1114 (1978). However, the Court found that the administrative record supporting the agency's decision to use the Pasquill-Gifford (P-G) dispersion coefficients for stability class A in setting emission limitations for isolated rural power plants was inadequate and remanded the class A record to the agency for its reconsideration. *Cincinnati Gas and Electric Company* v. *EPA*, 578 F.2d 660 (6th Cir. 1978).

In response to the Court's remand, the agency reviewed available scientific data and reconsidered its use of the P-G class A coefficients. EPA also evaluated the alternative suggested by the utilities. On February 7, 1979, EPA published and solicited comment on its preliminary finding that review of the data supported its original decision to use the P-G class A coefficients and demonstrated that the utility alternative would underpredict ground level concentrations. 44 FR 7798. Both Ohio Power and CSOE submitted extensive comments to the agency and also requested that the agency review monitoring data collected at various power plants including the Muskingum River and Conesville power plants. See 45 Fed. Reg. 41503–41504, 41509 (col. 2) (June 19, 1980).

On June 19, 1980, EPA published its response to comments and final determination. 45 FR 41501. The agency determined that all of the data including the relevant utility monitor data supported its original decision to use the P–G class A coefficients in setting the emission limitations for the four Ohio power plants. Moreover the data established that the agency could not accept any of the new alternatives proposed by the utilities during the comment period. Thus EPA reaffirmed the original emission limitations for these sources on June 19, 1980. Elsewhere in today's **Federal Register**, EPA is restarting the original compliance schedules for the Muskingum River, Cardinal and Conesville plants and revising the attainment dates for these sources.

Subsequent to the June 19, 1980 notice, Ohio Power Company and CSOE filed petitions in the U.S. Courts of Appeals for the Sixth and District of Columbia Circuits seeking judicial review of the agency's determination to support its original use of the P–G class A coefficients in setting the original emission limitations for the Cardinal, Muskingum River and Conesville plants. In addition, Ohio Power and CSOE filed these petitions for reconsideration and requests for stay.

Discussion

Ohio Power and CSOE petitioned for reconsideration of the agency's decision to support the original use of the P–G class A coefficients in setting emission limitations for their plants pursuant to Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(D)(7)(B), and Section 553(e) of the Administrative Procedure Act (APA), 5 U.S.C. § 553(e). The agency considers these petitions for reconsideration as petitions under the APA to revise the original emission limitations for petitioners' "class A" power plants. The agency has already determined that the agency's compilation of a supplemental record in response to the Court's remand is not subject to Section 307(d) of the Clean Air Act. 45 FR 41509 (June 19, 1980). Therefore, Section 307(d)(7)(B) does not apply to the agency's action.[5] Nevertheless, the agency recognizes the right of petitioners to seek revision of the original emission limitations for their "class A" plants under Section 553(e) of the APA. The Agency therefore considers these petitions as petitions to revise a rule under the APA. The

[1] Ohio Power filed its petition on July 10, 1980. CSOE filed a similar petition on August 11, 1980. Ohio Power and CSOE filed a joint supplement to their petition on August 18, 1980. These petitions have been evaluated together since they raise similar issues. On September 26 and October 3, 1980, petitioners filed further supplements to their petitions for reconsideration. The agency has reviewed these additional materials and finds that except for a comparison of monitor and model data from the Gibson power plant, petitioners have not submitted any new information. The agency will publish its evaluation of the Gibson comparison after review of the comparison has been completed.

[2] Both Ohio Power and CSOE have filed petitions to review the agency's reconsideration in the U.S. Courts of Appeals for the Sixth and District of Columbia Circuits.

[3] The emission limitations for these sources are as follows: Cardinal —4.76 lbs. SO_2/MBTU; Muskingum River —6.48 lbs. SO_2/MBTU; and Conesville —5.66 lbs. SO_2/MBTU. See 40 CFR 52.1881 (21), (34)(viii), and (63)(i). These are some of the highest (least stringent) SO_2 emission limitations in the State of Ohio.

[4] Dayton Power and Light Company's Stuart power plant is currently in compliance with its emission limitations of 3.16 lb. SO_2/MBTU. 40 CFR 52.1881(11)(i).

[5] Even if Section 307(d)(7)(B) did apply, petitioners would not qualify for a reconsideration. Based on the reasons set forth below, petitioners do not present a new objection of central relevance to the outcome of the rule within the terms of Section 307(d)(7)(B). Under the criteria of Section 307(d)(7)(B), therefore, the petitions would be denied.

standard of review for such petitions is whether the petitions present new information that warrants agency reconsideration of the rule. See generally, *Oljato Chapter of the Navajo Tribe* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975). Under this standard, petitioners have presented no basis for changing their emission limitations.

Petitioners allege that there is "significant evidence arising after the comment period" that requires the agency to reconsider its June 19, 1980 determination to support the original use of the P–G class A coefficients in setting the emission limitations for the four Ohio power plants. However, petitioners have not presented any new information that would warrant revision of the original emission limitations for their power plants.

Petitioners cite as new information two recently published reports and the most recent monitoring data collected near the Conesville plant. Neither of the reports presents new information relevant to the predictive accuracy of the agency's modeling using the P–G class A coefficients. The Miller report consists of information that the agency has already evaluated. 45 FR 41502 (col. 2) (June 19, 1980). The Weil report prepresents no data relevant to the predictive accuracy of the agency's model which uses the P–G class A coefficients. Instead, the Weil report addresses the predictive accuracy of a completely different model. Finally, petitioner's analysis of additional months of Conesville monitoring data confirms the predictive accuracy of the agency's modeling with the P–G class A coefficients. The most recent Conesville data therefore further support the agency's original decision to use the P–G class A coefficients in setting the emission limitation for the Conesville plant.

Petitioners also raise several objections to the agency's June 19, 1980 evaluation of petitioners' previous comments, proposed alternatives and data.[6] None of petitioners' objections are based on any new data. Nevertheless, the agency has evaluated the objections and finds that all of petitioners' objections to the agency's use of the P–G class A coefficients are without merit. Petitioners, therefore, have not presented a basis for revising their emission limitations.

[6] On June 25, 1980, the agency denied Ohio Power Company's request for an additional comment period on the agency's June 19, 1980 evaluation of comments and final determination. EPA found that the utilities had had an opportunity to comment on the agency's findings and that a further comment period was unnecessary.

A. The Miller report consists of information already considered by the agency

Petitioners offer as new information a recently published report entitled "Recommendations Concerning Models and Parameters Best Suited to Breeder Reactor Environmental Radiological Assessment" by C. W. Miller and others for the Oak Ridge National Laboratories (May 1980). However, the Miller report is not based on any new data with respect to the class A issue. Instead, it merely recites the recommendations of the American Meteorological Society (AMS) Workshop on Stability Classifiation Schemes and Sigma Curves, Hanna et al. (1977), and the recommendations of Geiss et al. (1978) (Julich curves). The agency previously reviewed both of these reports and recommendations and concluded that the recommended alternatives would underpredict ground level concentrations for sources with tall stacks. The AMS and Geiss recommdenations, therefore, can not be used to set emission limitations adequate to insure attainment and maintenance of ambient standards for the four Ohio power plants. *See* 45 FR 41502 (col. 2), 41507 (col. 2–3) (June 19, 1980). In short, the Miller report does not provide any new information which would warrant revision of petitioners' emission limitations.

B. The Weil report is not relevant to the predictive accuracy of the agency's modeling with P–G class A coefficients

Petitioners submitted another recently published article entitled "Performance of Simple Models For Stack Plume Dispersion During Convective Conditions" (April 8, 1980) by Jeffrey C. Weil. The article reports Weil's findings regarding the predictive accuracy of his own model. Weil neither analyzes the agency's model nor draws any conclusions regarding the accuracy of the agency's model. Moreover, Weil does not analyze the relative accuracy of his model compared to the agency's model. The Weil report therefore is not relevant to the predictive accuracy of the agency's model using the P–G class A coefficients and provides no basis for revising petitioners' emission limitations.

In his report, Weil compares pollution concentrations calculated by his own model using the Brookhaven class B_2, P–G class A and P–G class B curves with concentrations measured by monitors. Weil concludes that pollution concentrations calculated by *his model* with the Brookhaven class B_2 curves compared more favorably with monitored data than concentrations calculated by *his model* with the P–G class A or P–G class B curves.[7] However, Weil's model is very different from the agency's model. Weil uses modeling assumptions for plum height and mean transport wind that are significantly different than the agency's model treatment of these factors. Therefore, Weil's analysis is not relevant to the predictive accuracy of the agency's model using the PO–G class A coefficients.

Moreover, Weil does not evaluate the relative accuracy of his model using the Brookhaven class B_2 curves compared to the agency's model using the P–G class curves.[8] Weil's data, therefore, do not present a basis for revising the agency's decision to use the P–G class A coefficients in setting emission limitations for petitioners' plants.

C. The most recent Conesville data further supports the gency's use of the P–G class A coefficients

Petitioners submitted additional monitoring data from four Conesville monitors.[9] In addition, petitioners compared the maximum 3-hour concentrations measured by the monitors to the maximum 3-hour concentrations calculated by the agency's MPTER model using the P–G class A curves.[10] Petitioners' comprison

[7] The agency evaluated use of the Brookhaven class B_2 curves as an alternative to using the P–G class A coefficients in EPA's model and found that use of the Brookhaven curves would underestimate ground level concentrations. 45 FR 41507 (col. 2–3). The agency concluded that it could not use the Brookhaven curves to set emission limitations for the four power plants that would protect ambient standards.

[8] Agency review of the Weil report and a recent technical note by a Weil associate, Roger Brower, entitled "Comparison between Prediction of Two Gaussian Models (CRSTER and modified CRSTER) and Measured SO_2 Concentrations Near Tall Stacks Under Convetive Conditions" (June 1980), indicates that the Weil model will calculate even higher concentrations than the agency's model using the P–G class A curves.

[9] CSOE set up four SO_2 monitors in June of 1979 at locations 1.0 to 1.4 km from the Conesville plant. However, CSOE may not have placed its four "class A" monitors in locations where the maximum three-hour concentrations would occur under class A-type conditions. All of CSOE's "class A" monitors are located in a northeasterly direction from the Conesville plant. Review of the agency's modeling for Conesville established that the Conesville emission limitation was based on a second high 3-hour concentration located 230° southwest of the plant. Review of climatological data in the Conesville area also indicates that the prevailing winds are out of the northeast-north/northeast direction during class A type meteorological conditions. Therefore, more frequent and higher maximum 3-hour ground level concentrations are probably occurring in a different area than where CSOE has placed its monitors.

[10] CSOE's comparison set forth in Table 3a of the August 18, 1980 Supplement is similar to the monitor/model comparison the agency included in

Footnotes continued on next page

establishes that the agency's model using the P–G class A coefficients is accurately predicting the maximum ground level concentrations measured at the four Conesville monitors. Petitioners' new data therefore further support the agency's original decision to use the P–G class A coefficients in setting the emission limitation for the Conesville plant. The Conesville data does not provide a basis for revising the original emission limitation.

The agency considered the early months of data from the Conesville monitors in its June 19, 1980 notice (45 Fed. Reg. at 41509 (col. 2)). The agency determined that three months of data was insufficient to draw sound conclusions regarding the predictive accuracy of the P–G class A curves at the Conesville plant. The agency, however, noted that the limited comparison submitted by CSOE using three months of data indicated that the P–G class A coefficients were *underpredicting* the maximum observed 3-hour concentrations. 45 FR 41509 (June 19, 1980).

With the additional data the petitioners submitted in their petitions for reconsideration, the petitioners now have twelve months of data from three of the four monitors and ten and a half months at the fourth monitor. Petitioners compared the highest and second highest 3-hour pollution concentrations observed at each of the four Conesville monitors to the highest and second highest model calculated 3-hour concentrations at the monitor locations for each of six years of meterological data. The ratio of the model predicted to monitored maximum second high 3-hour concentrations for all four monitors on the average is 1.05 (1.0 would mean perfect agreement). The ratio for the highest 3-hour concentrations for all four monitors on the average is 1.32. The ratios demonstrate that there is very good agreement between the monitor readings and the model calculations. The petitioners' comparison establishes that the agency's model using the P–G class A curves accurately predicts the maximum 3-hour sulfur dioxide concentrations measured at the Conesville monitors. The Conesville data therefore further support the agency's original decision to use the P–G class A dispersion coefficients in setting an emission limitation for Conesville.

D. Petitioner's other objections are without merit.

1. Big Bend Study.

Petitioners imply that it was inconsistent for the agency on the one hand to determine that field study data collected at the shoreline site of the Big Bend power plant were not relevant to the predictive accuracy of the P–G class A curves (45 FR at 41509) and on the other hand to use P–G class A coefficients to set emission limitations for two Cleveland Electric Illuminating power plants located on Lake Erie (45 FR 42279, June 24, 1980). Petitioners, however, misconstrue the agency's findings on the Big Bend data.

The agency determined that it could not use the Big Bend data in evaluating the predictive accuracy of the P–G class A coefficients because the data was collected during a period of time when very unstable (class A type) meteorological conditions were suppressed by the influence of the Gulf. As EPA stated in its June 19 notice, "a large body of water *often* has a stabilizing influence on atmospheric conditions near the shoreline." 45 Fed. Reg. 41508 (col. 3) (emphasis added). In other words, the agency found that very unstable (class A type) conditions did not occur during the period of the Big Bend field study, *not* that class A type conditions never occur near large bodies of water.

Since class A type conditions do occur near large bodies of water, the agency must evaluate class A conditions and their effect on the dispersion of pollutants from sources near such areas. Only by evaluating class A (and all other) meterological conditions can the agency be sure of setting emission limitations that will protect air quality standards. It therefore was necessary for the agency to evaluate class A conditions for the two Cleveland Electric Illuminating power plants and appropriate for the agency to set emission limitations based on that evaluation.

2. Petitioner CSOE's Proposed Alternatives

Petitioners contend that the agency did not consider CSOE's proposed alternatives to the P–G class A coefficients. However, EPA has already considered and rejected CSOE's proposals. Petitioners present no basis for revising EPA's initial evaluation of petitioner's proposals.

Specifically, petitioners contend that EPA did not consider two alternatives: 1) the use of correction factors (time scaling factors)[11] and 2) the use of the shorter averaging times method. Both alternatives would essentially result in larger sigma-y values than in the P–G class A coefficients. Larger sigma-y values mean greater horizonal dispersion of the pollutant and lower maximum ground level concentrations.

EPA has already considered CSOE's alternatives and the general contention that the horizontal dispersion (sigma-y) component in the P–G class A curves is too small. See 45 FR 41506–41508 (June 19, 1980). EPA review of CSOE's alternatives as well as other alternatives relying on larger sigma-y values established that use of the alternative would underpredict ground level concentrations.[12] For that reason, the agency determined that it could not rely on the suggested alternatives to set emission limitations to protect the ambient air quality standards. 45 FR 41507–41508. Petitioners present no data to support revising that finding.

3. EPA's use of the Karlsruhe Data

Petitioners criticize EPA's reliance on the dispersion coefficients derived by the 195 meter Karlsruhe experiments in preference to the coefficients derived from the 60, 100, and 160 meter experiments. Petitioners contend that the Karlsruhe experimenters recommend using the coefficients obtained by combining the results of experiments at 160 and 195 meters. Petitioners also cite a recent article entitled "Dispersion Parameters for Emission Heights up to 195 meters Determined Experimentally at the Karlsruhe National Research Center", Nester and Thomas (1979), which summarizes the results of the 60, 100, 160, and 195 meter experiments. Petitioners contend that the combined experiment results in this report support larger sigma-y curves than in the P–G class A coefficients.

Petitioners misconstrue the Karlsruhe experimenters' recommendation. The Karlsruhe experimenters recommended use of the combined experiment coefficients for evaluating the low level

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Footnotes continued from last page
the July 19, 1980 notice using relevant utility monitoring data and MPTER (NTIS version) modeling calculations. See 45 FR 41503, 41512. (Table 3.). The agency has updated the CSOE table with model calculations using the OAQPS version of MPTER. See p. 21 and Table 2.

[11] CSOE did not propose this alternative during the comment period, but submitted it in a January 18, 1980 report. Nevertheless, the agency considered it in its June 19, 1980 notice. See 45 FR 41507 (Col. 1).

[12] CSOE in fact submitted evidence that use of its shorter averaging times alternative would significantly underpredict ground level concentrations calculated by the agency's modeling using the P–G class A coefficients. Class A Record at II.B.4.b. p. 39. Since the monitor/model comparison demonstrates that the agency's model accurately predicts monitored ground level concentrations, CSOE's alternative would necessarily underpredict monitored ground level concentrations.

emissions from the Karlsruhe facility.[13] The Karlsruhe experimenters did not comment on the appropriate coefficients for evaluating emissions from tall stack power plants. The 195 meter experiments are in fact the most appropriate experiments for evaluating dispersion from power plants.

As the agency explained in the June 19, 1980 notice, the most appropriate experiments for evaluating dispersion from the four Ohio power plants are the experiments that come closest to approximating power plant conditions. 45 FR 41505. Emissions from these power plants are released from tall stacks and attain heights of 200 meters or higher. Experiments that release tracers from 195 meters rather than 60, 100 or 160 meters best approximate the release of pollutants from these power plants. The 195 meter experiments, therefore, are the most appropriate experiments for evaluating dispersion coefficients for the power plants. 45 FR 41505 (June 19, 1980).

Petitioners contend that the recent article summarizing the results of the 60, 100, 160 and 195 meter dispersion experiments at Karlsruhe over the last ten years supports larger sigma-y curves than the P–G class A sigma-y values. The authors of the article, however, base their conclusions on the averaged results of these experiments. As discussed above, the 195 meter experiments are the most appropriate for evaluating dispersion coefficients for the four power plants, rather than averaged results from experiments at lower heights. Therefore, the article does not support the use of larger sigma-y values for the four power plants. Moreover, the agency has already considered and rejected the utility arguments for larger sigma-y values. 45 FR 41506–41507. (June 19, 1980). Petitioners present no basis for finding that the agency's reliance on the 195 meter experimental data is inappropriate.

4. EPA did not use monitoring data from power plants using supplementary control systems

Petitioners criticize the agency for not using monitoring data from two TVA power plants and Public Service Indiana's Gibson plant because these plants use supplementary control systems.[14] As EPA stated in the June 19, 1980 notice, appropriate comparison of model predictions with monitor observations for plants using a supplementary control system requires actual operating data that are not available to the agency. 45 FR 41503 (col. 3). The agency, therefore, could not use the monitoring data from these plants.

5. EPA's monitor/model comparison

Petitioners contend that the agency's comparison of monitor and model data set forth in Table 3 of the June 19, 1980 notice does not support EPA's conclusions. Supplement to petitions at 9–10. However, petitioners' argument on this point implies that petitioners misunderstand the agency's intent in drawing the comparison.[15] The point of the comparison is to determine whether the model using the P–G class A coefficients accurately predicts actual maximum ground level concentrations.[16] The agency compared the maximum 3-hour concentrations observed at power plant monitors to the model calculations of the maximum 3-hour concentrations at the same locations. The comparison established that the model calculations compared well with actual measurements. The agency, therefore, concluded that its model using the P–G class A coefficients accurately predicts maximum ground level concentrations for power plants with tall stacks. 45 FR 41504 (June 19, 1980). Petitioners present no basis for revising that conclusion. Instead, petitioners, raise several false issues.

First, petitioners criticize the modeling data the agency used in the comparison because the data was not "exclusively class A." Supplement to the petitions at 10. Each of the maximum 3-hour concentrations calculated by the agency's model consists of one or two hours of class A stability. See Supplement to petitions, Exhibit 4. However, petitioners assume that model calculated maximum 3-hour concentrations must consist of three consecutive hours of class A stability. Petitioners' assumption is wrong. Therefore, their criticism of the data is without merit.

The model calculates a maximum 3-hour concentration by averaging three one-hour concentrations. For each one-hour concentration the model evaluates the meterological data and determines the stability classifications. Thus, a 3-hour concentration has three stability classifications. Review of the agency's modeling demonstrates that maximum 3-hour concentrations usually do not consist of three consecutive hours of class A stability but consists of one or two hours of class A and the remainder of class B, C, or D stability. In fact, each of the second high 3-hour concentrations that were used to set emission limitations for the four "class A" power plants is based on only one or two hours of class A stability.[17] For example, the second high 3-hour concentration that was used to set the emission limitation for the Cardinal power plant was based on one hour of class A stability, one hour of class B stability and one hour of class C stability.

Second, petitioners criticize the agency for calculating maximum 3-hour concentrations only at the monitor locations. Petitioners contend that the agency should have calculated concentrations at several locations and compared the model's maximum concentration (considering all locations) to the monitor concentration. However, identity of monitor locations and model receptor sites is necessary for an accurate comparison. The agency specifically calculated concentrations at the monitor locations in order to compare data for the same locations. *See Cleveland Electric Illumination Company* v. *EPA*, 572 F.2d 1150, 1163 (6th Cir. 1978) (where the Court

[13] The dispersion coefficients derived from combining the 195 meter and 160 meter experimental data are more appropriate for use in evaluating the lower level releases that would occur at the Karlsruhe facility. Emissions at the Karlsruhe nuclear research facility are released at levels of less than or equal to 100 meters and are non-buoyant. The combination of the 160 and 195 meter experiments more closely approximates the Karlsruhe releases. Thus, use of the combined experiment coefficients is appropriate for evaluating the lower level emissions from the Karlsruhe facility, but not for evaluating the buoyant high level releases.

[14] Petitioners erroneously contend that there is nothing in the record to support the fact that these plants use supplementary control systems. See Class A record at III.C.10.a and III.D.101.

[15] For example, petitioners argue that the agency's comparison is faulty because it does not evaluate the accuracy of the model in predicting when class A weather conditions occur. Supplement to petitions at 9–10. However, whether or not the model can predict when class A conditions occur is not at issue. The issue is whether the model using the P–G class A curves accurately predicts maximum ground level concentrations.

[16] The agency made similar monitor/model analyses in originating deciding to use dispersion modeling to set emission limitations in Ohio. The U.S Court of Appeals for the Sixth Circuit noted the results of such comparisons in affirming the agency's use of dispersion modeling. *See Cleveland Electric Illuminating Co.* v. *EPA*, 572 F.2d 1150, 1163–1164 (6th Cir. 1978).

[17] Petitioners contend that the Muskingum River emission limitation was based on three class A hours. Supplement to petitions at 10. However, review of the modeling demonstrates that it was based on only two class A hours. The model did not average in the third class A hour as contributing to the concentraion since the wind direction changed, carrying the pollution off in a different direction. Petitioners also contend that model calculations of three consecutive hours of class A stability with a persistent wind direction are unrealistic. As discussed above, the model does not usually calculate maximum 3-hour concentrations with three consecutive hours of class A and a persistent wind direction, but such conditions do occur. Wind data submitted during the comment period by Cincinnati Gas and Electric Company for the East Bend power plant demonstrate that such conditions actually occur. Class A record at II.B.8.b.

discusses the need for identity of monitor locations and receptor sites). Petitioners' suggestions would not result in an accurate comparison and is without merit.

Finally, petitioners imply that the agency's comparison is faulty because it is not a "validation study." Model validation usually involves extensive on-site data collection and modeling analyses to evaluate the performance of an entire model. *See Cleveland Electric Illuminating Company* v. *EPA*, 572 F.2d 1153 (6th cir, 1978) (where the Court discusses the rigors of model validation). Using available monitor data to compare monitor and model concentrations is also a valid although less rigorous procedure for checking the accuracy of model predictions. Petitioners' implied critique of the comparison study is therefore without merit.

6. The agency's modeling methodology

Petitioners raise as an issue the fact that EPA did not use the CRSTER model in making the monitor/model comparison even though EPA had used the CRSTER model in setting the emission limitations for the four power plants. EPA did not use the CRSTER model for the comparison because that model does not have the capability of calculating concentrations at specifically designated locations such as the monitor locations. Instead, the agency used the MPTER model because it has the capability of calculating concentrations at specifically designated locations.[18] This allowed the agency to calculate concentrations at the monitor locations and make a more accurate comparison between model calculations and the monitor data

EPA developed the MPTER Model from the CRSTER model and in most respects the MPTER is equivalent to the CRTSTER model.[19] Besides the capability of calculating concentrations at specified locations, the MPTER Model can also take into account actual stack separation and the actual height of the wind instrument. These features increase the predictive accuracy of the MPTER Model analyses.

At the time the agency ran the MPTER model for the June 19, 1980 comparison, the agency considered that, except for the above described improvements over the CRSTER model, the MPTER Model was identical to CRSTER. The agency, however, has recently determined that two adjustments to the MPTER Model are require to make it completly consistent with CRSTER. These adjustments to the computer coding were outlined in a memorandum issued July 7, 1980, by EPA's Office of Air Quality Planning and Standards to EPA's regional offices.[20] The adjustments make the MPTER treatment of plume cut-off and receptor elevation consistent with CRSTER.

In order to evaluate the effect of these adjustments on the agency's June 19, 1980 modeling, which used the MPTER without these adjustments, the agency remodeled the John Sevier and Muskingum River power plants.[21] Table 1 sets forth a comparison of monitor data with the adjusted MPTER model (hereinafter "MPTER–OAQPS version") calculations for the John Sevier and Muskingum River plants and the original MPTER (hereinafter "MPTER–NTIS version") calculations which were set forth in Table 3 in the June 19, 1980 notice.[22] 45 Fed. Reg. 41512.

Comparison of the pollution concentrations calculated by the two versions of the MPTER demonstrates that the differences in the maximum and second maximum pollution concentrations are insignificant in almost all cases. Moreover, both MPTER versions calculate maximum concentrations that compare well with observed maximum concentrations. The comparison also shows that the monitors observed maximum concentrations of sulfur dioxide as high or higher than the maximum concentrations calculated by the model (OAQPS version) using the P–G class A dispersion coefficients. Therefore, the comparison using the OAQPS version of the MPTER model confirms the conclusion that the agency's modeling using the P–G class A coefficients accurately predicts measured maximum ground level concentrations.

Conclusion

Petitioners do no submit new data or raise objections that warrant revision of their original emission limitations. In fact, the most recent monitoring data from monitors, near the Conesville plant further support the agency's original decision to use the P–G class A coefficients in setting the emission limitation for the Conesville plant. EPA therefore denies the petitions for reconsideration.

Petitioners also fail to establish sufficient grounds to warrant a stay pending judicial review. The grounds for granting such a stay are set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958). Those grounds are that a stay would be in the public interest, is necessitated by the fact that petitioners would otherwise suffer irreparable harm and is justified by the likelihood of success on the merits.

Petitioners do not contend that a stay would be in the public interest or that they will suffer irreparable harm without a stay. On the contrary, the public interest requires that petitioners bring their power plants into compliance with their emission limitations. Moreover, petitioners will not suffer irreparable harm during the time necessary to complete judicial review. Under the compliance schedules for petitioners' class A plants, final compliance is not required for three years if compliance is achieved through installation of desulfurization equipment or for two and a half years if compliance is achieved through burning lower sulfuc or washed coal.[23]

Petitioners also have not established any likelihood of prevailing on the merits. Petitioners have had a full and fair opportunity to comment on the agency's findings. The agency has evaluated petitioners' comments and all available data on the class A issue. The agency has found that its findings are fully justified. In addition, EPA has utilized data comparable to the data relied upon by the Court in affirming the

[18] These model runs are in the class A record at III.B.

[19] The agency explained the difference between the MPTER and the CRSTER models in footnote number 7 of the June 19, 1980 notice. 45 FR 41503. The **Federal Register** inadvertently omitted this footnote in printing. The footnote in the original text reads as follows: "MPTER is a model EPA developed from the EPA CRSTER model. In most respects, the MPTER and CRSTER models are identical and both can be run with the P–G dispersion coefficients. However, unlike CRSTER, MPTER can take into account stack separation and can also locate receptors using Cartesian coordinates. This feature allowed the agency to set a model receptor exactly at the location of the monitor and therefore make a more accurate comparison between model predictions and monitoring data."

[20] This memorandum is in the record supporting the agency's response to the petitions for reconsideration.

[21] The agency also changed the SO_2 half-life previously used in its MPTER modeling to be consistent with that used in CRSTER modeling.

[22] Petitioners point out in their supplemental petitions at 8–9 that the meteorological data for 1964 used to set the original emission limitations is different than the data used in the MPTER modeling. The agency has previously pointed out that the national weather service corrected a mistake in the original 1964 meteorological data, after the agency's original modeling in 1976. The agency now uses the corrected data. The agency has found that the change has an insignificant effect on concentrations. See 45 FR 88930. (December 5, 1979). Petitioners also allege that the mixing height data is in error; however, petitioners do not support this allegation and the agency has no evidence of any error in the mixing height data it used in its MPTER modeling.

[23] Elsewhere in today's **Federal Register**, EPA is restarting the original compliance schedules for the petitioners' Class A power plants. The schedules will begin to run as of June 19, 1980.

agency's use of RAM modeling. *Cleveland Electric Illuminating Company v. EPA*, 572 F.2d 1150, 1163–164 (6th Cir. 1978). That data is a comparison between monitor observations and model calculations at the monitor locations. The comparison establishes that the agency's model using the P–G class A coefficients is accurately predicting ground level concentrations. In sumary, petitioners do not satisfy any of the grounds for granting a stay. Therefore, EPA denies petitioners' requests for a stay pending judicial review of the agency's June 19, 1980 action.

for this action is the United States Court of Appeals for the Sixth Circuit. Under Section 307(b)(1) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Dated: November 3, 1980.

Barbara Blum,

Acting Administrator.

Table 1.—*Highest and second highest 3-hour SO_2 concentrations observed and calculated at the four "class A" monitor sites at the Conesville powerplant*

Monitor observed			Model calculated (MPTER-NTIS version)			Model calculated (MPTER-OAQPS version)	
Year	Highest	Second	Year	Highest	Second	Highest	Second
John Sevier:							
1973	.17	.16	1964	.32	.32	.32	.31
1974	.23	.22	1970	.26	.18	.26	.17
1975	.45	.39	1971	.24	.21	.25	.21
1976	.40	.39	1972	.29	.25	.31	.26
1977	.43	.31	1973	.23	.16	.23	.16
1978	.34	.30	1974	.21	.17	.23	.17
1979	.24	.20					
Muskingum River:							
1978	.39	.20	1964	.43	.29	.50	.44
1979	.63	[1].43	1971	.33	.25	.34	.25
1980	[1].49	[1].44	1972	.40	.34	.95	.40
			1973	.40	.34	.42	.35
			1974	.36	.30	.37	.31
			1975	.55	.43	.56	.53
			1977	.41	.34	.42	.36

[1]This reflects the most recent data submitted by Ohio Edison on August 18, 1980. The 1980 figures are only for January through April, 1980.

Table 2.—*Highest and second highest 3-hour SO_2 concentrations observed and calculated at the four "class A" monitor sites at the Conesville powerplant*

Monitor observed			Model calculated (MPTER-NTIS version)			Model calculated (MPTER-OAQPS version)	
Year	Highest	Second	Year	Highest	Second	Highest	Second
Levee:							
June 1, 1979 and May 31, 1980	.38	.38	1964	.45	.31	.47	.32
			1973	.52	.42	.54	.44
			1974	.18	.14	.19	.15
			1975	.55	.36	.57	.45
			1976	.46	.27	.48	.28
			1977	.74	.64	.78	.68
Ash Pond No. 1:							
June 1, 1979 and April 16, 1979	.31	.26	1964	.37	.31	.38	.33
			1973	.44	.20	.45	.20
			1974	.52	.34	.53	.35
			1975	.45	.30	.48	.31
			1976	.30	.29	.31	.30
			1977	.71	.50	.76	.52
Batch:							
June 1, 1979 and May 31, 1980	.38	34	1964	.49	.45	.51	.46
			1973	.32	.09	.32	.09
			1974	.39	.22	.40	.22
			1975	.54	.36	.56	.37
			1976	.37	.34	.38	.35
			1977	.58	.42	.59	.43
River:							
June 1, 1979 and May 31, 1980	.37	.34	1964	.38	.37	.39	.38
			1973	.30	.28	.31	.29
			1974	.34	.16	.35	.17
			1975	.45	.42	.46	.43
			1976	.11	.07	.12	.09
			1977	.69	.40	.71	.40

[FR Doc. 80-34909 Filed 11-6-80; 8:45 am]

BILLING CODE 6560-38-M

[Docket No. ECAO-CD-79-1; AD-FRL 1664-4]

Air Quality Criteria for Particulate Matter and Sulfur Oxides; Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Meetings.

SUMMARY: On November 18–19, 1980, and throughout the month of December, the U.S. Environmental Protection Agency (EPA) will be holding a number of meetings to help further its preparation of a second external review draft of a revised air quality criteria document for particulate matter and sulfur oxides (PM-SO_x). The public is invited to attend the meetings.

DATES: The first of a number of meetings is scheduled to be held on November 18–19, 1980, beginning at 9 a.m., concerning Chapters 11, 12 and 13 (Deposition and Fate, Animal and Human Clinical Studies). Information concerning the subject matter and dates of additional meetings during December will be announced in a subsequent **Federal Register** notice.

ADDRESSES: The meeting of November 18–19, 1980, will be held in the conference room of the U.S. Army Research Office, Alexander Drive at North Carolina Route 54, Research Triangle Park, North Carolina. The location of additional meetings will be announced in a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Robert Bauman, Deputy Director, Environmental Criteria and Assessment Office, MD–12, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–4172.

SUPPLEMENTARY INFORMATION: In April 1980 EPA made available for public comment a first external review draft of a revised criteria document for PM/SO_x (45 FR 24913, April 11, 1980; 45 FR 42023, June 23, 1980). The document is being prepared pursuant to Sections 108 and 109 of the Clean Air Act, as amended, 42 U.S.C. §§ 7408 and 7409, and will be

used as a basis for the review and, as appropriate, revision of the national ambient air quality standards (NAAQS) for PM and SO_x.

On August 20–22, 1980, the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board met to provide scientific and technical advice to EPA regarding the first external review draft of revised criteria for PM/SO_x (45 FR 51644, August 4, 1980). At that meeting CASAC advised that EPA prepare a second external draft for public review prior to obtaining further advice from CASAC. CASAC recommended that EPA, in preparing the second draft, hold informal technical working sessions at which EPA, its consulting authors and reviewers, and other scientific and technically qualified persons selected by EPA could discuss the various chapters of the document and suggest ways of resolving outstanding issues. EPA is planning to hold such meetings as stated above under "Dates."

Discussions at the meetings will focus on preliminarily revised chapters of the PM/SO_x document which EPA is preparing in response to comments from the public and CASAC on the first external review draft. Copies of the preliminarily revised chapters will be available at the meetings at which they are discussed. Copies may also be obtained before the meeting as they become available by calling Robert Bauman (see "Further Information" above). An opportunity will be provided at the end of each meeting for members of the public to make brief oral statements. Ample opportunity for review and the submission of written comments will be provided, of course, when a second external review draft of the entire document is made available. It is anticipated the second draft will be released in January, 1981, following EPA's consideration of the discussions held at these meetings.

Detailed minutes of each meeting will be kept by EPA, containing a complete and accurate description of matters discussed and any conclusions reached at the meetings. The minutes, preliminary chapter drafts discussed at the meetings, and any other materials provided for or produced collectively at the meetings will be included in the docket which has been established for the review of PM/SO_x national ambient air quality standards. The docket is available for inspection and copying between the hours of 8 and 4 at EPA headquarters in the Central Docket Section (A–130), Gallery 1, West Tower, Waterside Mall, 401 "M" Street, S.W., Washington, D.C. 20460. (The criteria document docket, No. ECAO–CD–79–1, is part of the dockets established for review of the particulate matter and sulfur oxides NAAQS, Nos. A–79–28 and 29).

November 5, 1980.

Steven R. Reznek,

Acting Assistant Administrator for Research and Development.

[FR Doc. 80–34963 Filed 11–6–80; 8:45 am]

BILLING CODE 6560–26–M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80–685, 80–686; File Nos. BPCT–79072KF, BPCT–800714KJ]

Christian Center of the Ozarks and Springfield Family Television, Inc.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: October 16, 1980.

Released: October 31, 1980.

In re applications of Christian Center of the Ozarks, Springfield, Missouri, BC Docket No. 80–685, File No. BPCT–790727KF; Springfield Family Television, Incorporated, Springfield, Missouri, BC Docket No. 80–686, File No. BPCT–800714KJ; for a construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Christian Center of the Ozarks and Springfield Family Television, Inc. for a new commercial television station to operate on Channel 33, Springfield, Missouri.

2. The Commission finds the applicants qualified to operate and construct as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that grant of them will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set out below.

3. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

5. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80–34793 Filed 11–6–80; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Council on the Aging; Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 1, sec. 10, 1976) that the Council will hold a meeting on December 1, 1980 from 9:30 a.m. to 5:00 p.m., December 2, 1980 from 9:00 a.m. to 5:00 p.m. and December 3, 1980 from 9:00 a.m. to 3:00 p.m. in Rooms 403A and 425A, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The progress on key issues and reports of the Council's Congressionally Mandated Study will be the major agenda item. Committee reports on the older worker, long term care and the White House Conference on Aging will also be given. In addition, there will be a discussion on the Council's organization and work plan for 1981, the Annual Report and the organization of the 97th Congress and its impact on aging.

Further information on the Council may be obtained from the Federal Council on the Aging, Washington, D.C. 20201. Telephone (202) 245–0441.

FCA meetings are open for public observation.

Dated: November 3, 1980.

Charles J. Fahey,

Chairman, Federal Council on the Aging.

[FR Doc. 80-34855 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL MARITIME COMMISSION

Gulf Caribbean Marine Lines; Application for Permission To Submit Alternative Data

The Federal Maritime Commission hereby gives notice that Gulf Caribbean Marine Lines (GCML) has filed an application with the Commission for permission to submit alternative data pursuant to 46 CFR 512.2(d).

GCML requests permission to use revenue tons, in lieu of cargo cubes, as the basis of allocation in the filing of actual and projected General Order 11, Revised, Statements of Financial and Operating Data. This data is to be submitted on or about December 1, 1980, in connection with a general rate increase in the U.S. Gulf Coast to Puerto Rico Trade.

Interested parties may inspect the data submitted in support of the application at the Washington, D.C., Office of the Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. Interested parties may submit comments on the application to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before (20 days). A copy of any comments should also be forwarded to Crowley Maritime Corporation, The Caribbean Division, P.O. Box 2110, Jacksonville, Florida 32203, Attention: Mark Morrison and the comments should indicate that this has been done.

Dated: October 31, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-34902 Filed 11-6-80; 8:45 am]

BILLING CODE 6730-01-M

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 28, 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. 10044-5.

Filing Party: R. J. Finnan, Chief Publishing Officer, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

Summary: Agreement No. 10044-5 is a proposal by the parties to the U.S. Gulf/Peru Pooling Agreement to extend the expiration date of the basic agreement for 90 days, through March 31, 1981. Additionally, a provision which permits the parties, in every pool year except the final pool year (1980), to consider pool earnings from the final yearly sailing as earnings for the next succeeding year, is being amended by allowing such action in the final pool year.

Dated: November 3, 1980.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-34818 Filed 11-6-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-78]

Antonio Lopez Quintana d.b.a. Tony Quintana Freight Forwarders—Independent Ocean Freight Forwarder License No. 1324; Order of Investigation and Hearing

Antonio Lopez Quintana d.b.a. Tony Quintana Freight Forwarders (Quintana) located at 739 West Flagler Street, Miami, Florida 33130, is an independent ocean freight forwarder operating under FMC license number 1324 issued May 4, 1971. Information has been developed by the Commission staff indicating that Quintana has apparently violated section 44(e) of the Shipping Act, 1916 (46 U.S.C. 841(b)), and sections 510.23(a) and 510.24(e) of the Commission's General Order 4 (46 CFR 510). Quintana's actions may have rendered it unfit to carry on the business of forwarding, pursuant to section 44(b) of the Shipping Act, 1916 (46 U.S.C. 841(b)).

During the course of a compliance investigation of another licensee it was disclosed that Quintana had permitted a then-unlicensed firm, Trans-World International, Inc. (T.W.I.), to use Quintana's license for the performance of ocean freight forwarding services during the period May 17, 1977 to September 3, 1977, on at least 53 shipments. On at least 30 of these shipments Quintana collected compensation from the oceangoing common carrier which is a violation of section 44(e) of the Shipping Act, 1916 and section 510.24(e) of the Commission's General Order 4.

The licensee's apparently willful violations of the shipping statute and the Commission's regulations are relevant to the degree of fitness required of an independent ocean freight forwarder. Thus, Quintana may no longer be qualified to hold an FMC license.

In addition, section 32 of the Shipping Act, 1916, prescribes civil penalties for violations of section 44 of the Act and the Commission's regulations and charges the Commission with the responsibility of assessing those penalties.

Now therefore it is ordered, That pursuant to sections 22, 32 and 44 (46 U.S.C. 821, 831 and 841(b)) of the Shipping Act, 1916, and section 510.9 of the Commission's General Order 4 (46 CFR 510.9) a proceeding be instituted to determine:

1. Whether Quintana violated section 510.23(a) of General Order 4 by permitting a person not in its employ to use its license for the performance of ocean freight forwarding services.

2. Whether Quintana violated section 44(e) of the Shipping Act, 1916 and section 510.24(e) of the Commission's General Order 4 by collecting compensation from oceangoing common carriers on shipments for which it did not perform ocean freight forwarding services.

3. Whether civil penalties should be assessed against Quintana pursuant to section 32(e), Shipping Act, 1916 for violations of the Shipping Act, 1916, and/or the Commission's rules and regulations and, if so, the amount of any such penalty which should be assessed, taking into consideration factors in possible mitigation of such a penalty.

4. Whether Quintana's ocean freight forwarder's license should be suspended or revoked pursuant to

section 44(d) of the Shipping Act, 1916, for:

(a) willful violations of the Shipping Act, 1916, or the Commission's rules or regulations or both;

(b) such conduct as the Commission finds renders Quintana unfit properly to carry on the business of forwarding in accordance with section 510.9(e) of General Order 4.

It is further ordered, That Antonio Lopez Quintana d/b/a Tony Quintana Freight Forwarders be named Respondent in this proceeding.

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, shall commence within the time limits specified in Rule 61 (46 CFR 502.61) of the Commission's Rules of Practice and Procedure. The hearing shall include oral testimony and cross-examination at the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements or affidavits, depositions, or other documents, or that the nature of the matter at issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That notice of this Order be published in the **Federal Register** and a copy thereof and Notice of Hearing be served upon Respondent, Antonio Lopez Quintana d/b/a Tony Quintana Freight Forwarders and the Commission's Bureau of Hearing Counsel.

It is further ordered, That any person other than the Respondent and Hearing Counsel having an interest and desiring to participate in this proceeding shall file a petition for Leave to Intervene in accordance with Rule 72 (46 CFR 502.72) of the Commission's Rules of Practice and Procedure.

It is further ordered, That all future notices issued by or on behalf of the Commission, including notice of time and place of hearing, or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-34817 Filed 11-6-80; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Western Steamship Lines, Inc. d.b.a. Western Cruise Lines and Eastern Steamship Lines, Inc., c/o Eastern Steamship Lines, Inc., 1220 Biscayne Boulevard, P.O. Box 010882, Miami, Florida 33101.

Dated: November 5, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-34924 Filed 11-6-80; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnifiction of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Western Steamship Lines, Inc., d.b.a. Western Cruise Lines and Eastern Steamship Lines, Inc., c/o Eastern Steamship Lines, Inc., 1220 Biscayne Boulevard, P.O. Box 010882, Miami, Florida 33101.

Dated: November 5, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-34925 Filed 11-6-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Carter Lake Investment Co.; Formation of Bank Holding Company

Carter Lake Investment Co., Carter Lake, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First Bank and Trust of Carter Lake, Carter Lake, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 1, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 31, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34735 Filed 11-6-80; 8:45 am]

BILLING CODE 6210-01-M

Chase Bank International; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as Chase Bank International, Newark, Delaware, and to establish branches thereof in Chicago, Houston, Los Angeles and Miami, through conversion of existing Edge Corporations. Chase Bank International would operate as a subsidiary of Chase Manhattan Bank, N.A., New York, New York. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 1, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 31, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34736 Filed 11-6-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 31, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 25, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests clearance of a revision of 10 CFR Part 20, Standards for Protection Against Radiation, Burial of Small Quantities of Radionuclides. The revision to Part 20 is the deletion of § 20.304 which allows licensees to bury small quantities of radionuclides without prior approval by NRC. Deletion of 10 CFR 20.304 will increase the number of licensees who must submit applications for burial of radionuclides as required by section 20.302. The NRC estimates that an additional 26 licensees will be required to submit applications and that 24 hours will be required to prepare each application.

John M. Lovelady,

Senior Group Director, Regulatory Reports Review.

[FR Doc. 80-34774 Filed 11-6-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Amended System of Records

AGENCY: General Services Administration.

ACTION: Notification of amended system of records.

SUMMARY: The purpose of this document is to give notice, pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to amend a system of records that is maintained by GSA. The system of records, Investigation Case Files GSA/ADM-24, will be amended to change the records storage medium from only paper records to a combination of paper records and computer records. An amended system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on September 30, 1980.

DATES: Any interested party may submit written comments regarding the proposal. To be considered, comments must be received on or before December 8, 1980. The amendment shall become effective as proposed without further notice on December 8, 1980, unless comments are received that would result in a contrary determination.

ADDRESS: Address comments to General Services Administration (HRAR), Washington, DC 20405.

FOR FURTHER INFORMATION: Mr. William Hiebert, Records Management Branch, Information Management Division, (202) 566-0673.

Background: The Office of Inspector General (OIG) system of records, Investigation Case Files, is being amended by changing the record storage medium from only paper records to a combination of paper records and computer records. A computer system is necessary due to the increased number of investigation case files that will be covered by the system of records. The use of computers will reduce the staff time required to maintain the records and also provide instant access to investigation information. The system of records notice GSA/ADM-24, Investigation Case Files, was last published in the **Federal Register** on August 29, 1980, 45 FR 57878.

The amended system of records notice GSA/ADM-24 will read as follows:

GSA/ADM-24 (23-00-0024)

SYSTEM NAME:

Investigation Case Files.

SECURITY CLASSIFICATION:

Some of the material contained in the system has been classified in the interests of the national security pursuant to Executive Order 11652.

SYSTEM LOCATION:

The system is located in the Office of Inspector General, 18th and F Streets NW., Washington, DC 20405. The data base for this system is on computers operated by the Neshaminy Valley Information Processing Company, 4850 Street Road, Trevose, PA 19049.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are employees, applicants for employment, and former employees of GSA and commissions, committees, and small agencies serviced by GSA. Also included are historical researchers, employees of contractors performing custodial or guard services in buildings under GSA jurisdiction, individuals who were the source of an individual complaint or an allegation that a crime had taken place, witnesses having information or evidence on any side of an investigation, and identification of possible and actual suspects in the criminal, administrative, or civil actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files contain information such as name, date and place of birth, experience, and investigatory material. These records are used as a basis for issuance of subpoenas; security clearances; suitability determinations; and civil, criminal, and administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. Section 2 et seq.; Executive Order 10405, April 27, 1953; Executive Order 11478, August 8, 1969; Executive Order 11652, March 8, 1972; Executive Order 11246, September 24, 1965; and 40 U.S.C. 276a through a-7, 276c, 318 (a) through (d), and 327 through 331.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by GSA officials and representatives of other Government agencies on a need-to-know basis in the performance of their official duties under the authorities set

forth above and also for the following routine uses:

1. *Law enforcement:* Records maintained by the Office of Inspector General may be disseminated in any of the following manners:

a. A record of any case in which there is an indication of a violation of law, whether civil, criminal, or regulatory in nature, may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

b. A record may be disseminated to a Federal, State, local, or foreign agency or to an individual organization in the course of investigating a potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

c. A record relating to a case or matter may be disseminated in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

d. A record relating to a case or matter may be disseminated to an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

e. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement or that involves a case or matter within the jurisdiction of any agency may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made or to make such other inquiries and reports as are necessary during the processing of the case or matters;

f. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

g. A record may be disseminated to a Federal, State, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

h. A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; or

i. A record may be disseminated to the public, news media, trade associations, or organized groups when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual other than such modus operandi.

2. *Grievance, complaint, appeal:* A record from this system or records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management in accordance with the agency's responsibility for evaluation of Federal personnel management.

3. *Congressional inquiries:* A record from this system of records may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

4. *Private relief legislation:* The information contained in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage or the legislative coordination and clearance process as set forth in the circular.

5. *GSA agents:* A record from this system of records may be disclosed as a routine use (a) to an expert, a consultant, or a contractor, of GSA to the extent necessary to further the performance of a Federal duty and (b) to a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files and file folders and magnetically encoded records on electronic media; e.g., disk drives and tapes.

RETRIEVABILITY:

Paper records are retrieved manually by name from files that are indexed alphabetically and filed numerically by location and incident. Magnetically encoded records are retrieved from computer files organized by investigation case file number.

SAFEGUARDS:

Paper records are stored in locked alarmed vault type rooms and/or three-way combination dial safes with access limited to authorized personnel. Computer based records are protected by system, file, and date element level passwords and by user right-of-access codes with all access restricted to authorized personnel. Information is released only to authorized officials on a need-to-know basis.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for the system is the Executive Director, Office of Inspector General, 18th and F Sts. NW., Washington, DC 20405. Mailing address: General Services Administration (JM), Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals as to whether the system contains a record pertaining to themselves should be addressed to the system manager or the Director of Information (XI), 18th and F Sts. NW., Washington, DC 20405.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the Executive Director, Office of Inspector General, and should include full name (maiden name where appropriate), address, and date and place of birth. Only general inquiries may be made by phone.

CONTESTING RECORD PROCEDURES:

GSA rules for access to records and for contesting the contents and appealing initial determinations are promulgated in 41 CFR Part 105-64, published in the **Federal Register.**

RECORD SOURCE CATEGORIES:

Individuals, employees, informants, law enforcement agencies, other government agencies, employers, references, co-workers, neighbors,

educational institutions, and intelligence sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(j), this system of records is exempt from all provisions of the Privacy Act of 1974 with the exception of subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the act, to the extent that information in the system pertains to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (1) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (2) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or (3) reports of enforcement of the criminal laws, from arrest or indictment through release from supervision. This system is exempted to maintain the efficacy and integrity of the Office of Inspector General's law enforcement function.

In accordance with 5 U.S.C. 552a(k), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974. The system is exempt:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes; however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identify of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the act, under an implied promise that the identity of the source would be held in confidence; and

b. To the extent the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the act, under an implied promise that the identity of the source would be held in confidence.

This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Office of Inspector General's law enforcement responsibilities and responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Dated: October 31, 1980.

Ben Schiffman,

Director of Administrative Services.

[FR Doc. 80-34728 Filed 11-6-80; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Mountaire Feeds, Inc.; Premix AB-5-3N; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration withdraws approval of a new animal drug application (NADA) providing for use of Premix AB-5-3N (buquinolate and roxarsone). Finished feeds containing the premix are fed to poultry as an aid in preventing coccidiosis and enhancing growth and pigmentation. The sponsor, Mountaire Feeds, Inc., requested the withdrawal of approval.

EFFECTIVE DATE: November 17, 1980.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Mountaire Feeds, Inc., 124 East Fifth, P.O. Box 5391, North Little Rock, AR 72119, is the sponsor of NADA 37-983 which provided for use of Premix AB-5-3N (3.30 percent buquinolate and 2.0 percent roxarsone) in making finished poultry feeds. The feeds are indicated as aids in prevention of coccidiosis caused by *E. tenella, E. necatrix,* and *E. acervulina* and for stimulating growth and improving feed efficiency and pigmentation in broiler chickens. The application was originally approved December 14, 1967. By letter of August 27, 1980, the sponsor requested withdrawal of approval of the NADA because, since the approval date, the product has not been manufactured.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 37-983 and all supplements for Mountaire Feeds, Inc., Premix AB-5-3N is hereby withdrawn, effective November 17, 1980.

Dated: October 30, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-34567 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0189; DESI 6566]

Orphenadrine Citrate Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice (1) announces that Norflex Tablets (orphenadrine citrate) are a controlled-release dosage form and not a conventional dosage form as implied in previous notices, and (2) announces the conditions for marketing the product. The drug is effective for the relief of discomfort associated with acute, painful musculo-skeletal conditions.

DATES: Bioavailability supplements to approved new drug applications due on or before May 6, 1981; other supplements due on or before January 6, 1981.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 6566, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research

Council: Public Records and Documents Center (HFI-35), Rm. 12A.12.

Requests for guidelines or information on conducting bioavailability tests: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Requests for opinion of the applicability of this notice to specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 6566) published in the **Federal Register** of June 25, 1970 (35 FR 10394) as amended on March 11, 1974 (39 FR 9487) (Docket No. FDC-D-686 (now Docket No. 80N-0189)), the Food and Drug Administration (FDA) announced its conclusions that the following drug product is regarded as a new drug, that it is effective for the indication described below, and that abbreviated new drug applications and abbreviated supplements to previously approved new drug applications will be accepted.

NDA 12-157; Norflex Tablets containing 100 milligrams orphenadrine citrate; Riker Laboratories, 19901 Nordhoff St., Northridge, CA 91324.

Other drugs included in the notice of March 11, 1974, are not affected by this notice.

Abbreviated new drug applications were submitted in response to the March 11, 1974 notice. Upon further review, however, FDA has determined that Norflex Tablets are a controlled-release dosage form and not a conventional dosage form as implied in the March 11, 1974 notice. The abbreviated new drug applications submitted were for orphenadrine citrate in conventional dosage form that releases all the drug within 15 minutes, while Norflex controlled-release tablets release the drug over an 8- to 12-hour period. FDA believes that this significant increase in the rate of release of orphenadrine citrate may lead to a higher incidence of adverse effects than has occured with the controlled-released dosage form. Therefore the notice of March 11, 1974, is amended to reflect that Norflex Tablets are a controlled-released dosage form and that the finding that an ANDA is acceptable applies only to controlled-release products. It is further amended to require, in accord with 21 CFR 320.21 (a) and (f), supplements to approved applications and new or pending abbreviated new drug applications to furnish data adequate to assure the biologic availability of the drug and a rate of release that will be safe and effective.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. Such a drug may not be marketed if it is not the subject of an approved new drug application.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that orphenadrine citrate in a controlled-release dosage form is effective for the indication in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Orphenadrine citrate preparations are in controlled-release tablet from suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, the labeling bears adequate information for safe and effective use of the drug, and the label and other labeling include appropriate statements about its slow release. The indication is as follows:

Orphenadrine citrate is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculo-skeletal conditions. The mode of action of this drug has not been clearly identified, but may be related to its sedative or analgesic properties. Orphenadrine citrate does not directly relax tense skeletal muscles in humans.

3. *Marketing Status.* a. Maketing of such drug products that are now the subject of an approved or effective new drug aplication may be continued provided that, on or before January 6, 1981, the holder of the application has submitted (i) a supplement for revised labeling, including the label and other container labeling, that is in accord with the labeling conditions described in this notice, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)).

In addition, on or before May 6, 1981, the holders of such applications are required to supplement their applications to provide (1) evidence from in vivo bioavailability studies comparing the single-dose 100-milligram oral formulation to two doses of an oral solution of 50 milligrams of orhpenadrine citrate administered every 6 hours (total dose in 12 hours equals 100 milligrams), and (2) data from dissolution testing on three consecutive lots of the product. Guidelines on conducting dissolution tests and bioavailability studies are available from the Division of Biopharmaceutics at the address given above.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) containing full information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) must be obtained before marketing such products. An abbreviated new drug application is required to contain evidence from in vivo bioavailability studies comparing a single dose of 100 milligrams of the oral formulation to two doses of an oral solution of 50 milligrams of orphenadrine citrate administered every 6 hours (total dose in 12 hours equals 100 milligrams), and (2) data from dissolution testing on three consecutive lots of the product. Guidelines on conducting dissolution tests and bioavailability studies are available from the Division of Biopharmaceutics. Marketing before approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: October 26, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 80-34414 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 77N-0283; DESI 5378 and 11673]

Phentermine Tablets and Capsules; Drugs for Human Use; Drug Efficacy Study Implementation

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice amends previous **Federal Register** notices on drug products containing phentermine resin complex or phentermine hydrochloride to include additional strengths and state the marketing conditions fot these drug products. Also, this notice rescinds the notice of opportunity for hearing on the proposal to refuse to approve the new drug application (ANDA 85-128) for Adipex-P Tablets (containing 37.5 milligrams phentermine hydrochloride).

ADDRESS: Communications in response to this notice should be directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for labeling guidelines: Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-45, Bureau of Drugs.

Requests for guidelines or information on conducting dissolution tests: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 12A-12.

Requests for opinion of the applicability of this notice to specific products: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 5378) published in the **Federal Register** of August 8, 1970 (35 FR 12678), FDA classified Ionamin '15' Capsules and Ionamin '30' Capsules (containing 15 milligrams and 30 milligrams of phentermine as resin complexes) as possibly effective drug products. In a followup notice published in the **Federal Register** of July 19, 1974 (39 FR 26459, formerly Docket No. FDC-D-687, now Docket No. 77N-0283), FDA reclassified the products to be effective in the management of exogenous obesity as a short-term (a few weeks) adjunct in a regimen of weight reduction based on caloric restriction. Abbreviated new drug applications (ANDAs) were allowed. The notice also reclassified all remaining possibly effective claims to lacking substantial evidence of effectiveness and offered an opportunity for hearing on them. No person requested a hearing and the claims are no longer allowable in labeling.

In another notice (DESI 11673) published in the **Federal Register** of February 12, 1973 (38 FR 4280), the agency announced its conclusion that Wilpo Tablets containing 8 milligrams phentermine hydrochloride are effective for the exogenous obesity indication stated above.

Since publication of the above notices several firms submitted ANDA's for phentermine hydrochloride tablets or capsules in 30-milligram and 37.5-milligram strengths. To determine whether such strengths are appropriate for abbreviated new drug applications the Director of the Bureau of Drugs has considered the reports of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group on phentermine, the pharmacokinetic characteristics of the drug, and other available information. In view of the long biologic half-life inherent to phentermine, equivalent therapeutic responses and safety can be expected from either a slow-release form (e.g., resin complex) or from an immediate-release formulation of the drug (e.g., hydrochloride salt). The half-life of phentermine is reported to be approximately 20 hours. Therefore, phentermine products whose extent of absorption are identical will provide similar mean steady-state plasma concentrations even if their rates of absorption differ provided the phentermine is fully available for absorption (evidence of dissolution can be used as a measure of availability for absorption). In addition, dosage strength is not critical to the therapeutic effect. Based on the above information, the Director has concluded that the safety and effectiveness conclusions reached concerning the DESI products Wilpo and Ionamin apply to strengths of 30 milligrams and 37.5 milligrams of phentermine hydrochloride. The Director has also concluded that the pharmacokinetic characteristics of phentermine render a claim of controlled-release for a specific formulation of the drug clinically meaningless and misleading.

This notice pertains to all of the products described below.

1. NDA 11-613; Ionamin '15' Capsules and Ionamin '30' Capsules containing respectively 15 and 30 milligrams phentermine as a resin complex; Pennwalt Prescription Products, 755 Jefferson Rd., Rochester, NY 14603.

2. NDA 12-737; Wilpo Tablets containing 8 milligrams phentermine hydrochloride; Dorsey Laboratories, Division of Sandoz, Inc., P.O. Box 83288, Lincoln, NE 68501. Approval of this NDA was withdrawn in the **Federal Register** of March 9, 1979 (44 FR 13079) for failure of the holder to submit required reports. Marketing of the product had been discontinued.

3. ANDA 86-329; Phentermine Hydrochloride Capsules containing 30 milligrams phentermine hydrochloride; Zenith Laboratories, Inc., 140 LeGrand Ave., Northvale, NJ 07647.

4. ANDA 85-933; Adipex-P Tablets containing 30 milligrams phentermine hydrochloride; Lemmon Pharmacal Co., P.O. Box 30, Sellersville, PA 18960.

5. ANDA 86-911; Adipex-P Capsules containing 30 milligrams Phentermine hydrochloride; Lemmon Pharmacal Co.

Othr drugs included in the previous notices are not affected by this notice.

In a notice published in the **Federal Register** of September 16, 1977 (42 FR 46592, Docket No. 77N-0283), the Director offered an opportunity for a hearing on a proposal to refuse approval of an abbreviated new drug application (ANDA 85-128) for Adipex-P Tablets containing 37.5 milligrams phentermine hydrochloride submitted by Lemmon Pharmacal Co. Based upon the reevaluation of phentermine drug products, the Director has concluded that abbreviated new drug applications are suitable for conventional drug products containing 37.5 milligrams phentermine hydrochloride (equivalent to 30 milligrams of phentermine base). Therefore, the notice of opportunity for hearing of September 16, 1977 is hereby rescinded.

Accordingly, the July 19, 1974 and February 12, 1973 notices are amended as follows:

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review

this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that phentermine, as a resin complex or as the hydrochloride, is effective for the indication in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product is in tablet or capsule form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. A labeling guideline for the drug is available from the Food and Drug Administration (address given above). The indication is as follows:

For use in the management of exogenous obesity as a short-term adjunct (a few weeks) in a regimen of weight reduction based on caloric restriction.

3. *Marketing Status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application or abbreviated new drug application may be continued provided that, on or before January 6, 1981, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide full updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)).

b. Approval of an abbreviated new drug application (21 CFR 314(f)) must be obtained before marketing such product. The application must contain full manufacturing information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H. In addition, the application must contain dissolution rate data. Depending on the formulation, the dissolution rate data must demonstrate that the product meets one of the following requirements. For a product that is formulated to be fast dissolving (not formulated as a cationic resin complex or utilizing any other slow release mechanism), the data must show that at least 80 percent of the labeled amount of the drug dissolves in 60 minutes. For a product formulated to be slow release, such as a cationic resin complex, the data must show that at least 80 percent of the labeled amount of the drug dissolves in 6 hours. In vitro dissolution studies are to be conducted in accordance with the methods provided in the guidelines on conducting dissolution tests, which are available from the Division of Biopharmaceutics at the address given above.

Marketing before approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: October 26, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 80-34415 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0413]

Safety of Certain Food Ingredients; Opportunity for Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces an opportunity for public hearing on the safety of candelilla wax, collagen, methylpolysilicones, and oiticica oil to determine whether they are generally recognized as safe (GRAS) or subject to a prior sanction. This action accords with procedures of a comprehensive safety review that the agency is conducting. Interested persons are invited to give their views on the safety of these substances.

DATE: Requests to make oral presentations at the public hearing must be postmarked on or before December 8, 1980.

ADDRESSES: Written requests to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, or to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1973 (38 FR 20053), FDA issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (the Select Committee), about the safety of ingredients used in food to determine whether they are GRAS or subject to a prior sanction.

The agency now announces that the Select Committee is prepared to conduct a public hearing on the following categories of food ingredients: Candelilla wax, collagen, methylpolysilicones, and oiticica oil. The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present scientific data, information, and views on the safety of this substance, in addition to those previously submitted in writing under notices published in the **Federal Register** of July 26, 1973 (38 FR 20051, 20053), April 17, 1974 (39 FR 13798), and March 28, 1978 (43 FR 12941).

The Select Committee has reviewed all the available data and information on the food ingredients listed above and has reached one of the following five tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard. (This finding

does not apply to the substances covered by this notice.)

3. Although no evidence in the available information demonstrates a hazard to the public when it is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted. (This finding does not apply to the substances covered by this notice.)

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice.)

5. The information available is not sufficient to make a tentative conclusion.

The following table lists the ingredient, the Select Committee's tentative conclusion (keyed to five types of conclusion listed above), and the available information on which the Select Committee reached its conclusions:

Substances	Select committee tentative conclusion	Scientific literature review (order No.; price code; price)[1]	Other information (order No.; price code; price)[1]
Candelilla Wax	1	PB 287-762/AS; A02; $5.00	1. Letter, Oct. 18, 1966, L. E. Buckley, FDA, Washington, DC, to J. H. Heckman, Keller and Heckman, Washington, DC. 2. Letter, Feb. 1, 1967, L. E. Buckley, FDA, Washington, DC, to E. I. Lambert, National Association of Chewing Gum Manufacturers, Washington, DC. 3. Letter, Oct. 11, 1961, F. A. Cassidy, FDA, Washington, DC, to H. W. Conner, Wm. Wrigley, Jr. Co., Chicago, IL. 4. Letter, Aug. 7, 1959, A. A. Checchi, FDA, Washington, DC, to B. E. Sievert, Frank B. Hess Co. Inc., Jersey City, NJ. 5. Committee on GRAS List Survey (Phase III, 1978). 1975 Resurvey of the annual poundage of food chemicals generally recognized as safe (GRAS). (PB 228-081/AS; A03; $6.00). 6. Safety data relating to the use of candelilla wax in chewing gum, 1980. Submitted to FASEB, Bethesda, MD, by National Association of Chewing Gum Manufacturers, New York. Sect. 1. Hodge, H. C. 1973. University of California, San Francisco, CA. A critical review of the (1) Feeding studies of candelilla wax incorporated in gum base. (2) Together with studies of the possible carcinogenic potential by other routes of administration. Sect. 2. Toxicity test upon laboratory sample 36731 #12, Type 11 G. R. S. rubber and candelilla wax. Sect. 3a. Letter, Feb. 27, 1948, I. Davidson Mount Sinai Hospital, New York, to H. W. Conner, Wm. Wrigley, Jr. Co., Chicago, IL; summary of pathological findings on rats receiving various gum base mixtures. b. Letter, Jan. 3, 1949, I. Davidson, Mount Sinai Hospital, New York, to H. W. Conner, Wm. Wrigley, Jr. Co., Chicago, IL; summary of pathological findings on rats receiving various gum base mixtures. c. Letter, July 12, 1950, I. Davidson, Mount Sinai Hospital, New York, to H. W. Conner, Wm. Wrigley, Jr. Co., Chicago, IL; summary of pathological findings on rats receiving various gum base mixtures. d. Letter, Dec. 23, 1952, I. Davidson, Mount Sinai Hospital, New York, to H. W. Conner, Wm. Wrigley, Jr. Co., Chicago, IL; summary of pathological findings on rats receiving various gum base mixtures. Sect. 4. Harrisson, J. W. E. 1948. Toxicity test upon laboratory sample 36222, #16, 50/50 mixture candelilla wax and Heveatex (styrene and butadiene) polymer N-1017 Sect. 5. Harrisson, J. W. E. 1949. Toxicity test upon laboratory sample 39348, #17, Heveatex 50%, candelilla wax, hydrogenated fat. Sect. 6. Harrisson, J. W. E. 1953. (Condensed reort on long-term safety studies on gum base (including 25 percent candelilla wax employing rats and dogs.) Sect. 7. Harrisson, J. W. E. 1952. Summary, carcinogenicity studies on gum base (including 25 percent candelilla wax). 7. Letter, Dec. 20, 1968, W. G. Orr, FDA, Washington, DC, to D. D. Abbott, LaWall and Harrisson Research Laboratories, Inc., Philadelphia, PA. 8. Letter, Dec. 13, 1963, W. F. Randolph, FDA, Washington, DC, to P. E. Smith Jr., E. I. duPont de Nemours and Co., Inc., Wilmington, DE. 9. Memorandum, Sept. 20, 1979, H. I. Chinn, FASEB, Bethesda, MD. 10. Subcommittee on Review of the GRAS List (Phase II, 1972). A comprehensive survey of industry on the use of food chemicals generally recognized as safe (GRAS). (PB 221-921 through PB 221-949 or PB 221-920 for set; E99; $173.00. 11. Lipstick use studies, 1959. Submitted to FASEB, Bethesda, MD, by the Toilet Goods Association, Inc., New York.
Collagen	1	PB 289-599/AS; A05; $6.00	1. Brusick, D. J. 1977. Mutagenicity evaluation of Code 21 coria with poly dust. Submitted to Teepak, Danville, IL, by Litton Bionetics, Inc., Kensington, MD. 2. Letter, Sept. 20, 1960, F. A. Cassidy, FDA, Washington, DC, to J. G. Finch, Ithicon, Inc., Somerville, NJ. 3. Committee on GRAS List Survey (Phase III, 1978). 1975 resurvey of the annual poundage of food chemicals generally recognized as safe (GRAS). (PB 286-081/AS, A03, $6.00). 4. Collagen, Aug. 5, 1977. Submitted to FDA, Washington, DC, by Devro, Inc., Somerville, NJ, Corrected June 2, 1978. 5. Letter Dec. 6, 1979, L. H. Froehlich, Teepak, Inc., Chicago, IL, to F. R. Senti, FASEB, Bethesda, MD. 6. Letter, Jan. 21, 1980, L. H. Froehlich, Teepak, Inc., Chicago, IL, to F. R. Senti, FASEB, Bethesda, MD. 7. Letter, Jan. 18, 1980, E. R. Lieberman, Technical Consultant, Bridgewater, NJ, to L. Froehlich, Teepak, Inc., Chicago, IL. 8. Letter, June 1, 1979, C. I. Miles, FDA, Washington, DC, to F. R. Senti, FASEB, Bethesda, MD. 9. Morgareidge, K. 1967. Subacute feeding studies with a cross-linked coacervate in rats and dogs. Submitted to FASEB, Bethesda, MD, by L. H. Froehlich, Teepak, Inc., Chicago, IL.

Substances	Select committee tentative conclusion	Scientific literature review (order No., price code; price)[1]	Other information (order No., price code; price)[1]
			10. Nehring, P. 1978. "Coria-casings" der Firma Teepak. Submitted to Thomasen & Drijver Verblifa N. V., Deventer, Holland, from Institut fur Konserventechnologie, Braunschweig, W Germany. 11. Evaluation of the health aspects of gelatin as a food ingredient (SCOGS-58). Submitted to FDA by FASEB. (PB 254-527, A02, $5.00.) 12. Evaluation of the health aspects of soy protein isolates as food ingredients (SCOGS-101). Submitted to FDA by FASEB. (BP 300-717, A05, $8.00.) 13. Letter, May 1, 1979, G.A. Sellers Devro, Inc., Somerville, NJ, to F. R. Senti, FASEB, Bethesda, MD.
Methylpolysilicones	1	PB 289-396/AS; A04; $5.25	1. Letter, Oct. 18, 1960, F. A. Cassidy, FDA, Washington, DC, to T. W. Nale, Union Carbide Corp., New York. 2. Letter, Aug. 21, 1961, F. A. Cassidy, FDA, Washington, DC, to L. Jennings, National Dairy Products Corp., New York. 3. Memorandum, Jan. 7, 1980, H. I. Chinn, FASEB, Bethesda, MD. 4. Letter, Feb. 25, 1963, D. R. Kleber, Jr., Dow Corning Corp., Chicago, IL, to B. M. Crippin, Jr., Hormel and Co., Austin, MN. 5. Pollard, H. M. 1960. Oral toxicity of DC 15 Unpublished report to Dow Corning Corp., Midland, MI. 6. Subcommittee on Review of the GRAS List (Phase II, 1972). A comprehensive survey of industry on the use of food chemicals generally recognized as safe (GRAS). (PB 221-921 through PB 221-949 or PB 221-920 for the set; E99; $173.00.) 7. University of Birmingham, 1967-1970. Studies on silicone antifoam compound MS Antifoam M (compound F 9816). I. 90-day feeding test on rats, 1967a. II. Acute feeding study, 1967b. III. 120-day feeding test in dogs, 1968. IV. 80-week feeding study on mice, 1970.
Oiticica Oil	5	PB 287-764/AS; A02; $4.00	1. Letter, Mar. 30, 1960, F. A. Cassidy, FDA, Washington, DC, to F. G. Buerk, Murray Oil Products, Co., New York. 2. Letter, Mar. 31, 1960, F. A. Cassidy, FDA, Washington, DC, to M. Hassel, Brazilian Industrial Oils, Inc., New York.

[1] Price subject to change.

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

In addition to the information contained in the table above, the Select Committee supplemented, where appropriate, its review with specific information from specialized sources as announced in a previous hearing opportunity notice published in the **Federal Register** of September 23, 1974 (39 FR 34218).

The Select Committee's tentative reports on candelilla wax, collagen, and methylpolysilicones for direct food use and oiticica oil for use in food-contact surfaces are available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St. SW., Washington, DC 20204. In addition, all reports and documents used by the Select Committee to review the ingredient are available for review at the Docket Management Branch. To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the amount of time requested to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall so inform the Select Committee in writing addressed to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. A copy of each such request shall be sent to the Dockets Management Branch address noted above, and all requests shall be placed on public display in that office. Any such request must be postmarked on or before December 8, 1980, shall state the substance(s) on which an opportunity to present oral views is requested, and shall state how much time is required for the presentation. Requests should specify the docket number found in brackets in the heading of this notice. As soon as possible after the requested deadline, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the **Federal Register.**

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee reports shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Because of time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views, identified with the docket number found in brackets in the heading of this notice, shall be addressed to the Select Committee at the address noted above, and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Dockets Management Branch, Food and Drug Administration, and shall be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will be placed on public display in the Dockets Management Branch, Food and Drug Administration.

Dated: October 29, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34565 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0438]

Safety of Certain Food Ingredients; Opportunity for Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces an opportunity for public hearing on the safety of ethoxylated soya fatty acid amines to determine whether they are generally recognized as safe (GRAS) or subject to a prior sanction. This action accords with procedures of a comprehensive safety review the agency is conducting. Interested persons are invited to give their views on the safety of these substances.

DATE: Requests to make oral presentations to the public hearing must be postmarked on or before December 8, 1980.

ADDRESSES: Written requests to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, and 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: Leo F. Mansor, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 26, 1973 (38 FR 20053), FDA issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (the Select Committee) about the safety of ingredients used in food to determine whether they are GRAS or subject to a prior sanction. The agency now announces that the Select Committee is prepared to conduct a public hearing on ethoxylated soya fatty acid amines for use as components of lubricants in forming metal cans used as food and beverage containers. The public hearing will provide an opportunity for interested persons to present to the Select Committee scientific data, information, and views on the safety of these substances, in addition to those previously submitted in writing under notices published in the **Federal Register** of July 26, 1973 (38 FR 20051, 20053), April 17, 1974 (39 FR 13798), and March 26, 1978 (43 FR 12941).

The Select Committee has reviewed all the available data and information on the food ingredients listed above and has reached one of the following five tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard. (This finding does not apply to the substances covered by this notice.)

3. Although no evidence in the available information demonstrates a hazard to the public when it is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted. (This finding does not apply to the substances covered by this notice.)

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice.)

5. The information available is not sufficient to make a tentative conclusion.

The Select Committee will evaluate the information received at the public hearing and use it in reaching its conclusion.

The following table lists the ingredient, the Select Committee's tentative conclusions (keyed to the five types of conclusions listed above), and the available information on which the Select Committee reached its conclusions:

Substance	Select committee tentative conclusion	Scientific literature review (order No.; price code; price[1])	Animal study report (order No.; price code; price)	Other information
Ethoxylated soya fatty acid amines.	1	PB-289-414A02; $5.00		1. Letter, May 18, 1961, F. A. Cassidy, FDA, Washington, DC, to J. W. Bausch, Armour & Co., Washington, DC. 2. Doyle, R. L.; Majors, P. A. 1973. Acute toxicity and irritation studies of samples RD 4409 and Ethomeen® T/12. Submitted to FASEB, Bethesda, MD, by Armak Co., McCook, IL. 3. Evans, R. A.; McDougal, J. E.; Glass, M. G. 1950. Oral toxicity and irritation studies on products of the chemical division. Submitted to FASEB, Bethesda, MD, by Armak Co., McCook, IL. 4. Goater, T. O.; Griffiths, D.; McElligott, T. F. 1965a. Ninety-day oral toxicity of Ethomeen® T/12—albino rats. Imperial Chemical Industries Ltd., Cheshire, England. Submitted to FASEB, Bethesda, MD, by Armak Co., McCook, IL. 5. Goater, T. O.; Griffiths, D.; McElligott, T. F. 1965b. Ninety-day oral toxicity of Ethomeen® T/12—beagle dogs. Imperial Chemical Industries Ltd., Cheshire, England. Submitted to FASEB, Bethesda, MD, by Armak Co., McCook, IL. 6. Memorandum of telcon, Nov. 16, 1979, L. L. Jacobs, S. H. Mack Co., St. Charles, IL, and F. R. Senti, FASEB, Bethesda, MD. 7. Memorandum of telcon, Oct. 29, 1979, W. E. Link, Sherex Chemical Co., Inc., Dublin, OH, and F. R. Senti, FASEB, Bethesda, MD. 8. Memorandum of telcon, Nov. 15, 1979, R. A. Neal, The Ironsides Co., Columbus, OH, and F. R. Senti, FASEB, Bethesda, MD.

Substance	Select committee tentative conclusion	Scientific literature review (order No.; price code; price [1])	Animal study report (order No.; price code; price)	Other information
				9. Evaluation of the health aspects of hydrogenated soybean oil as a food ingredient (SCOGS-70). PB-266-280/AS. 10. Memorandum, Dec. 14, 1979, F. R. Senti, FASEB, Bethesda, MD.

[1] Price subject to change.

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented, where appropriate, its reviews with specific information from specialized sources as announced in a previous hearing opportunity notice published in the **Federal Register** of September 23, 1974 (39 FR 334218).

The Select Committee's tentative report on ethoxylated soya fatty acid amines is available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St. SW., Washington, DC 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review at the office of the Dockets Management Branch.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the time required to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall inform the Select Committee in writing addressed to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. A copy of each request shall be sent to the Dockets Management Branch (address above). All requests will be placed on public display in that office. Any such request must be received by or postmarked on or before December 8, 1980, state the substance(s) on which an opportunity to present oral views is requested and must state how much time is being requested for the presentation. Requests shall specify the docket number found in brackets in the heading of this notice. As soon as possible after the request deadline, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the **Federal Register**.

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Because of time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views, identified with the docket number found in brackets in the heading of this notice, shall be addressed to the Select Committee at the address noted above and must be postmarked no later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Dockets Management Branch, Food and Drug Administration, and will be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will be placed on public display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration.

Dated: October 29, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34566 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80D-0358]

Effectiveness Evaluation of Anthelmintics; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the availability of a guideline for use in developing data to establish the effectiveness of swine anthelmintic drugs. The agency invites interested persons to submit written comments on the guideline.

ADDRESSES: The guideline is available for public examination at, and comments may be submitted to, the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies are available from the Information Services Staff (HFV-5), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations which show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) describes the criteria that must be met before a new animal drug may be approved, including a requirement that a drug's effectiveness be shown by "substantial evidence" as defined in section 512(d)(3) (21 U.S.C. 360b(d)(3)).

The Bureau of Veterinary Medicine has prepared a guideline that addresses the type of data to be included in an NADA for swine anthelmintic drugs to establish "substantial evidence" of effectiveness for the drug.

Requests for single copies of the guideline should be addressed to the Information Services Staff (HFV-5) (address above). A copy of the guideline is on file in the office of the Hearing Clerk (HFA-305) (address above).

Interested persons may submit written comments on the guideline to the Hearing Clerk (HFA-305). Such comments will be considered in determining whether amendments to or revisions of the guideline are warranted. Comments should be in four copies (except that individuals may submit single copies of comments), identified with the Hearing Clerk docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 3, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34714 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80G-0412]

Hoffmann-La Roche, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Hoffmann-LaRoche, Inc., has filed a petition (GRASP 0G0265) proposing affirmation that dl-alpha-tocopherol is generally recognized as safe (GRAS) for use to aid in blocking nitrosamine formation in bacon.

DATE: Comments by January 6, 1981.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna A. Dennis, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 0G0265) has been filed by Hoffmann-LaRoche, Inc., Nutley, NJ 07110, proposing affirmation that dl-alpha-tocopherol used at a level of 0.05 percent in bacon to block nitrosamine formation is GRAS. The petition has been placed on display at the office of the Hearing Clerk (HFA-305), Food and Drug Administration.

Any petition that meets the formal requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

Interested persons, may, on or before January 6, 1981 review the petition and/or file comments (four copies, identified with the Hearing Clerk docket number found in brackets in the heading of this document) with the Hearing Clerk (HFA-305), Food and Drug Administration, RM 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 23, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80-34719 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0370]

Prescription Drugs; Draft Guideline Patient Package Inserts

AGENCY: Food and Drug Administration.

ACTION: Notice; clarification of comment period.

SUMMARY: The Food and Drug Administration (FDA) is clarifying its policy on comments on draft guideline patient package inserts (PPI's). The agency is taking this action because of requests it has received for an extension beyond October 27, 1980, of the comment period on the agency's guideline PPI's published September 12, 1980. FDA is not granting an extension of the comment period, but will consider late-filed comments to the extent possible.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 44-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen C. Groft, Bureau of Drugs (HFD-107), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4893.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 12, 1980 (45 FR 60785), FDA published 10 draft guidelines PPI's for the following drugs and drug classes: ampicilins, benzodiazepines, cimetidine, clofibrate, digoxin, methoxsalen, propoxyphene, phenytoin, thiazides, and warfarin. The agency provided until October 27, 1980, (or 45 days) for comments on the draft guideline. The agency also stated its intention to publish final guideline PPI's in November 1980, for cimetidine, clofibrate, and propoxyphene, in December 1980, for ampicillins, phenytoin, and warfarin, and in January 1981, for benzodiazepines, digoxin, methoxsalen, and thiazides.

On October 21, 1980, Endo Laboratories, Inc., Garden City, NY asked FDA for a 30-day extension of the comment period on the draft guidelines. On October 22, 1980, the American College of Physicians, Philadelphia, PA, asked for a 30-day extension of the comment period because the college had not received an FDA mailing of copies of the draft guideline PPI's until October 16. While FDA specifically solicits the submission of late-filed comments (comments received after October 27, 1980) and will consider them to the extent possible, for the following reasons the agency declines to formally extend the official comment period.

FDA guidelines are issued under section 10.90 (21 CFR 10.90) of the agency's administrative practices and procedures regulations. FDA guidelines do not establish legal requirements, and while a person may rely upon the guidelines with assurance that they are acceptable to FDA, their use in not required. A drug manufacturer, distributor, or dispenser is therefore free to adopt labeling that differs from the FDA guideline PPI as long as its PPI complies with the agency's regulations.

In publishing draft guideline PPI's for the 10 drugs or drug classes to which the agency intends initially to apply the requirements, FDA provided 45 days for comment. The agency also published the guidelines in a format that permits commenters to make written comments directly on their **Federal Register** copy of the guidelines. Given the length of the guidelines, the issues they raise, and their format, FDA believes that 45 days is adequate time to comment on the guidelines. An extension of the type requested will prevent the agency from meeting its scheduled publication of final PPI guidelines as announced in the notice of draft guidelines, that is, in November 1980, December 1980, and January 1981. With respect to the request of the American College of Physicians, while FDA's mailing of individual copies of the proposed guidelines to organizations of health professionals was intended to facilitate the filing of comments by them, it was not intended to substitute for the notice provided by the publication of the draft guidelines in the **Federal Register** of September 12. FDA will, nonetheless, consider all comments received before the agency concludes the preparation of

final guidelines, even if the comments are received after October 27.

Dated: November 3, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34718 Filed 11-4-80; 10:05 am]

BILLING CODE 4110-03-M

Small Business Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming Small Business Exchange Meeting to be chaired by Lloyd R. Claiborne, Regional Food and Drug Director, Region V, Chicago Field Office.

DATE: This meeting will be held at 9 a.m., Wednesday, December 10, 1980.

ADDRESS: The meeting will be held at the Conrad Hilton Hotel, 720, S. Michigan Ave., Chicago, IL 60605.

FOR FURTHER INFORMATION CONTACT: Danny D. Horner, Small Business Representative, Food and Drug Administration, 175 W. Jackson Blvd., Chicago, IL 60604, 312-353-9406.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small businesspersons in FDA's decisionmaking process.

Dated: November 3, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34715 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

Small Business Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming Small Business Exchange Meeting to be chaired by Caesar A. Roy, Regional Food and Drug Director, Region II, New York Field Office.

DATE: This meeting will be held at 1 p.m., Tuesday, December 9, 1980.

ADDRESS: The meeting will be held at the East Orange Library, 21 S. Arlington Ave., East Orange, NJ 07018.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-6365.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small businesspersons in FDA's decisionmaking process.

Dated: November 3, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34716 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

Small Business Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming Small Business Exchange Meeting to be chaired by James W. Swanson, Regional Food and Drug Director, Regions X and IX, Seattle Field Office and San Francisco Field Office.

DATE: This meeting will be held at 1:30 p.m., Wednesday 17, 1980.

ADDRESS: The meeting will be held at the Santa Ana Public Library, Spurgeon Room, 26 Civic Center Plaza, Santa Ana, CA 92702.

FOR FURTHER INFORMATION CONTACT: J. Lawrence Stevens, Small Business Representative, Food and Drug Administration, 1600 N. Broadway, Santa Ana, CA 92706, 714-836-2380.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small businesspersons in FDA's decisionmaking process.

Dated: November 3, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34717 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

National Institutes of Health

Aging Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on December 3-4, 1980, in Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on December 3, for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on December 3, from 10:00 a.m. to adjournment on December 4, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C08, National Institutes of Health, Bethesda, maryland, Area Code 301, 496-4120, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

Dated: October 28, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because the fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

[FR Doc. 80-34770 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

Breast Cancer Task Force Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Breast Cancer Task Force Committee, National Cancer Institute, December 9-10, 1980, Building 1, Wilson Hall,

National Institutes of Health, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. on December 9 through adjournment on December 10, 1980. Agenda items will include workshops on luteal phase defects in breast cancer risks. Attendance by the public will be limited to space available.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. D. Jane Taylor, Executive Secretary, National Cancer Institute, Landow Building, Room 4A22, 7910 Woodmont Avenue, Bethesda, Maryland 20014 (301/496–6718) will furnish substantive program information.

Dated: October 28, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH

[FR Doc. 80-34767 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

Institutional Biosafety Committee Chairpersons; Meeting

Notice is hereby given of a Workshop for the Institutional Biosafety Committee (IBC) Chairpersons. The Workshop is being held on November 24 and 25, 1980, at the Shoreham Hotel on Calvert St., Washington, D.C. and is being sponsored by the National Institute of Allergy and Infectious Diseases. The meeting will convene at 9:00 a.m. on November 24, 1980 and will be open to the public; attendance will be limited to space available.

The Workshop is designed to provide an opportunity for the Chairpersons of all Institutional Biosafety Committees to study together how best to address and resolve some problems they may face and to serve as a stimulus for action at the local level. In addition, the Workshop will serve as the first stage of a formal evaluation process to assess whether the IBCs as constituted have been able to meet the increasing responsibilities that changes in the NIH Guidelines for Recombinant DNA Research have thrust upon them and to identify and seek solutions to problems at both the federal and institutional level.

Topics covered during the meeting in plenary sessions will include:

- Review and Update of the NIH Guidelines for Recombinant DNA Research.
- Recombinant DNA Advisory Committee Procedures and Operations.
- Operations of Institutional Biosafety Committees (IBC).
- Other Federal Regulations and Guidelines that Impact on Biomedical Science.
- Proposed plan for evaluation of the IBCs.

In addition to the plenary sessions there will be three workshops:

- The IBC as a Means of Implementing Institutional Oversight.
- Health Surveillance, Monitoring and Certification.
- IBC Procedures and Operations.

Further detailed information can be obtained from Dr. John Nutter, Chief, Office of Specialized Research & Facilities, National Institute of Allergy & Infectious Diseases, National Institutes of Health, Bethesda, Maryland 20205, (301–496–6752).

Dated: October 28, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b) (4) and (5) of that Circular.

[FR Doc. 80-34765 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

Large Bowel and Pancreatic Cancer Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Large Bowel and Pancreatic Cancer Review Committee (Large Bowel Subcommittee), National Cancer Institute, December 4–5, 1980, Prudential Building, 10th Floor Dining Room, Houston, Texas. The meeting will be open to the public on December 4, from 7:30 p.m. to 8:00 p.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 4, from 8:00 p.m. to adjournment, and on December 5, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and a roster of committee members, upon request.

Dr. Vincent J. Cairoli, Executive Secretary, National Cancer Institute, Blair Building, Room 312, National Institutes of Health, Bethesda, Maryland 20205 (301/427–8800) will furnish substantive program information.

Dated: October 28, 1980.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395, Project grants in cancer cause and prevention research, cancer detection research, and cancer treatment research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-34768 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

Microbiology and Infectious Diseases Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Advisory Committee, National Institute of Allergy and Infectious Diseases, December 4, 1980 at the National Institutes of Health, Building 31C, Conference Room 7, Bethesda, Maryland.

The meeting will be open to the public on December 4 from 9:00 a.m. to approximately 10:00 a.m. to discuss program policies and issues. Attendance

by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Public Law 92–463, the meeting of the Committee will be closed to the public on December 4 from approximately 10:00 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the Council members as requested.

Dr. Thelma N. Fisher, Executive Secretary, Microbiology and Infectious Diseases Advisory Committee, NIAID, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–7465, will provide substantive program information.

Dated: October 28, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

(Catalog of Federal Domestic Assistance Program No. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

[FR Doc. 80-34766 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

National Eye Institute, Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 1 and 2, 1980, Building 31, Room 6A–35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 1 from 8:30 a.m. until approximately 2:30 p.m. for general remarks by the Institute's Acting Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 1 from approximately 2:30 p.m. until adjournment and the entire day on December 2 for review, discussion, and evaluation of individual projects conducted by the Laboratory of Vision Research, NEI. This evaluation and discussion could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Mr. Julian Morris, Chief, Office of Program Planning and Scientific Reporting, National Eye Institute, Building 31, Room 6A–25, National Institutes of Health, Bethesda, Maryland 20205 (telephone 301/496–5248), will furnish summaries of the meeting and rosters of committee members.

Substantive program information may also be obtained from Dr. Jin Kinoshita, Acting Scientific Director, National Eye Institute, Building 6, Room 222–A, National Institutes of Health, Bethesda, Maryland 20205 (telephone 301/496–3552).

Dated: October 28, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-34769 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

National Institute of Arthritis, Metabolism, and Digestive Diseases, Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Arthritis, Metabolism, and Digestive Diseases, November 20–22, 1980, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20205.

This meeting will be open to the public from 7:30 to 10:00 p.m. on November 20, from 9:00 a.m. to 4:30 p.m. on November 21, and from 9:00 to approximately 11:00 a.m. on November 22. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIAMDD intramural research program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 7:00 to 7:30 p.m. and 10:00 to 10:30 p.m. on Thursday, November 20, from 4:30 to 5:30 p.m. on November 21, and from approximately 11:30 a.m. to 12:30 p.m. on Saturday, November 22, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Arthritis, Metabolism, and Digestive Diseases, Building 31, Room 9A46, Bethesda, Maryland 20205. Further information concerning the meeting may be obtained by contacting the office of Dr. J. E. Rall, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20205, (301) 496–4128.

Dated: October 28, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-34764 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service

Care and Treatment of Seamen and Certain Other Persons; Delegations of Authority

Notice is hereby given that the following delegations and redelegations have been made under section 322 of the Public Health Service Act (42 U.S.C. 249), as amended, Care and Treatment of Seamen and Certain Other Persons:

1. Delegation from the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of authority under section 322 of the Public Health Service Act (42 U.S.C. 249), as amended, including the authority under section 322(e) to make grants and contracts to private and non-profit organizations for the purpose of providing mental health care. However, the delegation to the Administrator, Health Services Administration does not

include the authority delegated by the Assistant Secretary for Health to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration under section 322(e) of the Public Health Service Act (42 U.S.C. 249(e)) to make grants and contracts to private and non-profit organizations for the purpose of providing mental health care for the Haitian/Cuban Initiative, insofar as the authority applies to the functional responsibility assigned to the Alcohol, Drug Abuse, and Mental Health Administration.

2. Delegation from the Assistant Secretary for Health to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, of authority under section 322(e) of the Public Health Service Act, (42 U.S.C. 249(e)), as amended, to make grants and contracts to private and non-profit organizations for the purpose of providing mental health care for the Haitian/Cuban Initiative, insofar as the authority applies to the functional responsibility assigned to the Alcohol, Drug Abuse, and Mental Health Administration.

3. Redelegation from the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, to the Director, National Institute of Mental Health, without authority to redelegate, of authority under section 322(e) of the Public Health Service Act (42 U.S.C. 249(e)), as amended, insofar as the authority applies to the functional responsibilities of the National Institute of Mental Health to make grants and contracts to private and non-profit organizations. The delegation to the Director, National Institute of Mental Health does not include the authority delegated by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration to the PHS Regional Health Administrators to make grants and contracts to existing community mental health centers within their respective jurisdictions, insofar as the authority applies to their functional responsibility, for the purpose of providing mental health care for the Haitian/Cuban Initiative.

4. Redelegation from the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, to the PHS Regional Health Administrators, without authority to redelegate, of authority under section 322(e) of the Public Health Service Act (42 U.S.C. 249(e)), as amended, to make grants and contracts to existing community mental health centers within their respective jurisdictions, for the purpose of providing mental health care for the Haitian/Cuban Initiative, insofar as the authority applies to the Regional Health Administrators functional responsibilities.

Previous delegations to the Administrator, Health Services Administration, of the authority under section 322 of the Public Health Service Act have been superseded. Provision has been made for previous redelegations within the Health Services Administration to remain in effect pending further redelegations.

The above delegations and redelegations became effective on October 8, 1980.

Dated: October 30, 1980.

Jack N. Markowitz,

Acting Director, Office of Management.

[FR Doc. 80-34713 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Computation of Royalties on Phosphate Production on Public Lands

AGENCY: Department of the Interior, Geological Survey.

ACTION: Advance notice of proposed adoption of a new method of computing royalty payments to the Federal Government on phosphate rock mined on public lands.

SUMMARY: This notice solicits comments concerning a proposal to revise the method for determining mine values for the purpose of computing royalties on phosphate rock produced on Federal leases in the States of Idaho, Montana, Utah, and Wyoming.

DATE: Written comments due by December 8, 1980.

ADDRESS: Written comments should be addressed to: Andrew V. Bailey, Chief, Branch of Solid Minerals Management, U.S. Geological Survey, National Center, MS 650, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Barney Brunelle, District Mining Supervisor, U.S. Geological Survey, 150 S. Arthur Street, P.O. Box 1610, Pocatello, Idaho 83201, Telephone No: 208-236-6860.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 440), as amended by the Act of June 3, 1948 (62 Stat. 289; 30 U.S.C. 212), and 30 CFR 231.61, Value Basis for Royalty Computation, the Geological Survey proposes to adopt a new method for determining mine values for computing royalties on phosphate rock produced on Federal leases in the States of Idaho, Montana, Utah, and Wyoming.

On May 13, 1976, the Secretary of the Interior adopted a method of computing royalty payments to the Federal Government for phosphate rock mined on Federal lands. The method adopted was based on the average arm's-length sales price received for beneficiated/calcined phosphate rock with deductions allowed for trasportation and processing. The "proportion of profit" attributable to mining was included in the gross value of the product at the mine on which the royalty was assessed.

During the period of 1975 through 1979, arm's-length sales, both long-term sales and spot sales, were of sufficient magnitude to establish a realistic product value. In 1980, however, arms's-length sales diminished to less than 1 percent of total mine production in the western phosphate region. With such limited sales data on which to base a value, the suitability of the method adopted in 1976 is extremely questionable. Therefore, it is proposed that the method adopted on May 13, 1976, expire at the end of 1980.

With the adoption of this proposal, it will be necessary to develop a new method for computing mine value for royalty purposes for the 1981 production year and succeeding years.

Under existing Federal phosphate lease terms, the Secretary of the Interior may establish reasonable minimum value for the purpose of computing royalty on any of the deposits presently leased. This takes into consideration the highest price paid for a part or a majority of the production of comparable products from the same general area, the price received by the lessee posted prices, mining costs, and other relevant economic factors.

Most of the phosphate mined on Federal lands in the West is from the State of Idaho and includes all of the phosphate rock mined on Indian lands which is located within the same general area. In early 1980, a valuation method for phosphate rock mined form the Fort Hall Indian Reservation in Idaho was adopted following negotiations between the Shoshone-Bannock Tribe, the Bureau of Indian Affairs, and the producing companies. These nogotiations were based on studies conducted to determine the value of mined phosphate, and therefore represent the best information available to establish reasonable values for the purpose of computing royalty.

The above method now in use for assessing royalty on production of phosphate form Indian lands in Idaho consists of an established base value for the 1979 production year. This value was set at $.337 for each unit of P_2O_5. For

each dry ton (2,000 pounds) of ore, the value is the percent grade multiplied by $.337. For example, 27 percent P_2O_5 ore would be valued at $9.099 per ton.

For succeeding years, the 1979 value is indexed to the annual averae of the Comsumer Price Index-Urban (CPI–U). Utilization of the CPI–U was the result of the negotiated settlement, with full recognition that the selected index bore no relationship to mined phosphate.

While the method adopted by the Secretary in 1976 utilized actual sales and cost data specific to the Idaho phosphate operations, its utility is no longer viable because of diminished arm's-length sales. Also, this method was cumbersome, as it required the phosphate lessees to submit all their costs and sales data. These data, in turn, were audited by the Department and, after several months, a gross value was established. In most years, the royalty assessment was not determined until after the mining year was completed. Utilization of an indexing system will preclude these annual or periodic requirements and the royalty cost will be known prior to mining.

The proposed method will adjust the unit value of P_2O_5 annually, based on the index selected. The unit value for each calendar year will be adjusted annually by multiplying $0.337 by the average index for the preceding calendar year and dividing the product by the average annual index for 1979. The resultant unit value is multiplied by the percent P_2O_5 in the crude ore, to determine mine value. This method of determining crude ore value would apply to crude phosphate ore removed form Federal leases beginning in calendar year 1981.

No specific index has been selected. Although the CPI–U was agreed upon for the Fort Hall Indian Reservation lands, no specific Index has been selected for use on Federal lands. For this reason, comments are requested with respect to: (1(selection of an Index and (2) proposals for other methods of phosphate ore valuation.

Dated: November 3, 1980.

Don E. Kash,

Chief, Conservation Division.

[FR Doc. 80-34711 Filed 11-6-80; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Arizona; Announcement of Final Intensive Wilderness Inventory Decision

I hereby announce my final intensive inventory decision under the authority of Sec. 603 of the Federal Land Policy and Managment Act (FLPMA) and in accordance with the guidelines in the September 27, 1978, BLM *Wilderness Inventory Handbook* and Organic Act Directive No. 78–61, Change 3.

The proposed intensive inventory decision was published in the May 30, 1980, **Federal Register** page 36525, which initiated a 90-day public comment period. A supplement to the May 30 announcement, which amended the announced wilderness inventory, was published in the July 24, 1980, **Federal Register**, page 49364.

These **Federal Register** notices stated that the public comment period was to end on August 28, 1980 and gave the following State Wilderness Study Area units and acreages:

Districts	Acres intensive inventoried	Acres proposed for WSA	(Units)	Acres proposed to be dropped
Arizona Strip	1,576,672	483,618	(25)	1,093,054
Phoenix	1,867,081	907,024	(35)	960,057
Safford	311,333	191,731	(19)	119,602
Yuma	680,455	337,965	(19)	342,490
State	4,435,541	1,920,338 (98 WSA's)		2,515,203

Thirteen public meetings were held throughout Arizona during the 90-day comment period. Verbal and written comments concerning the wilderness characteristics of the WSA units were filed in the permanent documentation files. Those comments which provided new information were field checked and verified. Specific comments which disagreed with BLM's judgment of the application of the wilderness criteria mandated by Sec. 603 of the FLPMA of 1976 were also field checked. The comments received during the public comment period resulted in WSA boundary adjustments, dropping some recommended WSAs from further wilderness consideration and adding other WSA units which were proposed to be released from Sec. 603 of FLPMA.

Public comments received during this period are on file in the BLM District offices responsible for management of the specific inventory unit in question. WSA final decision maps and summary narratives are available from any Arizona BLM office listed at the end of this notice.

The WSA final decision is set forth in the following tables which list each inventory unit. Approximately 1,941,426 acres (94 units) have been determined to possess wilderness characteristics as set forth in Sec. 2(c) of the 1964 Wilderness Act and are WSAs. The remaining areas, consisting of about 2,467,398 acres, have been determined not to possess wilderness characteristics as set forth in Sec. 2(c) of the 1964 Wilderness Act and is therefore dropped from further consideration under the wilderness review process and released from the constraints of interim management as specified in Sec. 603(c) of the FLMPA of 1976.

Wilderness Study Area Final Decision

Inventory units name	Unit number	Acres intensively inventoried	Acres proposed for WSA	Acres proposed to be dropped	Final WSA acres	Final acres to be dropped
Arizona Strip District	AZ-010-006	26,502		14,988		14,988
Ferry Swale	AZ-010-006A		10,170		10,170	
Judd Hollow	AZ-010-006B		1,226		1,226	
Paria Rim	AZ-010-006C		106		106	
Cedar Mtn	AZ-010-006D		12		12	
	AZ-010-008/019	136,859		5,083		5,083
Paria Plateau	AZ-010-008A/19		124,428		124,428	
Overlook	AZ-010-008B		7,348		7,348	
Emmett Wash	AZ-010-009	25,856	12,913	12,943	12,913	12,943
House Rock Valley	AZ-010-010	15,437	0	15,437	0	15,437
Buffalo Range	AZ-010-011	25,139	0	25,139	0	25,139
North Canyon	AZ-010-012	8,550	0	8,550	0	8,550
Anderson Ranch	AZ-010-014	6,053	0	6,053	0	6,053
Round Valley	AZ-010-015	5,708	0	5,708	0	5,708
Big Ridge	AZ-010-016	6,912	0	6,912	0	6,912
Sand Hills	AZ-010-017	17,408	0	17,408	0	17,408
Corral Valley	AZ-010-018	9,164	0	9,164	0	9,164
Kaibab	AZ-010-020	11,990	0	11,990	0	11,990
Pine Hollow Canyon	AZ-010-021	11,635	0	11,635	0	11,635
Buckskin Mtns	AZ-010-022	9,064	0	9,064	0	9,064

Wilderness Study Area Final Decision—Continued

Inventory units name	Unit number	Acres intensively inventoried	Acres proposed for WSA	Acres proposed to be dropped	Final WSA acres	Final acres to be dropped
Pasture Canyon	AZ-010-023	13,850	0	13,850	0	13,850
Rock Canyon	AZ-010-024	5,171	0	5,171	0	5,171
LeFevre Canyon	AZ-010-025	18,912	0	18,912	0	18,912
Muggings Flat	AZ-010-026	17,894	0	17,894	0	17,894
Shinarump Cliff	AZ-010-027	13,696	0	13,696	0	13,696
Wildcat Canyon	AZ-010-028	40,533	0	40,533	0	40,533
Pigeon Canyon East	AZ-010-029	20,275	0	20,275	0	20,275
Little Cedar Knoll	AZ-010-030	10,320	0	10,320	0	10,320
Knab Creek	AZ-010-031	49,565	39,907	9,658	39,907	9,658
Scotts Hole	AZ-010-032	11,264	0	11,264	0	11,264
Hack Canyon (A)	AZ-010-033A	70,046	63,682	6,364	63,682	6,364
Hack Canyon (B)	AZ-010-033B	10,802	0	10,802	0	10,802
Robinson	AZ-010-034	9,741	9,671	70	9,671	70
Nates Canyon	AZ-010-038	5,550	0	5,550	0	5,550
Yellowstone Mesa	AZ-010-039	51,519	0	51,519	0	51,519
Bull Pasture	AZ-010-040	11,034	0	11,034	0	11,034
Cottonwood Point	AZ-010-041	6,790	6,449	341	6,449	341
Wild Band Pockets	AZ-010-045	7,706	0	7,706	0	7,706
Swapp	AZ-010-047	9,022	0	9,022	0	9,022
Hancock Knolls	AZ-010-048	12,189	0	12,189	0	12,189
Broad Canyon	AZ-010-049	4,122	0	4,122	0	4,122
Toroweap	AZ-010-050	5,427	5,312	115	5,312	115
Mt. Logan	AZ-010-051	18,608	8,803	9,805	8,803	9,805
Mt. Trumbull	AZ-010-052	8,400	7,285	1,115	7,285	1,115
Marshall Ranch	AZ-010-053	5,555	0	5,555	0	5,555
Pugh Knoll	AZ-010-055	25,702	0	25,702	0	25,702
Crosby Tank	AZ-010-056	8,320	0	8,320	0	8,320
Nickalas	AZ-010-057	15,633	0	15,633	0	15,633
Hurricane Cliffs	AZ-010-058	36,071	0	36,071	0	36,071
Vunkaret	AZ-010-059	43,059	0	43,059	0	43,059
Flat Top	AZ-010-062	9,088	0	9,088	0	9,088
Rocks	AZ-010-063	8,960	0	8,960	0	8,960
Snake Pond	AZ-010-064	13,309	0	13,309	0	13,309
White Pockets	AZ-010-065	8,653	0	8,653	0	8,653
East Antelope	AZ-010-066	6,989	0	6,989	0	6,989
Atkins Well	AZ-010-067	6,451	0	6,451	0	6,451
Spring Mtn	AZ-010-068	7,104	0	7,104	0	7,104
Canaan Gap	AZ-010-069	22,950	0	22,950	0	22,950
Cottonwood Canyon	AZ-010-071	41,472	0	41,472	0	41,472
East Mesa	AZ-010-072	29,286	0	29,286	0	29,286
Yellow Horse Flat	AZ-010-073A	10,440	0	10,440	0	10,440
Quail Draw	AZ-010-073B	22,540	0	22,540	0	22,540
Seegmiller	AZ-010-074	8,550	0	8,550	0	8,550
Gyp Pocket	AZ-010-076	7,275	0	7,275	0	7,275
Nutter Pond	AZ-010-077	9,467	0	9,467	0	9,467
Lower Hurricane	AZ-010-078	51,018	0	5,018	0	5,018
Navajo	AZ-010-079	4,996	0	4,996	0	4,996
Hole-in-Wall	AZ-010-080	19,507	0	19,507	0	19,507
Main Street	AZ-010-081	10,163	0	10,163	0	10,163
Hard Pond	AZ-010-082	12,133	0	12,133	0	12,133
Hooter	AZ-010-083	7,665	0	7,665	0	7,665
Hurricane Wash	AZ-010-084	6,298	0	6,298	0	6,298
Round Pond	AZ-010-085	5,120	0	5,120	0	5,120
Sink Hole	AZ-010-086	6,530	0	6,530	0	6,530
Mudhole	AZ-010-087	11,726	0	11,726	0	11,726
Sullivan	AZ-010-088	8,243	0	8,243	0	8,243
Rocky's	AZ-010-089	6,451	0	6,451	0	6,451
Poverty Mtn	AZ-010-091	11,699	0	11,699	7,872	3,827
Parashaunt	AZ-010-093	38,938	28,141	10,797	28,141	10,797
	AZ-010-094	2,945	0	2,945	0	2,945
	AZ-010-095	1,920	0	1,920	0	1,920
Damsil Canyon	AZ-010-096A	294	294	0	294	0
Parashaunt Wash	AZ-010-096B	7,770	0	7,770	0	7,770
Grassy Mtn	AZ-010-096C	56,573	.....	2,822	.....	2,822
Grassy Mtn	AZ-010-096C	.....	5,503	.....	5,503	.....
Andrus Canyon	AZ-010-096D	.....	48,248	.....	48,248	.....
North Dellenbaugh	AZ-010-097	10,698	10,678	20	10,678	20
	AZ-010-098	640	0	640	0	640
G&F	AZ-010-099	640	640	0	640	0
	AZ-010-100	640	0	640	0	640
	AZ-010-101	320	0	320	0	320
	AZ-010-102	640	0	640	0	640
Burnt Canyon	AZ-010-103	6,400	0	6,400	0	6,400
	AZ-010-104	49,522	.....	8,807	.....	8,807
Salt House	AZ-010-104A	.....	13,465	0	13,465	0
Mustang Point	AZ-010-104B	.....	27,250	0	27,250	0
Hidden Wash	AZ-010-110	19,950	0	19,950	0	19,950
Last Chance	AZ-010-111	38,460	38,050	410	38,050	410
Nutter	AZ-010-116	6,835	0	6,835	0	6,835
Eaglestead	AZ-010-117	5,350	0	5,350	0	5,350
Shoebuckle	AZ-010-118	11,955	0	11,955	0	11,955
Hobble Pond	AZ-010-125	17,126	0	17,126	0	17,126
Wolf Hole	AZ-010-131	12,251	0	12,251	0	12,251
Purgatory	AZ-010-132	21,187	7,557	13,630	7,557	13,630
Mokaac Mtns	AZ-010-133	32,246	0	32,246	0	32,246

Wilderness Study Area Final Decision—Continued

Inventory units name	Unit number	Acres intensively inventoried	Acres proposed for WSA	Acres proposed to be dropped	Final WSA acres	Final acres to be dropped
Mt. Emma	AZ-010-136	8,320	6,480	1,840	6,480	1,840
	AZ-010-137	1,408	0	1,408	0	1,408
	AZ-010-138	614	0	614	0	614
	AZ-010-139	1,485	0	1,485	0	1,485
	AZ-010-140	1,446	0	1,446	0	1,446
	AZ-010-141	179	0	179	0	179
	AZ-010-143	2,397	0	2,397	0	2,397
	AZ-010-145	2,312	0	2,312	0	2,312
	AZ-010-146	4,075	0	4,075	0	4,075
Total 110 units inventoried		1,576,672	483,618 (25 WSAs)	1,093,054	491,490 (26 WSAs)	1,085,182
Phoenix District	AZ-020-001	36,203	.....	.....	.....	.....
Mt. Wilson	AZ-020-001A	.....	24,821	0	24,821	0
Mt Wilson Plain	AZ-020-001B	.....	0	11,382	0	11,382
Squaw Peak	AZ-020-002	20,525	0	20,525	0	20,525
Trail Rapids Hills	AZ-020-003	10,430	0	10,430	0	10,430
S. Detrital Valley	AZ-020-004/005	13,920	0	13,920	0	13,920
Pope Mine	AZ-020-006	1,100	0	1,100	0	1,100
Van Deeman	AZ-020-007	3,200	1,550	1,650	1,550	1,650
Mockingbird	AZ-020-008	5,700	5,700	0	5,700	0
Black Mtns. N	AZ-020-009	20,400	20,398	2	20,398	2
Burns Spring	AZ-020-010	30,000	29,961	39	29,961	39
Mt. Tipton	AZ-020-012/042	22,560	19,550	3,010	19,550	3,010
Grapevine Wash	AZ-020-014	2,200	2,200	0	2,200	0
Grand Wash Cliffs	AZ-020-015	12,746	12,176	570	12,176	570
Music Mtns	AZ-020-017	32,800	0	32,800	0	32,800
Mt. Davis	AZ-020-021 (4 parcels)	2,560	0	2,560	2,560	0
Pinnacles	AZ-020-023	10,460	0	10,460	0	10,460
Mt. Nutt	AZ-020-024	33,345	26,300	7,045	29,200	4,145
Warm Springs	AZ-020-028/029	143,000	118,695	24,305	118,355	24,645
Detrital Valley	AZ-020-039	16,022	0	16,022	0	16,022
Peoples Canyon	AZ-020-068	3,480	3,480	0	3,480	0
Buckskin Mtns	AZ-020-071	78,348	47,582	30,766	47,582	30,766
Sycamore Mesa	AZ-020-072	5,897	0	5,897	0	5,897
Harcuvar Mtns	AZ-020-075	94,313	74,778	19,535	74,778	19,535
Hassayampa River Canyon	AZ-020-083	26,985	24,200	2,785	24,200	2,785
	AZ-020-084	6,667	.....	.....	.....	.....
S. Bradshaws E	AZ-020-084A	.....	640	0	640	0
S. Bradshaws W	AZ-020-084B	.....	0	6,027	0	6,027
Buckhorns	AZ-020-086	6,571	5,427	1,144	0	6,571
Granite Wash Mtns	AZ-020-090	43,938	0	43,938	0	43,938
Tank Pass	AZ-020-091	14,441	0	14,441	0	14,441
Harcuvar Peak	AZ-020-092	33,600	0	33,600	0	33,600
Big Horn Mtns	AZ-020-099	24,133	22,337	1,796	22,337	1,796
Hummingbird Springs	AZ-020-100	69,025	61,660	7,365	67,680	1,345
Black Butte	AZ-020-103	20,460	0	20,460	0	20,460
Belmont Hills N	AZ-020-107	11,500	0	11,500	0	11,500
Belmont Hills	AZ-020-108	18,773	0	18,773	0	18,773
Cedar Basin	AZ-020-118	7,883	0	7,883	0	7,883
Hells Canyon	AZ-020-119	9,385	9,379	6	9,379	6
Baldy Mtn	AZ-020-120	10,736	0	10,736	0	10,736
Petrified Forest	AZ-020-124	560	0	560	0	560
New Water Mtns	AZ-020-125	58,600	58,600	0	58,600	0
	AZ-020-126	25,690	.....	.....	.....	.....
Little Horn Mtns. West	AZ-020-126A	.....	13,800	2,650	13,800	2,650
Little Horn Mtns. West B	AZ-020-126B	.....	0	9,240	0	9,240
Red Raven Wash	AZ-020-127A	27,079	0	27,079	0	27,079
Palomas Plain	AZ-020-130	30,700	0	30,700	0	30,700
Tank Mtns	AZ-020-131	43,400	0	43,400	0	43,400
Palomas Mtns	AZ-020-132/133	28,040	0	28,040	0	28,040
Fact Mtn	AZ-020-136	39,560	0	39,560	27,575	11,985
Yellow Medicine Butte	AZ-020-137	37,983	0	37,983	0	37,983
Signal Mtn	AZ-020-138	29,070	20,920	8,150	20,920	8,150
Hyder Valley	AZ-020-140	9,340	0	9,340	0	9,340
Woolsey Peak	AZ-020-142/144	81,700	73,930	7,770	73,930	7,770
Gila Bend Mtns	AZ-020-143	19,900	0	19,900	0	19,900
Gila River	AZ-020-148	16,400	0	16,400	0	16,400
	AZ-020-155	49,200	.....	.....	.....	.....
Painted Rocks Mtns. S	AZ-020-155A	.....	0	39,450	0	39,450
Painted Rocks Mtns. N	AZ-020-155B	.....	9,320	430	0	9,750
N. Maricopa Mnts	AZ-020-157	77,650	75,485	2,165	75,483	2,167
Sierra Estrella S. Maricopa Mnts.	AZ-020-160	22,740	0	22,740	14,190	8,550
S. Maricopa Mnts	AZ-020-163	80,181	72,004	8,177	72,004	8,177
Butterfield Stage Memorial	AZ-020-164	9,574	9,566	8	9,566	8
Squaw Tits	AZ-020-169	33,690	0	33,690	0	33,690
Table Top Mtn	AZ-020-172	46,363	0	46,363	39,823	6,540
Batamote Mtns	AZ-020-175	57,697	0	57,697	0	57,697
Sikort Chapa Mtns	AZ-020-176	10,665	10,665	0	10,665	0
Pozo Redondo	AZ-020-177	19,890	0	19,890	0	19,890
Mineral Mtns	AZ-020-186	8,660	0	8,660	0	8,660

Wilderness Study Area Final Decision—Continued

Inventory units name	Unit number	Acres intensively inventoried	Acres proposed for WSA	Acres proposed to be dropped	Final WSA acres	Final acres to be dropped
White Canyon	AZ-020-187	6,975	6,970	5	6,968	7
Tortilla Mtns	AZ-020-188	5,030	0	5,030	0	5,030
Sawtooths	AZ-020-190	11,900	11,900	0	0	11,900
Picacho Mtns	AZ-020-194	6,400	6,400	0	6,400	0
W. Silver Bell Mtns	AZ-020-196	10,500	0	10,500	0	10,500
Ragged Top	AZ-020-197	8,480	0	8,480	4,460	4,020
Pan Quemado	AZ-020-199	11,870	0	11,870	0	11,870
Roskruge Mtns	AZ-020-200	7,700	0	7,700	0	7,700
Coyote Mtns.*	AZ-020-202	5,783	5,780	3	5,080	3
Baboquivari Peak	AZ-020-203	4,435	.....	.....	.....	.....
Baboquivari Peak North	AZ-020-203A	.....	0	2,370	0	2,370
Baboquivari Peak South	AZ-020-203B	.....	2,065	0	2,065	0
Ives Peak	AZ-020-204	11,435	9,875	1,560	9,675	1,760
Tres Alamo	AZ-020-205	8,935	8,910	25	8,910	25
Total 78 units inventoried		1,867,081	907,024 (35 WSAs)	960,057	976,661 (37 WSAs)	889,720

*No boundary adjustments were made. Final acres reflect a more accurate counting method.

Stafford District	AZ-040-001	25,174	.....	3,029	.....	3,029
Needles's Eye	AZ-040-001A	.....	10,020	0	9,485	535
Mescal Mtns	AZ-040-001B	.....	7,140	0	0	7,140
El Capitan	AZ-040-001C	.....	0	4,985	0	4,985
Zapata Wash	AZ-040-004	6,360	0	6,360	0	6,360
Black Rock	AZ-040-008	8,620	8,492	128	8,492	128
Ashurst	AZ-040-009	11,506	0	11,506	0	11,506
Bear Spring Flat	AZ-040-010/011	19,989	0	19,989	0	19,989
Diamond Bar	AZ-040-013	6,240	6,240	0	0	6,240
Fishhooks	AZ-040-014	32,633	20,600	12,033	15,013	17,620
Daymine	AZ-040-016	28,815	16,639	12,176	16,639	12,176
Oliver Knoll	AZ-040-017	7,786	6,984	802	0	7,786
Johnny Spring	AZ-040-020	8,382	8,225	157	0	8,382
	AZ-040-022/023/024	46,264	.....	9,220	.....	9,220
Gila Box	AZ-040-022/023/024A	.....	19,622	0	13,470	6,152
Turtle Mtn	AZ-040-022/023/024B	.....	17,422	0	17,422	0
Thumb Butte	AZ-040-030	10,075	0	10,075	0	10,075
Javelina Peak	AZ-040-048	18,207	17,870	337	17,870	337
Little Pranks	AZ-040-055	7,535	0	7,535	0	7,535
Orange Butte	AZ-040-059	7,655	0	7,655	0	7,655
Peloncillo Mtns	AZ-040-060	13,368	13,032	336	13,032	336
Happy Camp Canyon	AZ-040-065	20,327	17,271	3,056	16,771	3,556
Bowie Mtn	AZ-040-066	6,617	6,555	62	*	*
Baker Canyon	AZ-040-070	4,814	4,812	2	*	*
Rhode's Peak	AZ-040-072	279	0	279	*	*
YLE	AZ-040-073	960	0	960	*	*
Pothole	AZ-040-074	5,481	5,480	1	0	5,481
Linden Creek	AZ-040-075	160	0	160	0	160
Apache Box	AZ-040-076	932	932	0	932	0
Hoverrocker	AZ-040-077	3,754	3,754	0	2,769	985
Ketchum	AZ-040-078	22	0	22	0	22
Galiuro Addition #1	AZ-040-079	63	0	63	*	*
Galiuro Addition #2	AZ-040-080	160	0	160	*	*
Galiuro Addition #3	AZ-040-081	640	640	0	*	*
Holdout	AZ-040-082	116	0	116	0	116
Steeple Rock	AZ-040-083	8,400	0	8,400	0	8,400
Total 34 units inventoried		311,333	191,731 (19 WSAs)	119,602	131,895 (11 WSAs)	165,906

*These units were announced separately under an accelerated inventory. The final decision was released in the October 8, 1980 FEDERAL REGISTER, page 66876.

Yuma District						
Dead Mtn. North Addition	AZ-050-001	1,815	0	0	1,815	0
Dead Mtns. South Addition	AZ-050-002	630	630	0	630	0
Chemehuevi Mnts	AZ-050-003	195	195	0	195	0
Chemehuevi/Needles	AZ-050-004	960	~960	0	960	0
Needles North Addition	AZ-050-005A	*5,835	0	*5,835	0	5,590
Needles Eastern Addition	AZ-050-005B	7,315	465	0	465	0
Needles Southern Addition	AZ-050-005C	.....	0	6,850	0	6,850
Buck Mtns	AZ-050-007A	19,675	0	9,020	0	9,020
West Buck Mtns	AZ-050-007F	.....	0	10,655	0	10,655
Mohave Wash	AZ-050-007C/5-48/2-52	104,605	104,605	0	104,605	0
No Name	AZ-050-007D	5,945	0	5,945	0	5,945
East Whipple Mtns	AZ-050-009	5,235	0	5,235	0	5,235
Whipple Mtn. Addition	AZ-050-010	1,380	1,380	0	1,380	0
The Mesa	AZ-050-011	14,185	0	14,185	0	14,185
Gilbraltar Mtn	AZ-050-012	25,260	25,260	0	25,260	0

Wilderness Study Area Final Decision—Continued

Inventory units name	Unit number	Acres intensively inventoried	Acres proposed for WSA	Acres proposed to be dropped	Final WSA acres	Final acres to be dropped
Planet Peak	AZ-050-013	17,695	17,645	50	17,645	50
	AZ-050-014	72,825				
Cactus Plain	AZ-050-014A		65,645	2,145	70,360	2,465
Cactus Plain	AZ-050-014B		0	5,035		
Swansea	AZ-050-015A	44,785	41,690	3,095	41,690	3,095
Clara Peak	AZ-050-015B	9,695	0	9,695	0	9,695
E. Cactus Plain	AZ-050-017	14,020	13,735	285	13,735	285
Big Maria Mtns. N	AZ-050-018	415	415	0	415	0
Big Maria S	AZ-050-019	2,145	1,420	725	1,420	725
	AZ-050-020	54,230			2	
La Posa Plain	AZ-050-020A		0	24,960	0	24,960
S. La Posa Plain	AZ-050-020B		0	29,270	0	29,270
No Name	AZ-050-021	16,510	0	16,510	0	16,510
	AZ-050-023A/B	52,740	42,670	10,070		
S. Trigo Mtns	AZ-050-023A				4,500	1,390
Trigo Mtns	AZ-050-023B				36,670	9,980
Kofa Unit 2	AZ-050-028	3,085	0	3,085	0	3,085
Kofa Unit 3	AZ-050-030	9,240	0	9,240	0	9,240
Kofa Unit 3 S	AZ-050-031	11,270	3,400	7,870	3,400	7,870
Kofa Unit 4 N	AZ-050-033	2,195	1,900	295	1,900	295
Kofa Unit 4 S	AZ-050-034	11,220	11,220	0	11,220	0
Little Picacho Peak Addition	AZ-050-035	2,950	2,915	35	2,915	35
No Name	AZ-050-036	5,060	0	5,060	0	5,060
No Name	AZ-050-037	6,740	0	6,740	0	6,740
Laguna Mtn	AZ-050-038	9,265	0	9,265	0	9,265
N. Gila Mtns	AZ-050-039	13,165	0	13,165	0	13,165
Gila Mtns	AZ-050-040	8,765	0	8,765	0	8,765
N. Mohawk Mtn	AZ-050-042	4,725	0	4,725	0	4,725
Butler Pass	AZ-050-047/2-73	27,340	0	27,340	0	27,340
Polomosa Mtn	AZ-050-049	*87,340	0	*87,340	0	75,100
Total 37 units inventoried		680,455	337,965 (19 WSAs)	342,490	341,380 (20 WSAs)	326,590

*No boundary adjustments were made. Final acres reflect a more accurate counting method.

Summary of Wilderness Inventory

District	Acres proposed for WSA	Acres final WSA units	Acres proposed to be dropped	Acres final to be dropped	Total final acres reported*
Arizona Strip	483,618	491,490	1,093,054	1,085,182	1,576,672
Phoenix	907,024	976,661	960,057	889,720	1,866,381
Safford	191,731	131,895	119,602	165,906	297,801
Yuma	337,965	341,380	342,490	326,590	667,970
State Totals	1,920,338	1,941,426 (94 Units)	2,515,203	2,467,398	4,408,824

*The final total acres do not include units which were reported in the accelerated inventories.

The final intensive inventory decisions will become effective on December 15, 1980.

Protests and Appeal Procedures

The decision for each inventory unit is considered individually and separately from the decision for every other inventory unit. These decisions will become effective on December 15, 1980 unless timely protests are received by the Arizona State Director.

Persons wishing to protest any of the decisions announced herein must file a written protest with the State Director, Bureau of Land Management, Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073, on or before 4:15 p.m., December 15, 1980. Only those protests received by the Arizona State Office by time and date specified will be accepted.

The protest must specify the specific inventory unit to which it is directed. It must include a clear and concise statement and reason for the protest, as well as data supporting the reason.

At the conclusion of the protest period, the State Director will publish in the **Federal Register** a notice of those decisions that were not protested and therefore have become final, and those decisions which are under formal protest. The notice will identify those inventory units under protest and will announce that the decisions on the units will not become final pending a decision on the protest and any resulting appeal.

The State Director will issue a written decision on any protest which is filed according to the above requirements and will publish a notice in the **Federal Register** of the action taken in response to the protest.

Any person adversely affected by the State Director's decision on a written protest may appeal such decision under the provisions of 43 CFR Part 4.

All Wilderness Study Areas or inventory units under protest, or otherwise not formally dropped from further consideration, are subject to certain management and use restrictions as identified in the Interim Management Policy published December 12, 1979.

WSA final decision maps and summary narratives are available from any Arizona BLM office listed below.

Arizona Strip District Office, 196 East Tabernacle, P.O. Box 250, St. George, Utah 84770, (801) 673-4882.

Safford District Office, 425 East Fourth Street, Safford, Arizona 85546, (602) 428-4040.

Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757-4011.

Phoenix District Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017, (602) 241-2501.

Yuma District Office, 2450 Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364, (602) 726-6300.

Havasu Resource Area Office, 2049 Swanson Avenue, P.O. Box 685, Lake Havasu City, Arizona 86403, (602) 855-8017.

Clair M. Whitlock,

State Director.

October 30, 1980

[FR Doc. 80-34524 Filed 11-6-80; 8:45 am]

BILLING CODE 4310-84-M

Announcement of Final Intensive Wilderness Inventory Decisions

The Bureau of Land Management in Nevada hereby announces the final intensive wilderness inventory decisions under the authority of Sec. 603 of the Federal Land Policy and Management Act and in accordance with the guidelines in the September 27, 1978, BLM *Wilderness Inventory Handbook* and Organic Act Directive No. 78-61, change 3.

By publication in the April 1, 1980 **Federal Register**, pages 21356 through

21362, the BLM announced the beginning of a 90 day public review and comment period on the proposed decisions for approximately 14,108,000 acres subjected to the statewide intensive wilderness inventory. The public comment period ended on June 30, 1980. During the public comment period, twenty-five public meetings and open houses were held. All comments, whether mailed in or presented at a public meeting in writing or verbally, as well as late comments received in time to be reviewed before final decisions were made, were treated equally. They have been read, recorded, analyzed, and where appropriate, field checked. The final intensive wilderness inventory report, including maps, is available upon request from the Bureau of Land Management, Nevada State Office, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520. Public comments received may also be inspected at this address.

The decision for each unit is considered individually and separately from the decision for every other inventory unit. Persons wishing to protest any of the decisions announced herein must file a written protest with State Director, Ed Spang, Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. 12000, Reno, Nevada 89520 on or before 4:15 p.m., December 15, 1980. Only those written protests received by the Nevada State Office by this time and date specified will be accepted.

The protest must specify the inventory unit(s) to which it is directed and include the name and address of the person(s) protesting. It must also include a clear and concise statement of the reasons for the protest, as well as data to support the reasons stated.

At the conclusion of the protest period, the State Director will publish in the **Federal Register** a notice of those decisions that were not protested and those decisions which are under formal protest. The notice will identify those inventory units under protest and will announce that the decision on the units will not become final pending a decision on the protest and any resulting appeal.

The State Director will issue a written decision on any protest which is filed according to the above requirements and will publish a notice in the **Federal Register** of the action taken in response to the protest.

Any person adversely affected by the State Director's decision on a written protest, may appeal such decision under the provisions of 43 CFR Part 4.

Dated: October 31, 1980.

Roger McCormack,

Associate State Director, Nevada.

Units Proposed as WSA's in the Apr. 1, 1980 "Federal Register" Notice and Are Now Identified as WSA's

Unit No.	Unit names	Acres designated WSA's
	Elko District	
NV-010-027	Bluebell	63,150
NV-010-033	Goshute Peak	88,440
NV-010-106	Owyhee Canyon	17,170
NV-010-132	Little Humboldt River	40,100
NV-010-184	Bad Lands	9,000
	Winnemucca District	
NV-020-006-A/CA-020-914.	East Fork High Rock Canyon.	53,920
NV-020-008-A/CA-020-913.	Little High Rock Canyon.	52,143
NV-020-0121		
CA-020-621, 618	Poodle Mountain	127,829
NV-020-014	Fox Mountain Range	[1]72,347
NV-020-019	Calico Mountains	65,861
NV-020-200	Selenite Mountain	[2]31,920
NV-020-201	Mt. Limbo	24,126
NV-020-600	Blue Lakes	[3]23,397
NV-020-603	south Jackson Mtns	61,708
NV-020-606	North Jackson Mtns	25,780
NV-020-620	Black Rock Desert	333,111
NV-020-622	North Black Rock Range.	[2]29,945
NV-020-637	McGee Mountain	25,406
NV-020-827	No. Fork Little Humboldt.	81,320
NV-020-8591		
OR-3-1531		
OR-2-78	Disaster Peak	[4]18,200
	Carson City District	
NV-030-102	Clan Alpine Mtns	[2]193,120
NV-030-104	Stillwater Range	[2]92,053
NV-030-110	Desatoya Mountains	48,150
NV-030-122	Job Peak	[2]91,022
NV-030-407	Gabbs Valley Range	77,330
NV-030-430	Basalt	[2]27,560
NV-030-432	Hontone Mine	1,570
NV-030-531/CA-010-105.	Slinkard	5,440
NV-030-532	Carson-Iceberg	550
	Ely District	
NV-040-015	Goshute Canyon	[5]35,100
NV-040-0861		
UT-050-029	Granite Spring	[4]23,400
NV-040-154	Park Range	[5]46,500
NV-040-166	Riordan's Well	[5]56,800
NV-040-197	Table Mountain	[5]35,600
NV-040-2021		
UT-040-216	White Rock Range	[4]19,590
NV-040-246	Weepah Spring	[6]61,000
	Las Vegas District	
NV-050-0131	East Pahranagat	16,200
NV-050-0132	South Pahrocs/Hiko	28,600
NV-050-0154	Medsger Pass	11,462
NV-050-0165	Lower Pahranagat Lake.	3,350
NV-050-0350	Pigeon Spring	[2]3,575
NV-050-0054	Queer Mountain	[1]81,550
NV-050-0355	Bonnie Claire Flat	[1]69,000
NV-050-0368	Porter Mine	6,089
NV-050-0369	Amargosa	12,453
NV-050-0370	Nothing Flats	9,510
NV-050-03R-22	Gem	2,153
NV-050-0401	Mt. Stirling	[3]69,650
NV-050-4014	Pine Creek	[6]24,000
NV-050-0460	Resting Springs Range	3,850
	Battle Mountain District	
NV-060-019	Kawich	[2]27,360
NV-060-059	Rawhide Mountain	[2]64,360
NV-060-112	South Reveille	106,200
NV-060-142/162	Palisade Mesa	99,550
NV-060-158/199	Blue Eagle	[1]59,560
NV-060-163	The Wall	38,000
NV-060-166	Grant Range	[5]5,840
NV-060-191	Morey	20,120
NV-060-231/241	Antelope	[2]87,400
NV-060-541	Roberts	15,090

See footnotes at end of tabular matter

Units Proposed To Be Dropped in the April 1, 1980 "Federal Register" Notice, but Identified as WSA After Further Evaluation of Public Comments by BLM

Unit number	Unit name	Acres designated WSA
	Elko District	
NV-010-035	South Pequop	39,900
NV-010-151	Rough Hills	6,300
Total Elko District		46,200
	Winnemucca District	
NV-020-007	High Rock Lake	62,527
NV-020-406	Tobin Range	21,952
NV-020-621	Pahute Peak	55,052
Total Winnemucca District.		139,531
	Carson City District	
NV-030-108	Augusta Mountain	93,200
NV-030-525A	Burbank Canyons	13,395
Total Carson City District.		106,5[illegible]
	Ely District	
NV-040-242	Worthington Mountains	47,100
Total Ely District		47,100
	Las Vegas District	
NV-050-0338	Silver Peak Range North	33,900
Total Las Vegas District.		33,[illegible]
	Battle Mountain District	
NV-060-190	Fandango	40,940
NV-060-428	Simpson Park	49,670
Total Battle Mountain District.		90,610
State total		463,936

Units Dropped From Further Consideration Because of Lack of Wilderness Characteristics (These Units Were Proposed To Be Dropped in the Apr. 1, 1980 "Federal Register" and Now Are Dropped)

Unit no.	Unit name	Acres Released From Further Wilderness Consideration
	Elko District	
NV-010-002	Maverick Springs	84,840
NV-010-002-A	Maverick Springs	6,360
NV-010-002-B	Maverick Springs	5,760
NV-010-002-C	Maverick Springs	7,040
NV-010-002-D	Maverick Springs	7,700
NV-010-002-E	Maverick Springs	5,800
NV-010-002-F	Maverick Springs	31,360
NV-010-002-G	Maverick Springs	10,900
NV-010-002-J	Maverick Springs	7,700
NV-010-004	High Bald Peaks	31,560
NV-010-004-B	High Bald Peaks	16,000
NV-010-016	Spruce Mountain	35,960
NV-010-016-B	Spruce Mountain	8,150
NV-010-017	Spruce Ridge	46,600
NV-010-017-C	Spruce Ridge	6,500
NV-010-022	Hogan	15,460
NV-010-023	Collar & Elbow	10,000
NV-010-023-A	Collar & Elbow	8,300
NV-010-025	Leppy Peak	10,840
NV-010-027	Bluebell	[7]2,980
NV-010-032	Morgan Basin	12,160
NV-010-033	Goshute Peak	[7]12,900
NV-010-035	South Pequop	[7][8]6,760
NV-010-035-B	South Pequop	6,100

Units Dropped From Further Consideration Because of Lack of Wilderness Characteristics (These Units Were Proposed To Be Dropped in the Apr. 1, 1980 "Federal Register" and Now Are Dropped)—Continued

Unit no.	Unit name	Acres Released From Further Wilderness Consideration
NV-010-036	Boone Springs	8,320
NV-010-037	Brush Creek	13,320
NV-010-044	Antelope	33,020
NV-010-045	Currie Hills	27,640
NV-010-045-A	Currie Hills	7,760
NV-010-045-B	Currie Hills	5,200
NV-010-047	Kingsley	21,600
NV-010-047-D	Kingsley	8,160
NV-010-049	Sugarloaf	17,600
NV-010-050	Ferguson Mountain	6,960
NV-010-052	Lead Mine Hills	11,520
NV-010-053	Dead Cedar Wash	13,340
NV-010-054/UT-020-044.	Ferber Wash	[4]6,900
NV-010-058	Dead Horse	10,800
NV-010-060	White Sage Flat	19,540
NV-010-061/UT-020-050.	Ferber Flat	[4]6,300
NV-010-062UT-020-046.	Utah Peak	[4]5,700
NV-010-070	Cortez	33,260
NV-010-074	Florio	12,100
NV-010-081	Smith Creek Mountains.	20,850
NV-010-085	Diamond Hills	56,320
NV-010-102-A	Little Owyhee	5,800
NV-010-104	Hat Peak	49,800
NV-010-105	Forklift	17,280
NV-010-106	Owyhee Canyon	[7]350
NV-010-106-A	Owyhee Canyon	7,360
NV-010-106-B	Owyhee Canyon	43,520
NV-010-107	Airstrip No. 1	42,240
NV-010-108	Star Valley Cabin	32,000
NV-010-109	Silver Lake	41,470
NV-010-109-A-	Silver Lake	43,650
NV-010-110	Milligan Creek	121,360
NV-010-111	Winter Creek	59,780
NV-010-112	Bullhead	55,150
NV-010-113	Burner Hill	16,770
NV-010-114	Cornucopia	28,760
NV-010-115	Big Cottonwood Canyon.	56,140
NV-010-116	Sulphur	15,000
NV-010-129	Six Mile Hill	42,680
NV-010-130	Rock Creek	37,080
NV-010-131	Snowstorm	12,130
NV-010-132	Little Humboldt River	[7]56,220
NV-010-133	Three Mile Creek	28,440
NV-010-134	Chino Creek	9,680
NV-010-135	Bull Run	8,700
NV-010-143	Adobe	11,230
NV-010-147	Double Mountain	36,740
NV-010-148	Beaver Creek	22,240
NV-010-149	Lookout Mountain	44,960
NV-010-150	Table Mountain	47,300
NV-010-152	Charleston Reservoir	5,120
NV-010-153	Mahala Creek	10,240
NV-010-160/UT-020-009, 011, 012.	Wagon Box Pass	[4]16,330
NV-010-160-B	Wagon Box Pass	6,000
NV-010-161	Bald Mountain	16,620
NV-010-162	Tee Pee Rock No. 2	11,000
NV-010-167	Little Goose Creek No. 4.	5,300
NV-010-167-B	Little Goose Creek No. 4.	6,100
NV-010-170	Bedke Well	26,880
NV-010-171	Delano	7,400
NV-010-171-A	Delano	10,450
NV-010-171-B	Delano	10,540
NV-010-174	Ninemile	21,120
NV-010-177	Tijuana John	12,840
NV-010-177-B	Tijuana John	12,990
NV-010-177-F	Tijuana John	6,560
NV-010-177-J	Tijuana John	6,320
NV-010-177-L	Tijuana John	14,400
NV-010-178	Granite	8,300
NV-010-178-A	Granite	15,420
NV-010-178-C	Granite	9,900
NV-010-178-F	Granite	7,900
NV-010-181	Ellen and Dee	6,010
NV-010-181-C	Ellen and Dee	6,000
NV-010-181-E	Ellen and Dee	5,340
NV-010-183	Fort Yoho	12,350
NV-010-184	Bad Lands	[4]63,480
NV-010-185	Canyon Creek	35,760
NV-010-187	Cottonwood	15,490
NV-010-188	Beaver Ponds	17,320
NV-010-193	Anderson Creek	8,920
NV-010-197	Hank's Creek	37,640
NV-010-198	Coyote	9,580
NV-010-199	Stag Mountain	40,240
Total Elko District		2,243,830
	Winnemucca District	
NV-020-001/CA-020-919.	Tenmile Spring	11,470
NV-020-004/CA-020-813-A&B.	Hog Ranch Mountain	9,980
NV-020-006/CA-020-914-A.	Warm Springs Canyon	65,369
NV-020-00	7High Rock Lake	[7][8]9,869
NV-020-008/CA-020-913-A.	Little High Rock Canyon.	1,430
NV-020-009/CA-020-823.	Leadville	27,023
NV-020-010/CA-020-816/CA-020-821/CA-020-820.	Crutcher	52,745
NV-020-012/CA-020-621, 618.	Poodle Mountain	[7]9,331
NV-020-014	Fox Mountain Range	[7]9,077
NV-020-018	Division Peak	27,927
NV-020-019	Calico Mountains	[7]2,070
NV-020-021/CA-020-822-A&B/CA-020-823.	No Name	5,230
NV-020-200	Selenite Mountain	[2][3]2,811
NV-020-021	Mt. Limbo	[5]386
NV-020-204	Nightingales	56,549
NV-020-209	Razorback	67,467
NV-020-212	Lava Beds	69,605
NV-020-216	South Shawavee Mountains.	20,541
NV-020-217	Shawavee Mountains	65,757
NV-020-222	Blue Wing Mountains	43,711
NV-020-235	North Lava Bed	87,747
NV-020-406	Tobin Range	[8]64,920
NV-020-408	Jersey Valley	55,710
NV-020-410	Table Mountain	64,518
NV-020-436	Granite Mountain	20,269
NV-020-600	Blue Lakes	[1][7]9,827
NV-020-601	Alder Creek	30,467
NV-020-602	Mahogany Mountains	26,115
NV-020-603	South Jackson Mtns.	[7]7,606
NV-02-604	Trident Peak	69,718
NV-020-606	North Jackson Mtns.	[7]643
NV-020-609/OR-2-80.	Maggie Creek	[4]20,894
NV-020-610	Sentinel Peak	28,060
NV-020-612	Bilk Creek	21,072
NV-020-615	Wood Canyon	[5]6,681
NV-020-617	Middle Spring	11,460
NV-020-618	Texas Springs	10,853
NV-020-620	Black Rock Desert	[5]218,189
NV-020-621	Pahute Peak	[7][5]420
NV-020-621-A	Pahute Peak	32,240
NV-020-622	North Black Rock Range.	[7]64,411
NV-020-641	Paiute Meadows	16,349
NV-020-642	Pueblo Mountains	640
NV-020-800	Long Ridge	12,430
NV-020-809-A/OR-3-172.	Deer Flat	1,200
NV-020-810/OR-3-191.	Carin "C"	[4]3,700
NV-020-827	N. Fork Little Humboldt.	32,701
NV-020-830	Sugar Loaf Hill	35,901
NV-020-835	Forks Ranch	21,998
NV-020-836	Little Owyhee River	34,833
NV-020-838	Lone Willow	24,597
NV-020-839	Calico Ranch	[5]33,043
NV-020-840	No Springs	11,174
NV-020-843	Raven Creek	21,436
NV-020-859/OR-3-153/OR-2-78.	Disaster Peak	[4]419,135
Total Winnemucca District.		1,679,355
	Carson City District	
NV-030-102	Clan Alpine Mtns.	[5]63,880
NV-030-104	Stillwater Range	[2][7]3,177
NV-030-105	New Pass Range	61,500
NV-030-106	Shoshone Meadows	53,000
NV-030-108	Augusta Mountains	[7][8]2,800
NV-030-110/NV-060-288.	Desatoya Mountains	[5][7]30,010
NV-030-117	Diamond Canyon	65,000
NV-030-118	Desatoya South	[5]30,240
NV-030-125	Desatoya North	[5]55,500
NV-030-127	Job Peak	[2][7]24,098
NV-020-,136	Mount Annie	19,500
NV-030-323	Wassuk Range	[5]57,600
NV-030-402	Gillis Range North	51,580
NV-030-407	Gabbs Valley Range	[7]3,790
NV-030-409	Stewart Valley Hills	44,410
NV-030-425	Excelsior Mountains	66,850
NV-030-430	Basalt	[5][7]27,890
NV-030-432	Hontone Mine	[7]1,000
NV-030-435	Truman Meadows	7,560
NV-030-436	Queen Valley North	7,640
NV-030-437	Queen Valley Ranch	610
NV-030-439	Orchard Spring	76
NV-030-517	Rawe Peak	49,480
NV-030-520	Lyon Peak	36,000
NV-030-525	East Pine Nuts	[5]38,785
NV-030-525-A	Burbank Canyons	[7][8]1,095
NV-030-603/CA-020-403.	Fort Sage Mountain	22,990
NV-030-605	Virginia Mountains	89,275
NV-030-610	Peterson Mountain	17,170
Total Carson City District.		951,270
	Ely District	
NV-040-001/UT-020-053, 054.	Northeast Corner	[4]26,950
NV-040-004	Chin Creek	16,000
NV-040-007	Lehman Creek	17,300
NV-040-007-A	Lehman Creek	7,700
NV-040-008	Antelope Range	13,100
NV-040-009	Warm Springs	18,400
NV-040-015	Goshute Canyon	[2][7]155,580
NV-040-016	Willow Spring	19,200
NV-040-019	Egan Basin	20,900
NV-040-021	Butte Mountains	47,860
NV-040-021-A	Butte Mountains	33,460
NV-040-034	Buck Mountain	41,180
NV-040-042	Maple Syrup Well	20,400
NV-040-043	Robber's Roost	48,400
NV-040-047	Frank's Well	20,500
NV-040-048	Toner Spring	20,900
NV-040-048-A	Heusser Mountain	[5]32,940
NV-040-048-B	Toner Spring	[4]6,940
NV-040-049	Telegraph Canyon	20,020
NV-040-050	Hot Springs	8,900
NV-040-065	Golden Springs	16,200
NV-040-070	Red Hills	12,800
NV-040-078	Grass Valley Reservoir.	11,100
NV-040-079/UT-050-017.	Kern Mountains	[4]7,500
NV-040-079-A	Kern Mountains	7,300
NV-040-081	White Cloud Basin	25,100
NV-040-081-A	White Cloud Basin	17,800
NV-040-085	Yelland Ranch	9,900

Units Dropped From Further Consideration Because of Lack of Wilderness Characteristics (These Units Were Proposed To Be Dropped in the Apr. 1, 1980 "Federal Register" and Now Are Dropped)—Continued

Unit no.	Unit name	Acres Released From Further Wilderness Consideration
NV-040-086/UT-050-029.	Granite Spring	[4,7] 69,700
NV-040-100	Colorado Gulch	38,200
NV-040-100-C	John's Wash	3,000
NV-040-107	Kious Spring	2,900
NV-040-109	Snake Creek Cave	2,400
NV-040-110	Big Wash	1,000
NV-040-123	Martin Spring	24,800
NV-040-129	Copper Flat	42,600
NV-040-130-A	Deadman Gulch	9,800
NV-040-130-AA	Deadman Gulch	8,200
NV-040-130-AB	Deadman Gulch	11,900
NV-040-153	West Pancakes	317,820
NV-040-154	Park Range	[5,7] 4,100
NV-040-155	South Pancakes	140,400
NV-040-159	Manzone Well	30,000
NV-040-159-A	Manzone Well	9,100
NV-040-159-B	Manzone Well	8,240
NV-040-166	Riordan's Well	[5,7] 133,900
NV-040-184	Big Spring Wash	12,500
NV-040-185	Lexington Creek	4,900
NV-040-197	Table Mountain	[6,7] 21,660
NV-040-202/UT-040-216.	White Rock Range	[4,7] 13,780
NV-040-203	Burnt Canyon	7,860
NV-040-204	Camp Valley	16,000
NV-040-217	Black Cone	24,100
NV-040-226	Gap Mountain	9,800
NV-040-229	Scofield	10,200
NV-040-231	Bruno Creek	4,500
NV-040-234-A	South Badger Gulch	440
NV-040-235	Barton Spring	13,460
NV-040-241	Griswold	23,900
NV-040-241-A	Griswold	31,880
NV-040-242	Worthington Mtns	[7,8] 15,300
NV-040-243	Garden Valley Reservoir.	99,580
NV-040-246	Weepah Spring	[5,7] 130,700
NV-040-247	Fossil Peak	88,900
NV-040-249	North Pahranagat Range.	55,900
NV-040-249-A	North Pahranagat Range.	21,500
NV-040-250	Southpaw	34,900
Total Ely District		2,204,150
Las Vegas District		
NV-050-0100	Quinn Canyon	12,810
NV-050-0107	North Pahroc	28,847
NV-050-0108	Nesbitt	20,931
NV-050-0109	Seep Springs	15,149
NV-050-0112	Timpahute Range	52,800
NV-050-0113	Pahroc Summit Pass	61,737
NV-050-0114	Pahroc Spring	15,950
NV-050-0116	Chief Mountain	12,673
NV-050-0127	Swirl Cake Rock	8,690
NV-050-0131	East Pahranagat	[7] 136,258
NV-050-0132	South Pahroc/Hiko	[7] 42,455
NV-050-0302	Cedar Mountain	10,577
NV-050-0304	Relay Station	23,379
NV-050-0305	Far North	11,905
NV-050-0306	Pilot Peak	59,274
NV-050-0308	Monte	7,637
NV-050-0311	Devils Gate	36,332
NV-050-0312	Rock Hill	41,392
NV-050-0317	Lone Mountain	38,239
NV-050-0319	Montezuma Valley	12,047
NV-050-0320	Weepah Hills	29,153
NV-050-0323	Emigrant Peak	25,337
NV-050-0324	Volcanic Hills	25,444
NV-050-0325	Pinchot Creek	15,254
NV-050-0327	The Sump	30,693
NV-050-0328	Emigrant Pass	30,583
NV-050-0330/NV-050-0330-A.	Monocline	20,150
NV-050-0331	The Choice	23,676
NV-050-0335	Misplaced	49,040
NV-050-0336	Clayton Ridge	106,593
NV-050-0337	Company Spring South.	[10] 25,206

Units Dropped From Further Consideration Because of Lack of Wilderness Characteristics (These Units Were Proposed To Be Dropped in the Apr. 1, 1980 "Federal Register" and Now Are Dropped)—Continued

Unit no.	Unit name	Acres Released From Further Wilderness Consideration
NV-050-0337-A	Company Spring North	10,880
NV-050-0338	Silver Peak Range North.	[7,8] 38,879
NV-050-0338-A	Silver Peak Range South.	[10] 54,845
NV-050-0339	Aiken	1,279
NV-050-0340	Red Mountain Triangle	33
NV-050-0341	Furnace Creek	1,050
NV-050-0342	Palmeto Mountains	30,165
NV-050-0344	Mount Jackson North	33,720
NV-050-0344-A	Mount Jackson South	6,184
NV-050-0345/NV-050-0345-A.	Chispa Hills	30,599
NV-050-0349	Magruder Mountain	19,651
NV-050-0350	Pigeon Spring	[2,7] 3,402
NV-050-0351	Uncle Sam	24,223
NV-050-0352	Slate Ridge West	28,874
NV-050-0352-A	Slate Ridge East	8,813
NV-050-0353	Hell's Gate	19,596
NV-050-0354	Queer Mountain	[1,7] 7,179
NV-050-0355	Bonnie Claire Flat	[1,7] 12,766
NV-050-0358	Can You Believe	32,327
NV-050-0368	Porter Mine	[7] 600
NV-050-0369	Amargosa	[7] 73
NV-050-0370	Nothing Flats	[7] 2,545
NV-050-0372	Crater Flat	37,242
NV-050-0373	Black Marble	28,864
NV-050-0375	Big Dune	21,900
NV-050-0376	Dry Well	21,732
NV-050-0377	Jokersville	4,625
NV-050-0386	Claw	820
NV-050-0387	Old McNett Ranch	23,661
NV-050-03R-11-A	Fish Lake Valley	165
NV-050-03R-12	Pinto Hill	16,712
NV-050-03R-15-A	Lida Valley	852
NV-050-03R-22	Gem	[7] 40
NV-050-03R-23	Von Schmidt	2,786
NV-050-0401	Mount Stirling	[2,7] 133,358
NV-050-0406	Lost Cabin Spring	68,421
NV-050-0410	Shoemaker Spring	82,917
NV-050-0414	Pine Creek	[7] 10,761
NV-050-0416	Wheeler	7,282
NV-050-0421	Clark Canyon	7,880
NV-050-0450	Striped Hills	20,698
NV-050-0451	Specter Range	34,340
NV-050-0457	Mount Montgomery	45,193
NV-050-0459	Ash Meadows	9,770
NV-050-0460	Resting Springs Range.	[7] 17,208
NV-050-0461	Last Chance Range	27,079
NV-050-0462	High Peak	10,872
NV-050-0463	Grown	7,064
NV-050-04R-03-A B&C.	Pahrump	10,958
NV-050-CDCA276	Dead Mountains	750
Total Las Vegas District.		2,051,846
Battle Mountain District		
NV-060-019	Kawich	[2,7] 11,640
NV-060-059	Rawhide Mountain	[2,7] 11,040
NV-060-069	Empire Canyon	17,620
NV-060-078	Stone Cabin	24,000
NV-060-079	Hot Creek	45,970
NV-060-086	Monarch	11,700
NV-060-089	Woods Canyon	25,900
NV-060-112	South Reveille	[7] 8,300
NV-060-113	Quinn Canyon	105,570
NV-060-120	East Kawich	18,100
NV-060-130	Castle Rock	22,300
NV-060-132	North Reveille	65,000
NV-060-136	Quinn Range	23,703
NV-060-142/162	Palisade Mesa	[7] 17,450
NV-060-158/199	Blue Eagle	[1,7] 13,340
NV-060-163	The Wall	5,300
NV-060-166	Grant Range	650
NV-060-174	Black Rock	25,500
NV-060-176	Big Round Valley	6,200
NV-060-183	North Pancake I	17,200

Units Dropped From Further Consideration Because of Lack of Wilderness Characteristics (These Units Were Proposed To Be Dropped in the Apr. 1, 1980 "Federal Register" and Now Are Dropped)—Continued

Unit no.	Unit name	Acres Released From Further Wilderness Consideration
NV-060-184	North Pancake III	19,200
NV-060-188	Morgan	9,000
NV-060-190	Fandango	[7,8] 7,660
NV-060-191	Morey	[7] 9,580
NV-060-192	Slanted Buttes	23,900
NV-060-194	North Pancake II	26,400
NV-060-201/211	Sixmile	12,600
NV-060-212	Rhyolite Hills	34,300
NV-060-213	Red Ring Mountain	6,200
NV-060-219	Milton Ranch	9,300
NV-060-231/241	Antelope	[2,7] 60,900
NV-060-258	Buzanes	10,900
NV-060-278	Haypress	2,900
NV-060-279	White Rock	26,400
NV-060-347	Diana's Punchbowl	14,700
NV-060-407	Bates Mountain	77,930
NV-060-415	Callaghan	79,300
NV-060-422	White Sage	16,400
NV-060-428	Simpson Park	[5,7,8] 1,830
NV-060-432	Willow Creek	35,300
NV-060-433	Manhattan Mountain	31,300
NV-060-442	Sage	10,900
NV-060-459	Rocky Hills	57,360
NV-060-461	South Fish Creek	104,500
NV-060-464	Elephant Head	44,200
NV-060-465	Carico Ranch	6,000
NV-060-467	Francis Cabin	5,700
NV-060-474	Red Rock	14,100
NV-060-478	Caetano Ranch	9,560
NV-060-482	North Fish Creek	52,400
NV-060-504	Diamond Mountains	73,470
NV-060-530	Rutabaga Creek	13,800
NV-060-531	Henderson	12,700
NV-060-541	Roberts	[7] 42,710
NV-060-554	North Diamond	43,800
Total Battle Mountain District.		1,485,683
State total		10,616,134

See footnotes at end of tabular matter.

Units Under Formal Appeal to the Interior Board of Land Appeals

Unit No.	Unit name	Acres under formal appeal
NV-010-102/ID-12-56A.	Little Owyhee	53,280
NV-010-103/ID-16-53	Devil's Corral	8,960
NV-010-103-A/ID-16-53.	Devil's Corral	10,880
NV-010-164/ID-202-1/UT-020-001.	Little Goose Creek No. 1.	7,695
NV-010-179/ID-107/26/ID-17-26.	Cottonwood-Salmon Falls.	11,790
NV-020-811/OR-3-159/ID-106-70-E.	Tent Creek	10,680
NV-020-642/OR-2-81 (an accelerated inventory unit).	Pueblo Mountains	600

NOTE.—The inventory units listed above are under formal appeal to the Interior Board of Land Appeals (IBLA) as a result of the final initial inventory decisions, and in one case, an accelerated inventory decision. These inventory units will be subject to Interim Management Policy and Guidelines (IMP) until the IBLA issues a final decision. The IMP guidelines will remain in effect on those units remaining under wilderness review.

[1] The final decision for this unit represents a change from the proposed decision. Public comments received prompted a reconsideration of wilderness characteristics in the area, resulting in an increase in Wilderness Study Area acreage.

[2] The final decision for this unit represents a change from the proposed decision. Public comments received prompted

a reconsideration of wilderness characteristics in the area, resulting in a decrease in Wilderness Study Area acreage.

[3] Includes Lahontan Cutthroat Trout Natural Area.

[4] The proposed decision for this interstate unit cited total public land acreage in Nevada and the adjoining state. This figure represents only Nevada acreage. The final decision for the entire unit has not changed from the proposed decision.

[5] The acreage cited in the final decision differs from the proposed decision because of a more accurate acreage calculation.

[6] Includes Pine Creek Natural Area.

[7] A portion of this unit has been identified as a Wilderness Study Area, but the portion represented in this table was dropped from further wilderness consideration, because it lacks wilderness characteristics.

[8] The final decision for this unit represents a change from the proposed decision. Public comments received prompted a reconsideration of wilderness characteristics in the area, resulting in the identification of a Wilderness Study Area.

[9] Includes Heusser Mountain Bristlecone Pine Natural Area.

[10] Includes a portion of Pinyon Joshua Transition Natural Area.

[FR Doc. 80-34531 Filed 11-6-80 8:45 am]

BILLING CODE 4310-84-M

[INT DEIS 80-69]

Availability of Draft Environmental Impact Statement on Energy Transportation Systems, Inc. (ETSI) and Establishment of Public Review Period and Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of draft environmental impact statement of Energy Transportaion Systems, Incorporated (ETSI) Proposal. Establishment of 60-day Public Review and Comment Period and Location Sites and Dates for Public Meetings on the Document.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Bureau of Land Management has prepared an environmental impact statement on ETSI's proposed coal slurry pipeline. The proposed pipeline would originate in the Eastern Powder River region of Wyoming and cross Nebraska and Kansas to delivery points in Oklahoma, Arkansas, and Louisiana.

The proposed action would involve construction and operation of a 1,828-mile slurry transportation project. The project would comprise three coal slurry preparation plants, a water supply system (Niobrara County, Wyoming, well field); a 1,664-mile main slurry pipeline and slurry pump stations; nine dewatering plants; and ancillary facilities such as transmission lines microwave towers. The EIS also assesses the following alternatives: Market, Colorado route, Pipeline-Barge, Crook County Well Field, Oahe Reservior, coal cleaning, slurry pipeline water discharge, and no-action (all rail and rail-road-barge transportation). The Bureau has also established a 60-day public review and comment period and nine public meetings to receive public input and comment on the draft statement.

DATES: (1) Comments will be accepted until January 6, 1981.

(2) Public hearings will be held at the following places at 2:00 p.m. and 7:00 p.m.

Monday, December 1, State Mineral Board Conference Room, Natural Resources Building, 404 4th St., Baton Rouge, Louisiana.

Wednesday, December 3, Arkansas Game & Fish Commission, No. 2 Natural Resources Drive, Little Rock, Arkansas.

Thursday, December 4, Agricultural Center Auditorium, 4116 East 15th St., Room 107, Tulsa, Oklahoma.

Monday, December 8, Fort Hays State University, Black and Gold Room, Hays, Kansas.

Wednesday, December 10, Sterling City Auditorium, 120 So. 4th St., Sterling, Colorado.

Thursday, December 11, Holiday Inn, Junction I-80 & Highway 83, North Platte, Nebraska.

Monday, December 15, Rushmore Plaza Civic Center, 444 Mt. Rushmore Road North, Rapid City, South Dakota.

Tuesday, December 16, Parish Hall, Edgemont, South Dakota.

Wednesday, December 17, Niobrara County High School Auditorium, 5th & Iron St., Lusk, Wyoming.

Preregistration for people desiring to present testimony at the hearings is requested. Written comments and requests for hearing registration forms or a summary description of the ETSI project should be sent to: Richard E. Traylor, ETSI EIS Project Leader, Bureau of Land Management, Office of Special Projects, 555 Zang St., 3rd Floor East, Denver, Colorado 80228.

A limited number of single copies of the EIS may be obtained from the above address. Copies are available for inspection at the following locations:

Office of Information, Office of Special Projects, Bureau of Land Management, Interior Building, 18th and C Streets NW., Washington, D.C. 20240.

Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Copies will also be available at various libraries along the proposed route of the project. A complete list of these libraries may be obtained from the EIS Project Leader.

Dated: October 30, 1980

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 80-34446 Filed 11-4-80 8:45 am]

BILLING CODE 4310-84-M

Minnesota; Final Wilderness Inventory Decision—Minnesota Islands

In the September 17, 1980 **Federal Register**, the Bureau of Land Management (BLM) announced its final intensive wilderness inventory decision on 174 islands, totalling 701.21 acres, administered as BLM public lands in the State of Minnesota. The islands are located in 26 counties in eleven rivers and 47 lakes throughout the State.

The decision provided that, unless timely protests were received by the BLM Eastern States Director, 350 South Pickett Street, Alexandria, Virginia 22304, within a thirty-day period ending at 4:00 p.m., October 17, 1980, the decision would become *final*. No protests were received.

Under the authority of Section 603 of the Federal Land Policy and Management Act and in accordance with the guidelines in the September 27, 1978 *BLM Wilderness Inventory Handbook*, and BLM Organic Act Directive No. 78-61, Change 3, the final intensive wilderness inventory decision for the above units became effective October 17, 1980. The above public lands are no longer subject to BLM wilderness review and the management restrictions imposed by Section 603 of the Federal Land Policy and Management Act no longer apply.

Roger L. Hildebeidel,

Eastern States Director.

[FR Doc. 80-34778 Filed 11-6-80 8:45 am]

BILLING CODE 4310-84-M

National Park Service—Pacific Northwest Region

Crater Lake National Park: Public Meetings

Notice is hereby given that public meetings will be held concerning options for the future of Crater Lake Lodge.

The meetings will be held at the following times and places:

1. Klamath Falls, Oregon—December 9, 1980, 7:30 p.m., Meeting Room, Klamath Production Credit Association, 900 Klamath Avenue.

2. Medford, Oregon—December 10, 1980, 7:30 p.m., Oregon Room, Bureau of Land Management District Office, 3040 Biddle Road.

3. Salem, Oregon—December 11, 1980, 7:30 p.m., Conference Room, Room 122, State Transportation Building, Center and Capital Streets.

Anyone interested in obtaining a summary of options for the future of Crater Lake Lodge to be discussed at the meetings should contact National Park Service, Pacific Northwest Region, Fourth and Pike Building, Seattle,

Washington 98101. Attention: Daniel R. Kuehn, 206–442–4590. Written comments will be accepted up to 30 days following the public meetings.

Dated: October 24, 1980

Charles H. Odgegaard,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 80-34857 Filed 11-6-80; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given that the meeting of the Delta Region Preservation Commission previously announced for November 12, 1980, will be reconvened for a second session at 1:30 p.m. CST, November 19, 1980, at the Louisiana Department of Wildlife and Fisheries Building, 400 Royal Street, Room 220, New Orleans, Louisiana. All agenda items remain the same as published on October 31, 1980 (45 FR 72299).

Dated: November 4, 1980.

Jean Henderer,

Chief, Office of Cooperative Activities.

[FR Doc. 80-34858 Filed 11-6-80; 8:45 am]

BILLING CODE 4310-70-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 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 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 compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2–084

Decided: October 30, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 66753 (Sub-8F), filed October 27, 1980. Applicant: CHAIN HAULAGE, INC., 50 Middlesex Ave., Somerville, MA 02145. Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. 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 the Stop & Shop Companies, Inc., of Boston, MA.

MC 109633 (Sub-47F), filed October 23, 1980. Applicant: ARBET TRUCK LINES, INC., P.O. Box 697, Sheffield, IL 61361. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to the facilities used by Ralston Purina Company.

MC 110563 (Sub-318), filed October 23, 1980. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 W. Washington, Chicago, IL 60602. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between the facilities of members of the Trojan Shippers Association, at points in Miami County, OH, on the one hand, and, on the other, points in the U.S.

MC 110683 (Sub–188F), filed October 20, 1980. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, 1000 16th St. NW, Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between those points in the U.S., in and east of MN, SD, NE, KS, OK, and TX (except FL).

MC 118803 (Sub–22F), filed October 16, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Rd., Kings Park, NY 11754. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Sun Chemical Corporation, of Ft. Lee, NJ.

MC 123993 (Sub–84F), filed October 20, 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 *General Commodities* (except Household goods as defined by the Commission and Classes A and B explosives), between Alexandria, LA, on the one hand, and on the other Beaumont, Dallas and Houston, TX, and points in LA.

MC 125433 (Sub–429F), filed October 20, 1980. Applicant: F–B TRUCK LINE COMPANY, A CORPORATION, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson, (same address as applicant). Transporting (1)(a) *pollution control systems*, and (b) *parts and accessories* for pollution control systems, and (2) *metal products*, between points in MO, on the one hand, and, on the other, points in the U.S.

MC 125433 (Sub–430F), filed October 20, 1980. Applicant: F–B TRUCK LINE COMPANY, A CORPORATION, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting *such commodities* as are

dealt in or used by manufacturers of radios, televisions and recording and phonographic equipment, between points in IL, MO, PA, IN, and TX, on the one hand, and, on the other, points in the U.S. (including HI, but excluding AK).

MC 125433 (Sub-431F), filed October 20, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *plumbing fixtures*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of plumbing fixtures, between points in CA, FL, IL, IN, KY, MI, NV, and OK, on the one hand, and, on the other, points in the U.S. (including HI, but excluding AK).

MC 125433 (Sub-432F), filed October 20, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *equipment, materials, and supplies* used in the manufacture and distribution of swim pools, spas, and hot tubs, and (2) *chemicals and allied products*, as described in Item 28 of the Standard Transportation Commodity Code, between points in Los Angeles County, CA, on the one hand, and, on the other, points in the U.S.

MC 125433 (Sub-433F), filed October 20, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting *paving joints*, between Birmingham, AL, on the one hand, and, on the other, points in the U.S.

MC 125433 (Sub-435F), filed October 20, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers of electrical sound amplifying equipment, between points in OK, on the one hand, and, on the other, points in the U.S. (including HI, but excluding AK).

MC 125433 (Sub-438F), filed October 20, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *building materials*, and (2) *equipment, materials, and supplies*, used in the manufacture and distribution of the commodities in (1) above, between points in TX, on the one hand, and, on the other, points in the U.S.

MC 128413 (Sub-6F), filed October 21, 1980. Applicant: SEASON-ALL TRANSPORTATION COMPANY, a corporation, Rte. 119 South, Indiana, PA 15701. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Season-All Industries, Inc., of Indiana, PA.

MC 131023F, filed October 9, 1980. Applicant: INTERNATIONAL TRAVEL CONSULTANTS, INC., d.b.a. WINDWARD TRAVEL CENTER, 127 East Market St., York, PA 17401. Representative: Murray D. Friedman, (same address as applicant). To engage in operations as a *broker* at York, PA, in arranging for the transportation, by motor vehicle, *of passengers and their baggage in the same vehicle with passengers*, in round-trip special and charter operations, beginning and ending at York, PA, and extending to Harrisburg and Philadelphia, PA, Baltimore, MD, Washington, DC and points NY.

MC 139923 (Sub-80F), filed October 21, 1980. Applicant: MILLER TRUCKING CO., INC., P.O. Drawer "D", Stroud, OK 74079. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave, Park Ridge, IL 60068. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of infant formula and health care products (except commodities in bulk), between points in Campbell County, VA, on the one hand, and, on the other, those points in the U.S. in and west of MT, WY, CO, and NM.

MC 141873 (Sub-1F), filed October 17, 1980. Applicant: BERLIN TRANSPORTATION, INC., Rte. 5, Millersburg, OH 44654. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting *pallets and rough sawed lumber*, between points in the U.S. under continuing contract(s) with (a) Brenneman Lumber Co., of Jefferson, OH, (b) Noah Raber & Edward Raber, d/b/a Raber Lumber, of Charm, OH, (c) GRH Products, Inc., of Berlin, OH, and (d) Andy Weaver, d/b/a Plains Pallet Co., of Millersburg, OH. Condition: Applicant must submit a statement indicating how it proposes to satisfy the statutory criteria of contract carriage, i.e., either by (1) furnishing transportation service through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (2) furnishing transportation services designed to meet the distinct need of each individual customer, and if the latter, applicant must describe briefly the distinct need for which transportation services have been designed. The statement will be examined by a review board prior to issuance of any permit.

MC 142592 (Sub-111F), filed October 16, 1980. Applicant: H. L. STANSELL, INC., 1221 U.S. Alternate Hwy 19, Palm Harbor, FL 33563. Representative: David C. Venable, Suite 805, 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *foodstuffs*, (2) *paper and paper products*, (3) *metal articles*, (4) *plastic articles*, and (5) *such commodities* as are dealt in or used by bakeries, from points in the U.S. (except AK and HI), to points in FL.

MC 147193 (Sub-4F) filed October 21, 1980. Applicant: MARTIN RUITER, d.b.a., MARTIN'S FEED CO., P.O. Box 189, Custer, WA 98240. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Transporting *feed and feed ingredients*, between points in WA, OR, CA, UT, MT, and WY.

MC 149482F, filed October 15, 1980. Applicant: R. W. McDANIEL TRANSPORTATION CORP., 11280 Gratiot Avenue, Detroit, MI 48213. Representative: R. W. McDaniel (same address as applicant). Transporting *automotive parts*, between points in MI, IN, OH, KY, MD, DE, VA, KS, MO, TN, SC, WI, IL, PA, NY, NJ, WV, OK, IA, MN, NC, and AR.

MC 152232F, filed October 15, 1980. Applicant: TYLER TRANSPORTATION, INC., 3305 Grant Line Road, New Albany, IN 47150. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *general commodities* (except Classes A and B explosives and commodities in bulk, in tank vehicles), between points in the U.S., under continuing contract(s) with Pillsbury Company, of Minneapolis, MN.

MC 152302F, filed October 22, 1980. Applicant: CHARLES E. ARMES, 917 W. 9th St., Jonesboro, IN 46938. Representative: Robert W. Loser, 1101 Chamber of Commerce Bldg., Indianapolis, IN 46204. 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 G & T Industries of Indiana, Inc., of Evansville, IN, and Reeves Bros., Inc., Curon Division, of Cornelius, NC.

Volume No. OP4–111

Decided: October 31, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Carleton not participating.

MC 63417 (Sub-296F), filed October 23, 1980. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *household appliances*, and *materials, equipment and supplies* used in the manufacture and distribution of household appliances, between Greenville and Grand Rapids, MI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, WY, CO, and NM.

MC 89716 (Sub-56F), filed October 21, 1980. Applicant: DICK JONES TRUCKING, a Corporation, Box 956, Powell, WY 82435. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. Transporting *submergible pumping equipment, materials and supplies*, between points in WY and MT, on the one hand, and, on the other, points in CO, ID, KS, NE, ND, OK, SD, UT, and WA.

MC 99427 (Sub-51F), filed October 21, 1980. Applicant: ARIZONA TANK LINES, INC., 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in AZ, CA, CO, NM, NV, TX, and UT, on the one hand, and, on the other, points in the U.S.

MC 109397 (Sub-528F), filed October 22, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs, (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Harrison County, MS, on the one hand, and, on the other, points in the U.S.

MC 109397 (Sub-529F), filed October 22, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting (1) *rubber and rubber products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in King County, WA, on the one hand, and, on the other, points in the U.S.

MC 115557 (Sub-33F), filed October 24, 1980. Applicant: CHARLES A. McCAULEY, 308 Leasure Way, New Bethlehem, PA 16242. Representative: Larry D. McCauley (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 Los Angeles County, CA; Cook County, IL; Fayette County, KY; Armstrong, Clarion and Jefferson Counties, PA; Dallas and Hunt Counties, TX, and points in NJ and NY, on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 117427 (Sub-80F), filed October 17, 1980. Applicant: G. G. PARSONS TRUCKING CO., P.O. Box 1085, N. Wilkesboro, NC 28659. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting *furniture*, between points in Sumter County, SC, on the one hand, and, on the other, points in ID, MT, WA, and OR.

MC 119777 (Sub-505F), filed October 22, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85 East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *such commodities* as are used in the construction, maintenance, operation, renovation, removal and salvage of tracks and railroad right-of-ways (except in bulk, and classes A and B explosives), between points in the U.S.

MC 135197 (Sub-27F), filed October 24, 1980. Applicant: LEESER TRANSPORTATION, INC., P.O. Box 545, Palmyra, MO 63461. Representative: Leonard A. Jaskiewicz, 1730 M St. NW., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in IL, IN, IA, MN, MO, and NE, on the one hand, and, on the other, points in the U.S.

MC 138177 (Sub-11F), filed October 20, 1980. Applicant: BROWN TRUCKING, INC., 7622 Apple Valley Rd., Germantown, TN 38138. Representative: John Paul Jones, P.O. Box 3140, Front Steet Station, 189 Jefferson Ave., Memphis, TN 38103. Transporting (1) *commodities* in bulk, in dump vehicles, from points in Shelby and Fayette Counties, TN, to those points in the United States in and east of ND, SD, NE, KS, OK, and NM, and (2) *metals and alloys*, from points in Colbert and Jefferson Counties, AL, and points in Hickman and Marshall Counties, KY, to points in Fayette County, TN.

MC 146807 (Sub-23F), filed October 21, 1980. Applicant: S N W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Paul Seleski (same address as applicant). Transporting (1) *plastic sheeting* from Mountaintop, PA, to points in LA, TX, MO, and IL, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of (1) above, in the reverse direction.

MC 148576 (Sub-4F), filed October 20, 1980. Applicant: DOTSON TRUCKING CO., INC., 1220 Murphy Ave. SW., Atlanta, GA 30310. Represenative: Brian S. Stern, North Springfield Professional Center II, 5411–D Backlick Rd., Springfield, VA 22151. Transporting (1) *scrap materials*, and (2) *scrap metals*, from points in Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties, GA, to Gaston, SC.

MC 150447 (Sub-3F), filed October 20, 1980. Applicant: GSC TRANSPORT, INC., 166 National Rd., Edison, NJ 08817. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. 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 Boston, MA, Baltimore, MD, Wilmington, DE, New York, NY, Philadepphia, PA, and Norfolk and Newport News, VA, on the one hand, and, on the other, points in CT, DE, IL, MD, MA, NJ, NY, OH, PA, RI, and VA, restricted to shipments having a prior or subsequent movement by water.

MC 150567 (Sub-7F), filed October 21, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *plastic pipe and pipe fittings*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with R. G. Sloane Manufacturing Company, Inc., of Sun Valley, CA.

MC 150567 (Sub-8F), filed October 27, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting *general commodities*, between points in the U.S., under continuing contract(s) with Seaport Cooperative, Inc., of Portland, OR. Condition: To the extent the permit to be issued in this proceeding

authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issue.

MC 152107 (Sub-1F), filed October 7, 1980. Applicant: INTERPORT TRUCKING, INC., 860 McLester St., Elizabeth, NJ 07021. Representative: Ronald I. Shapss, 450 7th Ave., New York, NJ 10123. Transporting *chemicals and chemical containers*, between points in the U.S., under continuing contract(s) with Inland Chemical Corporation, of Ft. Wayne, IN.

Volume No. OP4–113

Decided: Oct. 31, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Jones not participating.

MC 63417 (Sub-295F), filed October 9, 1980, previously noticed in the FR issue of October 24, 1980, and republished this issue. Applicant: BLUE RIDGE TRANSFER CO, INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting (1) *new furniture and furniture parts*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in NC, SC, and VA, on the one hand, and, on the other, points in the U.S.

Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation, at applicant's written request, of authority held in MC–63417 and Subs thereunder which duplicate, in full or in part, the authority herein.

Note.—The purpose of this republication is to correct the territorial description.

MC 63417 (Sub-297F), filed October 23, 1980. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., restricted to traffic originating at or destined to the facilities of Rand McNally and Company.

MC 70557 (Sub-36F), filed October 21, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in and used by chain grocery and food business houses (except commodities in bulk), and (1) between the facilities of The McCarty-Holman Company, Inc. at points in FL and MS, and (2) from points in the U.S. (except AK and HI) to the facilities of The McCarty-Holman Company, Inc., at points in FL and MS.

MC 107107 (Sub-488F), filed October 21, 1980. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 N.W. 42nd Ave., Opa Locka, FL 33054. Representative: Sidney Alterman (same address as applicant). Transporting *such commodities* as are dealt in or used by grocery business houses, (a) between those points in the U.S. in and east of TX, OK, KS, NE, SD, and ND, on the one hand, and, on the other, points in AL, FL, GA, LA, MS, NC, and SC, and (b) between points in AL, FL, GA, LA, MS, NC, and SC.

MC 146807 (Sub-20F), filed October 20, 1980. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Edward F. V. Pietrowski, 3300 Birney Ave., Moosie, PA 18507. Transporting *coal*, from Wilkes Barre, PA, to points in WA, OR, CA, AZ, CO, TX, LA, FL, GA, NC, VA, MD, NY, ME, NH, VT, MA, OH, MI, MN, WI, IA, OK, KS, AR, MO, and DC.

MC 148647 (Sub-4F), filed October 27, 1980. Applicant: HI–CUBE CONTRACT CARRIER CORP., 5501 West 79th St., Burbank, IL 60459. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. 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 Dubuque Packing Company, of Dubuque, IA.

MC 152256 (Sub-1F), filed October 21, 1980. Applicant: GRAMMER INDUSTRIES, INC., P.O. Box 51, Grammer, IN 47236. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *fertilizer* from points in Floyd County IN, to points in KY, and those points in IL on and south of U.S. Hwy 36, restricted to traffic originating at the facilities of W. R. Grace & Company.

Volume No. OP4–115

Decided: Nov. 3, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Carleton not participating.

MC 70557 (Sub-37F), filed October 21, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *clay and clay products* and *materials, equipment and supplies* used in the manufacture and distribution of clay and clay products, between Olmsted, IL, and Paris, TN, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MO, MS, NC, OK, SC, TN, TX, VA, and WV.

MC 123476 (Sub-60F), filed October 23, 1980. Applicant: CURTIS TRANSPORT, INC., 23 Grandview Industrial Ct., Arnold, MO 63010. Representative: David G. Dimit (same address as applicant). Transporting (1) *plastic and plastic products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1) above (except commodities in bulk), between the points in the United States in and east of MT, WY, CO, OK and NM. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written requests of all Certificated authority under MC–123476. (Sub-Nos. 14, 15, 17, 18, 22, 24, 27, 30, 31, 34, 36, 37, 39, and 45).

MC 135936 (Sub-31F), filed October 27, 1980. Applicant: C & K TRANSPORT, INC., Box 205, Webster City, IA 50595. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Transporting *chemicals* in containers, from points in Cook and Lake Counties, IL, Atlanta, GA, Baltimore and Barberton, OH, Berkeley Springs and Natrium, WV, Charleston, SC, Copperhill and Memphis, TN, Kansas City and Lawrence, KS, Midland and Detroit, MI, and Minneapolis, MN, to Omaha, NE and Sioux City, IA.

MC 140806 (Sub-6F), filed October 28, 1980. Applicant: HERMS TRUCKING, INC., 620 Pear St., Trenton, NJ 08648. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *wax*, between points in the U.S., under continuing contract(s) with Moore & Munger Marketing, Inc., of Fairfield, CT.

MC 146337 (Sub-F), filed October 21, 1980. Applicant: NEW WEST TRANSPORTATION, INC., 17090 S. 54th St., Chandler, AZ 85224. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting (1) *tractors* (except truck tractors) and (2) *attachment parts* and accessories therefor, when moved in mixed loads with commodities in (1) above, from points in AZ to points in AZ, CA, NV, NM, and UT, restricted to shipments having a prior movement by rail.

MC 146637 (Sub-6F), filed October 27, 1980. Applicant: YANKEE REFRIGERATED XXPRESS, INC., 5500 Tacony St., Philadelphia, PA 19137. Representative: Eugene D. Anderson, 910 Seventeenth St., N.W., Suite 428, Washington, D.C. 20006. Transporting (1)

rubber or miscellaneous plastic products, as described in Item 30 of the Standard Transportation Commodity Code Tariff, and (2) *supplies* used in the manufacture and distribution of commodities in (1) above, between points in Kern and Yolo Counties, CA; Fairfield County, CT; Newton County, GA; Will and Morgan Counties, IL; Middlesex County, MA; Warren County, NJ; Wayne, Ontario and Monroe Counties, NY; Pottawatomie County, OK; Belle County, CO; and points in TX, on the one hand, and, on the other, points in the U.S.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34742 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before November 28, 1980. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, members Krock, Williams, and Taylor.

MC-FC-78441. By decision of October 6, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 on reconsideration approved the transfer to Inland Transport, Inc., of Fort Scott, KS, of Certificate No. MC-145123 issued August 11, 1978, to Zirkel Trucking, Inc., of Fort Scott, KS, authorizing the transportation of iron and steel articles (except commodities, the transportation of which because of their size or weight require the use of special equipment), from the facilities of Keystone Steel & Wire Division, Keystone Consolidated Industries, Inc., at or near Peoria, IL, to points in Nevada, Utah, Idaho, California, Arizona, Oregon, and Washington, restricted to traffic originating at the named origin and destined to points in the named destination states. Representative is: Erle W. Francis, Attorney, Suite 719-700 Kansas Avenue, Topeka, KS 66603.

MC-FC-78733. By decision of October 2, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 5 approved the transfer to Brown Line, Line, of Certificate No. MC ???? issued to January 15, 1973 to Everett Trucking, Inc., and to be issued to Western Carriers, Inc., in No. MC-FC-77709 *Western Carriers, Inc., Transferee and Everett Trucking, Inc., Transferor* (not printed, decided November 13, 1978), authorizing the transportation of: Wine and Malt beverages, from points in California to Bellingham, Burlington, Everett and Mount Vernon, WA. Representative is: George R. LaBissoniere, Attorney At Law, 15 S. Grely Way, Suite 233, Perton, WA 98055.

MC-FC-78748. By decision of September 30, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 5 approved the transfer to Atlantic & Western Transportation Company, Inc. of Permit No. MC-108467 (Sub-No. 1) issued December 2, 1954 to Richards & Associates, Inc. authorizing the irregular route transportation of such materials and equipment used in, or in connection with the construction, operation, repair maintenance or dismantling of telephone and telegraph lines, between points in AL, GA, FL, MS, LA, NC, SC, KY, and TN. Transferee's representative is: Robert W. Gerson, Esq., Tautman, Sanders, Lakeman & Ashmore, 1400 Candler Building, 127 Peachtree Street NE., Atlantic, GA 30303. Representative is: Frank D. Jones, P.O. Box 1000, Carrollton, GA 30017.

MC-FC-78764. By decision of October 1, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 11132, Review Board Number 5 approved the transfer to Ewing Gary McDowell, William Gregory McDowell and Ronald Dwayne McDowell d.b.a. McDowell Trucking, Elizabeth, IL, of Certificate No. MC-142778 (Sub-Nos. 2 and 4) issued Sept. 25, 1980 to Don Baker, McLeansboro, IL, authorizing the common carrier transportation of Irregular Routes: Sub-4, *coal*, in bulk, in dump vehicles, from Saline, Franklin, Jefferson, Williamson, Ballatin, Marion, Hamilton, Hardin, Pipe, Johnson, Union, Jackson, White, Wabash, Perry, and Washington Counties, IL, to points in Vigo, Vermillion, Knox, Hamilton, Floyd, and Gibson Counties, IN; Sub-2, Irregular Routes: *coal*, in bulk, in dump vehicles, from the Sahara minesite, located at or near Carrier Mills, Saline County, IL, and the Freeman minesite, located at or near Waltonville, Jefferson County, IL, to Evansville, IN, with no transportation for compensation on return except as otherwise authorized. Representative is: Robert T. Lawley, (217) 544-5468, 300 Reisch Bldg., Springfield, IL 62701.

MC-FC-78770. By decision of October 7, 1980 issued under 49 U.S.C. 10926 and the transfer rules of 49 CFR 1132, Review Board Number 5 approved the transfer to Motor Transport of South Dakota, Inc., of Sioux Falls, SD, of Certificate No. MC-109538 and (Sub-Nos. 8, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 28, 34, and 38) issued to Chippewa Motor Freight, Inc., of Eau Claire, WI, authorizing the transportation of general and specified commodities, over regular and irregular routes, between points in KY, IA, IL, IN, MN, OH, SD, and WI. Representative: H. Lauren Lewis, P.O. Box 850, Sioux Falls, SD, 57105.

Notes.—(1)TA has not been filed. (2) Transferee presently holds no authority from the Commission.

MC-FC-78775. By decision of 10/17/80, issued under 49 U.S.C. § 10926 and the transfer rules at 49 C.F.R. § 1132, Review Board No. 5 approved the transfer to Rappahannock Motor Lines, Inc. of Lively, Virginia of a portion of Certificate No. MC-99213 (Sub-No. 1), issued December 23, 1968 and of Certificate No. MC-99213 (Sub-No. 6), issued December 16, 1964 to Virginia Freight Lines of Kilmarnock, VA, authorizing the transportation of general commodities with exceptions, over

regular routes (1) between Baltimore, MD, and Burgess Stores, VA, serving the intermediate points of Montross and Owen, VA, intermediate points sought of the Westmoreland-Richmond County line, and serving off-route points in Northunberland, Richmond, and Lancaster Counties, VA. From Baltimore over Maryland Highway 3 (formerly U.S. Highway 301) to junction U.S. Highway 301, thence over U.S. Highway 301 across the Potomac River near Morgantown, MDS, to junction Virginia Highway 3, thence over Virginia Highway 3 to Warsaw, VA, thence over U.S. Highway 360 to Burgess Store, and return over the same route. RESTRICTION: Restricted against the transportation of shipments moving from and to Dahlgren, Virginia; (2) between Tappahannock, VA, and Baltimore, MD, serving no intermediate points: from Tappahannock over U.S. Highway 360 to Warsaw, VA, thence over Virginia Highway 3 to junction U.S. Highway 301, thence over U.S. Highway 301 to junction Maryland Highway 3 (formerly U.S. Highway 301) and thence over Maryland Highway 3 to Baltimore, and return over the same route; and (3) between Office Hall, VA, and Port Royal Cross Roads, VA, as an alternate route for operating convenience only, serving no intermediate points: from Office Hall over U.S. Highway 301 to Port Royal Cross Roads, and return over the same route, and over irregular routes between points in Lancaster, Northumberland, Richmond, and Westmoreland Counties, VA, on the one hand, and, on the other, Washington, D.C., and Baltimore, MD. Representative is: James W. Lawson, 1511 K Street, N.W., Washington, D.C. 20005. Transferee presently holds no authority from this Commission. Application has been filed for temporary lease under 49 U.S.C. § 11349.

MC-FC-78778. By decision of October 2, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to VALLEY TRANSPORTATION SERVICE, INC., of Mission, TX, of Permit No. MC-136005 (Sub-Nos. 1 and 4), issued December 7, 1973, and August 30, 1978, respectively, to JACK D. WHATLEY and ROBERT T. CALHOUN, a partnership, d.b.a. MAGIC VALLEY REFRIGERATED EXPRESS, of McAllen, TX, authorizing the transportation of (1) *canned citrus juice* and *citrus pulp livestock feed*, in bags, from the facilities of the Texas Citrus Exchange at Harlingen and Mission, TX, to points in OK, AR, KS, MO, IL, NE, IA, SD, MN, WI, ND, and CO, (2) *canned citrus juice*, from the facilities of Texas Citrus Exchange at Harlingen and Mission, TX, to points in NM, AZ, CA, IN, and MI, and (3) *frozen concentrated citrus products*, in containers, in mixed loads with canned citrus juice, from the facilities of Texas Citrus Exchange at Harlingen, Mission, Brownsville and McAllen, TX, to points in OK, AR, MO, KS, IL, NE, IA, SD, MN, WI, ND, CO, NM, AZ, CA, IN, and MI, under continuing contract(s) in (1), (2), and (3) above the Texas Citrus Exchange of McAllen, TX. Representative: Kenneth R. Hoffman, P.O. Box 2165, Austin, TX 78768. Transferee holds no authority from this Commission. However, transferee is under common control with L.C.W. Trucking, Inc., which holds contract carrier authority under MC-138578 and sub-numbers thereunder, and common carrier authority under MC-138686 and sub-numbers thereunder.

Note.—This application was previously docketed No. MC-F-14415F, and a TA application was filed under that number.

MC-FC-78780. By decision of October 14, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to JOE G. DIGGES, an individual, of Hendersonville, TN, of Certificate No. MC-126350 issued February 20, 1970, to RALPH GREEN and JACK NETTER, a partnership, d.b.a. GREEN & NETTER, of Memphis, TN, authorizing the transportation of milk products, milk byproducts, *fruit drinks, and fruit segments*, in containers, and *milk*, in containers, when transported in the same vehicle and at the same time with other commodities set forth herein, all in vehicles equipped with mechanical refrigeration, from the plant sites of Sealtest Foods Division, Kraftco Corporation at Memphis, TN, to points in AR, MS, and that part of MO on, south, and east of a line beginning at the Mississippi River, and extending westerly along U.S. Hwy 60 to junction U.S. Hwy 67 to the AR-MO state line, including points on the specified hwy portions, subject to the following condition: service shall be limited to the transportation of shipments originating at the origin points specified above. Representative is: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137.

Note.—Transferee presently holds no authority from the Commission.

MC-FC-78790. By decision of 10-24-80 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to FALICE TRUCKING SERVICE, Inc. of Rome, NY, of Certificate No. MC-13676 issued August 25, 1978 to FRANK J. & ROLLIN P. NICHOLS TRUCKING CO. INC., of Rome, NY, authorizing the transportation by irregular routes of *household goods* between Syracuse, NY, and points in New York within 50 miles of Syracuse, on the one hand, and, on the other, points in NY, MA, CT, PA, NJ, IL, IN, ME, MD, MI, NH, OH, RI, VA and DC. Representative is: Murray J. S. Kirshtein, 118 Bleecker Street, Utica, NY 13501.

MC-FC-78791. By decision of 10/14/80 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 5 approved the transfer to Bailey's Express, Inc. of the following certificates and authorities held by and in the name of Mutual Transportation, Inc., Baltimore, MD: (1) Certificate No. MC-92068, issued November 7, 1963, authorizing the transportation, in interstate or foreign commerce, of general commodites, over regular routes, from Baltimore, MD , to Alexandria, VA, serving the intermediate and off-route points of Laurel, Hyattsville, College Park, Chevy Chase, and Bethesda, MD; Washington, DC, and Bailey's Cross Roads, Clarendon, Del Ray, and Rosslyn, VA, for delivery only: from Baltimore over US Highway 1 to Alexandria, and return over the same route; (2) Certificate No. MC-92068 (Sub-No. 3), issued September 11, 1968, authorizing the transportation, over irregular routes, in interstate or foreign commerce, of general commodities, except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, from the facilities of Mutual Pool Car Agency in Washington, DC, to the City of Fairfax, VA, and Baltimore and Annapolis, MD; (3) Certificate No. MC-92068 (Sub-5), issued April 24, 1970, authorizing the transportation, over irregular routes, in interstate or foreign commerce, of general commodities, except those of unusual value, packinghouse products, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points in the Washington, DC, Commercial Zone, as defined by the Commission; (4) Certificate No. MC-92068 (Sub-No. E1), published August 15, 1974, authorizing the transportation, over irregular routes, in interstate or foreign commerce of general commodities (except those of unusual value, packinghouse products, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those

injurious or contaminating to other lading), from points in the Washington, DC, Commercial Zone as defined by the Commission to Baltimore, MD; (5) Certificate No. MC-92068 (Sub-No. E2), published August 15, 1974, authorizing the transportation, over irregular routes, in interstate or foreign commerce of general commodities (except those of unusual value, packinghouse products, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), from points in Washington, DC, Commercial Zone as defined by the Commission to Annapolis, MD; (6) Certificate No. MC-92068 (Sub-No. 10), issued January 9, 1975, authorizing the transportation, over irregular routes, in interstate or foreign commerce, of (a) such commodities as are dealt in by retail and discount department and chain stores, from the facilities of Mutual Transportation, Inc., at Baltimore, MD, to the stores and facilities (i) of Mammoth Mart, Inc., at Lexington Park and Waldorf, MD, and Lower Paxton Township, PA, and (ii) of Zayre Corp., in Woodbridge, VA; and (b) returned shipments of the commodities in (a) above, from the stores and facilities (i) of Mammoth Mart, Inc., at Lexington Park, Waldorf, and, at or near Bel Air, MD, and Lower Paxton Township, PA, and (ii) of Zayre Corp., at Woodbridge, VA, to the facilities of Mutual Transportation, Inc., at Baltimore, MD; (7) Certificate No. MC-92068 (Sub-No. 12), issued January 7, 1976, authorizing the transportation, over irregular routes, in interstate or foreign commerce, of such commodities as are dealt in by department stores (except in bulk), from the facilities of Mutual Transportation, Inc., in the District of Columbia, to the facilities of WOOLCO Department Store, Division. F. W. Woolworth Company, located at or near Woodbridge, VA; (8) Certificate No. MC-92068 (Sub-No. 14), issued May 17, 1976, authorizing the transportation, over irregular routes, in interstate or foreign commerce, such commodities as are dealt in or used by chain and department stores, from the facilities Mutual Transportation, Inc., at Washington, DC, to the facilities of the K Mart Store of S. S. Kresge Company at the intersection of US Highway 301 and MD Highway 424 near Crofton, MD; and from the facilities of Mutual Transportation, Inc., at Baltimore, MD, to the facilities of the K Mart Store of S. S. Kresge Company at the intersection of MD Highway 2 (Governor Richie Highway) and Jumpers Hole Road to Anne Arundel County, MD; (9) Certificate No. MC-92068 (Sub-No. 17), issued March 15, 1977, authorizing the transportation, over irregular routes, in interstate or foreign commerce, of (a) such commodities as are dealt in or used by retail and discount department stores, from the facilities of Mutual Transportation, Inc., at Baltimore, MD, to the facilities of Mammoth Mart, Inc., at Odenton, MD, and the facilities of the K Mart Store of S. S. Kresge Company, at the intersection of MD Highway 3 and 424, near Crofton, MD; and (b) returned shipments of the commodities in (a) above, from the facilities of Mammoth Mart, Inc., at Odenton, MD, and from the facilities of the K Mart Stores of S. S. Kresge Company, at the intersection of MD Highways 3 and 424, near Crofton, MD, to the facilities of Mutual Transportation, Inc., at Baltimore, MD; (10) Certificate No. MC-92068 (Sub-No. 19), issued April 6, 1978, authorizing the transportation, over irregular routes, in interstate or foreign commerce, (a) such commodities as are dealt in or used by retail and discount department stores, from the facilities of Mutual Transportation, Inc., at Baltimore, MD, and Washington, DC, to (i) the facilities of the K Mart Stores of S. S. Kresge Company, at Frederick, Hagerstown, and Lexington Park, MD, and Fredericksburg and Manassas, VA; (ii) the facilities of the S. S. Kresge Store of the S. S. Kresge Company at Hagerstown, MD; (iii) the facilities of the Zayre Corporation Stores at Frederick and Hagerstown, MD; (iv) the facilities of the Woolworth Stores of F. W. Woolworth Company at Hagerstown, MD, and Manassas, VA; and (v) the facilities of the Woolco Stores of F. W. Woolworth Company, at Frederick, MD, and Fredericksburg, VA; and (b) returned shipments of the commodities named above, from the destination points there named to the origin points there named; and (11) Certificate No. MC-92068 (Sub-No. 20F), issued December 8, 1978, authorizing the transportation, over irregular routes, in interstate or foreign commerce, of such commodities as are dealt in or used by retail and discount department stores, (a) between the facilities of Mutual Transportation, Inc., at Baltimore, MD, and Washington, DC, on the one hand, and, on the other, the facilities of the Woolworth stores of F. W. Woolworth Company, at Frederick and Westminster, MD, and Fredericksburg, VA; and (b) between the facilities of Mutual Transportation, Inc., at Baltimore, MD, on the one hand, and, on the other, the facilities of the K Mart Stores of K Mart Corporation, at Elkton and Salisbury, MD. Representative is: Edward N. Button, 580 Northern Avenue, Hagerstown, MD 21740, (301) 739-4860.

MC-FC-78792. By decision of October 10, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to C. E. Myers & Sons Trucking Co., Inc., of Kamay, TX, of Certificate No. MC-55981 (Sub-No. 3) issued 5/17/73 to Rayford Sadberry, of Holliday, TX, authorizing the transportation of machinery, materials, supplies and equipment used on oilfield development, between points in OK and points in TX on and west of U.S. Hwy. 81, earthdrilling machinery and equipment and machinery, equipment, materials, supplies and pipe incident to oilfield development (Mercer commodities), between points in OK, and points in TX on and west of U.S. Hwy. 81. Representative is: Barry J. Brooks, 2340 Fidelity Union Tower, Dallas, TX 75201. Transferee is not a carrier. TA lease is not sought.

MC-FC-78797. By decision of October 14, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Elmer M. Rabel, an individual, of Box 59, R.D. #2, Olyphant, PA 18447 of Certificate No. MC-102939 issued June 25, 1942 to Michael Rabel and George Rabel, a partnership, doing business as, Rabel Brothers of Box 457 #1, Olyphant, PA 18447 authorizing the transportation of *household goods* as defined in *Practices of Motor Common carriers of Household Goods*, 17 M.C.C. 467, over irregular routes, between Olyphant, PA, and points and places within three miles of Olyphant, on the one hand, and, on the other, points and places in Connecticut, New York, New Jersey, and Maryland, traversing the District of Columbia for operating convenience. TA has not been filed. Representative: Herbert R. Nurick, Esquire McNess, Wallace & Nurick, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108.

MC-FC-78798. By decision of October 9, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to Green Line Charters Ltd., of Vancouver, British Columbia, Canada, of Certificate No. MC-141875 (Sub-No. 2) issued 12/12/77 to Currie Bus Lines Ltd. (Price Waterhouse Limited, Trustee), of Vancouver, British Columbia, Canada, authorizing the transportation of passengers and their baggage, in special and charter operations, between ports of entry on the U.S.-Canada Boundary line, located at points in ID and WA, on the one hand, and, on the other, points in

AZ, CA, ID, NV, NM, OR, UT, and WA, restricted to traffic originating and terminating at Merritt or Princeton, British Columbia, Canada. Representative is: Henry Winters, 525 Evergreen Bldg., 15 S. Grady Way, Renton, WA 98055. Transferee holds no authority. TA lease is not sought.

MC-FC-78804. By decision of October 10, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to Thomas P. Kourafas and Laura J. Noven doing business as Esposito Moving Co. of Certificate No. MC-90767 issued December 6, 1971 to Joseph A. Esposito, Gennaro Esposito and Albert Esposito, doing business as Joseph A. Esposito & Co. authorizing the transportation of *used store, office and restaurant fixtures*, between Boston, MA, and points within 5 miles of Boston, on the one hand, and, on the other, points in New Hampshire and Rhode Island. Representative is: George C. O'Brien, 12 Vernon Street, Norwood, MA 02062. Transferee presently holds no authority from the Commission.

MC-FC-78807. By decision of October 14, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to RANDELL BUS COMPANY of Galesburg, IL, of Certificate No. MC-140279 (Sub-No. 1) issued October 11, 1977 to A-1 CHARTER SERVICE, of Anawan, IL, authorizing the transportation of *passengers and their baggage*, in round-trip special and charter operations, beginning and ending at points in Henry and Bureau Counties, IL, and extending to points in MI, IN, KY, TN, MO, WI, IA, and MN. Representative: Edward F. Karas, 1 S 376 Summit Avenue, Suite 2A, Oakbrook Terrace, IL 60181.

Note.—(1) TA has not been filed. (2) Transferee holds motor common carrier authority pursuant to Certificate No. MC-134822.

MC-FC-78815. By decision of October 18, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to J. L. COUTURE TRUCKING, INC. of West Gardiner, ME of permit No. MC-12377 (Sub-No. 1) issued September 18, 1975, to Michael W. Wood of *merchandise* as is dealt in by retail drugstores, from Winslow, ME, to Portsmouth, NH, subject to the following restrictions: The operations are limited to a transportation service to be performed under a continuing contract or contracts with LaVerdure's Super Drug Store of Winslow, ME. Representative is: Gregory J. Farris, 251 Water Street, Gardiner, ME 04345. TA application has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34747 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before November 28, 1980. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, members Krock, Taylor, and Williams.

MC-FC-78706. By decision of October 1, 1980, issued under 49 U.S.C. 1926 and the transfer rules at 49 CFR 1132 Review Board Number 5 approved the transfer to Washington-California Express, Inc., of Los Angeles, CA, of Permit/Certificates No. MC-129239 and MC-133796 (all subs) to Washington-California Express, Inc., of Los Angeles, CA, authorizing the transportation of named commodities including fireworks, heating, ventilation, and air conditioning enclosures, skis, paint, plastic, automotive parts, dampers, notions and novelties, electric heating elements, electric lamps, rope, such merchandise as is dealt in by department stores, candy and confectionery, from and to name points in various states subject to the following conditions: Representative is: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. Transferee holds authority in MC-144584. TA lease not sought.

MC-FC-7811. By decision of October 10, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to Gazda Moving Co., Inc., of that portion of Certificate No. MC-78643 acquired by BN Transport, Inc., pursuant to No. MC-F-13527 authorizing the transportation of *Household goods*, as defined by the Commission, and emigrant movables, between points in North Dakota, on the one hand, and on the other, points in South Dakota, Minnesota, Wisconsin, Iowa, Illinois, Ohio, Nebraska, and Montana. Between points in South Dakota, Minnesota, Wisconsin, Iowa, Illinois, Ohio, Nebraska, and Montana. Representatives: James E. Ballenthin for Transferee, 630 Osborn Building, St. Paul, MN 55102. Cecil L. Goettsch for Transferor, 11th Floor Des Moines Building, Des Moines, IA 50307.

MC-FC-78812. By decision of October 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to Crossriver Industries, Inc. of Certificate No. MC-125627 issued (date) July 21, 1964, to I&L Trucking Inc. authorizing the transportation of (1) *electrical, gas and household appliances, sinks and cabinets*, crated and uncrated, between the site of Sussman & Spiegel Distribution Center, Inc., Jersey City, NJ, on the one hand, and on the other, points in that part of Connecticut on and south of US Highway 44, and that part of New York on and south of a line beginning at the Massachusetts-New York State line and extending along US Highway 20 to Cazenovia, NY, and on and east of a line beginning at Casenovia, NY, and extending along New York highway 13 to junction New York highway 14 north of Elmira, NY, and then along New York highway 14 to the New York-Pennsylvania State line. (2) *Electrical, gas and household appliances, sinks and cabinets*, uncrated and crated when

moving in mixed loads in the same vehicle, between the site of the Sussman & Spiegel Distribution Center, Inc., Jersey City, NJ, on the one hand, and, on the other, Philadelphia PA, Washington, DC, and points in Maryland. Representative is: Harold Reckson, Registered Practitioner, 33–28 Halsey Road, Fairlawn, NJ 07410. Application has been filed for temporary lease under 49 U.S.C. § 11349.

Agatha L. Mergenovich,
Secretary.

Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49* U.S.C. §§ 11344 and 11349. Those rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonally to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.240(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, in accordance with 49 C.F.R. 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided October 29, 1980.

By the Commission, Review Board #5, members Krock, Taylor and Willaims. (Board member Taylor not participating in MC–F–14491.)

MC–F–14490F, filed October 14, 1980. TIGER TRUCKING GROUP, INC. (Tiger Trucking) (1888 Century Park East, Los Angeles, CA 90067)—Control—DOHRN TRANSFER COMPANY (Dohrn) (4016—9th Street, Rock Island, IL 61201); and HALL'S MOTOR TRANSIT COMPANY (Hall's) (6060 Carlisle Pike, Mechanicsburg, PA 17055)—Merger—DOHRN TRANSFER COMPANY (Dohrn). Representatives: Edward G. Bazelon and Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603, and Thomas F. Godfrey, 14 Wall Street, New York, NY 10005. Tiger Trucking seeks authority to acquire control of Dohrn through the purchase by Tiger Trucking of all the issued and outstanding capital stock of Dohrn. Further, Hall's seeks authority for the merger, subsequent to the acquisition of Dohrn's stock by Tiger Trucking, of all the operating rights and property of Dohrn into Hall's for ownership, management, and operation. The shares of Dohrn stock outstanding and held by Tiger Trucking immediately prior to the effective time of the meger will be cancelled and surrendered to Hall's. Tiger International, Inc., a non-carrier and sole stockholder of both Tiger Trucking and Hall's, seeks authority to acquire control of Dohrn and Dohrn's rights and properties through these transactions.

The operating rights to be acquired by Hall's are contained in certificates issued to Dohrn in Docket No. MC–43421 and sub-numbers thereunder and authorize the transportation of general commodities, with the usual exceptions, over a network of regular routes in the States of MN, IA, MO, OK, TX, WI, IL, IN, MI, OH, KY, NY, and MA.

Tiger Trucking holds no anthority from the Commission. Halls operates as a common carrier in interstate or foreign commerce pursuant to certificates in MC–67646 and sub-numbers thereunder, transporting general commodities, with the usual exceptions, basically over regular routes in the States of MN, WI, IL, IN, OH, WV, PA, NY, MA, CT, RI, NJ, DE, MD, VA, KY, MI, and DC.

Notes.—(1) Application for temporary authority has been filed. (2) A directly related application under 49 U.S.C 11301 and 11302 has been filed in FD–29501, *Hall's Motor Transit Company—Assumption of Obligations and Liabilities.* Hall's seeks authority to assume Dohrn's liabilities including obligations of a total principal amount not to exceed $11,300,000. Hall's will assume the balance on Dohrn's promissory notes which were issued pursuant to FD–27333, FD–28399, FD–27939, FD–27627, FD–27135, and FD–28859, and assume the obligations and liabilities of Dohrn as guarantor in respect to an Industrial Development Bond which was issued pursuant to FD–29287. Condition: Tiger International, Inc., a non-carrier holding company, shall be considered a carrier within the meaning of 49 U.S.C. 11348 and is subjected to the requirements of 49 U.S.C. 11302 for those issuances of securities and assumptions of obligations which may relate to or affect the activities of its carrier subsidiaries. Regarding the reporting requirements of 49 U.S.C. 11145, Tiger International, Inc., need only file such special reports as the Commission may from time to time require. Tiger International, Inc., is not made subject to the accounting requirements of 49 U.S.C. 11142.

MC–F–14491F, filed October 15, 1980. COLUMBINE CARRIERS, INC. (Columbine)—Merger—CENTURY MOTOR LINES, INC. (Century) (both of Box 66, South Bend, IN 46624). Representative: Charles J. Kimball, 350

Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Columbine seeks authority to merge the interstate operating rights and property of Century into Columbine for ownership, management, and operation. Kenneth D. Rudy, who owns and controls Columbine, and Kenneth D. Rudy and David A. Weyhrich, who own and control Century through stock ownership, seek authority to continue to control the unified rights of Columbine and Century through this transaction. Columbine controls Century pursuant to authorization granted in MC-F-14213F. The interstate operating rights to be merged into Columbine are contained in Century's certificates issued in MC-144621 and sub-numbers thereunder, which authorize the transportation, as a motor common carrier, over irregular routes, as follows: (1) *food, food products, and food ingredients*, from the facilities of Archer Daniels Midland Company, at or near Decatur, IL, to points in CT, DE, ME, MD, MA, NH, NY, OH, NC, NJ, PA, RI, TN, VT, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (2) *commodities* as are dealt in or used by manufacturers and distributors of surgical supplies, medical supplies, and health care supplies (except commodities in bulk), from the facilities of Parke Davis Company, Inc., at or near Greenwood, SC, to points in AZ, CA, CO, ID, NV, NM, OR, TX, UT, and WA. (3) *such commodities* as are dealt in or used by manufacturers and distributors of surgical supplies, medical supplies, and health care supplies (except commodities in bulk), between the facilities of Parke Davis Company, Inc., at or near Greenwood, SC, on the one hand, and, on the other, points in the United States (except AK, HI, and SC). (4) *surgical, medical and health care products and supplies*, (a) between points in Middlesex County, NJ, Will and Cook Counties, IL, San Mateo County, CA, and Grayson County, TX, and (b) from Grayson County, TX to Denver, CO. (5) *frozen foodstuffs*, from the facilities of Tandem Associates, at or near Santa Maria, CA, to those points in the United States in and east of MN, IA, MO, AR, LA, and TX. (6) *meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at or near Cherokee, Des Moines, and Cedar Rapids, IA, and Albert Lea, MN, to points in CA, restricted to the transportation of traffic originating at the above-named origins and destined to the named destinations. Columbine holds authority pursuant to its Permits in MC-135185 and sub-numbers thereunder, to operate as a motor contract carrier, in interstate or foreign commerce, serving eight shippers, in the 48 adjacent States.

Note.—Application for temporary authority has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34751 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket Nos. 29450 (Sub-1) etc.]

Iowa Falls Western Holding Co. et al.; Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Co. et al.

Finance Docket No. 29450 (Sub-No. 1), Iowa Falls Western Holding Company—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) between Iowa Falls and Sibley, IA; Finance Docket No. 29451 (Sub-No. 1), Royal-Manson Shippers' Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) between Royal and Manson, IA; Finance Docket No. 20459 (Sub-No. 1), Gateway Railroad—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, trustee) Lines in Iowa; Finance Docket No. 29470 (Sub-No. 1), Mid-States Port Authority—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) between Denver, CO and McFarland, KS; Finance Docket No. 29471 (Sub-No. 1), Little Rock and Western Railway Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) between North Little Rock and Perry, AR; Finance Docket No. 29473 (Sub-No. 1), Southeast Iowa Shippers Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) between Fruitland and Burlington, IA; Finance Docket No. 29474, Regional Transportation Authority (Illinois)—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) Chicago/Joliet Commuter Line; Tece Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) in Texas, Oklahoma, and Kansas; Finance Docket No. 29479, Des Moines Metropolitan Transit Authority—purchase (portion)—Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, trustee); Finance Docket No. 29480, Arkansas Transportation Commission and Oklahoma Department of Transportation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, trustee) in Oklahoma, Tennessee, Arkansas, and Louisiana.

AGENCY: Interstate Commerce Commission.

ACTION: Proceedings rescheduled.

SUMMARY: The Commission is granting the petition of the Chicago and North Western Transportation Company in part, and is rescheduling these proceedings. The prior deadlines for supplementing the applications, and filing comments and evidence are vacated.

DATES: 1. By December 2, 1980 all of the titled applications in these proceedings shall be completed. Additionally, all other applications seeking to acquire any of the same lines sought in the titled proceedings shall be filed on this date.

2. By December 22, 1980 verified statements supporting or opposing all proposals must be filed.

3. By January 6, 1980 verified statements in reply must be filed.

ADDRESS: The original and 10 copies of each statement should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, 12th and Constitution Ave. NW., Washington, D.C. 20423. Attn.: RITEA Acquisitions.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7026.

SUPPLEMENTARY INFORMATION: The Chicago and North Western Transportation Company (C&NW) has filed petitions to intervene and for reconsideration of the decisions served September 22, 1980 and published in the **Federal Reister** of October 1, 1980, setting procedural time tables in Finance Docket No. 29450 (Sub-No. 1), Finance Docket No. 29451 (Sub-No. 1), Finance Docket No. 29459 (Sub-No. 1), and Finance Docket No. 29479. C&NW also filed a supplement to the petition. Replies were filed in Finance Docket Nos. 29450 (Sub-No. 1) and 29459 (Sub-No. 1).

In these cases, as well as, Finance Docket No. 29470 (Sub-No. 1), Finance Docket No. 29471 (Sub-No. 1) Finance Docket No. 29473 (Sub-No. 1), Finance

Docket No. 29474, Finance Docket No. 29475, Finance Docket No. 29479, and Finance Docket No. 29480, also all published in the Federal Register of October 1, 1980, we granted waivers for 45 days of certain information normally required in an application. A number of requests for extensions of time in these proceedings have been filed so that negotiations with the Trustee can be concluded, and then the information provided in order to complete the applications.[1] We will partially grant the petition by C&NW and the extension requests. We will reschedule the titled proceedings which were filed under section 112 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 96–254 (1980) (RITEA).

In its petitions, the C&NW contends that the expedited procedural timetable set in the prior decision will jeopardize the restructuring and revitalization of the midwestern rail system and impair negotiations by established carriers with the Trustees of both the Chicago, Rock Island and Pacific Railroad Company (Rock Island) and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the Milwaukee). It is argued that section 111 of RITEA provides for an expedited 100-day decisional timetable on applications for sales to "solvent carriers", and not to non-carrier or shipper groups. C&NW contends that the intent of the timetable set up by RITEA was to provide first an opportunity for established carriers to purchase portions of the Rock Island and the Milwaukee. After carrier applications were decided, under the expedited 100-day timetable then a system of federal assistance would be available so that non-carriers or shipper groups could acquire the remaining segments and retain needed rail service.

C&NW also argues that the Trustee of the Rock Island is currently developing valuation data to be used to determine the price for the sale of the Rock Island lines. This data will not be available until November 1980, at the earliest, and it is argued that no purchase negotiations can be completed until that time. C&NW contends that established carriers may be interested in purchasing portions of the Rock Island and the Milwaukee but will not be filing applications with the Commission until they have an agreement with the Trustee. C&NW concludes that under the expedited time frame set up in the prior decisions, the Commission could be approving transactions in the mistaken belief that no other carrier is interested in the lines.

In the replies it is argued that the Commission is required to dispose of applications to purchase portions of bankrupt lines in a timely fashion. It is argued that C&NW has made no compelling showing to delay these proceedings and that consideration of the acquisition proposals should progress as ordered by the Commission.

At this point we must stress that we will not give a preference to either carrier or noncarrier proposals. There is no legislative basis whatsoever for either the carrier or noncarrier preference argument. We intend to handle these cases on a consolidated basis, and consider the merits of each application.

The other arguments raised by C&NW are applicable to most of the applications which have been filed under section 112 of RITEA. The arguments are not relevant to those cases in which the Bankrupcy Court has imposed a decisional deadline.[2]

In addition the arguments are not relevant in Finance Docket No 29481 (Sub-No. 1) *Beaverville Grain & Lumber Company, and Kankakee, Beaverville & Southern Railroad Company—Acquisition and Operation (Portion)—Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee)*, because an agreement has been reached with the Trustee, and a completed application is on file. We will consider C&NW's petition as it applies to the other applications filed under Section 112 of RITEA.

In order for the Commission to make a meaningful determination on these purchase applications, the record should include all the facts concerning the terms of the purchase, the involved rail lines, and the proposed operations. In addition, the Commission should be able to consider all competing applications. It is true that applications to acquire a portion of a bankrupt rail line must be disposed of in a timely fashion. However, it would be improper to expedite these proceedings if such action would prevent us from considering information which is needed to rule on the applications.

As C&NW points out in its petition, the 100-day timetable applies to applications by solvent carriers. Section 112 of RITEA, which applies to noncarriers seeking funding from the Federal Railroad Administration (FRA), has no specific time limit. Indeed, there is not even a timetable for a decision by FRA on the funding application. Of course, the Commission must dispose of the noncarrier applications in a timely fashion, no later than 180 days after any application was filed under section 5 or 17 of the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101 (November 4, 1979).

It has become apparent that the Trustee of the Rock Island is in the process of developing valuation data to be used in negotiating agreements for the sale of rail lines. It is also apparent that the earliest this information will be available is November, 1980. After obtaining this information the Trustee will be in a position to enter agreements for the sale of Rock Island's lines. Under these circumstances, if we continue to follow the expedited procedural timetable, it could frustrate the restructuring and revitalization of midwestern rail service. We do not believe that rescheduling these proceedings will prejudice any party. However, when an applicant provides all of the relevant information, it can then petition for expedited action on the application.

It was our intent in preparing the previous timetable to comply with the spirit of expedition enunciated by RITEA. However, because the parties have been unable to conclude negotiations with the Trustees for the acquisition of lines, we will interpret section 111 of RITEA technically. This section requires our decisions 100 days after an application has been filed by a solvent carrier to acquire a line of the Rock Island. None of the acquiring parties in the titled proceedings are carriers. The public good requires this delay so that we can consider agreements and other relevant material not now before us.

We are concerned that the delay in processing these applications should not be of indefinite duration. Although the orderly restructuring of the midwestern rail system is important, it is also very important that this process begin. Therefore, we have adopted the new timetable set forth under the DATES portion of this decision. It should be noted that parties who have previously submitted statements need not resubmit them. This should provide a reasonable time for parties to negotiate with the

[1] Requests for an extension of time to complete applications have been filed by Iowa Falls Western Holding Company, Royal-Manson Shippers' Association, Gateway Railroad Corporation, and the Southeast Iowa Shippers Association. Requests for an extension of time to file statements have been filed by Rath Packing Company, the Railway Labor Executives' Association, and Continental Grain Company.

[2] Finance Docket No. 29472 (Sub-No. 1) filed by Continental Group, Inc.; Finance Docket No. 29476, filed by North-South Development Corporation; Finance Docket No. 29484, filed by Trans-Con Services, Inc.; and Finance Docket No. 29494, filed by the Louisiana and Midland Railway Company. Order No. 282 requires a recommendation in these cases by December 24, 1980.

Trustee so that we may pass on a more logical disposition of Rock Island and Milwaukee lines in the midwest.

At this point it is appropriate to point out our general belief that the debtors' estates (and therefore the creditors) will receive a greater benefit in selling the assets for continued rail service instead of net liquidation value. We believe it is also necessary to remind the parties that before a sale or transfer may be authorized by the bankruptcy court we must approve it under sections 5(b) or 17(b) of the MRRA. It also should be clear that although it is our prerogative to approve competing sales, we may find that the public interest requires us to approve an earlier filed proposal without an agreement, and later deny a competing proposal filed after our approval even though an agreement has been reached.

It is ordered:

(1) The petitions are granted in part, and the proceedings are rescheduled.

(2) This decision shall be effective on the date it is served.

Dated: October 31, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34752 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-10639]

Ohio Valley Shippers Association—Petition for Declaratory Order—Use of Representatives To Inform Non-Member Shippers of Advantages of Association Membership

AGENCY: Interstate Commerce Commission.

ACTION: Notice of declaratory order proceeding.

SUMMARY: A declaratory order proceeding is being instituted to determine the lawfulness of the use of representatives by shippers association to inform nonmember shippers of the advantages of membership in an association. Non-profit shippers associations, which are exempt from regulation under 49 U.S.C. 10562(3), consolidate and distribute freight for member shippers.

DATES: Comments should be filed on or before December 22, 1980.

ADDRESSES: Send an original and 15 copies, if possible, of any comments to: MC-C-10639, Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative: Norbert B. Flick, 715 Executive Building, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Mark S. Shaffer, (202) 275-7531
or
Edward E. Guthrie, (202) 275-7691.

SUPPLEMENTARY INFORMATION: By petition filed January 24, 1980, the Ohio Valley Shippers Association (OVSA) seeks a declaratory order that it can employ representatives to contact non-member shippers and receivers for the purpose of citing advantages of membership in the association. OVSA operates as a non-profit shippers association which is exempt from regulation under 49 U.S.C. 10562(3). This section provides that the Commission "does not have jurisdiction * * * over—the service a shipper or a group of shippers in consolidating or distributing freight on a non-profit basis, for the shipper or members of the group to secure carload, truckload, or other volume rates."

Essentially, OVSA argues that uncertainty exists as to the scope of permissable solicitation activities. It seeks a general determination that the use of agents to solicit new members does not necessarily constitute a "holding out" of services to the general public for compensation which would destroy its exempt status under section 10562(3). Petitioner argues that such a finding would allow it and other shippers associations to continue to provide low cost transportation to its members during inflationary times by increasing the number of members able to consolidate freight for movement at volume rates.

In the past, it has been held that the legislative history of this exemption section evinces strong Congressional policy that regulation should not encroach or restrict the right of shippers to join together to gain for themselves the savings of volume rates. *Freight Consolidators Cooperative, Inc.*, v. *United States*, 230 F. Supp. 692, 696 (S.D. N.Y. 1964), sustaining *American Freight Forwarding Corp.* v. *Konlon and Walder*, 318 I.C.C. 507 (1962). Shippers associations were accorded exempt status under section 10562(3) to effectuate this right. In determining the activities permissible under this section, as distinguished from those that would be subject to regulation as freight forwarder activities, we have stated that exempt shippers associations cannot hold out to the public to provide transportation for compensation within the freight forwarder definition. See e.g., *Atlanta Shippers Assn., Inc.,—Investigation*, 322 I.C.C. 273, 286-87 (1964).

It is petitioner's contention that allowing non-profit shippers associations to use representatives in the manner contemplated is not precluded by section 10562(3) or existing case law. It asks the Commission to declare generally that the use of representatives in the described manner is lawful so that such associations can continue to provide low-cost transportation to members on a non-profit basis. Petitioner states that the ruling requested will have no effect of any kind on the quality of the human environment.

Issues which may be addressed include: (1) What specific legal limitations exist concerning composition of exempt shippers associations, and (2) whether the proposal would allow solicitation of non-member freight and result in the providing of transportation of property for profit which is not exempt under 49 U.S.C. 10562(3).

Finally, several unsolicited pleadings have been received. They generally seek intervention in this proceeding. These comments are premature in that the Commission, until now, has not requested comments on the merits of the proposal. Any consideration of these pleadings would be inappropriate. Accordingly, they will not be considered. No prejudice should result from this determination in that any party having filed such a pleading is free at this time to participate in this proceeding by submitting its views or arguments.

Written material or suggestions submitted will be available for public inspection at the Office of the Interstate Commerce Commission, 12th Street and Constitution Ave., Washington, D.C., during regular business hours.

It is ordered: Pursuant to 5 U.S.C. 554(e) and in the sound exercise of the Commission's discretion, a declaratory order proceeding is instituted.

Decided: October 24, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34753 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 364]

Permanent Authority Decision-Notice

Decided: October 28, 1980.

The following applications, filed on or after March 1, 1979, are governed by

Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected*. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for perfroming that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of paticular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after November 7, 1980.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Finding: With the execption of those application involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regualtion. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminary and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before December 8, 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 notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before December 8, 1980 or the application shall stand denied.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

MC 107002 (Sub-570F) (correction), filed January 21, 1980, published in the **Federal Register**, issue of April 17, 1980, and republished as corrected this issue. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth, P.O. Box 8573, Battlefield Station, Jackson, MS 39204. Transporting *chemicals and materials* used in the manufacture of chemicals, in bulk, in tank vehicles, between the facilities of Fallek-Lankro Corporation at or near Tuscaloosa, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this republication is to correct the commodity and territorial description.

MC 50682F (correction), filed April 28, 1980, published in the **Federal Register**, issue of July 15, 1980, and republished, as corrected, this issue. Applicant: KEDASHAW, INC., P.O. Box 246, Kensington, KS 66951. Representative: Erle W. Francis, Esq., Suite 719, 700 Kansas Avenue, Topeka, KS 66603. Transporting (1) *cheese, whey, whey protein and milk* (a) from Hebron, Oxford and Dodge, NE, to points in AZ, CO, IL, IA, KS, LA, MO, ND, UT, TX, and (b) from Ravenna, NE to points in AZ, CO, FL, IL, IA, KS, LA, MO, NY, ND, UT and TX; (2)(a) *packaging materials* from Des Moines, IA and (b) *cheese ingredients* from points in KS, to Dodge, Hebron, Oxford and Ravenna, NE.

Note.—The purpose of this republication is to add the territorial description in (1)(b) inadvertently omitted.

[FR Doc. 80-34746 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP4-112]

Permanent Authority Decision-Notice

Decided: October 31, 1980.

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 nor 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 22, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members: Carleton, Joyce, and Jones. Member Carleton not participating.

Agatha L. Mergenovich,

Secretary.

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".

MC 31367 (Sub-37F), filed October 21, 1980. Applicant: H. F. CAMPBELL & SONS, INC., P.O. Box 260, R.D. #1, Millerstown, PA 17062. Representative: J. Bruce Walter, 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 147627 (Sub-5F), filed October 20, 1980. Applicant: ROADRUNNER DELIVERY SERVICE, INC., BWI Airport, Box 8765, Baltimore, MD 21240. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, and (2) *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

[FR Doc. 80-34745 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 72F]

Illinois Central Gulf Railroad Co.—Abandonment-Near Union City, TN at Cayce, KY; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided November 3, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Oregon Short Line R. Co.—Abandonment Goshen, 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of a line of railroad known as the Cairo District (portion), extending from railroad milepost 451 near Union City, TN, to milepost 457 at Cayce, KY, a distance of 6 miles. A certificate of public convenience and necessity permitting the abandonment was issued to the Illinois Central Gulf Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 17, 1980. The offer, as filed, shall contain information required pursuant to Section 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34750 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C 10524(b).

1. The parent corporation is Amstar Corporation, 1251 Avenue of the Americas, New York, N.Y. 10020.

2. The wholly-owned subsidiaries which will participate in the operations are:

(a) Milwaukee Electric Tool Corporation, 13135 West Lisbon Road, Brookfield, Wisconsin 53005;

(b) Duff-Norton Company, Inc., 100 Pioneer Street, Charlotte, North Carolina 28232.

(1) Parent Corporation and address of principal office: Excel Industries, 1120 North Main Street, Elkhart, Indiana 46514.

(2) Wholly-owned subsidiaries which will participate in the operations, and

addresses of their respective principal offices.

Excel Corporation, 1120 North Main Street, Elkhart, Indiana 46514
Buchanan Metalform Products, Inc., 216 S. Post Road, Buchanan, Michigan 49107
Machine-Rite Products, Inc., U.S. Route 20, La Grange, Indiana 46761
Excel Metalcraft, Ltd., 95 Cousins Dr., Box 70, Aurora, Ontario, Canada L4G 3H1
Metal Fabricating Corporation, 2200 Helton Drive, Lawrenceburg, Tennessee 38464
Industrial Data Systems, 101 E. Simonton Street, Elkhart, Indiana 46514
Excel Industries of California, Inc., 12661 Box Springs Blvd., Industrial Park, Riverside, California 92507

A. Parent corporation and address of principal office: W. R. Grace & Co., Grace Plaza, 1114 Avenue of the Americas, New York, New York 10036.

B. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(1) Grace Distribution Services, Inc., P.O. Box 308, Duncan, SC 29334
(2) American Breeders Service International, Inc., Route 1, DeForest, WI 53532
(3) A-1 Bit & Tool Company, P.O. Box 26292, Oklahoma City, OK 73126
(4) Axial Basin Coal Corporation, Stapleton Plaza, Suite 8800, 3333 Quebec Street, Denver, CO 80207
(5) Chance Collar Company of Louisiana, P.O. Box 899, Pearland, TX 77581
(6) Daylin, Inc., 10960 Wilshire Blvd., Suite 2000, Los Angeles, CA 90024
(7) DeZaan, Incorporated, Grace Plaza 1114 Avenue of the Americas, New York, NY 10036
(8) El Torito-La Fiesta Restaurants, Inc., 2450 White Road, Irvine, CA 92714
(9) Far West Services, Inc., P.O. Box 19561, Irvine, CA 92713
(10) Gilbert/Robinson, Incorporated, P.O. Box 16000, Kansas City, MO 64112
(11) Handy Dan Home Improvement Centers, Inc., 10960 Wilshire Blvd., Suite 2420, Los Angeles, CA 90024
(12) Homco International, Inc., P.O. Box 2442, Houston, TX 77001
(13) MSP Industries Corporation, 6400 E 11-Mile Road, Center Line, MI 48015
(14) Rent-It, Inc., 9898 Bissonnet, Suite 450, Houston, TX 77036
(15) Sheplers, Inc., P.O. Box 9021, Wichita, KS 67277
(16) TRG Drilling Corp., P.O. Box 20020, Oklahoma City, OK 73156
(17) W. R. Grace & Co. of Canada Ltd., Grace Plaza, 1114 Avenue of the Americas, New York, NY 10036
(18) Precision Dynamics Corporation, 3031 Thornton Avenue, Burbank, CA 91504
(19) jojos Restaurants, Inc., 2932 E. Nutwood Avenue, Fullerton, CA 92631

1. Parent corporation and address of principal office: Johnson & Johnson, 501 George Street, New Brunswick, NJ 08903.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Chicopee, 317 George Street, New Brunswick, NJ 08903
(b) Codman & Shurtleff, Inc., New Bedford Industrial Park, New Bedford, MA 02745
(c) Critikon, Inc., 500 Elizabeth Avenue, Somerset, NJ 08873
(d) Devro, Inc., P.O. Box 858, Loeser Avenue, Somerville, NJ 08876
(e) Ethicon, Inc., U.S. Route #22, Somerville, NJ 08876
(f) Extracorporeal Medical Specialties, Inc., Royal & Ross Roads, King of Prussia, PA 19406
(g) J&J Baby Products Co., Centennial Avenue, Piscataway, NJ 08854
(h) J&J Dental Products Co., 20 Lake Drive, East Windsor, NJ 08520
(i) J&J International, 501 George Street, New Brunswick, NJ 08903
(j) J&J Products, Inc., 501 George Street, New Brunswick, NJ 08903
(k) McNeil Consumer Products Co., Camp Hill Road, Ft. Washington, PA 19034
(l) McNeil Laboratories, Camp Hill Road, Ft. Washington, PA 19034
(m) Ortho Pharmaceutical Corp., U.S. Route #202, Raritan, NJ 08869
(n) Permacel, U.S. Route #1, New Brunswick, NJ 08903
(o) Personal Products Co., Van Liew Avenue, Milltown, NJ 08850
(p) Pitman-Moore, Inc., Box 344, Bear Tavern Road, Washington Crossing, NJ 08560
(q) Surgikos, Inc., 2500 Arbrook Blvd., Arlington, TX 76010

1. Parent corporation and address of principal office: Landsman Motor Sales, Inc., 5601 Reisterstown Road, Baltimore, Maryland 21215.

2. Wholly-owned subsidiaries which will participate in the operations, and address of thier respective principal offices: Landsman Car Carrier Service, Inc., 5601 Reisterstown Road, Baltimore, Maryland 21215.

1. Parent corporation and address of principal office: Noble Affiliates, Inc. 330 Neustadt Plaza, 333 West Main, P.O. Box 1967, Ardmore, Oklahoma 73401.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Noble Drilling Corporation, 1924 South Utica, Suite 600, Tulsa, Oklahoma 74104
(b) Samedan Oil Corporation, 110 West Broadway, P.O. Box 909, Ardmore, Oklahoma 73401
(c) B. F. Walker, Inc., 1555 Tremont Place, P.O. Box 17-B, Denver, Colorado 80217
(d) Noble Transport, Inc., 1555 Tremont Place, P.O. Box 17-B, Denver, Colorado 80217

1. Parent corporation and address of principal office: St. Louis Southwestern Railway Company, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Dallas Terminal Railway and Union Depot Company, 2300 Canton Street, Dallas, TX 75226
(b) Glascar, Inc., Southern Pacific Building, One Market Plaza, San Francisco, CA 94105
(c) The Southwestern Town Lot Corporation, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105
(d) Southwestern Transportation Company, 1766 El Camino Real, Burlingame, CA 94010

1. Parent corporation: Stanley Works, 195 Lake Street, New Britain, Connecticut 06050.

2. Wholly owned subsidiaries:

a. Stanley-Vidmar, Inc., a Connecticut corporation, with principal offices located at Queen City Airport Industrial Park, 11 Grammes Road, Allentown, Pennsylvania 18103.
b. Mac Tools, Inc., an Ohio corporation with principal offices at P.O. Box 370, South Fayette Street, Washington Court House, Ohio 43160.
c. C.E.S., Inc., an Indiana corporation, with principal offices at 10640 East 59th Street, Indianapolis, Indiana 46236.

1. Parent corporation and address of principal office: The Terminal Corporation, 211 East Pleasant Street, Baltimore, Maryland 21202.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: Terminal Transportation Service, Inc., 211 East Pleasant Street, Baltimore, Maryland 21202.

1. Parent corporation: Texas United Corporation; 2000 West Loop South; Houston, Texas 77027.

2. Wholly-owned subsidiaries:

Texas Brine Corporation, 2000 West Loop South, Houston, Texas 77027
United Salt Corporation, 2000 West Loop South, Houston, Texas 77027
TBC Fluid Services, 2000 West Loop South, Houston, Texas 77027

1. Parent Corporation and address of principal office: United Brands Company, 1271 Avenue of the Americas, New York, New York 10020.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal office:

A&W Beverages, Inc., 1271 Avenue of the Americas, New York, New York 10020
A&W Restaurants, Inc., 922 Broadway, Santa Monica, California 90406
A&W Concentrates, Inc., 2150 Yosemite Boulevard, Modesto, California 95351
TRT Telecommunications Corporation, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006
United Brands Floriculture, Inc., 17455 S.W. 157th Avenue, Perrine, Florida 33157
John Morrell & Company, 208 South LaSalle Street, Chicago, Illinois 60604
Ark Valley Feeders, R.R. #3, Arkansas City, Kansas 67005
Golden Sun Feeds, Inc., P.O. Box 517, Estherville, Iowa 51334
M.H. Greenebaum, Inc., 165 Chambers Street, New York, New York 10007
Chiquita Brands, Inc., 15 Mercedes Drive, Montvale, New Jersey 07645
Maritrop Trading Corporation, 1271 Avenue of the Americas, New York, New York 10020

1. The parent corporation and the address of its principal office is: Washington Industries, Inc., 244 Second Avenue, North, Nashville, Tennessee 37202.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices are:

(a) Washington Mfg. Company, 244 Second Avenue, North, Nashville, Tennessee 37202.
(b) Keith-Simmons, Inc., 1010 South 7th, Nashville, Tennessee 37206.
(c) First National Company, d/b/a Ely & Walker, 823 E. Holmes Road, Memphis, Tennessee 38116.
(d) Marshall & Bruce Company, 689 Davidson Street, Nashville, Tennessee 37206.
(e) Carter Corp., 2101 Plantside, Louisville, Kentucky 40299.
(f) Hibben's Inc., 2750 Tobey Drive, Indianapolis, Indiana 46219.
(g) William R. Moore, Inc., 183 Monroe Avenue, Memphis, Tennessee 38103.
(h) Manufactors Warehouse Co., No. 9 Cummins Station, Nashville, Tennessee 37201.
(i) Jenkins & Darwin Bros., Inc., 3rd and Commerce, Nashville, Tennessee 37202.
(j) National Stores Corp., 3rd and Commerce, Nashville, Tennessee 37202.
(k) Rockford Textile Mills, Inc., 200 Mulberry Street, McMinnville, Tennessee 37110.

1. Parent: Whitehall Co., Ltd., 750 Everett Street, Norwood, Mass. 02062.

2. Subsidiaries:

(a) Lower Fultonville Trucking Co. (same as above).
(b) Crown Distributors Co., Inc., 184 Everett Street, Allston, Mass. 02134.
(c) Liberty Liquors Division, 75 Caldwell Drive, Springfield, Mass. 01101.
(d) New England Liquor Sales, Co., Inc., 750 Main Street, Holyoke, Mass. 01040.
(e) National Beer & Liquor Co., Inc., 750 Everett Street, Norwood, Mass. 02062.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34749 Filed 11-6-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

[Amdt. No. 1 to Delegation of Authority No. 1]

Delegation of Authority Amendment Regarding Personnel in AID and the Institute

Pursuant to the authority vested in the Director of the United States International Development Cooperation Agency ("IDCA") by Reorganization Plan No. 2 of 1979 (44 FR 41185) and Executive Order No. 12163 of September 29, 1979 (44 FR 56673), I hereby amend IDCA Delegation of Authority No. 1, dated October 1, 1979, 44 FR 57521, as follows: 1. Section heading 1-9 entitled "Foreign Service Personnel Authorities" is changed to "Personnel Authorities."

2. Section 1-901 is deleted in its entirety and replaced by the following: "1-901. The authority of the Administrator and the Director under section 625(a) of the Act, with respect to personnel in AID and the Institute respectively, shall include any authority available to me under any statute, regulation, or delegation of authority, relating to any aspect of personnel authority or administration, including, but not limited to: (a) The Act;

(b) The Foreign Service Act of 1980, Pub. L. 96-465, 94 Stat. 2071;

(c) Title 5 of the United States Code; and

(d) Delegations of Authority from the Office of Personnel Management."

This amendment is effective immediately.

Dated: October 31, 1980.

Thomas Ehrlich,

Director.

[FR Doc. 80-34795 Filed 11-06-80; 8:45 am]

BILLING CODE 4710-02-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee On Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C. on December 2, 1980, beginning at 9:30 a.m. This meeting is subject to either cancellation or a change of date. A notice will appear in the **Federal Register** regarding any change which may occur.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion in the Joint Board's examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, Sections 1242(a)(1)(B)(C). In addition, administrative matters relative to the Advisory Committee will be reviewed.

A determination as required by Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portion of the meeting dealing with the questions which may appear on the Joint Board's examinations falls within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, Section 552b(c)(9)(B), and that the public interest requires that such portion be closed to public participation.

The remainder of the meeting, i.e., those agenda items not pertaining to possible questions to be used on the Joint Board's examinations, will commence at approximately 9:30 a.m. and will be open to the public as space is available until the conclusion of those agenda items.

Dated: November 4, 1980.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 80-34794 Filed 11-6-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Publication of Criteria Used in Granting Excepted Prescription Drug Status of the Controlled Substances Act to Certain Preparations

AGENCY: Drug Enforcement Adminstration, Department of Justice.

ACTION: Notice

SUMMARY: One of the obligations incurred by the United States as a Party to the 1971 Convention on Psychotropic Substances is the requirement that the Secretary-General of the United Nations be notified of the names and composition of preparations exempted from any measures of control provided in that Convention. Also, the United States as a Party to the 1971 Convention, has provided to the Division of Narcotic Drugs of the Commission secretariat the criteria which have been used by the U.S. to except preparations. This was done in response to a request received from the Commission on Narcotic Drugs for information which might facilitate the elaboration of additional guidelines internationally. Comments concerning the criteria may be made to the Drug Enforcement Administration.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Regulatory Control Division, Drug Enforcement Administration, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The United States has provided the Secretary-General of the United Nations with a copy of Chapter II—Drug Enforcement Administration, Table of Excepted Prescription Drugs to Part 1308, 21 CFR in fulfillment of one of its obligations as a Party to the 1971 Convention on Psychotropic Substances. In addition, the United States, in response to a request contained in Resolution 2 (S-V1) of the Commission on Narcotic Drugs of the United Nations, for additional information, has provided to the secretariat of the Commission criteria which have been used by the Drug Enforcement Administration and its predecessor agencies to grant excepted prescription drug status of the Controlled Substances Act to over 2,000 preparations. The great majority of the preparations granted excepted prescription status were excepted by the Bureau of Drug Abuse Control (BDAC) of the Food and Drug Administration. The criteria used by BDAC were developed by a panel of Public Health Physicians and Food and Drug Administration medical officers in 1967. These criteria were used by BDAC's successor, the Bureau of Narcotics and Dangerous Drugs and later the Drug Enforcement Administration.

These criteria were based upon the concept of combining with the controlled substance contained in the preparation, an amount of counteractive drug sufficient to cause early subjective deterrent side effects. The ratios of psychotropic drug to counteractive deterrent drug were based upon specific daily threshold values for psychic and/or physical dependence. Daily threshold values of 500 mg. for short acting barbiturates and 800 mg. for intermediate and long acting barbiturates were selected by the panel of physicians and medical officers. Before a combination could be excepted, the side effects produced by the deterrent drug would have to be sufficient to limit the daily barbiturate intake to no more than 500 mg. for short and 800 mg. for intermediate and long acting barbiturates. Psychotropic drugs combined with relatively innocuous substances were not excepted.

Some examples of the deterrent daily threshold doses selected are:

	Mg./day
Atropine	3.50
Conjugated equine estrogen or equivalent	11.25
Theophylline	800
Theobromine	800
Chlorpromazine	500

Using theophylline as an example, a total daily dose of 800 mg. of theophylline would induce sufficient subjective side effects to preclude the intake of enough barbiturate to produce dependency. Therefore, a *ratio* of at least 800 parts by weight of theophylline and 800 parts by weight of a long acting barbiturate such as phenobarbital should be combined before an exception could be granted.

Drugs which do not have early deterrent side effects but which do include delayed, very serious toxic reactions after sustained use are not suitable for use in excepted preparations.

The following specific criteria have been used in evaluating requests for excepted prescription drug status:

I. *Barbiturate in combination with:*

A. *Analgesics:*

In order to be excepted, the following criteria apply to barbiturates and analgesics:

1. Fifteen milligrams of long or intermediate acting barbiturates combined with at least:

a. 188 mg. aspirin;

b. 375 mg. salicylamide;

c. 70 mg. phenacetin, acetanilid, or acetaminophen.

2. Fifteen milligrams of short acting barbiturates combined with at least:

a. 307 mg. aspirin;

b. 614 mg. Salicylamide;

c. 106 mg. acetanilid, phenacetin, or acetaminophen.

B. *Anticholinergics:*

1. Atropine or belladonna alkaloids: Hyoscyamine in official salts is the levo form. Dextro-hyoscyamine is inactive and not used because its antimuscarinic activity is almost nil. 1-hyoscyamine is therefore twice as potent as an equal weight of atropine.

If side effects from belladonna alkaloids do not limit the barbiturate intake to less than 500 mg. of short acting or 800 gm. of intermediate or long acting barbiturate, the combination should be controlled. It is recommended that if a person ingests 500 mg. of short acting or 800 mg. of intermediate or long acting barbiturates per day, the amount of atropine base or equivalent needed for exception must be not less than 3.5 mg. per day.

The following information is used for calculations involving belladonna and hyoscyamus preparations:

Hyoscyamus Extract: Total alkaloids as hyoscyamine, 155 mg/100 gm or 0.155% alkaloids.

Belladonna Extract: Total alkaloids as atropine, 1.25% alkaloids.

Belladonna Leaf: Total alkaloids as atropine, 0.35% alkaloids.

Belladonna Root: Total alkaloids as atropine, 0.45% alkaloids.

Tincture Belladonna: Total alkaloids as atropine, 0.03% alkaloids.

Belladonna Leaf Fluid-extract: Total alkaloids as atropine, 0.3% alkaloids.

2. *Synthetic Anticholinergics:*

In order for a preparation to be excepted it must contain at least the amount of anticholinergics shown in the following table with 15 mg. of either short or long acting barbiturate:

Anticholinergic drugs	Therapeutic dose(mg)	Threshold dose(mg)	Threshold dose(mg) compared to 15 mg barbiturate	
			Long acting	Short acting
Adiphenine	75	525	9.8	15.75
Ambutonium Bromide	2.5	17.5	0.33	0.52
Anisotropine Methylbromide	10	70	1.33	2.1
Atropine	0.5	3.5	0.066	0.105
Dicyclomine Hydrochloride	20	140	2.6	4.2
Diphemanil Methylsulfate	50	350	6.6	10.5
Glycopyrrolate	1	7	0.13	0.21
Homatropine base	3.7	26	0.5	0.8
Mepenzolate Bromide	25	175	3.3	5.2
Methantheline Bromide	25	175	3.3	5.2
Oxphencyclimine Hydrochloride	10	70	1.3	2.1
Oxyphenonium	10	70	1.3	2.1
Penthienate Bromide	5	35	0.66	1.05
Pipenzolate Methylbromide	5	35	0.66	1.05
Piperidolate Hydrochloride	50	350	6.6	10.5
Poldine Methylsulfate	5	35	0.66	1.05
Propantheline Bromide	15	105	2	3.2
Scopolamine base	2	14	0.26	0.4
Thiophenamil Hydorchloride	100	700	13	21
Tricyclomol Hydrochloride	50	350	6.6	10.5
Valethamate	10	70	1.3	2.1

C. *Ephedrine:*

Drug combinations containing levels of barbiturates at 15 mg. and ephedrine at 12.5 mg. are excepted.

D. *Hormones:*

1. *Estrogens:*

Estrogens must be at a level of 3 times the maximum recommended therapeutic dose when a level of 500 mg. short acting or 800 mg. of intermediate or long acting barbiturate is present. At this level, estrogen can be considered a deterrent and such preparations may be excepted.

2. *Testosterone:*

Such combinations should be controlled because the subjective side effects in the male would not be limiting. In addition, the insidious onset of liver disease could be fatal.

3. *Estrogens, Testosterone, and Barbiturates:*

In the absence of evidence to the contrary, each would not conteract the effects of the other and a basis for exception could be made only by evaluating the estrogen content alone.

E. *Hydantoin Anticonvulsants (Mephenytoin, diphenylhydantoin):*

Every 80 mg. of long acting barbiturate must be combined with at least 100 mg. hydantoin for exception. Doses of diphenylhydantoin greater than 500 to 600 gm. daily uniformly produce side effects.

F. *Inert Ingredients or Ingredients of Doubtful Efficacy* are controlled. This includes vitamins, minerals, methycellulose, amino acids, magnesium hydroxide, etc.

G. *Nitrates or Nitrites:*

Combinations of drugs which contain therapeutic levels of nitrates or nitrites with a barbiturate up to 60 mg. in amount would be excepted.

H. *Thyroid Hormone:*

Every 15 mg. of long or intermediate acting barbiturate must be combined with at least 11 mg. of thyroid extract or 0.019 mg. thyroxine for exception.

I. *Xanthines:*

1. *Caffeine:* Will not prevent the potential abuse when combined with barbiturates. Barbiturates in single combination with caffeine should be controlled.

2. *Theophylline:* 800 mg. of the base as a total daily dose would induce sufficient subjective side effects to preclude the intake of sufficient barbiturate to produce dependency. Therefore, at a ratio of at least 800 mg. theophylline base and at most 500 mg. short acting or 800 mg. intermediate or 800 mg. long acting barbiturate should be combined before an exception could be granted.

3. *Theobromine:* Combination drugs which contain a ratio of 800 mg. or more of theobromine base in combination with 500 mg. short acting or 800 mg. of intermediate or long acting barbiturates are excepted.

J. *Secondary Ingredients with Hazardous but Insidious Side Reactions:* Some drugs, such as *thiocyanate,* do not have early deterrent side effects which occur regularly at a given dose, but do induce delayed, very serious toxic reactions after sustained use. Thus an abuser might develop a fatal, insidious illness from his experiments with a combination drug containing one of these secondary ingredients, with no warning from early side effects. Therefore, such combinations should be controlled.

II. *Meprobamate:*

Quantities of specific ingredients required to except 200 mg of meprobamate.

	mg
Conjugated Estrogens	0.2
Pentaerythritol Tetranitrate	10.0
Tridihexethyl Chloride	12.5

III. *Chlordiazepoxide.*

Quantities of specific ingredients required to except 5 mg of chlordiazepoxide.

	mg
Conjugated Estrogens	0.1875
Clinidium Bromide	0.5830

Experience since 1967 has shown that excepted preparations have not contributed significantly to drug abuse in the U.S. Considering this lack of evidence that exemption of these preparations has significantly added to the abuse problem, DEA intends to continue the use of the described guidelines.

Interested parties may submit comments in writing regarding these criteria. Written comments should be received on or before December 8, 1980. Comments should be submitted to the Administrator, Drug Enforcement Administration, Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

Dated: November 3, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-34867 Filed 11-6-80; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed 1981 aggregate production quotas.

SUMMARY: This notice proposes 1981 aggregate production quotas for dextropropoxyphene, Tetraphydrocannabinols and pethidine intermediate-A. Since the establishment of the 1981 aggregate production quotas for other Schedules I and II controlled substances on September 18, 1980 (45 FR 62228), certain events have occurred which require that quotas for these additional substances be established, in accordance with the Controlled Substances Act of 1970.

DATE: Comments should be received on or before (30 days from publication).

ADDRESS: Send comments in quintuplicate to: Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Regulatory Control Division, Drug Enforcement Administration, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. Since the establishment of the 1981 aggregate production quotas for other substances in Schedules I and II on September 18, 1980 (45 FR 62228), events have occurred which require that quotas for dextropropoxyphene, tetrahydrocannabinols and pethidine intermediate-A be set.

In a final rule which appeared in the **Federal Register** on July 22, 1980, bulk dextropropoxyphene was placed in Schedule II of the Controlled Substances Act (45 FR 48881). This action requires that an aggregate production quota be established for this substance. In determining the proposed 1981 aggregate production quota for dextropropoxyphene, the Administrator considered data on quota applications submitted by those companies which desire to manufacture dextropropoxyphene or to formulate dosage units containing this substance. This data included actual past sales of dextropropoxyphene as well as estimates of 1980 sales and 1980 year-end inventories.

Concerning tetrahydrocannabinols, the National Cancer Institute has recently undertaken an expanded research program to investigate the usefulness of this Schedule I basic class in the control of emesis resulting from the treatment of cancer. The Pharmaceutical Resources Branch, Division of Cancer Treatment of the National Cancer Institute has estimated that 20,000 grams of tetrahydrocannabinols will be produced in 1981 in order to supply investigators for this research. A 1981 aggregate production quota must be set to allow a registered manufacturer to produce this amount of material.

Recently, application has been made for a manufacturing quota for pethidine intermediate-A (4-cyano-1-Methyl-4-phenylpiperidine), a Schedule II substance. This substance is to be manufactured for use as a precursor in the synthesis of meperidine. Therefore, it is necessary to propose an aggregate production quota for pethidine intermediate-A. This proposed quota is based on the historical yield of meperidine from this intermediate and the amount of meperidine which will be manufactured in 1981.

Therefore, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes that the 1981 aggregate production quotas for dextropropoxyphene and pethidine intermediate-A, expressed as anhydrous base, and tetrahydrocannabinols be established as follows:

Controlled substance	Proposed 1981 aggregate production quota (g)
Tetrahydrocannabinols (schedule I)	20,000
Dextropropoxyphene (schedule II)	44,796,000
Pethidine intermediate-A (schedule II)	6,877,000

All interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrant a hearing, the Administrator will have published in the **Federal Register** an order for a public hearing which will summarize the issues to be heard and which will set the time for the hearing (which will not be less than 30 days after the date of the order).

Dated: November 3, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-34850 Filed 11-6-80; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

Notice is hereby given that the Coordinating Council on Juvenile Justice and Delinquency Prevention will meet Wednesday, November 19, 1980, in the 13th Floor Conference Room, 633 Indiana Avenue, NW., Washington, D.C. 20531. The meeting will be open to the public.

The meeting will begin at 10 a.m. Agenda items include: the review and preliminary identification of a limited number of priority, delinquency-related issues suitable for the Council's future attentions; a report on cooperative efforts with the Department of Health and Human Services regarding implementation of the Adoption Assistance and Child Welfare Act of 1980; discussion of the issue pertaining to the mentally disturbed and mentally retarded juvenile offender; an update on the progress of the Annual Analysis and Evaluation comprehensive survey; presentation of draft Council bylaws, including a provision regarding minimal criteria for selection of Council designees; and discussion of issues raised by the National Advisory Committee which are of mutual concern to the Council.

For further information contact Mr. James C. Shine, Executive Assistant and Special Council, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 80-34893 Filed 11-6-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Awards Pursuant to ETA OPER Grant Solicitation 8009; Grants for Research on Social and Institutional Processes Affecting Hispanic American Employment Outcomes

The U.S. Department of Labor, Employment and Training Administration, Office of Policy, Evaluation and Research, announces the following awards under Grant Solicitation 8009:

1. Pennsylvania State University, "Labor Market Dynamics and Joblessness for Hispanic American Youth", Approximate Cost—$59,000.
2. Michigan State University, "Illness and Disability as Factors Promoting Dependence on Seasonal Agricultural Labor Among Chicanos within the Midwestern Migratory Stream", Approximate Cost—$59,000.
3. The University of Akron, "Employment Outcomes of Hispanic Youth: An Analysis of Labor Market Behavior Using the 1979 National Longitudinal Survey of Youth", Approximate Cost—$100,000.
4. Northwestern University, "Determinants of High School Track Selection and Course Taking and Their

Consequences for Post Secondary Education and Earnings of Hispanic Americans", Approximate Cost—$57,000.

5. Battelle Human Affairs Research Centers, "English Proficiency, Occupational Characteristics, and the Employment Outcomes of Mexican-Americans", Approximate Cost—$98,000.

6. University of California, "The Economic Status of Male Hispanic Migrants and Natives in the U.S.: A Human Capital Approach", Approximate Cost—$37,000.

7. George Washington University, "Unemployment Among Hispanic Youth: Educational and Social Antecedents", Approximate Cost—$56,000.

Arvon W. Jordan,

Chief, Central Procurement Staff.

October 31, 1980.

[FR Doc. 80-34870 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-80-128-C]

Double "O" Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Double "O" Coal Company, Rockhouse, Kentucky 41561 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 137 Mine 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 coal seam in the No. 137 Mine ranges from 40 to 48 inches in height, with ascending and descending grades, resulting in dips in the coalbed.

2. Petitioner states that installation of cabs and canopies on the mine's haulage and electrical face equipment would result in a diminution of safety for the miners affected because:

a. The canopies cannot be set low enough to clear the roof support system,

b. Cramped seating of the equipment operator reduces visibility and causes operator fatigue.

3. 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 24, 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 29, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34888 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-100-M]

Noranda Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Noranda Mining, Inc., P.O. Box 1450, Park City, Utah 84060 has filed a petition to modify the application of 30 CFR 57.11-41 (fixed ladder requirements) to its Ontario Project located in Summit County, Utah. 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. Petitioner requests a modification of the standard in order to maintain the maximum ventilation flow of air from the surface to the 100 foot level down a six foot borehole.

2. The standard requires the travel way in a vertical borehole to be offset with landings every 30 feet and the six foot diameter hole would require a back guard. Petitioner states that this type of structure would seriously hinder the air flow down the six foot diameter ventilation hole to the 100 foot level.

3. The purpose for having a manway down the borehole is for inspection of a sand line. The hole will not be used for regular travel or as an escapeway.

4. Petitioner proposes as an alternative method a fall prevention system which claims to meet the OSHA standard found at 29 CFR 1910.27. The system consists of a roller bearing equipped sleeve, a notched carrier rail on ladder, and two snaps on the sleeve that fasten to the safety belt.

5. petitioner states that the proposed alternate method 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 24, 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 29, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34885 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-143-C]

Mary Lee Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mary Lee Coal Company, Inc., P.O. Box 208, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its No. 27 Mine located in Sequatchie County, Tennessee. 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 coal seam varies from pencil thickness to 36 inches in height.

2. Petitioner states that installation of lighting fixtures onto the mine's equipment would result in a diminution of safety for the miners affected because:

a. Installation of the prescribed lighting system will cause an abrupt, virtually instantaneous change in the light intensity. For a period of time thereafter, the equipment operator and those working in the general vicinity will be blinded;

b. The lighting interferes with the communication between miners by cap lamp; and

c. The foreman is forced to travel from lighted areas to dark areas while performing duties and this could impair the foreman's vision and hamper job performance.

3. 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 24, 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 29, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34887 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-102-M]

Pea Ridge Iron Ore Co.; Petition for Modification of Application of Mandatory Safety Standard

Pea Ridge Iron Ore Co., Route 4, Sullivan, Missouri 63080, has filed a petition to modify the application of 30 CFR 57.4-61(B) (fire door requirements) to its Federal Mine located in Washington County, Missouri. 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 fire doors be installed in each opening to an underground shop.

2. The underground shop area is at the lower-most working level (2475 foot level) of the mine with the normal fresh air flow from the downcast intake shaft (#1 shaft), through the underground shop and into the ore body on that level.

3. The mine is a "hardrock" mine of non-combustible materials consisting of magnetite and hematite iron ore surrounded by rhyolite porphyry; is high in humidity as measured at 95 to 100 percent relative humidity; is a non-gassy mine; has little or no timbering anywhere in the mine; and the underground shop area is merely additional mine excavation with concreted floors and gunited walls and back.

4. As an alternative method to installing fire doors, petitioner proposes the following:

a. The main level fan on the 2475 foot level (underground shop level) is located between the underground shop and the ore body. This fan would be shut off at the shop office by an emergency shutdown switch and automatically blocked from recirculating; this would allow diverting the air flow directly to the upcast mine exhaust shaft (#2 shaft) through the exhaust fan;

b. Any employees in the underground shop area would have direct access to the downcast fresh air intake shaft and employees working on the 2475 foot on level on the ore body side of the main level fan which has been shut off are protected by air doors between the shop and that main level fan;

c. These employees also have two means of exit via inclines which provide access to the 2275 foot level above and the fresh air flow at the #1 intake shaft on that level. The only exposure of personnel in this procedure would be the skip pocket attendant at the 2380 foot skip pocket level of the exhaust shaft. This employee has a signal connection to the emergency shutdown switch on the 2475 foot level main level fan that will activate a siren when that fan is shutdown, in which case it is required that the 2380 skip pocket attendant immediately exit to fresh air up the incline to the 2275 foot level fresh air intake station.

5. Petitioner believes that the modification as requested will provide an alternative method of achieving the result of the standard and guarantee at all times no less protection 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 24, 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 29, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34886 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Alaska State Standards; Notice of Approval

1. *Background:* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the at least as effective as" status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated August 4, 1980 from Edmund N. Orbeck, Commissioner, to James W. Lake, and incorporated as part of the plan, State standards comparable to 29 CFR 1910.177 Subpart N, Servicing Multi-Piece Rim Wheels, as published (44 FR 6706) on January 29, 1980.

These State standards, which are contained in AAC 01.0810—Servicing Multi-Piece Rim Wheels, were promulgated after a public workshop and publication on April 9, 1980 in the State-wide media. The public comment period was open for thirty days by Edmund N. Orbeck, Commissioner, under authority vested by AS 18.60.020.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and accordingly should be approved. The significant area of difference is the deletion of the phrase, "the employer shall," throughout the standards, as the employer's responsibilities are spelled out in Alaska's State Statutes, Section 18.60.075, Safe Employment.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99801; and the Technical Data Center, Roiom N2349R, 3rd and Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be repetitious.

This decision is effective November 7, 1980.

(Sec. 18, Pub. L. 91596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 25th day of September 1980.

James W. Lake,

Regional Administrator.

[FR Doc. 80-34876 Filed 11-5-80; 8:45 am]

BILLING CODE 4510-26-M

[V-78-12; V-79-1]

Chrysler Corp.; Grant of Variance

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

ACTION: Grant of variance.

SUMMARY: OSHA has granted the Chrysler Corporation's application for a permanent variance from certain paragraphs of 29 CFR 1910.1025, Occupational Exposure to Lead, and 29 CFR 1910.1018, Occupational Exposure to Inorganic Arsenic.

DATES: The effective date of this grant of variance is November 7, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Room N3662, Washington, D.C. 20210, Telephone: (202) 523-7144

or the following Regional and Area Offices

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 1110, Charles Center—31 Hopkins Plaza, Baltimore, Maryland 21201

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building—Room 3007, 844 King Street, Wilmington, Delaware 19801

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor—Room 3263, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Department of Labor, Occupational Safety and Health Administration, 344 Smoke Tree Business Park, North Aurora, Illinois 60542

U.S. Department of Labor, Occupational Safety and Health Administration, 231 West Lafayette—Room 628, Detroit, Michigan 48226

U.S. Department of Labor, Occupational Safety and Health Administration, 210 North 12th Boulevard—Room 520, St. Louis, Missouri 63101

U.S. Department of Labor, Occupational Safety and Health Administration, 1150 Grand Avenue—6th Floor, 12 Grand Building 30309, Kansas City, Missouri 64106

I. Background

On May 3, 1978, The Occupational Safety and Health Administration, ("OSHA") issued an occupational safety and health standard for exposure to inorganic arsenic [29 CFR 1910.1018; 43 FR 19584, May 5, 1978]. In September, 1978, Chrysler Corporation ("CC") applied, pursuant to section 6(d) of the Occupational Safety and Health Act [29 U.S.C. 655(d)] and 29 CFR 1905.11, for a permanent variance from several provisions of the standard. CC also requested an interim order pending a decision on the application.

An occupational safety and health standard for exposure to lead was issued on November 13, 1978 (29 CFR 1910.1025; 43 FR 52952, November 14, 1978). CC applied on January 8, 1979, for a variance from several provisions of the lead standard and an interim order pending a decision on the application.

Both variance applications pertain to the lead and inorganic arsenic exposure that occurs on the automobile assembly line during the soldering process. With concurrence of CC, OSHA consolidated the individual applications for consideration and disposition.

The addresses of the places of employment affected by the applications for inorganic arsenic and lead are as follows:

Chrysler Corporation, Stamping and Assembly Division

Belvedere Assembly Plant, Chrysler Drive, Belvedere, Illinois

Jefferson Assembly Plant, 12200 E. Jefferson Avenue, P.O. Box 1658, Detroit, Michigan

Lynch Road Assembly Plant, 6334 Lynch Road, P.O. Box 1518, Detroit, Michigan

Missouri Truck Assembly Plant, 1050 Dodge Drive, Fenton, Missouri

Newark Assembly Plant, 550 S. College Street, P.O. Box 179, Newark, Delaware

St. Louis Assembly Plant, 1001 N. Highway Drive, Fenton, Missouri

Warren Recreational Vehicle Plant, 6600 E. Nine Mile Road, Warren, Michigan

Warren Truck Assembly Plant, 21500 Mound Road, Detroit, Michigan

Warren Truck Special Equipment Center, 21900 Hoover Road, Warren, Michigan

In addition, the applicant has asked to have the variance extended to any future facilities which have solder grind booths operating in the same manner as existing ones.

An interim order pending the decision on CC's application for variance from the inorganic arsenic standard was granted on November 17, 1978. Notice of the CC application for variance and for the interim order, and of the grant of the request for an interim order was published in the **Federal Register** on November 17, 1978 [43 FR 53847-49]. An interim order covering the lead standard was subsequently granted on February 2, 1979. Notice of the CC application for variance from the lead standard and for the interim order, and notice of the grant of a lead interim order and of the renewal of the first interim order concerning inorganic arsenic, was printed in the **Federal Register** on February 2, 1979. [44 FR 6791-95]. Both notices invited interested persons to submit written data, views, and arguments regarding the grant or denial of the variances requested. In addition, affected employers and employees were notified of their right to request hearings on the applications for variance. The Chrysler Corporation requested a hearing in the event that the consolidated variance application was denied. The February 2, 1979 notice announced that additional data and information had been requested from CC to supplement the data submitted with the original variance applications to enable OSHA to reach a decision on the variance. In addition to the data generated by CC, OSHA conducted several variance investigations at CC facilities to gather additional information. Throughout the variance process, OSHA, CC, and the UAW met several times to discuss the CC application. These meetings provided more information to the record of the proceeding and served as a vehicle for revising the original application so that a complete protective program acceptable to OSHA, as reflected by the variance order, was developed. Discussions were also held with the General Motors Corporation and Ford Motor Company, both of whom had submitted similar applications for variance. Interim orders have been issued to these applicants [43 FR 53847-49, November 17, 1978; 44 FR 6791-95, February 2, 1979; 45 FR 10972-75, February 19, 1980] and a decision on a permanent variance for Ford is pending, while the General Motors grant of variance appeared in the **Federal Register** on July 11, 1980 [45 FR 46922-31, July 11, 1980].

Three comments were received with regard to the request for variance from the inorganic arsenic standard. Two of the comments were from the International Union, United Automobile,

Aerospace and Agricultural Implement Workers of America ("UAW"), the employee representative in the affected facilities. The UAW disagreed with much of CC's rationale and reserved the right to request a hearing. The UAW stated further that, considering the interrelationship between occupational exposure to inorganic arsenic and lead in the automobile industry, should CC file an application as to the lead standard, they would request consolidation of the hearings on the two applications. The third comment was from an employee of the Chrysler Corporation which was sent by way of one of OSHA's Regional Offices. This employee took exception to some of the assertions made in the application, but did not request a hearing.

On March 1, 1979, the U.S. Court of Appeals for the District of Columbia Circuit judicially stayed certain provisions of the lead standard (*United Steelworkers of America, AFL–CIO–CLC* v. *Marshall*, No. 79–1048 (D.C. Circuit, March 1, 1979)). Notice of the partial judicial stay was published in the **Federal Register** on March 13, 1979 (44 FR 14554). CC had requested variance from several provisions of the lead standard which had been judicially stayed. The stayed provisions were 1910.1025(e)(1); 1910.1025(e)(3) except for (e)(3)(ii)(F); 1910.1025(i), as it applies to construction of new facilities or substantial renovation of existing facilities; and 1910.1025(r), as it applies to other provisions of the standard which had been stayed. On August 15, 1980, the Court of Appeals issued a decision upholding the standard in major part, but remanding to OSHA the question of the feasibility of the standard for specified industries, including the auto manufacturing industry. As to these industries, the record was remanded to the Secretary of Labor for reconsideration, with directions to return the record on feasibility, with sufficient evidence and explanation, within six months. In the interim, the stay of paragraph (e)(i) of the standard, which requires compliance with the PEL by engineering work practice controls, continues for these industries. All other provisions of the standard, including the requirement to reach the PEL by some combination of engineering, work practice and respiratory controls, are in effect.

II. Facts

A. *The Soldering Process.* The applicant is a manufacturer of automobiles. The assembly of some automobile bodies necessitates application of solder to certain welded joints. Lead solder is principally used to fill depressed, welded joints between body panels to achieve durable, finely-sculptured body surfaces after final paint.

The soldering process is performed in the body shop on the assembled shell. Joint soldering and grinding is one of the final steps in body assembling and construction performed prior to hanging and fitting of door, hood, fender and trunk lid assemblies. Stud welding and metal finishing may take place prior to transfer to the paint shops for painting.

An automotive body may have as many as eight to ten joints that require a solder fill. If a joint is scheduled to be covered with vinyl roof covers, in certain instances a substitute filler may be used since final paint appearance is not a factor.

The welded automobile body proceeds along the body shop conveyor to the soldering area and is processed in the following steps:

1. *Joint Preparation.* The joint area is rough ground and wire brushed to smooth the metal and remove excess chips, dirt and any coatings on the steel.

2. *Tinning.* Joint preparation is immediately followed by coating of the joint with a thin layer of tinning compound to assure a good bond of the solder.

This operation is performed by wiping on the tinning compound which is a suspension of powdered solder and flux. This tinning compound is subsequently heated with a hand held torch to promote reaction with the surface of the steel. This is immediately followed by rag wiping the coated surface, leaving only a thin coating of solder.

3. *Solder Fill.* The tinned joint is now filled with solder which has been prepared by heating to a mush-like consistency. Prior to application, the body joint is fanned with a torch to raise the temperature to avoid cold shock and poor adhesion of the solder. The employee performing this operation is skilled in filling, heating and contouring the solder on the body to produce a joint ready for minimal grinding.

4. *Solder Grind.* The cooled joint is sculptured to exact body contour through rough and finish grinding using rotary disc, hand-held grinders in enclosed solder grind booths. These booths vary from about 100 to 200 feet in length, and can accommodate several car bodies with about six feet of work space on either side. The booths are operated under negative pressure with a designed minimum in-draft of 150 feet per minute into all openings of the booth. The booths are vented by drawing outside air into the booth and exhausting it through an enclosed system through the roof of the plant.

Workers then utilize grinding and finishing tools to remove excess solder and smooth the finish. The first operator in the line uses a relatively coarse abrasive; subsequent employees use a smoother finishing process as the car body passes through the booth.

During the grinding operation, particles of solder are released into the atmosphere of the solder grind booth at very high velocities. According to material specifications, the body solder used by CC contains arsenic in quantities of up to 0.6 percent and approximately 90 percent lead. Thus, whenever workers are exposed to lead from soldering applications, there is concurrent exposure to inorganic arsenic. To protect solder grind operators in the booth from the toxic dusts and the hot, high-velocity particles, these operators wear positive pressure supplied-air hoods which extend downward to cover the waist. Flaps covering the front and back fasten under the arms and around the waist. An inner bib is located around the neck of the wearer.

5. *Subsequent Operations.* The car body is then cleaned either by washing, wiping, or air blow-off. The body then proceeds for door, fender, hood and rear deck lid hanging and fitting, final stud welding, and metal finishing and polishing.

Some provisions are made in all body shops for a variety of repair operations. All lines provide a final body wash and blow-off of body shop dirt, dust and debris prior to the acid bath which prepares the car body for painting (phosphating), and the paint shop.

B. *Application for Variance.* CC's application for a variance applies to workers in the soldering process. The applicant proposes to provide a place of employment as safe as that required by 29 CFR 1910.1018, which contains regulations concerning inorganic arsenic and by 29 CFR 1910.1025, which contains regulations concerning lead. Specifically, the applicant requested variance from several provisions of the lead standard, as follows:

Sections 1910.1025(e)(1) and (e)(3) of the standard deal with engineering and work practice controls, and compliance programs, respectively, as they pertain to methods of compliance. In part, these provisions require that employers implement engineering and work practice controls to reduce and maintain employee exposure to lead consistent with levels required by the standard, and establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit ("PEL") solely by means of engineering and work practice

controls. The applicant requested a variance from these provisions insofar as they pertain to every work station within the solder grind booth, and the assembly line between the solder application and the phosphating operations.

Section 1910.1025(i) of the standard relates to hygiene facilities and practices and deals, in part, with requirements for the provision and use of change rooms, showers, lunchrooms, and lavatories in areas where employees are exposed to lead above the PEL without regard to the use of respirators. The applicant requested a variance from this section insofar as it requires special hygiene facilities for solder applicators and employees on the line between the solder grind booth and the phosphating operation.

Section 1910.1025(i)(4) of the standard specifies requirements for hygiene facilities and practices including lunchrooms. Specifically, employers are required to provide temperature controlled, positive pressure, filtered air supplied lunchrooms, readily accessible to employees who work in areas where their airborne exposure to lead is above the PEL without regard to the use of respirators. The applicant requested a grant of variance from this section insofar as it required these lunchrooms.

Section 1910.1025(d)(1) deals with the general requirements for exposure monitoring and defines, for those purposes, employee exposure as that exposure which would occur if employees were not using a respirator. CC requested a variance from this section, insofar as it requires monitoring of air levels of lead within the solder grind booths, without regard to a respirator.

Sections 1910.1025(d)(1) (ii) and (iii) require, in part, that the employer collect full shift personal samples including at least one sample for each shift for each job classification in each work area, and that these samples be representative of a monitored employee's regular, daily exposure to lead. The applicant requested variance from these provisions insofar as they require full-shift monitoring for employees on the assembly line.

Section 1910.1025(g)(2)(viii) is concerned with the prohibition for the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air. The applicant requested a variance from this section insofar as it necessitates vacuuming of clothes when employees leave the solder grind booths.

Section 1910.1025(h)(2)(i) requires that surfaces where lead accumulates not be cleaned by the use of compressed air. The applicant requested a variance from this section insofar as it may be interpreted to prevent the removal of lead dust from automobile bodies prior to their exit from the solder grind booth.

Section 1910.1025(f)(2)(i) deals with respirator selection where respirators are required. The applicant requested a variance from this section insofar as it might be construed to prohibit supervisors spending intermittent periods in the solder grind booths from wearing half-mask, air-purifying respirators.

Section 1910.1025(r) deals with start up dates, requiring all obligations of the standard to commence on the effective date except for such requirements as hygiene facilities and compliance programs. The applicant requested relief from any obligation of this section from which the variance was requested.

Specifically, the applicant requested variance from several provisions of the inorganic arsenic standard, as follows:

Section 1910.1018(e)(1)(ii) defines employee exposure to inorganic arsenic as the exposure which would occur if the employee were not wearing a respirator.

Section 1910.1018(e)(1)(iii) requires collections of full shift (at least 7 continuous hours) personal sampling including at least one sample for each shift for each job classification in each work area.

Section 1910.1018(g)(1) requires the institution of engineering and work practice controls to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible; and

Section 1910.1018(g)(2) requires the establishment and implementation of a written compliance program for reducing exposures. The applicant requested variance from the requirement for using engineering and work practice controls to reduce employee exposure in the solder grind booths and from the requirement to develop written compliance programs.

Section 1910.1018(h)(2) contains the requirements for respirator selection, including a table which lists the required respirators for various concentrations of airborne inorganic arsenic. The applicant requested variance from this section to permit supervisors to wear half facepiece, filter-type respirators approved for toxic dust, with a high-efficiency filter if necessary.

Section 1910.1018(m)(3)(i) requires that employers provide readily accessible lunchrooms with temperature controlled, positive pressure, filtered air supply for employees working in regulated areas.

Section 1910.1018(m)(5) requires that employers provide and assure the use of facilities for employees, working in regulated areas where exposure (without the use of respirators) exceeds 100 $\mu g/m^3$, to vacuum their protective clothing and clean or change shoes before entering change rooms, lunchrooms or showers. The applicant requested a variance from this section insofar as it limits the cleaning process to the use of vacuum.

Section 1910.1018(n) requires physical examinations of employees exposed above the action level without regard to the use of respirators, either annually or semi-annually, depending on length and level of exposure. The applicant requested a variance from this section insofar as it requires semi-annual medical examinations.

III. Decision

CC's applications for variance were submitted shortly after the inorganic arsenic and lead standards were isued. The supporting data submitted at the early stages of the proceeding were deemed sufficient for granting an interim order, but OSHA concluded that more supporting data were necessary before a permanent variance could be granted. CC collected the additional information as requested and provided it to OSHA. OSHA conducted variance investigations at several CC assembly facilities to obtain more information it deemed necessary to make a final determination on the consolidated application. Extensive discussions were held with the Company and the UAW at various stages of the proceeding regarding the proposed CC program of worker protection. After careful consideration of the entire variance record and of the records in the lead and inorganic arsenic rulemakings, OSHA concluded that CC's original request could not be granted in its entirety as it did not meet the statutory criterion for a permanent variance.

However, at the core of CC's variance request was a voluntary commitment on the part of the Company to a program of preventing inorganic arsenic and lead exposure associated with solder grinding by eliminating the use of lead body solder where feasible (see application for lead variance, pp. 4–6). That commitment and the unlikelihood of CC finding an engineering control solution as effective as total elimination of lead exposure in the standard's one year compliance period fostered a cooperative effort among OSHA, the UAW, and the Company to promote that goal by finding an acceptable interim solution until the Company's effort to

eliminate inorganic arsenic and lead exposure could be completed.

After numerous discussions, agreement was reached on a comprehensive variance program which OSHA concluded would provide workers with protection equivalent to that provided by the lead and arsenic standards. This program is embodied in the variance order issued today. CC's agreement to abide by the terms of the variance order is taken by OSHA to be an implicit revision of the original applications so as to incorporate only the terms of the order, thereby allowing a complete grant of the applications as revised. CC has also agreed, as has the UAW, to withdraw their requests for hearing. Certain items in the original applications for which a variance was requested are not addressed in the Order. With respect to these items, CC has agreed to have the relevant provisions of the lead and inorganic arsenic standards apply, and OSHA has treated these items as having been withdrawn. A discussion of these issues is found in the appropriate paragraphs below.

The variance order issued to CC today permits the Company to comply with the numbered terms and conditions set forth in the variance order instead of the following requirements in the lead and arsenic standards:

29 CFR 1910.1025(d)(1)(i) and 29 CFR 1910.1018(e)(1)(ii), concerning employee exposure for monitoring purposes; 29 CFR 1910.1025(d)(1)(ii) and 29 CFR 1910.1018(e)(1)(iii), concerning full-shift monitoring; 29 CFR 1910.1025(e)(1) and 29 CFR 1910.1018(g)(1)(i) and 29 CFR 1910.1018(g)(1)(ii), concerning engineering and work practice controls as they pertain to methods of compliance; 29 CFR 1910.1025(g)(2)(viii) and 29 CFR 1910.1018(j)(2)(viii), concerning the prohibition for lead removal from protective clothing or equipment by blowing, shaking or any means which disperses lead into the air and for removal of inorganic arsenic by blowing or shaking; 29 CFR 1910.1025(i)(4)(ii) and 29 CFR 1910.1018(m)(3)(i), concerning the requirement that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply; 29 CFR 1910.1025(h)(2)(i) concerning the prohibition for lead removal from floors and other surfaces by the use of compressed air; 29 CFR 1910.1018(m)(5), concerning removal of inorganic arsenic from protective clothing by vacuuming; 29 CFR 1910.1018(n)(3)(ii), concerning the requirement for a semi-annual chest x-ray and sputum cytology examination; and 29 CFR 1910.1025(r)(7)(A), concerning the startup date for compliance plans. All other provisions of both standards are unaffected by the variance order, and CC must continue to comply with them in conjunction with the order.

OSHA has concluded that the preponderance of the evidence accumulated over the entire course of this proceeding demonstrates that this variance, when viewed as a single, integrated compliance program, will provide affected CC workers with at least equivalent protection to that provided by the respective standards. It is important to note that OSHA's conclusion that the variance granted provides protection equivalent to that provided by the standards is based on the totality of what would be feasible under the standards. No item by item equivalence has been made. After an evalution of the unique circumstances presented in this case, OSHA has concluded that the "as safe and healthful as" criterion of section 6(d) of the Act has been satisfied. In fact, this variance in many ways may provide even greater protection than the standards. It immediately initiates a plan for implementation of engineering and work practice controls while that requirement of the lead standard is judicially stayed and not binding on the applicant; it ensures that the most effective type of control (elimination of lead and arsenic exposure) will be used; it provides acceptable interim protection until long term goals are met; and it facilitates OSHA enforcement by establishing a uniform compliance plan for all affected CC assembly facilities.

The following is a discussion of the individual provisions of the variance order and the relevant sections of the lead and inorganic arsenic standards:

1. *Methods of Compliance.* A variance is granted from paragraphs (e)(1) and (r)(7)(A) of § 1910.1025 and paragraph (g)(1)(i) of § 1910.1018. These paragraphs refer to methods of complying with the standards' permissible exposure limits and to the schedule for submitting a written compliance plan. The lead and inorganic arsenic standards both require compliance with the PEL (50 $\mu g/m^3$ for lead; 10 $\mu g/m^3$ for inorganic arsenic, as 8-hour time-weighted averages) by means of engineering and work practice controls. This requirement in the lead standard (§ 1910.1025(e)(i)) had previously been stayed and remains so pending completion of judicial review for certain industries, including the automobile industry. The inorganic arsenic standard allowed all employers up to 16 months for compliance with this requirement; the lead standard allowed up to 5–10 years for employers in 5 selected industries and up to one year for employers in all other industries, of which automobile manufacturing is one. Each standard requires employers to establish and implement a written compliance plan to achieve these goals. This requirement in the lead standard had also been stayed previously, but is now in effect. The inorganic arsenic standard gave employers 4 months to prepare a written compliance plan; under the lead standard, employers who were given one year from the standard's effective date for compliance with the PEL were given 6 months to complete the compliance plan. Where engineering and work practice controls are not sufficient to meet permissible limits, both standards require reductions in exposure to the lowest levels achievable with these controls supplemented with personal respiratory protective equipment.

For each standard, OSHA determined that compliance with the PEL by means of engineering and work practice controls by the dates given for compliance was generally feasible for all affected industries. OSHA also recognized that potential compliance problems could arise in specific operations, processes or jobs within a given industry. It was proposed that these situations be remedied in the enforcement context through negotiated abatement plans or variances. (See 43 FR 19601 (inorganic arsenic) and 43 FR 52991 (lead).)

The solder grinding operation consistently generates extremely high concentrations of airborne lead and arsenic particulates and, consequently, controlling the workers' exposure to within permissible limits is very difficult with conventional types of engineering and work practice controls. CC has thus committed itself to the objective of eliminating employee exposure to lead and inorganic arsenic due to solder grind operations by January 1, 1987, barring unforeseen economic or technical limitations. The Company has proposed to accomplish this by redesigning the automobile body so that it does not require solder joints. This approach would take longer than the standards would allow for compliance. It involves substantial redesigning and retooling, and since automobile production is planned several years in advance, new model changes can only be reasonably accomplished with several years lead time. CC is anticipating that all of its models will have undergone a major model change which incorporates the redesigned body by the 1987 model year.

CC's commitment to eliminate exposure to lead and inorganic arsenic does not, however, preclude the Company from using alternative means of reaching the same goal if it finds them to be more cost-effective, efficient, or otherwise preferable. Alternative solutions which may be used under the variance Order include using suitable substitutes for lead solder or automating the solder grinding operation.

It is a fundamental principle of industrial hygiene that there is no better way of protecting employees from exposure to lead and arsenic than by elimination of employee exposure to those substances. To aid CC in its lead and arsenic exposure elimination program, OSHA has issued this variance and thereby extended the time for the Company to comply with the standard's PEL's solely by use of engineering and work practice controls. In the interim, the variance order obligates the Company to provide additional protection to that currently provided by the standards. CC has a continuing responsibility to reduce employee exposure to lead and arsenic by utilizing feasible engineering and work practice controls that may be developed in the future, despite the current stay of this provision of the lead standard (Order paragraph 9). Whenever permissible exposure levels are not met by engineering controls or work practice controls, the Company must provide to each solder grind booth worker, without regard to airborne exposure levels, a positive pressure, supplied-air respirator, with a hood and protective bib. Clean hoods and bibs must be provided on a daily bais (Order paragraph 1).

In addition to the written compliance plans required by the standard, CC is also required to submit a detailed annual report to OSHA on the implementation of its lead elimination program (Order paragraph 2). Since trade secret information may be included in these reports, the Department of Labor will protect the confidentiality of this information, if a privilege is asserted by CC, to the fullest extent permitted by law and will notify CC in advance if disclosure is compulsory to allow CC an opportunity to protect its interests.

Both the compliance plan and the annual report will reflect a Corporation-wide compliance program applicable to all of CC's affected facilities. This is in lieu of separate plans for each workplace which would otherwise be required under the standards. This approach will enable OSHA to monitor CC's total compliance efforts and will facilitate uniform and systematic enforcement of essentially similar operations in diverse locations. It is OSHA's decision that this approach, in conjunction with the augmented exposure monitoring, medical surveillance, medical removal protection, and training programs provided in the variance order, will provide solder grind booth workers with at least equivalent protection as would be afforded by the lead and inorganic arsenic standards.

2. *Exposure Monitoring.* The primary purpose of air monitoring is to identify the sources and the extent of employee exposure to airborne lead and inorganic arsenic. In general, monitoring assists the employer in the selection of proper engineering controls and the assessment of effectiveness of those controls. Where engineering controls do not reduce exposure levels to or below the PEL, monitoring enables the employer to determine the appropriate respiratory protection to be used in conjunction with engineering controls. Additionally, monitoring enables the employer to notify employees when their exposure levels exceed permissible limits, as required by section 8(c)(3) of the Act, and provides information to physicians when, for example, blood leads are high, but air lead readings are low.

Employee exposure, as defined by both the lead and inorganic arsenic standards, at 29 CFR 1910.1025(d)(1)(i) and 29 CFR 1910.1018(e)(1)(ii) respectively, is exposure which would occur in the absence of respiratory protection. It is acknowledged that engineering controls currently available to CC might not be sufficient by themselves to reduce employee exposure levels to the PEL within the time periods allowed by the lead and inorganic arsenic standards. Therefore, this variance is predicated on the interim use of supplied-air respirators by all solder grind booth employees while CC works toward eliminating exposure to lead and inorganic arsenic originating from solder grinding. Since data from CC as well as from OSHA variance inspections have demonstrated that airborne concentrations of lead and inorganic arsenic, although they vary considerably, are within the limits which permit the use of the supplied-air respirators currently in use by CC (not in excess of either 100,000 μg lead/m^3 of air, or 200,000 μg inorganic arsenic/m^3 of air), monitoring inside the hood of the respirator will present, for the purposes of this variance, a means of determining employee exposure to airborne lead and inorganic arsenic and efficacy of the respirator program. The objectives of airborne monitoring will be met in this way, and thus a variance is granted from 29 CFR 1910.1025(d)(1)(i) and 29 CFR 1910.1018(e)(1)(ii) to permit sampling as indicated, to be carried out under the hood of the respirator (Order paragraphs 8 and 11).

The exposure monitoring requirements of the standards state that full-shift personal samples (i.e., at least 7 continuous hours), including at least one job classification in each job area, be taken. See 29 CFR 1910.1018(e)(1)(iii) and 29 CFR 1910.1025(d)(1)(ii). CC has proposed that short-term monitoring inside the hood of the supplied-air respirator be carried out which represents the exposure of all solder grind booth employees, claiming that short-term sampling is sufficiently representative in this situation. The results of a Chrysler Corporation conducted study presented to OSHA comparing the concentrations of airborne lead from short-term (one full work cycle) samples with full-shift (7 hour) samples, indicated a significant relationship between the concentrations in the samples. This conclusion was based on high correlation coefficient values, the similarity of average concentrations and the similarity of the variations derived from the sample data. Short-term monitoring, therefore, appears to provide reliable measurements for solder grind booth employees where ceiling exposure levels inside the hood are consistently below the standard's PEL's (Order paragraph 12). For the purposes of this Order, a full work cycle includes the following steps: donning the supplied-air respirator and proceeding into the solder grind booth; grinding; using the air shower; exiting the booth; and removing the helmet. This work cycle includes the passage through the booth of at least 30 automobile bodies and normally requires a one and one-half hour time period.

Paragraph (d)(4)(i) of the lead standard requires an employer to monitor only a representative sample of workers to determine all workers' exposure levels. With regard to frequency of monitoring, paragraph (d)(6)(i) of the lead standard states that where an initial reading reveals exposure below the action level, measurements need not be repeated unless a change in circumstances occurs, as outlined in paragraph (d)(7). Where monitoring reveals employee exposure at or above the action level but below the PEL, paragraph (d)(6)(ii) of the lead standard calls for monitoring at least once every six months, until readings fall below the action level.

Quarterly monitoring is required under paragraph (d)(6)(iii) of the lead standard only when exposure levels are determined to be above the PEL, until such time as readings are confirmed to be below the action level. An identical requirement is found in paragraph (e)(3) of the inorganic arsenic standard. OSHA believes that the methods for monitoring exposure to lead and inorganic arsenic, as detailed in paragraphs 8 and 11 of the Order, provide worker protection at least as safe and healthful as would exist if the exposure monitoring provisions of the lead and inorganic arsenic standards were followed.

In the case of lead, it was determined that the combination of monitoring of airborne levels on a semi-annual basis and monitoring of blood lead and zinc protoporphyrin (ZPP) levels every 2 months give an accurate picture of the exposure of the employee. When pre-established levels for blood lead (40 μg/100gm) or ZPP (100 $\mu g/\mu g$-100ml) are exceeded, both a documented comprehensive evaluation and a medical examination are to be carried out. When a TWA of 50 $\mu g/m^3$ is exceeded in the semi-annual airborne lead monitoring, a documented comprehensive evaluation shall be carried out.

In determining exposure to inorganic arsenic it is OSHA's contention that airborne monitoring within and outside of the hood of the supplied-air respirator is necessary since inorganic arsenic has been determined to be carcinogenic and there is no established correlation between the results of biological testing for lead and exposure to inorganic arsenic.

Where the levels of inorganic arsenic as measured inside the hood of the supplied-air respirator exceed the action level (5 micrograms per cubic meter of air), a documented comprehensive evaluation shall be carried out to determine the cause and a report shall be sent to OSHA's Office of Variance Determination.

3. *Medical Surveillance and Medical Removal Protection.* Under the variance, medical protection will be enhanced for solder grind booth workers exposed to lead and inorganic arsenic. CC will augment in several ways its medical surveillance and medical removal protection ("MRP") programs currently carried out under the lead standard. CC will also continue its medical surveillance program under the inorganic arsenic standard, but variance has been granted from several provisions dealing with frequency of medical examinations, and provision of sputum cytology and chest x-ray examinations-specifically, paragraphs (n)(2)(ii), (n)(3)(i) and (n)(3)(ii) of § 1910.1018.

Paragrah 3 of the Order requires CC to maintain its MRP program in accordance with paragraph (k) of the lead standard notwithstanding any judicial stay of enforcement that may be ordered. Although a stay was not ordered by the U.S. Court of Appeals, subsequent appeals may be taken to the Supreme Court where a stay of enforcement could be imposed.

The lead provides for blood lead monitoring on a frequency of 2 or 6 months, depending upon exposure levels. Under paragraph 4 of the Order, CC will provide all solder grind booth employees with blood lead and zinc protoporphyrin (ZPP) monitoring at least every two months, without regard to exposure levels. In this way, the Order expands coverage of the standard allowing closer surveillance of these workers which in turn will help evaluate the efficacy of CC's comprehensive health and hygiene program. If, at any time, an employee's blood lead level is greater than 40ug/100g, or the ZPP level is greater than 100ug/100ml, an additional sample shall be obtained from that employee within 10 days. If the abnormality is confirmed, a documented comprehensive evaluation of possible causes shall be made for appropriate corrective action. A report of this evaluation is to be sent to the Office of Variance Determination. In addition, a medical examination shall be provided to that employee.

During the first six months the variance is in effect, OSHA will review the results of the Chrysler Corporation zinc protoporphyrin (ZPP) testing as a method for detecting employee overexposure to lead.

Inorganic arsenic is a known human carcinogen which causes lung and other cancers. The inorganic arsenic standard specifies that all employees exposed at least 30 days per year over the action level, or with a history of 10 or more years of exposure over the action level must be provided with initial chest x-ray and sputum cytology examinations, as part of the medical surveillance program. 29 CFR 1910.1018(n)(3)(i) provides that all employees under 45 years of age with fewer than 10 years of exposure over the action level, without regard to respirators, shall have annual medical examinations thereafter that include chest x-ray, but not sputum cytology, examinations. 20 CFR 1910.1018(n)(3)(ii) specifies that all other employess in the medical surveillance program, i.e., those not included in (n)(3)(i), shall be given examinations that include both chest x-ray and sputum cytology examinations at least semi-annually.

In its application for variance from the inorganic arsenic standard, the Chrysler Corporation requested the elimination of chest x-ray and sputum cytology examination.

OSHA has concluded that in this particular case the frequency of chest x-ray examinations can be reduced without compromising the level of protection. Under paragraph 10 of the Order, employees whose initial exposure to inorganic arsenic occurred at least 10 years previously (exposure defined as assignment in an area where the employee is likely to be exposed over the action level of 5ug/m^3 of air for at least 30 days per year) without regard to respirator use are to be provided with chest x-ray examinations on an annual basis. Such variance is granted on the basis of the recognized latency between initial exposure to inorganic arsenic and risk of future cancer development. CC will continue to provide semi-annual physical examinations, incorporating the procedures listed in (n)(2)(i), and (n)(2)(ii)(B) and (D) of the inorganic arsenic standard, for all solder grind booth employees. In addition, an initial or baseline chest x-ray shall be provided to all exposed employees, as required by paragraph (n)(2)(i) of the inorganic arsenic standard. OSHA has further determined that, in view of the other provisions of this variance, sputum cytology examinations need not be required.

4. *Solder Dust Removal and Control.* A variance has been granted from the following provisions in the inorganic arsenic and lead standards which attempt to minimize dispersion of dust when contaminated clothing, equipment, or surfaces are cleaned: (1) 29 CFR 1910.1018(j)(2)(viii), which prohibits removal of arsenic dust by blowing or shaking; (2) 29 CFR 1910.1018(m)(5), which requires vacuuming of protective clothing before entering change rooms, lunchrooms or shower rooms; (3) 29 CFR 1910.1025(g)(2)(viii), which prohibits removal of lead dust from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air; and (4) 29 CFR 1910.1025(h)(2)(i), which prohibits removal of lead from floors and other surfaces where lead accumulates by the use of compressed air.

Instead of complying with these requirements, solder grind booth employees will be permitted to remove surface dust from their protective equipment and clothing, prior to exiting the booth, either by vacuuming or by the use of fixed-in-place overhead, multi-orificed, compressed air showers (Order

paragraph 6). While the latter method is not acceptable under the standards, it meets the objectives of the standards in these circumstances because the employee, while using the air shower, is required to wear a supplied-air respirator connected to the air supply which will prevent dust from entering his breathing zone; any other employees in the solder grind booth would be unaffected since they also would be wearing their respirators; and employees outside of the solder grind booth would be unaffected because the lead and arsenic dust which would be removed by the air shower would remain within the confines of the booth (Order paragraph 5). The air showers permitted by the variance Order have been in use in various locations in the auto industry. OSHA has observed these air showers in several solder grind booths and is convinced that their use satisfies the standards' objective of minimizing dispersion of dust into the air when clothing and protective equipment are being cleaned.

Solder grind booth employees will be permitted to remove lead dust from the auto bodies before they exit the booth by the use of compressed air (Order paragraph 7). This method will be allowed since the dust blown from the car does not substantially change the lead levels at employee work stations where grinding is performed, and does not affect employees outside of the solder grind booth inasmuch as the dust remains within the confines of the booth, as required by paragraph 5 of the Order.

5. *Eating Facilities.* A variance has been granted from 29 CFR 1910.1025 (i)(4)(ii) and 29 CFR 1910.1018 (m)(3)(i), which require that readily accessible lunchroom facilities be provided and have a temperature controlled, possitive pressure, filtered air supply. Variance investigations have shown that CC currently provides such facilities, and OSHA has determined that they are in substantial compliance with these requirements of the standards.

Paragraph 14 of the Order permits the Company, as an alternative, to provide clean eating areas near the solder grind booths. These areas need not have a temperature-controlled, positive-pressure filtered air supply, but must be maintained as free as practicable of lead or arsenic dust and must be at least 50 feet from any point of the solder grind booth. OSHA has determined that these conditions will provide solder grind booth workers with a least equivalent protection as lunchrooms required by the standard. Unlike smelters, for example, where lead contamination is pervasive and filtered-air lunchrooms provide protection for workers eating lunch, the ambient air in an automobile manufacturing plant is relatively free from lead and arsenic. The solder grind booth is the primary source of lead and arsenic dust, and since the dust will be contained within the booth by the booth's ventilation system and by the carrying out of the requirement of the Order that car bodies and employees' protective clothing and equipment be cleaned before they exit the booth, contamination of food and eating areas by air borne lead and arsenic is not considered to be a problem. Air samples taken by CC and by OSHA near exists and entrances of the solder grind booth and in the eating areas support this conclusion.

6. *Training.* Under paragraph 15 of the Order, CC will supplement the training and education requirements of the lead and inorganic arsenic standards with periodic presentations of a written program for all employees in the soldering operation from application to finishing. The program will be given to all workers prior to initial assignment to the soldering operation and will provide information on the nature of the hazard, the controls used for reducing exposure, proper use of supplied-air respirators with hoods and bibs, procedures for cleaning clothes and equipment, personal hygiene and other relevant information.

7. *Non Solder Grind Booth Employees.* The variance Order also gives increased protection from lead and arsenic dust to workers on the assembly line adjacent to the solder grind booth, and to supervisors who enter the booth for short periods. All provisions of the lead and inorganic arsenic standards apply to these workers, and in addition the Company will (1) maintain the solder grind booths in such a manner that airborne lead or arsenic dust generated within the booth is not released outside the confines of booth; (2) remove any solder dust from the automobile bodies before additional work is performed; (3) provide blood lead and zinc proptoporphyrin (ZPP) monitoring to all other employees in the medical surveillance program, exposed more than 30 days per year at least every six months without regard to employee's airborne lead and arsenic exposure levels; and (4) implement the MRP provisions of the lead standard even if they are stayed by court order pending judicial review; and (5) conduct air monitoring on the assembly line in compliance with the lead standard.

Paragraph 5 of the Order requires the Company to perform whatever repair or maintenance is necessary to maintain the structural integrity of the booth and assure the efficiency of its exhaust ventilation system. Paragraph 7 of the Order also minimizes release of dust outside the booth by requiring that dust be removed from automobile bodies before they exit the booth. As an alternative, dust may be removed by washing the bodies outside of the booth, but in no case may the body proceed for further work until it is cleaned. Workers exposed to lead who do not work in the solder grind booth will be given additional protection through periodic blood and ZPP monitoring. The lead standard would permit termination of blood monitoring if air monitoring showed values below 30 ug/m^3; CC has agreed to monitor all workers exposed to lead at least at 6 month intervals regardless of airborne exposure levels (Order paragraph 4). The MRP program will be provided despite any stay of enforcement pending review (Order paragraph 3) (See section on Medical Surveillance and Medical Removal Protection above). Paragraph 13 of the Order requires air monitoring on the automotive assemply line (except for the solder grind booth) as required by the lead standard.

CC had originally requested variances from several other provisions of the inorganic arsenic and lead standards which would have directly affected non-solder grind booth employees. These requests and the reasons for their withdrawal, are as follows:

A request had been made for a variance from 29 CFR 1910.1018(e)(1)(iii) and 29 CFR 1910.1025(d)(1)(ii), those provisions of the exposure monitoring section in the inorganic arsenic and lead standards that required collection of full-shift (at least 7 continuous hours) personal samples, as they pertained to employees on the assembly line outside of the solder grind booth. CC's contention was that it was appropriate to collect short-term representative samples. The Company's monitoring revealed that very few operations outside the solder grind booth had exposure levels which would require additional monitoring. As a result, CC has withdrawn its request for short-term monitoring in these operations.

A request was made for a variance from 29 CFR 1910.1025(i) of the lead standard as it relates to requirements for the provision and use of change rooms, showers, lunchrooms, and lavatories in areas where employees are exposed to lead above the PEL without regard to the use of respirators. CC requested a variance for solder applicators and employees on the line between the solder grind booth and the

phosphating operations, insofar as the provision required special hygiene facilities. OSHA's position was that overexposure to lead and inorganic arsenic for employees other than those working in the solder grind booths could readily be prevented by engineering and work practice controls and that, therefore, the standard would not require the employer to provide these hygiene facilities. CC concurred and withdrew its request for variance.

CC had originally requested a variance from the respirator selection tables of the lead and arsenic standards as they applied to supervisory personnel who enter the solder grind booth periodically for varying periods of time. CC's concern was that the standards could be interpreted to require supervisors to wear the supplied-air respirator with a hood and bib regardless of the duration of exposure. In discussions with CC, OSHA explained that the standards required supervisors to be provided with the respirator which affords the necessary protection factor according to the respirator selection tables. This interpretation satisfied CC's concerns, and the Company agreed to have the respective standards apply to the determination of the appropriate respirators for supervisors. Although the choice of the appropriate respirator takes into consideration the duration of exposure, it would appear that in actual practice, supervisors who enter the solder grind booth during grinding operations for any substantial period of time would need to wear respiratory protection equivalent to those of the solder grind booth employees.

IV. Order

Pursuant to authority in section 6(d) of the Occupational Safety and Health Act of 1970, and in Secretary of Labor's Order No. 8–76 (41 FR 25059), it is ordered that the Chrysler Corporation be, and is hereby, authorized to comply with the requirements of this Order set out below in lieu of complying with the requirements prescribed in the following provisions of the standard for Occupational Exposure to Lead, 29 CFR 1910.1025, and of the standard for Occupational Exposure to Inorganic Arsenic, 29 CFR 1910.1018: 29 CFR 1910.1025(d)(1)(i), and 29 CFR 1910.1018(e)(1)(ii), concerning employee exposure for monitoring purposes; 29 CFR 1910.1025(d)(1)(ii) and 29 CFR 1910.1018(e)(1)(ii), concerning full-shift monitoring; 29 CFR 1910.1025(e)(1) and 29 CFR 1910.1018(g)(1)(i) and (ii), concerning engineering and work practice controls as they pertain to methods of compliance; 29 CFR 1910.1025(g)(2)(viii) and 29 CFR 1910.1018(j)(2)(viii), concerning the prohibition for lead removal from protective clothing or equipment by blowing, shaking or any means which disperses lead into the air and for removal of inorganic arsenic by blowing or shaking; 29 CFR 1910.1025(i)(4)(ii) and 29 CFR 1910.1018(m)(3)(i), concerning the requirement that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply; 29 CFR 1910.1025(h)(2)(i), concerning removing lead from floors and other surfaces where it accumulates by the use of compressed air; 29 CFR 1910.1018(m)(5), concerning removal of inorganic arsenic from protective clothing by vacuuming; 29 CFR 1910.1018(n)(2)(ii)(C), and (n)(3)(i) and (ii), concerning the requirements for initial and periodic medical examinations, respectively; and 29 CFR 1910.1025(r)(7), concerning the startup date for compliance plans. All other provisions of both standards are unaffected by this variance order, and the Chrysler Corporation must continue to comply with them in conjunction with the terms of this Order.

1. Each employee in the solder grind booth shall be provided daily with, and required to wear, supplied-air respirators with hoods and protective bids, operated in the positive pressure mode. These respirators shall be approved for use in atmospheres containing not more than 20 milligrams of inorganic arsenic per cubic meter of air (20 mg/m^3), or 100 milligrams of lead per cubic meter of air (100 mg/m^3).

2. A corporate written compliance program, as required by paragraph (e)(3) of the standard for Occupational Exposure to Lead, shall be completed within one year of the effective date of the grant of variance. Copies of the plan will be available at each plant covered by this variance. The employer shall substantially reduce, with the goal of ultimate elimination, employee exposure to lead and inorganic arsenic in connection with solder grind operations as soon as feasible, but not later than January 1, 1987, barring economic or technical limitations. In addition to the compliance plan, the employer shall submit to the Assistant Secretary a report concerning the detailed implementation of this objective on April 1, 1981, and annually thereafter until the goal is met. Upon the assertion by the employer, at the time of each submission, that the report contains trade secret information, the Department of Labor will protect the document to the fullest extent permitted by law and will not disclose it unless such disclosure is compulsory as a matter of law. Where disclosure may be required, the employer will be notified in advance.

3. For all employees in Chrysler's medical surveillance program, the employer shall institute a program of medical removal protection as provided in paragraph (k) of the standard for Occupational Exposure to Lead.

4. All solde grind booth employees shall have both blood lead level and zinc protoporphyrin (ZPP) levels determined at least every 2 months. All other employees in the medical surveillance program, exposed more than 30 days per year, shall have blood lead and ZPP levels determined in accordance with paragraph (j) of the standard for Occupational Exposure to Lead, but not less frequently than every 6 months, irrespective of airborne lead monitoring results.

5. The employer shall be required to maintain the solder grind booth in such condition that airborne lead or inorganic arsenic dust within the booth shall be contained within the confines of the booth.

6. The employer shall assure that employees, prior to exiting the solder grind booth, remove surface dust from their clothing and equipment by vacuuming, or by the use of fixed-in-place overhead air showers with multiple orifices, while their respirators are connected to an air supply.

7. The employer shall assure that solder dust is removed from the automobile bodies before they exit the confines of the solder grind booth, as required by paragraph (h)(1) of the standard for Occupational Exposure to Lead, except that where car wash facilities are provided, the automobile bodies may be washed to remove solder dust after they exit the solder grind booth. In any case, the solder dust shall be removed before any additional work is performed on the automobile bodies.

8. If a solder grind booth employee's blood lead level is greater than 40 micrograms per 100 grams (4μg/100g), or the zinc protoporphyrin (ZPP) level is greater than 100 micrograms per 100 milliliters (100μg/100ml), an additional sample shall be obtained from the employee within 10 days of receipt of the original laboratory results. If the abnormality is confirmed, then the following shall be accomplished: (a) A documented comprehensive evaluation shall be made by the employer. Such an evaluation shall include monitoring inside of the hood of the supplied-air respirator, for both lead and arsenic, and may also include air monitoring outside of the hood of the supplied-air respirator, a study of engineering controls and personal protective

equipment (air supply, hood integrity, booth ventilation, and facilities), employee personal hygiene and work practices, and blood lead data to determine the cause. Engineering changes, further testing, and employee retraining shall be carried out as needed. A preliminary report of this evaluation shall be sent to the U.S. Department of Labor, Office of Variance Determination within 2 months of the receipt of the laboratory results of the confirming blood tests. A final report shall be sent when available; and (b) A medical examination shall be performed as outlined in paragraph (j)(3)(ii) of the standard for Occupational Exposure to Lead (§ 1910.1025). The specific tests and any follow-up examinations will be determined by the examining physician.

9. The employer is not relieved from the continuing responsibility to utilize feasible engineering and work practice controls that may be developed as the sole means of reducing exposure to inorganic arsenic and lead to acceptable levels under the standard for Occupational Exposure to Inorganic Arsenic and the standard for Occupational Exposure to Lead.

10. All solder grind booth employees shall be provided semi-annual medical examinations to include items specified in paragraphs (n)(2)(i), (n)(2)(ii)(B), and (n)(2)(ii)(D) of the standard for Occupational Exposure to Inorganic Arsenic (§ 1910.1018). In addition, 10 years following the date of initial exposure of any employee to inorganic arsenic over the action level ($5\mu g/m^3$ of air) without regard to respirator use, such employee shall be provided with an annual chest X-ray examination described in paragraph (n)(2)(ii)(A) of the inorganic arsenic standard (§ 1910.1018). Exposure is defined as assignment in an area where the employee is likely to be exposed over the action level for at least 30 days per year.

11. The employer shall conduct air monitoring which represents the time weighted average exposure to inorganic arsenic and lead of all solder grind booth employees, on a semi-annual basis. These personal samples shall be taken from inside the hood of the supplied-air respirator in the breathing zone of the employee in the solder grind booth, and from within the solder grind booth outside of the hood of the supplied-air respirator. Where the time weighted average (TWA) for inorganic arsenic is 5 micrograms per cubic meter of air ($5\mu g/m^3$) or greater or the TWA for lead is $50\mu g/m^3$ or greater, inside the hood of the supplied-air respirator, the employer shall conduct a documented comprehensive evaluation which may include a study of engineering controls and personal protective equipment (air-supply, hood integrity, booth ventilation, and facilities), employee personal hygiene and work practices, and blood data. Engineering changes, further testing, and employees retraining shall be carried out as needed. A preliminary report of this evaluation shall be sent to the U.S. Department of Labor, Office of Variance Determination within 2 months of notification of the results of the repeated monitoring inside the hood of the supplied-air respirator. A final report shall be sent when available.

12. When monitoring of airborne levels of lead or inorganic arsenic inside the hood of the supplied-air respirator of a solder grind booth employee is required, the monitoring shall be carried out for a period of time sufficient to collect samples representative of full-shift exposure, which shall include at least one full work cycle in the solder grind booth.

13. The employer shall conduct air monitoring on the automotive assembly line from solder application to Bonderite (except for the solder grind booth) in compliance with the standard for Occupational Exposure to Lead.

14. For solder grind boothe employees, the employer may provide a clean and readily accessible eating facility in lieu of the required lunchroom, as specified in § 1910.1018(m)(3)(i) of the inorganic arsenic standard and § 1910.1025(i)(4)(ii) of the lead standard. These eating facilities shall be no closer than fifty (50) feet from any point of the solder grind booth and shall be kept clean in accordance with the housekeeping requirements as provided in paragraph (h) of the standard for Occupational Exposure to Lead.

15. The employer shall provide a written training and education program for employees assigned to solder application, grinding, and finishing operations which shall include, but not be limited to, the health hazards associated with inorganic arsenic and lead, proper respirator use, protective clothing, personal hygiene, and restrictions on smoking or eating in the solder grind booth. This training and education program shall be operated periodically.

16. The employer shall comply with all provisions in this grant of variance, and in addition shall not be relieved from compliance with all other applicable provisions of the standard for Occupational Exposure to Inorganic Arsenic and the standard for Occupational Exposure to Lead.

As soon as possible, the Chrysler Corporation shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective Date: This Order shall become effective on November 7, 1980, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 28th day of October, 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-34879 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor of Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of Federal standards as State standards after comments and public hearing. Section 1952.108 of Subpart D sets forth the State's schedule for the adoption of Federal standards. By letter dated August 19, 1980 from Darrel D. Douglas, Administrator of the Accident Prevention Division, Workers' Compensation Department, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.177, Servicing Multi-Piece Rim Wheels, as published in the **Federal Register** (45 FR 6706) dated January 29, 1980. These State standards which are contained in OAR Chapter 437, Division 56, Vehicles, were promulgated by the State after a hearing held on May 15, 1980 pursuant to the rulemaking authority in ORS 654.025(2) and ORS 656.726(3) and in accordance with the procedure provided by ORS 183.335.

2. *Decision.* Having reviewed the State submission in comparison with the

Federal standards, it has been determined that the State standards are identical to the Federal standards with the following minor exceptions: rule numbers and required internal references, definitions, mention of responsible individuals by title, and the dates on which various rules became effective, and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Technical Data Center, Room N2349R, New Department of Labor Building, 3rd and Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 7, 1980.

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

Signed at Seattle, Washington this 16th day of September 1980.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 80-34875 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-26-M

Oregon State standards; Notice of Approval

1. **Background.** Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (herein after called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated purusant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of Federal standards as State standards after comments and/or public hearing. Section 1952.108 of Subpart D sets forth the State's schedule for the adoption of Federal standards. By letter dated May 8, 1980, from Darrel D. Douglas, Administrator, Accident Preveniton Divison, Workers' Compensation Department, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.1000, Table Z-1, Chlorine, as publsihed (43 FR 87602) on December 8, 1978. These State standards which are contained in OAR Chapter 437, Occupational Safety and Health Code, and amend Chapter 22-017(A), Air Contaminants, Table G-1, were promulgated by the State after a notice to amend was publish in the Secretary of State's Administrative Rules Bulletin on December 15, 1979 pursuant to ORS Chapter 183.335. No written comments or requests for a public hearing were received.

Decision. Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards except for different effective dates, and accordingly should be approved. The enforcement of the comparable Federal standard has been delayed pending Supreme Court action.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Technical Data Center, Room N2349R, New Department of Labor Building, 3rd and Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 7, 1980.

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

Signed at Seattle, Washington this 25th day of September 1980.

James W. Lake,

Regional Administrator.

[FR Doc. 80-34877 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been aproved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as those which are presently or will, in the future, be promulgated under section 6 of the Occupational Safety and Health Act of 1970. In accordance with ORS Chapter 183.336, the Workers' Compensation Department duly filed notice of intent to amend OAR Chapter 437, Oregon

Occupational Safety and Health Code, Division 57 (part 26) Motor Vehicle Transportation of Workers. The notice was published in the Secretary of State's Administrative Rules Bulletin on December 15, 1976. On December 16, 1976, the notice of intent was mailed to the Worker's Compensation Department and Motor Vehicles Division. No written comments or requests for a public hearing regarding the filed notice of intent were received. The Motor Vehicle Transportation of Workers was adopted on March 17, 1977, upon the filing of an Order of Adoption with the Secretary of the State of Oregon.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that there is no comparable Federal standard and that, therefore, the State standard exceeds Federal requirements.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Technical Data Center, Room N2349R, New Department of Labor Building, 3rd St. and Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is one for which there is no comparable Federal standard and therefore the State standard exceeds the Federal standards.

2. The standard was adopted in accordance with the procedural requirements to State law and further participation would be unnecessary.

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

This decison is effective November 7, 1980.

Signed at Seattle, Washington this 28th day of March 1980.

James W. Lake,

Regional Administrator.

[FR Doc. 80-34878 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefit Programs

[Application No. D-2046]

Proposed Exemption for Certain Transactions Involving the Bakery Drivers Local 802 Pension Fund, Located in Long Island City, N.Y.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed leasing of office space by the Bakery Drivers Local 802 Pension Fund (the Pension Fund) to Bakery Drivers Local Union 802 (the Union), Bakery Drivers Local 802 Welfare Fund (the Welfare Fund), Bakery Drivers Local 802 Credit Union (the Credit Union), and other tenants in a building to be purchased from Bakery Drivers Real Estate Corp. (the Corp.), which is wholly owned by the Union. The proposed exemption, if granted, would affect the Pension Fund, the Welfare Fund, the Union, the Credit Union, any other tenants of the building, and any other persons participating in the proposed transaction.

DATES: 1Written comments and requests for a public hearing must be received by the Department of Labor on or before December 26, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20216, Attention: Application No. D-2046. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department of Labor, telephone (202) 523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the trustees of the Pension Fund, pursuant to section 408(a) of the Act and section 4975(c((2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. As of May 1980, there were approximately 2,300 participants in the Pension Fund. As of December 31, 1979, the market value of the gross assets of the Pension Fund was $12,464,498. Currently and for the past several years the Pension Fund, the Welfare Fund, the Union, and the Credit Union occupy and have occupied space in an office building (the Building) located at 41-20 Crescent Street, Long Island City, New York 11101. The same persons serve as trustees for both the Pension Fund and the Welfare Fund. Employees of the Welfare Fund participate in the Pension Fund, to which the Welfare Fund contributes on behalf of such employees. Thus, the Welfare Fund is a party in interest with respect to the Pension Fund, pursuant to section 3(14)(C) of the Act. The Union is a party in interest with respect to the Pension Fund, pursuant to section 3(14)(D). The applicants represent that the Credit Union is not a party in interest with respect to the Pension Fund.

2. The Building, consisting of two stories and a basement, contains a total area of 11,390.5 square feet. Under the current arrangement, which has been in effect for approximately 15 years, the

Pension Fund, the Welfare Fund, and the union share jointly 4,810.5 square feet on the second floor and basement. The Pension Fund occupies approximately 9 percent (442.5 square feet); the Welfare Fund, approximately 31 percent (1500.5 square feet); and the Union, approximately 60 percent (2867.5) square feet) of the shared space. The remainder of the rentable space in the Building consists of 986 square feet leased to the Credit Union at an annual rent of $6,900, and 1,142 square feet which is currently unoccupied. In addition to the rentable space is 4,452 square feet which is common area, including but not limited to entrances, lobbies, stairways, and toilets.

3. The trustees of the Pension Fund intend to purchase the Building from the Corp. The Corp. is going to sell the Building primarily for financial reasons. There is no guarantee that a buyer other than the Pension Fund would not require the current tenants to relocate. The Pension Fund would thus incur relocation expenses, may find it difficult to obtain suitable office space, and may not find office space at the same place as the Union.

The application represents that it is extremely advantageous for both Funds to occupy the same building with the Union in order to facilitate transactions pertaining to the participants. The current location of the offices is considered very convenient for participants, as well as the trustees and employees. The application represents further that it is customary in the New York City area for Taft-Hartley pension and welfare funds and the related sponsoring union to have offices in the same building and that the proposed lease of office space to the Union and related Welfare Fund is also customary in this area for such arrangements.

4. No exemption is requested with respect to the purchase of the Building by the Pension Fund from the Corporation because the applicants believe that such purchase is permitted under the transitional rule of section 414(c)(3) of the Act.[1] The purchase price is less than four percent of the Pension Fund's total assets as of December 31, 1979. Such purchase is conditioned upon the ability of the Pension Fund to lease space in the Building to the Union, the Welfare Fund, the Credit Union, and other tenants.

5. The leases, which have not yet been entered into, will provide terms which have been recommended by Helmsley-Spear, Inc. (H-S), a company established in 1856 which deals in real estate and insurance. The leases will be for ten years at $10 per square foot, inclusive of heat, based on the rental value of this class of building in the area. Each lease will have escalator clauses which increase the annual rental payable to reflect increases in real estate taxes, heating costs, and building maintenance costs. According to H-S, these escalator provisions serve the same purpose as rental adjustments and it is common business practice to have these escalator provisions in 10-year leases, such as those involved in this transaction. Electricity is not included in the lease and will be apportioned to each tenant by the managing agent on the basis of usage, as determined by electrical engineering surveys. The rental rate is anticipated to be sufficient to cover the costs of operating the Building, including the managing agent's fee, and any tax on unrelated business income arising out of the debt-financed rental income. (The Building is being sold subject to an existing mortgage of approximately $62,000.)

6. H-S will be retained as independent fiduciary with respect to the proposed lease arrangements and in such capacity will serve as managing agent of the Building, pursuant to a written agreement not yet executed, with complete fiduciary authority to manage and control the Building and the leases, except for the authority to sell the Building, which authority will be retained by the trustees of the Pension Fund. H-S pay all bills for the Building, will monitor energy bills and make recommendations for conservation and will administer all service contracts relating to the Building. In addition, H-S will secure a tenant or tenants for the unoccupied rentable space and will renew or negotiate subsequent leases for the currently occupied space at such terms and rental as H-S will determine is reasonable and a fair market rental value for the space. H-S will undertake to advise the trustees of the Pension Fund regarding the continued viability and feasibility of ownership of the Building; However, H-S's power in this regard is solely advisory. The trustees believe that because the Pension Fund is buying the Building as a home for the Pension Fund, rather than as an investment, it would be impractical and unreasonable to delegate to an independent fiduciary final authority to sell the Pension Fund's home office. H-S has represented that the sale and leases between the Pension Fund, the Union, the Credit Union, and the Welfare Fund are in the best interests of the participants of the Pension Fund.

7. In summary, the applicants represent that the proposed lease arrangements satisfy the statutory criteria contained in section 408(a) of the Act because (a) the lease arrangements will enable the Pension Fund, the Welfare Fund, and the Union to continue to be located in the same building for the convenience of Plan participants; (b) the rental rate will be the fair rental value as appraised by an independent real estate company and is expected to cover the Building's operating costs, the managing agent's fee, and any unrelated business income tax; (c) electricity will be paid by the tenants; (d) the rental rate will be adjusted annually to reflect increases in real estate taxes, heating costs, and building maintenance costs; (e) the Building and the leases will be managed by an independent fiduciary who believes that the proposed lease arrangements are in the best interests of the participants of the Pension Fund; and (f) the trustees of the Funds believe that the transactions are appropriate for and in the interests of the Funds' participants and beneficiaries.

Notice to Interested Persons

Within 20 days of the date this notice of pendency is published in the **Federal Register**, the applicants will notify all interested persons of the pendency of this application for exemption. Interested persons include all contributing employers, the Union, active employees, pensioners, and beneficiaries. The notice will contain a copy of the notice published in the **Federal Register** and will inform interested persons of their right to comment and/or request that a hearing be held with respect to the proposed exemption. The notice will be posted at the various work sites of the employees and will be mailed to pensioners and beneficiaries.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in

[1] The Department is expressing no opinion as to whether such purchase meets the requirements of this section.

accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the leasing of office space by the Pension Fund to the Union, the Welfare Fund, the Credit Union, and other tenants, in the Building to be purchased from the Corporation, according to the lease terms and conditions specified hereinabove, provided the rental payments are not less than fair market rental value.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consumated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of November 1980.

Morton Klevan,

Deputy Administrator, Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 80-34864 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2103]

Proposed Exemption for Certain Transactions Involving the Citizens Bank and Trust Company Revised Retirement Plan Located in Jeffersonville, Ind.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of certain real property by the Citizens Bank and Trust Company Revised Retirement Plan (the Plan) to the Citizens Bank and Trust Company (the Employer), a party in interest with respect to the plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Employer, and any other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 26, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2103. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined benefit plan with approximately 120 participants. The Trust Department of the Employer serves as the Plan trustee (the Trustee). Pursuant to the terms of a Plan Trust Agreement presently in effect, the Trustee is given discretionary authority to make investment decisions for the Plan. However, these decisions are subject to the review and endorsement of an eight member Trust Committee.

2. Among the assets of the Plan is certain real property located at 438, 440 and 442 Spring Street in Jeffersonville, Indiana (the Property). The Property consists of two contiguous parcels of land. Also making up the Property is a two-story office building known as the "Beck Building", which is erected on one of the parcels. The parcel containing the Beck Building was acquired by the Plan in November 1962 for $22,000. The adjacent parcel was purchased by the Plan in February 1970 for $5,020.

3. Prior to the passage of the Act, the Plan leased the Property to the

Employer. The lease was for a 5 year period beginning in October 1971 and ending in September 1976. The rental paid was $5,250 per annum. Other lease provisions gave the Employer a right to renew the lease for three successive 5 year periods as well as an option to purchase the Property at any time during the leasehold term. The Employer was also responsible for incurring all repair and maintenance costs associated with the Property.

With the passage of the Act, the lease arrangement was terminated. The Plan then began leasing the Property to unrelated parties and to assume the expense of repairs.

4. As a result of deterioration of the Beck Building, the Plan has been unable to lease the entire second floor to prospective tenants. Although the Plan has advertised the availability of these premises on several occasions, no tenant has been found. Consquently, the Plan has suffered operating deficits with respect to its ownership of the Property.

5. To curtail potential losses, the Plan proposes to sell the Property to the Employer in order to divert the funds received into other investments. In addition, the Employer wishes to expand its existing banking facilities by acquiring the Property, which is adjacent to its business premises. The sales price of the Property is $58,000. This amount represents the higher of two independent appraisals made of the Property in January and February 1980. Mr. Renn F. LaMaster, a real estate broker, valued the Property at $58,000. Mr. James T. Raney, an appraisal consultant, valued the Property at $56,700. The proposed transaction will not involve the payment of real estate commissions or fees. Further, the sale will be for cash.

6. As of January 1, 1980, Plan assets totaled $741,240. Thus, the Property involved in the proposed transaction would represent approximately 8% of the total Plan assets.

7. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (1) it will be a one-time transaction for cash; (2) the sale will allow the Plan to divest itself of asset producing operating deficits; (3) the purchase price of the Property will be the greater of two independent appraisals; (4) no brokerage fees or commissions will be incurred by the Plan; and (5) the Trustee has determined that the proposed transaction is appropriate for the Plan and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be given to the Plan Trustee and all active and inactive participants and beneficiaries, within 20 days of the publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency as published in the **Federal Register** and shall inform interested persons of their rights to comment and/or request a hearing regarding the proposed exemption. Notice will be provided to participants currently employed by the Employer by posting it at locations customarily used to inform employees of items of interest. Notice shall be provided to each beneficiary, inactive participant and fiduciary by first class mail.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale by the Plan to the Employer of certain real property located at 438, 440, and 442 Spring Street in Jeffersonville, Indiana for $58,000, provided this amount is no less than the fair market value on the date of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of November, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-34791 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1502]

Proposed Exemption for Certain Transactions Involving the Rhodes, Kendall & Harrington, a Professional Law Corporation, profit Sharing Plan and Trust Agreement Located in Newport Beach, Calif.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a partnership interest in Abbott Equities, Ltd. (Abbott) by the Rhodes, Kendall & Harrington, a Professional Law Corporation, Profit Sharing Plan and Trust Agreement (the Plan) to RK&H Properties. RK&H Properties is a partnership composed of Terry L. Rhodes (Rhodes), Robert A. Kendall and Bruce E. Harrington who are stockholders in Rhodes, Kendall & Harrington, a Professional Law Corporation, the Sponsor of the Plan, as well as being trustees of the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 18, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1502. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Dan O'Neil, of the Department of Labor, telephone (202) 523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed August 7, 1979, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. On February 9, 1978, the Plan purchased for $20,000 a 10 percent interest in Abbott, a limited partnership, from an independent third party, Michael McHugh, in an arm's-length transaction. Abbott owns a 75 percent interest in Stevenson Associates (Stevenson), a limited partnership which holds title to certain real estate (the Property) located on the northerly side of Stevenson Boulevard between Cedar Boulevard and Boyce Road in the City of Newark, Alameda County, California. The sale of the Property was consummated on December 28, 1978.

2. Subsequent to Stevenson's agreeing to acquire the Property for $25,000 an acre, but before the sale was consummated, the City of Newark revised the general planning designation of the Property from low density residential to high density residential and community commercial. Litigation ensued between Stevenson and the seller of the Property which resulted in a renegotiated purchase agreement at a price of $30,000 an acre. As a result of such renegotiation the Plan was required to make additional capital contributions to Abbott of $965.28 on August 1, 1978, $540 on December 1, 1978, and $50,000 on October 23, 1979. As a result of these contributions, the Plan's interest in the partnership constituted approximately 99 percent of the value of the assets of the Plan as of January 31, 1980.

3. At the time the Plan's interest in Abbott was acquired, the Plan had four participants. Currently, it has twenty-six participants. Plan documents permit contributions by participates. Administration of the Plan has become virtually impossible for several reasons. Since the partnership interest in Abbott represents approximately 99 percent of Plan assets, there is no opportunity to achieve the liquidity and diversity necessary for the sound management of Plan assets. Under the Plan documents, participants are empowered to direct investment of their interest in the Plan, and there has been little opportunity for participants to exercise such power. Substantial additional capital contributions may be required by Abbott, which could exceed the future financial capabilities of the Plan. Even if the Plan was financially capable of participating further in the development of the Property, income resulting from this effort, if any, may be taxable pursuant to the Unrelated Business Taxable Income rules in sections 511 through 514 of the Code. Additionally, Abbott has met resistance from potential investors in the development of the Property because of the presence of the Plan as a partner.

4. This application was filed by Rhodes, a trustee of the Plan, requesting an exemption to allow RK&H Properties to purchase the 10 percent interest in Abbott held by the Plan for approximately $80,600, the exact amount to be determined at the date of sale. This fugure represents a 10 percent annual return on the Plan's total investment of $71,505.28. The terms of the sale are to be cash. The appraised value of the Plan's interest in the Property amounted to $73,364 as of April 16, 1979, based on an appraisal by David M. DeVoe, S.R.P.A.-M.A.I., Hayward, California. Up to March 31, 1980, the Plan has received no offers from independent third parties to purchase the partnership interest in Abbott.

5. The applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because (1) the exemption would eliminate possible unfavorable tax rates, pursuant to the Unrelated Business Taxable Income rules contained in sections 511 through 514 of the Code, should the Plan participate in the development of the Property, (2) the proposed transaction would eliminate cash flow burdens which the Plan is presently unable to meet and allow the Plan to continue its investment objectives and (3) the Plan would receive in excess of fair market value for its share in Abbott.

Notice to Interested Persons

Notice of the pending exemption will be given to all interested persons including participants and beneficiaries of the Plan within 10 days after

publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or request a hearing regarding the proposed exemption. Delivery of the notice will be accomplished by hand delivery to those participants currently employed by Rhodes, Kendall & Harrington, a Professional Law Corporation, and by mailing to all retired or otherwise terminated participants and beneficiaries.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975 (a) and (b) of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a 10 percent partnership interest in Abbott Equities, Ltd., by the Plan to RK&H Properties for approximately $80,600, the exact amount to be determined at the date of sale, the terms to be cash, provided that the selling price is at least the fair market value of the interest at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of November.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-34790 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1129]

Proposed Exemption for Certain Transactions Involving the Sheet Metal Workers Pension Plan for Northern California Located in San Francisco, Calif.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the issuance by the Sheet Metal Workers Pension Plan for Northern California (the Plan) of commitments obligating the Plan to purchase mortgage loans on single-family dwelling units from financial institutions which are parties in interest solely by reason of being service providers to the Plan, when construction of such dwelling units may be by persons who are parties in interest with respect to the Plan, and the repurchase of defective mortgages by such financial institutions. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the financial institutions involved, contributing employers, and other persons participating in the proposed transactions.

DATES: Written comments must be received by the Department on or before January 20, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-1129. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan by its legal counsel, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471,

April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multiemployer pension plan which covers sheet metal workers, some of whom are employed by home builders in Northern California. In order to obtain construction loans, builders frequently must have a commitment from a mortgage banking firm or other financial institution to provide financing for the purchasers of the dwelling units which the builder proposes to build and sell. Such mortgage banking firms and other financial institutions often do not hold for their own investment all the mortgage loans they make to purchasers of the homes but instead sell the loans to long-term investors, pursuant to a written commitment made by such an investor. In many instances the mortgage banker or financial institution relies on the commitment of the long-term investor in giving its financing commitment to the builder to provide financing for the purchasers of the dwelling units. The Plan has for over four years issued written commitments to independent mortgage banking firms. Such commitments obligate the Plan to purchase from the mortgage banking firms a specified amount of mortgage loans made by the firm, and secured by first deeds of trust on single family dwelling units. Such units are detached single family homes in subdivisions, are condominiums created under applicable state law, or are planned unit developments which are multi-unit subdivisions restricted by recorded documents limiting the use of property to residential purposes and providing a plan for maintenance of common facilities. Commitments are made on behalf of the Plan by McMorgan & Company, the Plan's investment manager, for the purchase of mortgage loans which conform to certain written guidelines, regarding the type and quality of the property and the credit worthiness of the buyer, established by the trustees of the Plan. In considering whether to issue a commitment on behalf of the Plan for a particular project, McMorgan & Company considers, among other things, who the builder of the project will be. McMorgan & Company is, and is required to remain while serving as investment manager for the Plan, registered as an investment advisor under the Investment Advisor's Act of 1940, and was appointed the Plan's investment manager under section 402(c)(3) of the Act.

2. Following purchase by the Plan of any such mortgage loans, the note and deed of trust are assigned by the mortgage banking firm to the Plan. The Plan normally charges a loan fee for issuing the commitment to purchase such loans, part of which is refundable if the loans are tendered and purchased by the Plan. Terms of the commitments prohibit sale to the Plan of any loan which is an obligation of a party in interest or disqualified person with respect to the Plan. Further, the commitment provides that in the event defects in the mortgage loan are discovered which would jeopardize the lien position or collectibility of the debt, the mortgage banker will repurchase the defective mortgage, within a specific period (typically 90 days) from the date of purchase by the Plan. The mortgage banker will pay the Plan the outstanding principal balance on the mortgage loan plus interest and will reimburse the Plan for any expenses incurred in making the loan. The Plan's commitment must conform to the written guidelines which the Plan trustees have provided to the Plan's investment manager. The guidelines are in two sets, one for conventional residential mortgages, including planned unit developments and condominium units, and the other for one-family dwellings, FHA-insured or VA-guaranteed mortgages. Each set of guidelines contains requirements regarding the dwelling, the plot, water supply and sewage disposal, the area, the mortgage loan (including the borrower's income and credit) and other requirements or considerations. These guidelines may be changed from time to time, but typically they have provided that the dwelling unit not be more than one year old (although justifiable exceptions may be considered), that the loan mature in not more than 30 years (in the case of conventional loans) or 35 years (in the case of FHA-insured or VA-guaranteed loans), that conventional loans not exceed 80 percent of appraised value except loans of 90 percent of appraised value will be considered where private mortgage insurance covers the top 20 percent, and that title insurance and other forms of insurance be provided. These requirements are specified in the written commitment. In addition, the commitment contains the fee charged by the Plan for issuing the commitment and the interest rate required on the loans which are to be purchased by the Plan.

Also, mortgage banking firms from which the Plan purchases mortgages service the loans under separate servicing contracts with the Plan. The servicing includes collective payments and remitting them to the Plan, sending late notices and handling foreclosures. Also, the servicing contract provides that should any mortgagor default in his payment obligations (e.g., fire and hazard insurance, taxes), the servicer shall nevertheless pay the obligations when due by advancing its own funds, subject to reimbursement by the Plan.

3. The terms of the commitment are similar to commitments made by other lenders, for example, insurance companies, banks and savings and loan associations. The interest rate charged is determined by the rate then prevailing in the marketplace.

Notice to Interested Persons

Notice will be given to all interested persons within 45 days of the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment within the time period set forth in the notice of proposed exemption. The notice will be posted by all contributing employers to the Plan and will be posted in each local union office and hiring hall. Also, notice will be published in any labor journal that is regularly distributed to participants.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the

requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to issuance by the Plan of commitments, in accordance with the guidelines and procedures set forth in the application, obligating the Plan to purchase mortgage loans on single family dwelling units from financial institutions which are parties in interest solely by reason of being service providers to the Plan, when construction of such dwelling units may be by persons who are parties in interest with respect to the Plan, and the repurchase of defective mortgages by such financial institutions. The foregoing exemption will be applicable only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arm's length transactions between unrelated parties.

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan records are lost or destroyed prior to the end of the six year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the sanctions imposed by section 4975 of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any trustee of the Plan or any duly authorized employee or representative of such trustee;

(iii) The Plan's investment manager or any duly authorized employee or representative of the investment manager; and

(iv) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary.

In addition, the proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3d day of November, 1980

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-34789 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-29-M

Office of Pension and Welfare Benefit Programs

Proposed Exemption for Certain Transactions Involving Supermarket Merchandising Corporation Profit Sharing Plan (Application No. D-1976); Decor Distributors, Inc. Profit Sharing Plan (Application No. D-1977); M-K Housewares Company Profit Sharing Plan (Application No. D-1978)

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt the proposed loans (the Loans) of money for a period of five years by the Supermarket Merchandising Corporation Profit Sharing Plan, the Decor Distributors, Inc. Profit Sharing Plan and M-K Housewares Company Profit Sharing Plan (collectively, the Plans) to their respective sponsors, Supermarket Merchandising Corporation, Decor Distributors, Inc. and M-K Housewares Company (collectively, the Companies), the sponsors of the Plans. The proposed exemption would also exempt for the term of the Loans the personal guarantees of the Companies' obligation by Joel Mandel (Mandel) and J. B. Kahn (Kahn). The proposed exemption, if granted, would affect the Plans, the Companies, and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 19, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, Attention: Application Nos.

D-1976, D-1977 and D-1978. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW, Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of applications for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in applications filed by Mandel, Kahn and Gilbert Araiza, the Trustees (the Trustees) of the Plans, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. The three Plans are identical in structure and have the same Plan Administrator and Trustees. The custodian of the Plans is the First City National Bank of Houston (the Bank). As of December 31, 1979 the Plans had net assets totaling $1,065,323. The Trustees own the majority of the stock of the Companies. Each of the Companies maintains a fleet of vehicles (the Vehicles). Presently, the purchase of the Vehicles by the Companies is financed through the Bank. The Bank finances the Vehicles at an interest rate of 2% above the prevailing prime rate of the Bank.

2. The Trustees are requesting an exemption to allow each Plan, for a period of five years to make Loans on a recurring basis to the Company which sponsors it. The five year period would begin on the date the exemption for the proposed transactions is published in the **Federal Register**. The proceeds from the Loans would be used by the Company to purchase the Vehicles. Each Loan would be subject to the following conditions:

(1) Each Loan will be collateralized by a promissory note and a security agreement,

(2) Each Loan will have a first lien on the Vehicle, and in addition will be collateralized by other vehicles which are owned by the Companies such that at all times each Loan will be collateralized in an amount at least equal to 150% of outstanding balance of such Loan,

(3) Each Vehicle purchased will be a new Vehicle,

(4) No Loan will exceed 80% of the purchase price of the Vehicle financed, excluding the tax, title and license costs,

(5) The maximum length of any Loan will be 36 months,

(6) The interest rate on the Loans will be fixed at a rate 2¼% above the prevailing prime rate set by the Bank with the maximum rate being the rate which is legally allowed under the usury statutes of the State of Texas,

(7) At the time of its making no Loan together with other Loans will exceed 25% of the dollar value of the total assets of the Plan,

(8) Each Loan will be personally guaranteed by Mandel and Kahn who are the majority shareholders of the Companies. The Trustees represent that Mandel has a net worth of more than three million dollars and Kahn has a net worth of more than one million dollars.

3. Prio to the Plans entering into any Loan, an independent fiduciary, Mr. Kenneth H. Knop (Knop), Esquire, will certify that such Loan would be an appropriate investment for the Plan and that the terms of such Loan are equal to or better than those which the Plan would receive in dealing with an unrelated party. Knop will also be responsible for monitoring the payments on the Loans and for monitoring the fair market value of the collateral used in securing the Loans. Knop is engaged in the practice of law in Houston, Texas and specialzes in trust administration. Knop is unrelated to the Companies or the Plans. The Bank will release money to fund a Loan only upon the Bank's receipt of (1) a promissory note and security agreement in proper form, (2) an envelope draft payable to the order of the seller of the Vehicle containing an application for a title to the vehicle, a sales tax receipt, and a seller's affidavit of sale, and (3) the written approval of Knop. The Bank will receive all Loan payments and will notify knop of any failure on the part of any Company to make a Loan payment within 15 days from the date such payment is due.

4. The Trustees represent that the proposed Loans will satisfy the criteria of section 408(a) of the Act as follows: (1) The Trustees fo the Plan represent that the Loans will be in the best interests of the Plan; (2) the Loans will be approved and monitored by an independent fiduciary; (3) the Plans will receive a high rate of return on their investment; (4) the Loans will be secured at all times by personal property valued at 150% of the outstanding balance of the Loans and by personal guarantees of the majority shareholders of the Companies; and (5) the exemption will be for a five year period of time.

Notice to Interested Persons

A copy of the notice of pendency will be mailed to each participant and beneficiary of the Plans within 15 days of its publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will b available for public inspection with the applications for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the applications, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and Section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply for a five year period to the Loans to the Companies by the Plans as above described, or for the term of the Loans to the personal guarantees of the Companies' obligation ~~by~~ Mandel and Kahn.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the applicatons accurately describe all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of November 1980.

Ian D. Lanoff,

Administator, Pension and Welfare Benefit Programs, Labor-Management Services Administation, Department of Labor.

[FR Doc. 80-34788 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1954

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending October 31, 1980.

Alabama	Montana
Alaska	Nebraska
Arizona	Nevada
Arkansas	New Hampshire
California	New Jersey
Colorado	New Mexico
Connecticut	New York
Delaware	North Carolina
District of Columbia	North Dakota
Florida	Ohio
Georgia	Oklahoma
Hawaii	Oregon
Idaho	Pennsylvania
Illinois	Rhode Island
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Massachusetts	Washington
Michigan	West Virginia
Minnesota	Wisconsin
Mississippi	Wyoming
Missouri	

Signed at Washington, D.C., on October 31, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-34882 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-30-M

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1954

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending October 31, 1980, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama	Montana
Alaska	Nebraska
Arizona	Nevada
Arkansas	New Hampshire
California	New Jersey
Colorado	New Mexico
Connecticut	New York
Delaware	North Carolina
District of Columbia	North Dakota
Florida	Ohio
Georgia	Oklahoma
Hawaii	Oregon
Idaho	Pennsylvania
Illinois	Rhode Island
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Massachusetts	Washington
Michigan	West Virginia
Minnesota	Wisconsin
Mississippi	Wyoming
Missouri	

Signed at Washington, D.C., on October 31, 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-34881 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-30-M

[Secretary of Labor's Order 8-80]

Enforcement of Equal Opportunity in Programs and Activities Receiving or Benefiting from Financial Assistance from the Department of Labor

1. *Purpose.* To establish an Office of Civil Rights in the Office of the Secretary, and to delegate authority and assign responsibility for enforcing equal opportunity in programs and activities receiving or benefiting from financial assistance from the Department of Labor (DOL).

2. *Authority and Directives Affected.*—a. *Authority.* This Order is issued pursuant to the Act of March 4, 1913 (37 Stat. 736); 29 U.S.C. 551, 5 U.S.C. 301 and 302 (b) (1); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; Section 132 of the Comprehensive Employment and Training Act (CETA); and Executive Orders which apply to recipients of financial assistance from the DOL.

b. *Directives Affected.* This Order cancels Temporary Directives 33 and 33-E, including the abolishment of the position of Special Assistance to the Secretary for Civil Rights. All other Orders, Directives, and Notices inconsistent with the provisions of this Order are superseded to the extent of such inconsistency.

3. *Policy.* It is the policy of the DOL to promote equality of opportunity in its programs and activities, and to ensure full compliance with all constitutional, statutory and regulatory nondiscrimination provisions in programs and activities receiving or

benefiting from financial assistance from the DOL.

4. *Background.* The DOL, through several of its Agencies, administers grant programs which provide financial assistance to various recipients including units, agencies, and consortia of State and local governments, educational institutions, nonprofit agencies and organizations and private corporations. Recipients of assistance must conform to constitutional, statutory and regulatory prohibitions against discrimination. An Office of Civil Rights in the Office of the Secretary is needed to establish uniform, consistent and effective enforcement of the nondiscrimination and equal opportunity requirements applicable to all DOL programs of financial assistance.

5. *Establishment.* There is hereby established in the DOL an Office of Civil Rights whose Director reports directly to the Secretary of Labor.

6. *Delegation of Authority and Assignment of Responsibilities.*—a. *The Director of the Office of Civil Rights* is delegated authority and assigned responsibility for:

(1) Developing, implementing, and monitoring the Department's civil rights enforcement program under all equal opportunity and nondiscrimination requirements applicable to programs of financial assistance from DOL, including Title VI of the Civil Rights Act of 1964, as amended; Section 132 of CETA; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; and the Age Discrimination Act of 1975, as amended (hereinafter referred to as grant related EO laws).

(2) Establishing and formulating all policies, standards, and procedures, as well as issuing rules and regulations governing the civil rights enforcement programs under grant related EO laws.

(3) Achieving compliance through pre-award and post-award reviews, complaint investigations, negotiations, conciliation proceedings, and the application of appropriate sanctions and remedies.

(4) Cooperating and coordinating with DOL Agencies, the Office of the Inspector General, the Department of Justice, Equal Employment Opportunity Commission and other agencies in connection with the administration of nondiscrimination and equal opportunity laws.

(5) Developing and conducting training and providing technical assistance for the National and regional staffs of the Office of Civil Rights as well as for DOL Agency program staffs, recipients of DOL financial assistance and beneficiaries.

(6) Developing and implementing a management information and case tracking system which can be used to assess the effectiveness of the DOL Civil Rights Program; and directing the regional programs and staff for civil rights in carrying out their functions under the grant related EO laws.

b. *Agency Heads* are assigned responsibility for:

(1) Promoting and instituting measures to assure that equality of opportunity is a reality in all Federal financial assistance programs funded by their Agency.

(2) Assuring that equal opportunity requirements are incorporated into all regulations, procedures and other guidelines and references covering grant programs administered by their Agency.

(3) Maintaining close liaison and providing full cooperation with the Director of the Office of Civil Rights in all civil rights and equal opportunity matters affecting the financial assistance programs of their Agency.

c. *The Solicitor of Labor* is delegated authority and assigned responsibility for:

(1) Providing legal advice and assistance to all officers of the Office of Civil Rights relating to the administration of grant related EO laws.

(2) Representing the Secretary of Labor and/or other DOL officials in legal proceedings under the grant related equal opportunity laws as appropriate.

7. *Transfer of Resources.* Personnel, funds, equipment, supplies and records associated with administration and enforcement of equal opportunity in any grant making programs of DOL Agencies are transferred to the Office of Civil Rights. The Assistant Secretary for Administration and Management will complete arrangements to effect an orderly and equitable transfer of resources, including assurance of consultation and negotiations as appropriate with the exclusive union representatives.

8. *Effective Date.* This order shall be effective as of October 28, 1980. Signed at Washington, D.C., this 28th day of October 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-34683 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-23-M

[TA-W-10,675]

Collins and Aikman Corp. Bangor Division, Cowpens, S.C.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 1980 in response to a worker petition received on August 20, 1980 which was filed by former workers on behalf of workers and former workers producing finished fabric at the Cowpens, South Carolina plant of the Bangor Division of Collins and Aikman Corporation.

On September 8, 1980, an investigation (TA-W-10,675) was initiated on behalf of the same group of workers as TA-W-10,504.

Since the identical group of workers is the subject of the ongoing investigation TA-W-10,504, a new investigation would serve no purpose. Consequently, the investigation (TA-W-10,675) has been terminated.

Signed at Washington, D.C. this 4th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34872 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,173]

Conklin Forging Co., Inc., Detroit, Mich.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 6, 1980 in response to a worker petition received on September 29, 1980 which was filed by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO on behalf of workers and former workers producing forged parts and tools at Conklin Forging Company, Incorporated, Detroit, Michigan.

The petitioning group of workers in this case was included in a determination (TA-W-7784) issued on October 17, 1980 which certified as eligible to apply for adjustment assistance all workers at Conklin Forging Company, Incorporated, Detroit, Michigan. Since all workers separated totally or partially, from Conklin Forging Company, Incorporated, Detroit, Michigan on or after April 11, 1979 (impact date) and before October 17, 1982 (expiration date of the certification) are covered by an existing determination, a new investigation would serve no purpose. Therefore, this investigation has been terminated.

Signed at Washington, D.C. this 4th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34873 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,616]

Metal Forge Co., Columbus, Ohio; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1980 in response to a worker petition received on September 2, 1980 which was filed on behalf of workers at the Columbus, Ohio plant of Metal Forege Company. The workers produce front end suspension systems.

On October 17, 1980 workers at the Columbus, Ohio plant of Metal Forge Company were denied eligibility to apply for adjustment assistance (TA-W-8007). The petition alleged that imports of automobiles caused layoffs. The investigation revealed no evidence that indicated increased imports of automobiles or suspension systems had contributed importantly to layoffs at the Columbus, Ohio plant of Metal Forge Company in 1979 or the first six months of 1980.

The Department instituted another investigation on behalf of workers at the Columbus, Ohio plant of Metal Forge Company (TA-W-10,616). The petition alleges that imports of automobiles caused layoffs in July 1979.

Since an investigation has already been conducted pursuant to the facts and statements presented in the current petition (TA-W-10,616) and since the current petition presents no additional information pursuant to the previous determination (TA-W-8007) that would change that determination, another investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 4th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34871 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7399]

Uniroyal Merchandising Co., Houston, Tex.; Negative Determination Regarding Application for Reconsideration

By an application dated September 5, 1980, counsel for the petitioner with support from the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers engaged in employment related primarily to the sales and service of passenger car and truck tires at the Uniroyal Merchandising Company, Houston, Texas. The determination was published in the **Federal Register** on August 19, 1980, (45 FR 55298).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

Counsel for the petitioner with support from the company claims that the Uniroyal Merchandising Company's (UMC) application cannot be separated from the plant situations where trade adjustment assistance was approved. Counsel claimed that imported tires have caused UMC to sell its tires at unprofitable prices thereby causing layoffs. Lastly, counsel states that UMC's sales have been hurt by the shift to metric size tires which has brought a steadily declining share of the replacement market to UMC.

The Department's review shows that workers at UMC did not meet the "contributed importantly" test of the Trade Act of 1974. The Department found that the substantial decline in domestic demand for passenger car and truck tires and the management decision by UMC to phase out its retail outlets were the major factors affecting sales at UMC.

With respect to the linking of the certifications at several of Uniroyal tire plants to UMC's application and to the claim that UMC was placed in an unfavorable competitive position because of imported passenger car tires, it should be noted that in order to certify the UMC retail outlets, the adverse impact of increased imports must be shown to have contributed importantly to the closing of the UMC retail outlets. In this case, no such relationship has been found since the certifications issued to workers at Uniroyal tire plants in 1979 and 1980 were based on increased imports of passenger car tires by the Uniroyal Tire Company, itself, and on purchases of imported passenger car and truck tires by Uniroyal's customers in the original equipment and large wholesalers in the replacement markets. UMC's retail outlets sell passenger car and truck tires directly to individual customers in the replacement market. Certification of UMC workers, therefore, cannot be linked directly to the basis on which the production worker certification rested. The closing of UMC retail outlets beginning in 1977 were a factor in the significant declines in UMC's sales, especially in 1979. Declines in U.S. shipments in 1979 compared to 1978 of both passenger car and truck tires resulted primarily from the contraction in tire demand. This contraction was brought about by several factors including the increased use and longer life of radial tires and reduced tire wear due to lower speed limits, and longer tire life due to reduced driving caused by scarcity and costliness of gasoline. Further, the Department found that UMC's retail outlet closings were the result of a management decision which originated in the mid-1970s long before workers were certified at the first Uniroyal tire plant.

Finally, the Department does not agree with the claim that imports of metric size tires have been a factor in UMC sales declines. Metric size tires were only introduced on some 1978 new car models and the demand "downstream" in the replacement market has not as yet fully arrived. Irrespective of developments in the metric size tire market, the Department's negative decision is predominantly based on Uniroyal's management decision in the mid-1970s to divest itself of its company owned retail outlets and on the substantial decline in domestic demand for passenger car and truck tires.

Further, increased auto imports cannot be used as a basis for certifying employees of company owned retail outlets of independent tire producers. The Department has previously determined that component parts are not like or directly competitive with the finished article. This position has been supported by the courts.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 28th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34884 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 31st day of October 1980.

Harold Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Abex Corp. Amsco Division (USWA)	Chicago Hts., IL	10-24-80	10-10-80	TA-W-11,497	Steel castings.
AIE Division of Vernitron (workers)	Smithville, TN	10-24-80	10-21-80	TA-W-11,498	Small electrical transformers.
American Motors Corp., PDC (workers)	Burlingame, CA	10-24-80	10-20-80	TA-W-11,499	Automotive parts.
American Safety Inflatables Division (workers)	Miami, FL	10-20-80	10-16-80	TA-W-11,500	Flotation safety equipment.
Boris Smoler & Sons Inc. (ILGWU)	La Porte, IN	10-24-80	10-21-80	TA-W-11,501	Ladies apparel.
Boris Smoler & Sons Inc. (ILGWU)	Chicago, IL	10-24-80	10-21-80	TA-W-11,502	Ladies apparel.
Boris Smoler & Sons Inc. (ILGWU)	Elkhart, IN	10-24-80	10-21-80	TA-W-11,503	Ladies apparel.
Burgher Shingle Ridge Inc. (workers)	Copalis Crossing, WA	10-24-80	10-10-80	TA-W-11,504	Make shake ridge.
Crucible Steel Co. Colt Ind. (USWA)	Midland, PA	10-24-80	10-21-80	TA-W-11,505	Stainless and alloy steel.
Concord Coal Corp. (company)	Charlestown, WV	10-24-80	10-17-80	TA-W-11,506	Metallurgical and utility coal.
Decker Coal Co. (PMWA)	Decker, MT	10-27-80	10-24-80	TA-W-11,507	Coal.
Fisher Corp. (company)	Troy, MI	10-22-80	10-20-80	TA-W-11,508	Seat belt hardware.
GAF Corp. Building, Materials Group (USWA)	Joliet, IL	10-24-80	10-21-80	TA-W-11,509	Advanced mastics and fibrous padding.
Hoover N.S.K. Bearing Co. (UAW)	Ann Arbor, MI	10-24-80	10-17-80	TA-W-11,510	Ball bearings.
Jack Winter Company (ACTWU)	Milwaukee, WI	10-24-80	10-18-80	TA-W-11,511	Ladies and misses apparel.
Liberty Tool & Die (workers)	Walled Lake, MI	10-24-80	10-14-80	TA-W-11,512	Stamping die.
New Jersey Zinc Co. (USWA)	Ogdensburg, NY	10-24-80	10-20-80	TA-W-11,513	Mining product of zinc ore for processing into zinc metal.
Olivetti Corp. (workers)	Harrisburg, PA	10-24-80	10-21-80	TA-W-11,514	Calculators, printers and typewriters.
Pennsy Coats (ILGWU)	Paterson, NJ	10-24-80	10-22-80	TA-W-11,515	Raincoats.
Sharon Steel Corp., Brainard Strapping Division (USWA).	Warren, OH	10-24-80	10-21-80	TA-W-11,516	Strapping tools, steel trappings.
Thorntown Textile Co. (company)	Thorntown, IN	10-24-80	10-21-80	TA-W-11,517	Ladies sportswear.
Thorsby Mfg. Co. (ILGWU)	Thorsby, AL	10-24-80	10-21-80	TA-W-11,518	Sportswear.
Sharpie Mfg. (workers)	Brainerd, MN	10-24-80	10-18-80	TA-W-11,519	Ladies coats and jackets.
Simonds Cutting Tools Wallace Murray Corp. (USWA).	Newcomerstown, OH	10-24-80	10-21-80	TA-W-11,520	Specialty files.
Thompson Steel Co. Inc. (USWA)	Worcester, MA	10-24-80	10-21-80	TA-W-11,521	Wire products, tempered and untempered.
VRN Division of Vernitron (workers)	St. Petersburg, FL	10-22-80	10-20-80	TA-W-11,522	Potentiometers and resistive devices.
Wheeling-Pittsburgh Steel Corp. (USWA), Martins Ferry Plant.	Martins Ferry, OH	10-27-80	10-23-80	TA-W-11,523	Galvanized steel coils and sheet and strip.
Wonderall (workers)	Buffalo, MN	10-24-80	10-18-80	TA-W-11,524	Children blouses, shirts, pants, coats, jackets.
Wonderall (workers)	Minneapolis, MN	10-24-80	10-18-80	TA-W-11,525	Children blouses, shirts, pants, coats, jackets.
Wonderall (workers)	Paynesville, MN	10-24-80	10-18-80	TA-W-11,526	Children blouses, shirts, pants, coats, jackets.
Xplorer Motor Homes (workers)	Brown City, MI	10-27-80	10-24-80	TA-W-11,527	Motor homes and vans.
B&B Plastics (workers)	Lockport, NY	10-28-80	10-24-80	TA-W-11,528	Teflon coats carburetor parts.
Gene Bell Chevrolet Inc. (workers)	Detroit, MI	9-18-80	9-16-80	TA-W-11,529	Automobile sales.
Industrial Electronic Rubber Co. (workers)	Twinsburg, OH	10-28-80	10-22-80	TA-W-11,530	Precision molded rubber products.
S. W. Evans & Sons (workers)	Philadelphia, PA	10-27-80	10-22-80	TA-W-11,531	Umbrella frames.
Sager Glove Corp. (workers)	Murray, KY	10-28-80	10-23-80	TA-W-11,532	Flame retardant safety clothes.
Taylor Sportswear Inc. Warehouse (workers)	Cleveland, TN	10-24-80	10-21-80	TA-W-11,533	Men's 3 pc. vest suits.
Taylor Sportswear Inc. Plant (workers)	Cleveland, TN	10-24-80	10-21-80	TA-W-11,534	Men's 3 pc. vest suits.
Taylor Sportswear Inc. (workers)	New York, NY	10-24-80	10-21-80	TA-W-11,535	Men's 3 pc. vest suits.
United Canning Corp. (workers)	North Lima, OH	10-27-80	10-24-80	TA-W-11,536	Different sized cans of mushrooms.
United Steel Wire Co. (workers)	Battle Creek, MI	10-27-80	10-23-80	TA-W-11,537	Shopping carts.
Associated Spring Barnes Group Inc. (UAW)	Ann Arbor, MI	10-24-80	10-17-80	TA-W-11,538	Precision valve springs.
Armco Inc. (USWA)	Baltimore, MD	10-27-80	10-24-80	TA-W-11,539	Stainless steel products.
Bethlehem Steel Corp. (USWA)	Steelton, PA	10-28-80	10-22-80	TA-W-11,540	Steel ingots, alloy steels.
Dayton Malleable Ironton Division (workers)	Ironton, OH	10-28-80	10-20-80	TA-W-11,541	Automobile and truck parts.
East Side Lighting (AFL-CIO)	Linden, NJ	10-27-80	10-22-80	TA-W-11,542	Lighting fixtures.
Florsheim Shoe Co. (workers)	Chaffee, MO	10-20-80	10-11-80	TA-W-11,543	Men's leather shoes.
Intrend Textiles Inc. (workers)	New York, NY	10-27-80	10-22-80	TA-W-11,544	Printed fabric.
Mahoning Valley Mushroom Farm Inc. (workers).	North Lima, OH	10-27-80	10-24-80	TA-W-11,545	Different size cans of mushrooms.
Reliant Die & Engineering Co. (workers)	Detroit, MI	10-28-80	10-24-80	TA-W-11,546	Automotive dies and tools.
St. Joe Zinc Co. (USWA)	Balmat, NY	10-27-80	10-21-80	TA-W-11,547	Zinc concentrate, zinc sulphide.
Detroit Drop Die Co. (Detroit Die Sinkers)	Bellville, MI	10-24-80	10-21-80	TA-W-11,548	Forging dies, trimmers.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ensign Electric Co. (USWA)	Huntington, WV	10-27-80	10-23-80	TA-W-11,549	General mining equipment.
G. C. Lingerie Corp. (Company)	Tuscumbia, AL	10-27-80	10-21-80	TA-W-11,550	Lingerie.
General Electric Co. (workers)	Memphis, TN	10-27-80	10-24-80	TA-W-11,551	Miniature automotive lamp.
Gregory Novelty, Ltd. (ILGWU)	New York, NY	10-27-80	10-23-80	TA-W-11,552	Process feathers.
Glenoma Shake & Shingles (workers)	Glenoma, WA	10-27-80	10-20-80	TA-W-11,553	Shakes and shingles.
Granite City Steel Division (USWA)	Granite City, IL	10-27-80	10-23-80	TA-W-11,554	Cold and hot rolled and galvanized steel.
Philadelphia Steel (USWA)	Conshohocken, PA	10-27-80	10-24-80	TA-W-11,555	Large round iron balls.
Rubin Gloves Inc. (ACTWU)	Gloversville, NY	8-1-80	7-30-80	TA-W-11,556	Men's and ladies gloves.
United States Steel Corp. (workers)	Pittsburgh, PA	10-27-80	10-21-80	TA-W-11,557	Clerical work.
Barnum Brothers Fibre Co. (Sterling Plastics Wkrs. Union).	Petoskey, MI	10-29-80	10-21-80	TA-W-11,558	Fan shrouds.
Creative Foam Corp. (workers)	Fenton, MI	10-29-80	10-1-80	TA-W-11,559	Foam gaskets and seals for the automotive industry.
DME Company (company)	Youngwood, PA	10-28-80	10-22-80	TA-W-11,560	Steel plates used to assemble tooling for plastic injection molding and die castings.
DME Comapny (company)	Darlington, PA	10-28-80	10-22-80	TA-W-11,561	Steel plates used to assemble tooling for plastic injection molding and die castings.
Display South (USWA)	Clanton, AL	10-28-80	10-23-80	TA-W-11,562	Metal display fixtures.
Doehler-Jarvis (UAW)	Batavia, NY	10-29-80	10-21-80	TA-W-11,563	Custom die castings, chain saw parts, audio visual parts.
K Industries Corp. (workers)	Mineral Wells, TX	10-28-80	10-23-80	TA-W-11,564	Hermetic seals.
Publix Shirt Co. (ACTWU)	Gallitzin, PA	10-29-80	10-22-80	TA-W-11,565	Men's sport shirts.
Signal Stat (IAM)	Union, NJ	10-27-80	10-22-80	TA-W-11,566	Automotive lighting devices.
Wheeling-Pittsburgh Steel Corp. (USWA)	Yorkville, OH	10-27-80	10-23-80	TA-W-11,567	Steel.
General Motors Corp., Central Office (company).	Willow Run, MI	10-30-80	10-27-80	TA-W-11,568	Administration, engineering and research testing.
Brown Shoe Co. (workers)	Peggott, AR	10-29-80	10-22-80	TA-W-11,569	Manufacture shoes.
Engineering & Research Staff—Manufacturing Development Glendale—Glendale Research (UAW).	Detroit, MI	10-29-80	10-23-80	TA-W-11,570	Research.
Imperial Disptay Corp. (workers)	Long Island City, NY	10-27-80	10-18-80	TA-W-11,571	Decorations.
Ina Sportswear (workers)	New York, NY	10-24-80	10-21-80	TA-W-11,572	Shirts and slacks.
Mickey Madann Handbags Inc. (company)	New Bedford, MA	10-24-80	9-23-80	TA-W-11,573	Manufacture ladies handbags.
Nicholson File Co. (workers)	Anderson, IN	10-15-80	10-8-80	TA-W-11,574	Hand files, rotary burrs.
Republic Steel Corp. (USWA)	Niles, OH	10-14-80	10-9-80	TA-W-11,575	Flat cold rolled steel coils.
Teledyne Wah Chang (workers)	Albany, OR	10-28-80	10-23-80	TA-W-11,576	Zirconium metal nuclear fuel rods.
Theo Gershenwald & Sons Inc. (workers)	New York, NY	10-14-80	10-9-80	TA-W-11,577	Suits, coats.
U.S. Steel Corp American Bridge Division (workers).	Pittsburgh, PA	10-20-80	10-14-80	TA-W-11,578	Fabricate and erect steel bridges, buildings.
Goodyear Tire & Rubber Co. Dist. Ctr. (workers).	Gadsden, AL	10-29-80	10-20-80	TA-W-11,579	Tires.
Jay Garment Co. (ACTWU)	Clarksville, TN	10-29-80	10-27-80	TA-W-11,580	Work shirts and suits.
Miller Shoe #4, Melville Corp	Brunswick, ME	10-29-80	10-23-80	TA-W-11,581	Women's shoes and boots.
Royal Down Products (ACTWU)	Belding, MI	10-29-80	10-20-80	TA-W-11,582	Textiles.
Sunstrand Heat Transfer Inc. (workers)	Dowagiac, MI	10-29-80	10-22-80	TA-W-11,583	Copper.
Tommy-Alpren Togs Inc. (factory) (workers)	New York, NY	10-29-80	10-22-80	TA-W-11,584	Manufacture children's clothing.
Tommy-Alpren Togs Inc. (showroom) (workers).	New York, NY	10-29-80	10-22-80	TA-W-11,585	Manufacture children's clothing.
Twine Products Corp. (UTW)	New Orleans, LA	10-29-80	10-27-80	TA-W-11,586	Sisal baler twine, polypropylene baler plastic twine.
Vakko Leather (workers)	New York, NY	10-29-80	10-28-80	TA-W-11,587	Pants, coats, jackets.
Cadillac Cable Corp., Machine Division (AFL-CIO).	Frackville, PA	10-30-80	10-27-80	TA-W-11,588	Steel fabricated material handling racks.
Chrysler St. Louis Car Assembly Plant (UPGWA).	Fenton, MO	10-27-80	10-23-80	TA-W-11,589	Produce cars.
Elanvay Corp. (ILGWU)	Shelbyville, IN	10-30-80	10-27-80	TA-W-11,590	Pant suits, pants, blouses, skirts, dresses.
J. I. Case Co. (UAW)	Racine, WI	10-27-80	10-23-80	TA-W-11,591	2 wheel and 4 wheel agricultural tractors.
J. I. Case Co. (UAW)	Burlington, IA	10-27-80	10-23-80	TA-W-11,592	Rubber tires, construction equipment for construction tractors.
J. I. Case Co. (UAW)	Bettendorf, IA	10-27-80	10-23-80	TA-W-11,593	Crawler tractors.
J. I. Case Co. (UAW)	Rock Island, IL	10-27-80	10-23-80	TA-W-11,594	Components for agricultural tractors; valves, engines.
Miller Bros. Industries (workers)	New York, NY	10-27-80	10-24-80	TA-W-11,595	Manufacture jeans.
U.S. Steel Corp. U.S. Steel Supply Division (workers).	Tayler, MI	10-10-80	9-25-80	TA-W-11,596	Sale of steel products.
Peterson Spring Corp. (UAW)	Three Rivers, MI	10-30-80	10-25-80	TA-W-11,597	Springs, rings, stampings.
Andrew Bruce Fashions LTD (company)	New York, NY	10-30-80	10-27-80	TA-W-11,598	Men's clothing.
Distel Tool & Machine Co. (UAW)	Warren, MI	10-30-80	10-28-80	TA-W-11,599	Build large body dies.
Fly Manufacturing Co., Athens Division (workers).	Athens, AL	10-30-80	10-24-80	TA-W-11,600	Woven work and sport shirts.
National Fibrit (workers)	Springfield, TN	10-30-80	10-28-80	TA-W-11,601	Interior trim panel.
Parker Reynolds Chev. Inc. (workers)	North Olmsted, OH	9-9-80	9-2-80	TA-W-11,602	Auto dealership.
Salant & Salant (company)	Lexington, TN	10-30-80	10-23-80	TA-W-11,603	Men's and women's jeans.
Reed Forest Products Inc. (workers)	Cheektowaga, NY	10-30-80	10-28-80	TA-W-11,604	Wallpaper.
Yorktowne Manufacturing Co. (workers)	Ephrata, PA	10-30-80	10-27-80	TA-W-11,605	Women's blouses.

[FR Doc. 80-34874 Filed 11-6-80; 8:45 am]
BILLING CODE 4510-28-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period October 27-31, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed

importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-8146; Commerce Engineering and Pattern Co., Walled Lake, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of industrial patterns are negligible.

TA-W-8150; J&I Pattern Company, Troy, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of industrial patterns are negligible.

TA-W-8152; Sherwood Metal Products, Inc., Drayton Plains, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of auto patterns are negligible.

TA-W-10,320; Ring Screw Work Co., Ring Screw Division, Warren, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8778; H. Waterbury and Sons Co., Oriskany, NY

Investigation revealed the criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7846; Wells Lamont Corp., Leather Cutting Dept., Brownsville, TN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,032; DSB Engineering, Inc. Algonac, MI

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8621; Modern Engineering Service Co., Inc., Troy, MI

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9496; Joan Fabrics Corp., Lowell, MA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of yam and finished fabric did not increase as required for certification.

TA-W-9376; Florsheim Shoe Co., Hermann, MI

Investigation revealed that criterion (3) has not been met. A certification applicable to the workers at the subject facility expired on May 4, 1980. Production at the facility has not declined since that time.

TA-W-9158; U.S. Industries Inc., Lucas Steel Div., Toledo, OH

Investigation revealed that the workers do not produce an articles as required for certification under Section 223 of the Act.

TA-W-8148; Admiral Pattern Works, Inc., Warren, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of industrial patterns are negligible.

TA-W-8091; Magnavox Consumer Electronics Co., Cabinet Div., Jefferson City, TN

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of cabinets or televisions did not increase as required for certifications.

TA-W-7912; Dana Corp., Hagerstown Distribution Center, Hagerstown, IN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-7302; Lear Siegler, Inc., Automotive Div., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7938; Bendix Corporation, St. Joseph, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7962; Dayco Corporation, Automotive Sales Div., Waynesville, NC

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8373; Ceramic Elements, Inc., South Plainfield, NJ

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8714; Bent Tube Inc., Fowlerville, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-9162; J&R Fashions, Inc., Paterson, NJ

Investigation revealed that sales by manufacturers for which the subject form product under contract did not decline.

TA-W-9429; E.I. Dupont De Nemours and Co., Inc., Flint, MI

Investigation revealed (3) has not been met. Aggregate U.S. importants of automotive coatings are negligible.

TA-W-10,285; National Steel Corp., Steamship Div., Cleveland, OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8124; Whittaker Corp., Detroit, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8999; Carron and Co., Inkster, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,853; Michigan Metal Processing Corp., Detroit, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-10,893; Joseph T. Ryerson and Son, Inc., Indianapolis, IN

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8327; Uniroyal, Inc., Port Clinton, OH

Investigation revealed that criterion (1) has not been met.

TA-W-10,601; Warrior and Gulf Navigation Co., Port Birmingham, AL

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8659; General Hose Products, Inc., Fairfield, NJ

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8149; Progress Patern Div., Lear Siegler, Inc., Southfield, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7941 and 8209; Machine Rite Products, Inc., Lagrange, IN; Metal Fabricating Corp., Lawrenceburg, TN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8109, 8110, 8111, 8112, 8113, 8114, and 8115; Superior Industries International, Inc.; Woodley Ave., Van Nuys, CA; Keswick St., Van Nuys, CA; Redwood Ave., Los Angeles, CA; South Westgate, West Los Angeles, CA; Gardena, CA; Rt. 53, Itasca, IL; and West Bryn Mawr, Itasca, IL

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,667, 10,677, & 10678; Consolidation Coal Co., McDowell, WV

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increases as required for certification.

TA-W-9676; Dana Corp., Hopins, MN

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of axles did not increase as required for certification.

TA-W-9458; P.R. Die and Stamping Company, Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,004; Hub Material Company, Boston, MA

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8143; Perfection Pattern and Mfg. Co., Madison Heights, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8144; Automotive Pattern Foundry Tooling Division, Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7793; Modine Manufacturing Co., Paducah, KY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8064; Stamping Service, Inc., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

Affirmative Determinations

TA-W-8014 & 8014A-F; Dalton Industries, Inc.; Willoughby, OH; Canton, OH; Lorain, OH; Solon, OH; Cleveland, OH; Asheville, NC; and Columbus, NC

A certification was issued covering all workers of the firm separated on or after April 28, 1979 and before June 1, 1980.

I hereby certify that the aforementioned determinations were issued during the period October 27-31, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: November 3, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34880 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-76)]

NASA Advisory Council; Meeting

ACTION: Notice of Meeting Extension.

SUMMARY: The scheduled meeting on November 10, 1980, of The NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee, published in the **Federal Register** October 21, 1980 (45 FR 69602), has been extended to be held an additional day as follows:

NAME OF COMMITTEE: NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee.

DATE AND TIME: November 10, 1980, 8:30 a.m.-5:00 p.m., November 11, 1980, 9:00 a.m.-12:00 noon.

ADDRESS: Board of Trustee's Room, Millikan Library, California Institute of Technology, Pasadena, California 91125.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

AGENDA:

November 10, 1980

8:30 a.m.-10:30 a.m., Introduction.

10:30 a.m.–12:00 noon, Planning Status.
1:00 p.m.–4:00 p.m., Alternate Planning.
4:00 p.m.–5:00 p.m., Summary.

November 11, 1980

9:00 a.m.–10:30 a.m., Closed Session (Discussion of Membership).
10:30 a.m.–12:00 noon, Alternate Planning Continued.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Washington, DC 20546 (202/755–3728).

SUPPLEMENTARY INFORMATION: The Informal Ad Hoc Solar System Exploration Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploration (COMPLEX) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration. The committee will report its findings to the Council and to NASA. The chairperson of the committee is Dr. John E. Naugle, and the committee is composed of four other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel.

The meeting, originally announced as a one-day open meeting, is being extended at this time to accommodate the recently identified need to consider adding additional members to cover any disciplines not adequately covered by the original membership. For this purpose, a portion of the extension will be closed to the public from 9:00 a.m. to 10:30 a.m., on November 11, for a discussion of the qualifications of additional candidates for participation in the committee's study. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 32 persons, including committee members and invited meeting participants. Visitors will be requested to sign a visitor's register.

Russell Ritchie,

Deputy Associate Administrator for External Relations.

November 3, 1980.

[FR Doc. 80-34773 Filed 11-6-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Robert E. Ricklefs; Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by December 8, 1980. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. The regulations appeared in final form in the June 7, 1979 **Federal Register**. Additional information was published in the July 31, 1980 **Federal Register**, page 51004.

The application received is:

1. *Applicant:* Robert E. Ricklefs, Department of Biology, University of Pennsylvania, Philadelphia, Pennsylvania 19104.

2. *Activities for which Permit Requested.* Taking (24 Adelie penguin eggs, 24 Giant Petrel eggs, 24 Blue-eyed Shag eggs, 12 South Polar Skua eggs, 24 Wilson's Storm Petrel eggs). Importing into the U.S.A.

The eggs are required in conjunction with studies on the tolerance of avian embryos to cooling. Petrel eggs are frequently abandoned for periods of one or more days, but although egg temperature drops to around 5° C during absences, the embryos survive. Embryos of most other species at Palmer Station cannot tolerate such cooling.

The applicant plans to measure the metabolism (oxygen consumption) of embryos exposed to different temperatures ranging downward from 36° C to the point at which metabolism is no longer detectable.

The applicant plans to test the tolerance of embryos exposed to temperatures of 20° C and 5° C for periods of 2 hours, 24 hours, and 72 hours. Three eggs will be tested under each combination of conditions. Where feasible, the experiment will be repeated with eggs collected during the early part of the incubation and during the late part.

3. *Location:* Anvers Island and vicinity, Antarctic Peninsula.

4. *Dates:* December 8, 1980 to March 31, 1981.

Authority to take this action has been delegated by the Director, NSF to the Director, Division of Polar Programs.

Edward P. Todd,

Division Director, Division of Polar Programs.

[FR Doc. 80-34792 Filed 11-6-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-348]

Alabama Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. NPF–2 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit No. 1 (the facility) located in Houston County, Alabama. The amendment is effective as of the date of issuance.

The amendment lowers the core elevation radial peaking factor, Fxy, for the remainder of Cycle 2 and for the upcoming Cycle 3.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's supplemental filing dated September 25, 1980 contained a portion claimed to be proprietary pursuant to 10 CFR 2.790(b). The staff has not yet completed its proprietary determination. The information claimed to be proprietary will be treated as such pending our determination. The non-proprietary portion of the September 25, 1980 submittal is available in the Public Document Room.

For further details with respect to this action, see (1) the application for amendment dated August 15, 1980 and the non-proprietary portion of the letter dated September 25, 1980, (2) Amendment No. 16 to License No. NPF-2, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of October, 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing

[FR Doc. 80-34854 Filed 11-6-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-250]

Florida Power and Light Co.; Issuance of Amendment of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 60 to Facility Operating License No. DPR-31 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of the Turkey Point Plant Unit No. 3 (the facility) located in the Dade County, Florida. The amendment is effective as of the date of issuance.

The amendment permits continued operation of the Turkey Point Plant Unit 3 for six equivalent months of operation from October 24, 1980 at which time the steam generators shall be inspected.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 22, 1980, (2) Amendment No. 60 to License No. DPR-31, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of October, 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch, #1 Division of Licensing

[FR Doc. 80-34853 Filed 11-6-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

The Zion Inservice Inspection Program; Issuance of Amendments To Approve and Provide Relief Where Appropriate; Correction

On August 28, 1980, a "Notice of Issuance of Amendments to Facility Operating Licenses" was published on page 45 FR 57612 which incorrectly referenced the Commonwealth Edison Company's application date. The correct application date should have been October 1, 1979 instead of October 26, 1979.

The Notice related to the approval of the inservice inspection (ISI) program at the Zion Station, Unit Nos. 1 and 2 located in Zion, Illinois.

Dated at Bethesda, Maryland, this 29th day of October, 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 80-34852 Filed 11-6-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meeting

November 3, 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 the Executive Committee of the President's Commission for a National Agenda for the Eighties, is scheduled for November 6, 1980, from 7.00 p.m. to 11:00 p.m. in Washington, D.C. The meeting will be held in the Board Room of the Federal Home Loan Bank Building, 1700 G Street, N.W.

The purpose of the meeting is to discuss elements of the Commission's 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. 80-34809 Filed 11-6-80; 8:45 am]

BILLING CODE 3110-01-M

President's Commission for a National Agenda for the Eighties; Meeting

November 3, 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 VIII (The Quality of American

Life) of the President's Commission for a National Agenda for the Eighties, is scheduled for November 7, 1980 from 7:30 a.m. to 9:00 a.m. The meeting will be held in the New Executive Office Building, Room 8103, 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. 80-34810 Filed 11-6-80; 8:45 am]

BILLING CODE 3110-01-M

Office of Personnel Management

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of two additional members of the Performance Review Board.

DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph E. Nordsieck, Career Management Division, Office of Personnel, Office of Personnel Management, 1900 "E" Street, NW, Washington, DC 20415 (202-632-7484).

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Kathryn Anderson Fetzer,

Assistant Issuance System Manager.

The following two individuals are additions to the Senior Executive Service Performance Review Board:

1. Benita Sidwell, Deputy Director of Administration, Goddard Space Flight Center, National Aeronautics and Space Administration.
2. Vincent J. Hearing, Deputy Assistant Secretary for Administration, Department of Housing and Urban Development.

[FR Doc. 80-34901 Filed 11-6-80; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Privacy Act of 1974; System of Records Modification and Addition of New System of Records

AGENCY: U.S. Postal Service.

ACTION: Advance notice of modification to one existing system of records and of the creation of a new system of records.

SUMMARY: The primary purpose of this document is to provide information for public comment concerning the Postal Service's proposal to add a new routine use to system USPS 120.098, Personnel Records—Office of Workers' Compensation Program (OWCP) Record Copies, and to create a new system of records, USPS 120.099, Personnel Records—Injury Compensation Payment Validation Records.

DATE: Comments must be received on or before December 8, 1980.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260, or delivered to Room 3321 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected in Room 3321 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service is planning to begin identifying current and former postal employees who have received injury compensation payments concurrently with payments under another benefit program. The information to be maintained will be valuable in evaluating the extent of double payments, determining validity of suspected cases of fraud, seeking remunerative action, and establishing a basis for proposing legislation that could effectively reduce unwarranted double payments in the future. Preliminary analyses indicate that significant cost savings to the Postal Service and the general public may result.

Various precautions will be taken to protect the privacy of Postal Service employees: (a) Minimal retention periods will be established for all records created; (b) the files will be purged of cases that do not involve improper payments after completion of operational phases which result in such determinations; (c) the flow of information between the various Postal Service facilities will be channeled through specific points; and (d) the parties involved will provide adequate safeguards while using this information.

System Modification to Add New Routine Use

On a one-time basis, the Postal Service proposes to disclose a limited amount of information about plan members to respective Federal health benefit carriers. This information will be used to identify postal employees who have received compensation payments for the same injury from both the Postal Service and the carrier. Accordingly, system USPS 120.098, Personnel Records—Office of Workers' Compensation Program (OWCP) Records Copies, 120.098, is modified to add a new temporary routine use to allow this disclosure as follows:

"7. (Temp.) Disclosure of information about plan members may be made to respective health benefit carriers for a one-time comparison with the carriers' claim/payment files. (Note: This routine use will be in effect for a period of one year from its effective date.)"

System 120.098 is reprinted herein with the proposed routine use inserted.

Proposed Creation of One New System

The Postal Service proposes to create a new system of records, namely, USPS 120.99, Personnel Records—Injury Compensation Payment Validation Records, 120.099. USPS 120.099 is being created to provide the capability to identify employees who receive double compensation payments for the same injury. The system will also be used to take necessary follow-up actions on a case-by-case basis. It will contain information already existing in other Postal Service Privacy Act systems of records. This information will be extracted from those systems and included in USPS 120.099 whenever a record for an individual appears in both USPS 120.098 and another system. Also, it will include information gathered from Federal health benefit carriers about employees who have received both insurance and injury compensation payments for the same injury. Accordingly, proposed system USPS 120.099 is included for comment.

W. Allen Sanders,

Associate General Counsel General Law and Administration.

USPS 120.098

SYSTEM NAME:

Personnel Records—Office of Workers Compensation Program OWCP1. Record Copies 120098

SYSTEM LOCATION:

All postal facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal employees who have voluntarily filed for injury compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of Department of Labor forms consisting of claims and supporting information, Postal Service forms and correspondence related to the claim; automated payments and accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1005.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—This information is used to provide injury compensation to qualifying employees and to maintain a record of the events as a basis for managerial decisions.

Use—

1. To provide information to the Department of Labor for the purpose of determining whether a claimant qualifies for compensation and to what extent qualification applies.

2. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

3. Disclosure may be made 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.

4. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

5. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court of administrative body.

6. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether international, Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

7. (Temp.) Disclosure of information about plan members may be made to respective health benefit carriers for a one-time comparison with the carriers' claim/payment files.

Note.—This routine use will be in effect for a period of one year from its effective date.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms and correspondence.

Note: In some cases, the USPS by agreement with the Department of Labor (DOL), temporarily stores original case files. These files are considered to be DOL records to which DOL rather than USPS regulations apply.

Continuation of pay and DOL charge-back information in stored on computer media.

RETRIEVABILITY:

Records are retrieved alphabetically by name and social security number.

SAFEGUARDS:

Maintained in locked filing cabinets within the exclusive custody of the injury compensation control point. Automated records are protected through computer password security, encryptions, and/or a computer software security system.

RETENTION AND DISPOSAL:

OWCP case files are maintained for five years after employee has left the Postal Service, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, and APMG, Finance Department, Headquarters.

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the System manager.

RECORD ACCESS PROCEDURES:

See NOTIFICATION PROCEDURE above.

Note.—The original case file (in most cases) is maintained by OWCP and must be requested from that organization as provided for under Department of Labor Privacy Act System DOL/EAS–13.

CONTESTING RECORD PROCEDURES:

The contents of OWCP records may be contested only by contacting OWCP as provided for under the Department of Labor Privacy Act System DOL/EAS–13.

RECORD SOURCE CATEGORIES:

Information is obtained from the claimant, the supervisor, witnesses, physicians, and Department of Labor.

USPS 120.099

SYSTEM NAME:

Personnel Records—Injury Compensation Payment Validation records, 120.099.

SYSTEM LOCATION:

All postal facilities having injury compensation units, Inspection Service offices from which an investigation is conducted, National Headquarters and Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Postal Service employees who have received or are receiving injury compensation program payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of individuals whose names appear in two systems of records, research case records, remuneration and investigative records related to injury compensation paid to current and former employees by the Postal Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 39 U.S.C. 1005.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—This information is used to identify instances in which improper double payments have been or are being made to Postal Service employees who have filed injury/sickness compensation claims and to maintain records of this event as a basis for: Detecting fraud; seeking remuneration and/or legal actions; reporting the extent of double payments nationwide; and for proposing corrective legislation.

Use:

1. (Temp.) Disclosure of information about plan members may be made to respective health benefit carriers for a one-time comparison with the carriers' claim/payment files.

Note.—This routine use will be in effect for a period of one year from its effective date.

2. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

3. Disclosure may be made 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.

4. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

5. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court of administrative body.

6. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether international, Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer reports, paper records, correspondence and research records.

Note.—These files are considered to be USPS records to which USPS regulations apply.

RETRIEVABILITY:

Records are retrieved by social security number.

SAFEGUARDS:

These restricted files are maintained in locked file cabinets. Access to automated records is protected through a computer security system, file encryption, and/or password protection.

RETENTION AND DISPOSAL:

a. Computer reports.

(1) Initial data collection reports and master file/tape are maintained for 3 years and destroyed by depersonalization.

(2) Subsequent reports containing affirmative identifications become part of research case records.

b. Research case records (copies of records from other systems—includes computer reports, paper records, and correspondence).

(1) If research determines nonapplicability, destroy by burning or shredding, 6 months after such determination is made.

(2) If research determines applicability, research records then become (a) part of an investigative case file and fall within system USPS 080.010, Inspection Requirements Investigative File System (refer to USPS 080.010 for retention and disposal instructions), or (b) a remuneration case file which is maintained for 2 years and destroyed by burning or shredding.

Extra copies of research records are destroyed at the time a remuneration or investigative case file is created.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters.

NOTIFICATION PROCEDURE:

Employees or former employees wishing to know whether information about them is maintained in this system of records should address inquiries to the System manager.

RECORD ACCESS PROCEDURES:

See Notification Procedure above.

CONTESTING RECORD PROCEDURES:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is obtained from Postal Service injury compensation case files, payment records and employment records as found in USPS Privacy Act Systems: USPS 050.020, 120.070, and 120.098; Social Security Administration death files; and pertinent Federal health benefit carriers' claim/payment files.

[FR Doc. 80-34727 Filed 11-6-80; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21774; (70-6514)]

Arkansas Power & Light Co., Et al.; Proposed Issuance and Sale of Notes to Banks and Commercial Paper

November 3, 1980.

In the matter of Arkansas Power & Light Co., First National Building, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Notice is hereby given that Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service Inc. ("New Orleans"), electric utility subsidiaries of Middle South Utilities, Inc., a registered holding company, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Arkansas, Louisiana, Mississippi, and New Orleans currently have in effect separate programs under which each of them is authorized to issue and sell unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper to meet its interim financing requirements. (See File Nos. 70-6381, 70-6225, 70-6408, and 70-6369, respectively.) Arkansas, Louisiana, Mississippi, and New Orleans each proposes now to revise the foregoing programs and to issue and sell individually from time to time through June 30, 1982, unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper in aggregate principal amounts outstanding at any one time equal to the lesser, from time to time, of (i) $170,000,000, $190,000,000, $45,000,000, and $22,000,000, respectively, or (ii) 10 percent of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed and then outstanding and (b) the capital and surplus of each company as then stated on its books of account (which 10 percent is the maximum principal amount of unsecured short-term borrowings permissible under the provisions of the respective charters without the appropriate consent of their respective preferred stockholders). On the basis of the foregoing 10 percent restriction, Arkansas, Louisiana, Mississippi, and New Orleans would have been permitted, as of July 31, 1980, to issue and sell short-term promissory notes (including commercial paper) in aggregate principal amounts of up to $163,500,000, $157,800,000, $37,600,000, and $23,000,000, respectively. Subject to the foregoing limitations, the nature of each issue of such notes (including commercial paper) will be determined in the light of the then prevailing market conditions and other factors.

It is stated that in accordance with the past practices, short-term bank borrowings will be made by each of the companies from a group of commercial banks which are located in the general service area of the respective company ("Territorial Banks"). In addition, each of the companies intends to effect short-

term borrowings under consolidated "either/or" lines of credit established with a group of commercial banks located outside the general service areas of the companies ("Non-territorial Banks"). Under the proposed "either/or" borrowing arrangements, each of the Non-territorial Banks would provide a single line of credit which would be available to any and all of the declarants. It is stated that this consolidation of credit lines is expected to be preferable to existing arrangements whereby each of the companies currently maintains separate lines with various Non-territorial Banks in that it will allow for the maintenance of lines of credit for the declarants, on an aggregate basis, at the minimum levels necessary to provide adequate amounts of capital as required from time to time, will minimize the related costs of borrowing, including commitment fees and/or compensating balance requirements, and will afford the Middle South System greater control over the cost of short-term funds.

The notes proposed to be issued and sold by each company to the territorial Banks and the Non-territorial Banks will be in the form of unsecured promissory notes, will be payable not more than 270 days from the date of issuance with the right of renewal, will bear interest at a rate per annum no greater than the prime commercial bank rate in effect at the lending bank on the date of issuance or renewal or from time to time depending upon the requirements of the lending bank, and will, at the option of the company, or, under certain circumstances, with the consent of the lending bank, be prepayable, in whole or in part, at any time without premium or penalty.

Each of the declarants maintains accounts with its Territorial Banks, and, although balances in these accounts may be deemed to be compensating balances, these accounts are working accounts, and fluctuations in their balances do not reflect or depend upon fluctuations in the amounts of bank loans outstanding. Assuming that a 20% compensating balance is maintained and assuming a 13.5% per annum prime commercial bank rate, the effective interest cost for borrowings from Territorial Banks would be 16.875% per annum.

With respect to borrowings from the Non-territorial Banks, it is anticipated that the Non-territorial Banks will require the maintenance of compensating balances and/or the payment of commitment fees with respect to the amount of loan commitments and/or loans outstanding, but in no case will the total of such compensating balances exceed 12%. Assuming that a 12% compensating balance is maintained and assuming a 13.5% per annum prime commercial bank rate, the effective interest cost for borrowings from Non-territorial Banks would be 15.34% per annum.

The proposed commercial paper will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, the actual maturities to be determined by market conditions, effective cost of money to the respective declarant, and such company's anticipated cash requirements at the time of issuance. In accordance with the established custom and practices in the market, the proposed commercial paper will not be payable prior to maturity. Each company proposes to issue, reissue, and sell the commercial paper directly to a dealer in commercial paper ("Dealer") at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality of that particular maturity sold by public-utility issuers to commercial paper dealers.

No commission or fee will be payable in connection with the issuance and sale of the commercial paper. Each Dealer, as principal, will reoffer and sell the commercial paper at the customary discount rate for commercial paper. Each Dealer in reoffering the commercial paper will limit the reoffer and sale to a non-public customer list for each declarant containing not more than 200 buyers of commercial paper. It is anticipated that the commercial paper will be held by the buyers to maturity; however, each Dealer may, if desired by a buyer, repurchase the commercial paper for resale to others on the list of customers.

As of July 31, 1980, the construction programs of the declarants in 1981 and 1982 are estimated to result in the following expenditures:

[In thousands of dollars]

	Arkansas	Louisiana	Mississippi	New Orleans
1981	$308,100	$280,200	$158,700	$25,200
1982	168,500	293,800	84,900	27,900

The net proceeds to be received by the companies from the issuance and sale of the notes (including commercial paper) referred to herein, together with other funds available, from time to time, to the companies from their operations or derived from the issuance and sale of long-term debt and/or equity securities, will be applied to their construction programs and other lawful purposes.

The declarants request that they be granted authority to file individually and on a quarterly basis their certificates under Rule 24.

The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $10,000, including legal fees of $5,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice if further given that any interested person may, not later than November 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in 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. 80-34759 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21773; (70-6498)]

Arkansas Power & Light Co.; Proposal To Issue and Sell First Mortgage Bonds at Competitive Bidding

November 3, 1980.

Notice is hereby given that Arkansas Power & Light Company ("Arkansas"), First National Buidling, Little Rock, Arkansas 72203, an electric utility

subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) 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.

Arkansas proposes to issue and sell at competitive bidding up to $70,000,000 in principal amount of its first mortgage bonds ("Bonds") of a series having a term of not less than five nor more than thirty years. Arkansas will determine, and give notice to bidders of, the principal amount of the Bonds, if less than $70,000,000, and of the maturity date of the Bonds on a business day and not later than 24 hours prior to the time fixed for the presentation of the bids. The interest rate of the Bonds, (which will be a multiple of ⅛ of 1%) and the price, exclusive of accrued interest, to be paid to Arkansas for the Bonds (which will not be less than 100% nor more than 102¾ of the principal amount thereof) will be determined by competitive bidding.

The Bonds are to be issued as a new series of Arkansas' First Mortgage Bonds under its Mortgage and Deed of Trust, dated as of October 1, 1944, to Guaranty Trust Company of New York (currently known as Morgan Guaranty Trust Company of New York) and Henry A. Theis (John W. Flaherty, successor), as Trustees, as heretofore supplemented and as proposed to be further supplemented by a Thirty-second Supplemental Indenture ("Supplemental Indenture") thereto. The Supplemental Indenture will include a prohbition, for a period of not more than five years, against refunding the Bonds, directly, or indirectly, with the proceeds of funds borrowed at a lower effective interest cost.

Arkansas proposes to use the net proceeds derived from the issuance and sale of the Bonds for the payment of a portion of the short-term indebtedness incurred or estimated to be incurred for financing Arkansas' construction program. Arkansas' 1980 construction program is expected to result in expenditures of approximately $283,600,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated to be $190,000. Legal fees of counsel for the successful bidders are estimated at $20,000. It is stated that the Arkansas Public Service Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transaction and that no other 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 December 3, 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 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. 80-34762 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21771; (70-6476)]

The Columbia Gas System, Inc., and Columbia Gulf Transmission Co.; Proposal To Enter Into Partnership Agreements Relating to Construction and Ownership of Natural Gas Pipeline and To Issue and Sell Notes in Support Thereof

October 31, 1980.

Notice is hereby given that the Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Columbia Gulf Transmission Company ("Columbia Gulf"), 3805 West Alabama Ave., Houston, Texas 77027, a wholly owned natural gas transmission subsidiary of Columbia, have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b), 9 and 10 of the Act and Rule 51 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Columbia Gulf and four other unaffiliated natural gas transmission companies have entered into partnership agreements which relate to construction and ownership of a new 800 mile natural gas pipeline system, to be known as the Trailblazer system, through which new supplies of natural gas being developed in Wyoming, Utah, Idaho, Nebraska and Colorado will be transported, directly and by displacement, to the mid-western and eastern markets owned by the partners. The partners are Colorado Interstate Gas Company ("Colorado"), Columbia Gulf, Mountain Fuel Resources, Inc. ("Resources"), Natural Gas Pipeline Company of America ("Natural"), and Northern Natural Gas Company ("Northern"), hereafter referred to as the Companies.

The Trailblazer system, which is estimated to cost $533 million, will be comprised of three segments. The western segment, referred to as the Overthrust Pipeline and named for the "Overthrust" discovery areas, will be approximately 88 miles long and will cost an estimated $57 million. It will be jointly owned by all five partners and will be designed, constructed and operated by Resources. Construction will be initially financed out of $17.1 million in partnership equity contributions (Columbia Gulf's contribution will be approximately $3.4 million) and the remaining $39.9 million with bank loans. The short-term bank loans will be repaid with proceeds from the subsequent issuance of long-term debt securities. The debt securities issued will be an obligation of the partnership, not of Columbia Gulf or any of the partners. Initial capacity of this pipeline will be approximately 400 million cubic feet per day.

The middle segment, Colorado Interstate Pipeline, will extend approximately 264 miles from near Rock Springs, Wyoming to a point south of Cheyenne, Wyoming, near Rockport, Colorado and will cost an estimated $195 million. This segment will be owned, built, financed and operated by Colorado and will have an initial

capacity when completed of 665 million cubic feet of gas per day.

The eastern segment, known as the Trailblazer Pipeline, will be jointly owned by Natural, Columbia Gulf and Northern, and will transport gas supplies eastward for those partners. Total cost of this segment, which will consist of 445 miles of 36 inch diameter pipeline, is estimated at approximately $281 million. Natural, or its affiliate, will design, construct, and operate this segment, which will have an initial operating capacity of 525 million cubic feet of gas per day. Construction will be initially financed out of $84.3 million in equity contributions and the remainder with term bank loans. Columbia's equity contribution to the Trailblazer Pipeline segment will total approximately $28.1 million. The term bank loans for the Trailblazer Pipeline facilities will be repaid, at prevailing rates, with proceeds from a subsequent permanent financing program consisting of some combination of debt securities. The precise combination and provisions of the securities to be issued will depend upon market conditions at the time such securities are sold. The debt securities issued will be an obligtion of the partnership, not of Columbia Gulf, Natural or Northern.

Columbia Gulf proposes to participate in the construction and ownership of the Overthrust and Trailblazer Pipeline segments of the Trailblazer system through its membership in the Overthrust Pipeline Company General Partnership Agreement ("Overthrust Pipeline Company") and the Trailblazer Pipeline Company General Partnership Agreement ("Trailblazer Pipeline Company"), each of which is dated September 20, 1979, and amended and restated as of February 21, 1980. The central segment of the Trailblazer system, to be constructed, financed, owned and operated by Colorado alone, did not require any partnership agreement covering all three pipeline segments, which together form the Trailblazer system. However, an agreement covering all three pipeline segments was also entered into on September 20, 1979, and amended and restated as of February 21, 1980. It coordinates their activities and is called the Pipeline Project Agreement for the Trailblazer System. The parties are Colorado, Columbia Gulf, Columbia Gas Transmission Corporation, Resources, Mountain Fuel Supply Company, Natural, Northern, Overthrust Pipeline Company and Trailblazer Pipeline Company.

The Overthrust and Trailblazer Pipeline Company Agreements provide, in each case, that the partnerships shall be managed by management committees consisting of a representative selected by each partner and that no partner may incur any obligation on behalf of the management committees. In the event that a partner defaults with respect to its obligation to make a capital contribution, the agreements provide that the non-defaulting partners may contribute or lend funds to the partnership in equal amounts which total the amount of the default, and after 60 days, may require the defaulting partner to assign its interest in the partnership to a third party. All distributive shares of income, profit, loss, deduction or credit ar allocable to the partners in accordance with each partner's capital participation which, in the case of the Overthrust Pipeline Company, is one-fifth, and, in the case of the Trailblazer Company, one-third. Except with the unanimous consent of the management committee, a partner may not transfer any interest in either partnership, and no partner may withdraw from either partnership, except that the management committees may request Columbia Gulf to withdraw in the event that this Commission does not approve any capital contribution to the partnerships for which Columbia Gulf is obligated by the partnership agreements.

Columbia Gulf proposes to finance its participation in the Overthrust and Trailblazer Pipeline segments of the Trailblazer system through the issuance and sale to Columbia of up to $33 million of either 20-year installment promissory notes and/or 7-year floating rate term notes. The installment notes are to be unsecured and dated the date of their issue. The principal amounts will be due in twenty (20) equal annual installments on September 30 of each of the years 1982 to 2001, inclusive. Interest on the notes would accrue from the date of their issuance, on the unpaid principal thereof, and be paid semi-annually in accordance with the provisions of said notes. The interest rate would be the effective cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%.

Columbia sold $100,000 principal amount of debentures on August 13, 1980 (HCAR No. 21671), at an effective cost of money of 12.9%. Subject to market conditions, Columbia anticipates selling additional long-term securities during the project's construction period. Therefore, installment notes issued prior to such additional sale of debentures would bear an interest rate of 12.9% and installment notes issued subsequent to any of Columbia's future debenture issues would carry an interest rate related to the last such sale prior to the issuance of said notes. Should Columbia issue any notes under the Revolving Credit and Term Loan Agreement, dated as of April 1, 1980, ("Agreement") among Columbia and certain banks named therein, then Floating Rate Term Notes ("Floating Rate Notes") due March 31, 1987 would be issued by Columbia Gulf in lieu of installment notes. Such would be dated the date of their issue and would bear interest at Columbia's effective cost of money of any borrowings under the Agreement. Any such Floating Rate Notes issued would be refinanced upon maturity.

The fees and expenses to be incurred in connection with the proposed transactions are $23,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The participants in the Trailblazer system have applied to the Federal Energy Regulatory Commission ("FERC") for a certificate of public convenience and necessity to build and operate the pipeline (FERC Docket No. CP 79-80).

Notice is further given that any interested person may, not later than November 28, 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-declaration as amended or as it may be further amended, 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 applicants-declarants at the above stated addresses, 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-declaration, as amended or as it may be further amended, may be granted and 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 postonement thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-34761 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21772 (70-6509)]

New England Power Co.; Proposed Issuance and Sale of General and Refunding Bonds at Competitive Bidding and Pledge of First Mortgage Bonds to General and Refunding Mortgage Trustee; Proposed Issue and Sale of Preferred Stock at Competitive Bidding

October 31, 1980.

Notice is hereby given that New England Power Company ("NEPCO"), 25 Research Drive, Westborough, Massachusetts 01581, a subsidiary of New England Electric System, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEPCO proposes to issue and sell not exceeding $50,000,000 principal amount of general and refunding bonds to be designated General and Refunding Mortgage Bonds, Series E, —— percent, due ——— ("Series E Bonds"), to bear interest at such rate and to be issued at such price as shall be determined by competitive bidding. The terms and conditions relating to bids provide that each bid shall specify the interest rate, which shall be a multiple of ⅛ of 1 percent, to be borne by the Series E Bonds (if the interest rate specified exceeds 15 percent per annum, further orders of State commissions exercising jurisdiction would be necessary), and the price, exclusive of accrued interest, to be paid to NEPCO therefor, which shall be not less than 98 percent of the principal amount nor more than 101¾ percent thereof. The Series E Bonds will bear interest, paid semiannually, for the date as of which bonds of the series are first authenticated at the rate per annum shown in their title. The Series E Bonds will be redeemable at general and special redemption prices. However, the Series E Bonds may not be redeemed at general redemption prices during the first five years of their term through refunding operations at a lesser effective interest cost to NEPCO.

The Series E Bonds will be issued under a General and Refunding Mortgage Indenture and Deed of Trust dated as of January 1, 1977, as amended and supplemented by a Third Supplemental Indenture (collectively the "G&R Indenture") and will be secured with all other bonds issued under the G&R Indenture by a mortgage lien on substantially all the properties then owned, and, to the extent permitted by law, thereafter acquired by NEPCO, subject to the lien of the First Mortgage Indenture, liens permitted by the G&R Indenture, and exclusive of property excepted by the G&R Indenture. All G&R bonds will be further secured by first mortgage bonds which NEPCO is obligated to issue and pledge with the G&R Trustee as described below.

By an order dated January 7, 1977 (HCAR No. 19844) the Commission authorized the execution and deliverance to the trustee of the G&R Indenture. The G&R Indenture was created in order to eliminate, among other items, certain provisions in NEPCO's First Mortgage Indenture dealing with restrictions on bondable property and definitions of additional property and net earnings. While NEPCO no longer issues bonds pursuant to its present first mortgage indenture for sale to the public, first mortgage bonds are, however, still issued and pledged to the Trustee under the G&R Indenture as additional security for the G&R Bonds. A principal amount of not exceeding $25 million additional first mortgage bonds to be designated First Mortgage bonds, Series Z, —— percent, due ——— ("Series Z Bonds") will be issued and pledged. The Series Z Bonds will be a new issue of first mortgage bonds ("First Mortgage Bonds") issued under and secured by the Indenture of Trust and First Mortgage dated as of November 15, 1936, and indentures supplemental thereto and will have the same interest rate and maturity as the Series E Bonds. Neither the principal of, nor the premium, if any, nor the interest on the Series Z Bonds shall be payable unless a default shall have occurred under the G&R Indenture or the First Mortgage Indenture.

NEPCO further proposes to issue and sell not exceeding $50 million of preferred stock in the form of 500,000 shares of a new series of its Dividend Series Preferred Stock (par value $100) to be designated Cumulative Preferred Stock, $100 par value, —— percent Series ("new preferred stock"). The new preferred stock has not yet been approved by stockholders and NEPCO will only issue stock upon receipt of all necessary regulatory and stockholder approvals.

The new preferred stock will bear such dividend rate and be issued at such price as will be determined by competitive bidding. The terms and conditions relating to bids will provide that each bid shall specify the dividend rate to be borne by the new preferred stock and that such dividend rate shall be a multiple of .04 of 1 percent. In addition, each bid must specify the price to be paid to NEPCO for the new preferred stock which shall not be less than par nor more than 102.75 percent of par. If the dividend rate specified exceeds 14 percent per annum, further orders of State commissions exercising jurisdiction would be necessary. Dividends will be cumulative from the date of initial issue. The new preferred stock will not be redeemable during the first five years after its issuance in connection with a refunding by the issuance of debt securities at a lesser effective interest cost or other preferred stock at a lesser effective dividend cost to NEPCO.

NEPCO will designate by telephone or telegram to prospective bidders not later than 12 Noon, E.S.T., on the second full business day prior to the time designated for the submission of bids (i) the date on which the Series E Bonds shall mature, which date shall be not less than 5 nor more than 30 years from the first day of the month as of which the Series E Bonds are issued, and (ii) the sinking fund for the new preferred stock which will retire up to 5% of the initial issue each year.

NEPCO has currently scheduled the issue and sale of the Series E Bonds and new preferred stock in December 1980; however, due to uncertain market conditions, NEPCO may sell such securities any time prior to April 1, 1981. The issue and sale of the Series E Bonds and the new preferred stock are separate transactions, and are not contingent upon each other.

NEPCO's short-term borrowings pursuant to Commission authorization totaled about $59 million at August 31, 1980. NEPCO expects that such borrowings will exceed $100 million by December 31, 1980 if the Series E Bonds or the New Preferred Stock are not issued by that date. The proceeds from the sale of Series E Bonds and/or the preferred stock will be applied to the payment of short-term borrowings incurred for, or to the cost of, or to the reimbursement of the treasury for uncapitalized additions and

improvements to the plant and property of NEPCO and any other uncapitalized expenditures of NEPCO.

Statements of the fees, commissions and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The proposed transactions are subject to the jurisdiction of the Connecticut Division of Public Utility Control, the Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission and the Vermont Public Service Board. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-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 application-declaration, as filed or as it may be amended, may be granted and 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. 80-34760 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11424, (812-4731)]

Real Estate Associates Limited III, National Partnership Investments Corp., and National Partnership Investments Associates; Filing of Application Pursuant to Section 6(c) of the Act for Exemption From All Provisions of the Act

October 31, 1980.

Notice is hereby given that Real Estate Associates Limited III ("REAL III"), a California limited partnership, and its general partners, National Partnership Investments Corp. and National Partnership Investments Associates ("General Partners" and, together with REAL III, collectively referred to hereinafter as "Applicants"), 1901 Avenue of the Stars, Los Angeles, California 90067, filed an application on September 8, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting REAL III from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that REAL III was formed under the California Limited Partnership Act on July 25, 1980, and is designed to implement the policy of Title IX of the Housing and Urban Development Act of 1968 to provide private investors with a means of acquiring equity interests in government-assisted low and moderate income housing. REAL III will acquire limited partnership interests in local limited partnerships ("Local Limited Partnerships") which own or lease government-assisted rental housing projects for low and moderate income persons.

REAL III itself is organized as a limited partnership because a limited partnership is the only form of organization which provides an investor with both liability limited to his capital investment and the ability to claim on his individual tax return the deductions, losses, credits, and other tax items a partnership can pass through to its partners. Therefore, REAL III will operate as a "two tier" partnership; *i.e.*, REAL III, a limited partnership, will invest in Local Limited Partnerships which, in turn, will be engaged in the development, building, ownership, or leasing of government-assisted housing for low and moderate income persons.

One of the primary objectives of REAL III is to pass through to its partners during the early years of the partnership net losses which may be used to offset other taxable income. Another of REAL III's primary objectives is to invest in projects which will appreciate in value.

REAL III has filed a registration statement under the Securities Act of 1933, as amended, covering the sale of 3,000 Units to be offered at a maximum price of $5,000 per Unit. Each Unit consists of two limited partnership interests and a warrant to purchase two additional limited partnership interests, exercisable by January 22, 1982 (the "Warrants"). The Warrants will entitle an investor to purchase the related limited partnership interests for $2,500 each, the equivalent price per limited partnership interest acquired pursuant to the purchase of a Unit. In the event that any Warrant is not exercised, the respective limited partnership interests may be sold by REAL III to other qualifying offerees.

Commencing in 1982, REAL III will allocate 62½% of profits and losses to the limited partnership interests sold in 1982 (whether sold by exercise of the Warrants or by subscriptions for interests as to which the Warrants were not exercised), and 37½% of its profits and losses to the limited partnership interests sold in 1981. This allocation will continue until the aggregate profits and losses allocated to the limited partnership interests sold in 1982 equal the aggregate profits and losses allocated to limited partnership interests sold in 1981. The effect of this allocation is expected to be that, in the course of the life of REAL III, interests purchased in 1981 by investors who do not exercise the Warrants to purchase interests in 1982, and interests for which subscriptions pursuant to the unexercised Warrants are accepted in 1982, will have been allocated an equal aggregate amount of profits and losses in REAL III and will have equivalent capital accounts. After this equalization of capital accounts is attained, all interests will be treated equally without regard to the date they were purchased.

Interests in REAL III will be sold only to qualified investors with a minimum subscription of one Unit ($5,000). The General Partners will contribute to REAL III $12,500, an amount representing approximately 1%, .08%, or .04%, respectively, of the total capitalization depending upon whether the minimum, maximum (excluding exercise of the Warrants), or maximum (including exercise of the Warrants) offering amount is sold. It is estimated that REAL III will have as proceeds of its public offering, a minimum of $1,056,000 and maximums (depending upon the exercise of the Warrants) of

approximately $13,200,000 or $26,737,000 available for investment after deductions for sales commissions and anticipated offering expenses.

Offers to sell and sales of the Units to the public are proposed to be effected through E.F. Hutton & Company Inc. and other selected members of the National Association of Securities Dealers, Inc., none of which will own or owns any interest in either of the General Partners or will have or has any other material relationship with their directors, officers, or partners. Such broker-dealers will use their best efforts as agents for REAL III and thereafter to sell any limited partnership interests available upon the non-exercise of the Warrants.

No subscription for Units will be accepted unless the subscribing investor will represent in the Subscription Agreement for Units (1) that he has a net worth (exclusive of home, furnishings, and automobiles) of at least $50,000 and an annual gross income of at least $50,000, or that he has a net worth (exclusive of home, furnishings, and automobiles) of at least $200,000, or that he is purchasing in a fiduciary capacity for a person or entity which has such net worth and annual gross income; and (2) that he is aware of the risks involved in investing in REAL III. He also must represent that some part of his annual income for 1981 will be taxable at the federal tax rate of 50% or more, and that he anticipates that some part of his income for the next six years will, but for the effect of his investment in the Units and limited partnership interests or other tax shelters, be taxable at such 50% rate. In addition, the partnership agreement of REAL III will require that during the first five years following effectiveness of the registration statement, each transferee of limited partnership interests must represent that he meets the suitability standards set forth above.

REAL III will be controlled by the General Partners pursuant to a partnership agreement ("Partnership Agreement") between the General Partners and limited partners, whereby the limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of REAL III. However, limited partners owning a majority of limited partnership interests will have the right to amend the Partnership Agreement, dissolve REAL III, remove one or both of the General Partners and elect successor general partners, and continue REAL III upon the death, insanity, retirement, or bankruptcy of a General Partner. Also under the Partnership Agreement, each limited partner or his representative is entitled to review the records of REAL III at reasonable times, including the register of names, addresses, and number of limited partnership interests owned by each other limited partner.

Applicants state that REAL III will invest not less than 90% of its available capital in Local Limited Partnerships which own or lease government-assisted housing projects. REAL III may also invest up to 10% of its capital in limited partnerships owning other residential projects. REAL III has not yet identified any specific Local Limited Partnership or projects in which it proposes to invest. However, Applicants state that REAL III will make its investments in accordance with both detailed criteria for selecting particular projects for investment and certain investment policies which may not be changed without approval by the limited partners owning at least a majority of the outstanding limited partnership interests.

Because REAL III will invest only in limited partnership interests, both REAL III and the General Partners will have only limited control over the management of the Local Limited Partnerships. However, REAL III will own at least 50%, and, in many cases, 90% of the limited partnership interests of a Local Limited Partnership. Moreover, in negotiating Local Limited Partnership Agreements, the General Partners will endeavor to provide REAL III with one or more of the following: the right to approve or disapprove the sale of the project; the right to demand a dissolution of the Local Limited Partnership; and the right to demand the resignation of the local general partners. In addition, REAL III's capital contribution to a Local Limited Partnership will be made in stages, and, in most cases, REAL III will withhold the major portion of its contribution until the project has been constructed and is operating.

Although the General Partners are engaged in other real estate transactions and manage other similar limited partnerships, REAL III will not sell, acquire, or lease properties or interests therein to or from the General Partners or their affilitates. Further, the General Partners have undertaken that no new public offerings with the same investment objectives as REAL III will be commenced until substantially all funds raised by REAL III have been committed to investment or otherwise utilized as described in the REAL III prospectus.

The General Partners will be entitled to receive 1% of REAL III's profits, losses, and distributions subject to the conditions that their 1% share of new cash flow will be reduced each year by the amount of annual management fees which are paid or payable to them in that year. In addition to their 1% participation in REAL III's profits, losses, and distributions, the General Partners will receive certain fees for overseeing the conduct of REAL III's affairs and the continuing operation of each project. Applicants represent that these fees are in substantial conformity with the standards imposed by the Midwest Securities Commissioners and the California Corporations Commissioner, and that to the best of their knowledge all such fees are in compliance with the current rules promulgated by such authorities.

In the initial period, the General Partners will be paid a fee for the organization and initial management of REAL III, the syndication of the Units and the provision of certain financing commitments, if any, aggregating approximately 0.9% of invested assets. Invested assets are defined as the sum of the capital contributions anticipated to be made by REAL III to the Local Limited Partnerships and the aggregate amount of the nonrecourse mortgage loans on the projects owned by such Local Limited Partnerships attributable to REAL III's capital contributions. The General Partners also will receive acquisition and selection fees for their services in connection with the selection, evaluation, negotiation, and acquisition of REAL III's investments. The aggregate amount of such fees will equal approximately 1.3% of invested assets. Of the proceeds from the sale of the Units. Applicants anticipate that approximately a minimum of $117,600 and maximums (depending upon the exercise of the Warrants) of $1,500,000 and $3,100,000 will be paid for these organization, initial management, syndication, and commitment fees, and acquisition and selection fees.

During REAL III's operational period, the General Partners will receive, in consideration for their management services, an annual fee in an amount equal of 0.5% of invested assets to be paid out of REAL III's general funds. As noted above, this annual management fee will be applied against the General Partners' 1% share of REAL III's net cash flow. Finally, when a project is sold, the General Partners will receive a liquidation fee based upon the net proceeds only after payment to the limited partners of their invested capital in the project, plus an amount sufficient to pay their federal and state taxes.

REAL III states that it will file with the Commission pursuant to Section 15(d) of the Securities Exchange Act of 1934 all required annual reports, quarterly reports, and current reports on Forms 10–K, 10–Q, and 8–K, as well as any other reports required by such act. The General Partners will also send each limited partner a year-end report containing financial statements audited by REAL III's independent accountants and tax information necessary for the preparation of each limited partner's federal income tax return. In addition, each limited partner will receive a report at least semiannually of REAL III's activities and the operational status of its investments, as well as interim reports regarding acquisitions.

Under the California Limited Partnership Act, and under the terms of the Partnership Agreement, the corporate General Partner, which has registered as an investment adviser under the Investment Advisers Act of 1940, and the non-corporate General Partner, are fiduciaries of REAL III and its limited partners. Applicants state that under the Partnership Agreement, the officers and directors of the corporate General Partner and the partners of the non-corporate General Partner will be indemnified only when a court finds that such persons' conduct fairly and equitably merits indemnity in the amount claimed.

Without conceding that REAL III is an investment company as defined in the Act, Applicants request that REAL III be exempted from the Provisions of the Act pursuant to Section 6(c). Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act and rule thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants contend that the exemption of REAL III from all provisions of the Act is both necessary and appropriate in the public interest. Applicants assert that the form of organization of REAL III, *i.e.*, a limited partnership, which is necessary to limit the liability of private investors investing in subsidized low and moderate income housing, is incompatible with the regulatory framework of the Act. Applicants contend that to discourage the two-tier limited partnership arrangement by application of the Act would eliminate the primary means of attracting private equity capital into government-assisted housing and would frustrate the national policy declared by Congress "to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income persons." Applicants further state that the exemption would be consistent with the protection of investors and the purposes and policies of the Act. The limited partnership interests in REAL III are beng sold only to relatively sophisticated investors who will be aprised of the management of REAL III and of th Local Limited Partnerships through reports sent to the limited partners and filed with the Commision. Furthermore, Applicants state that the General Partners' discretion to invest the assets of REAL III is proscribed by its stated investment policies and objectives, which may be changed only by the vote of the holders of at least a majority of the outstanding limited partnership interests. With a majority vote, the limited partners will also have the right to dissolve REAL III, to amend the Partnership Agreement, and to remove the General Partners.

Applicants further assert that although the involvement of the General Partners in similar past and future partnerships could create a conflict of interest, such potential conflicts are mitigated by the General Partners' undertaking not to make any conflicting new public offering until substantially all of REAL III's funds have been committed and to follow prescribed procedures for determining which partnership should make an investment in the event of a conflict. Moreover, Applicants state that the Partnership Agreement prohibits certain transactions between REAL III and its General Partners and their affiliates in order to eliminate or significantly mitigate conflicts of interest.

Notice is further given that any interested person may, not later than November 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commision shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-34758 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17264; File No. SR-MSRB-80-10]

Self-Regulatory Organizations; Proposed Rule Changes by Municipal Securities Rulemaking Board

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board is filing herewith amendments to rule A–3 relating to membership on the Board (hereafter referred to as the "proposed rule changes"). The text of the proposed rule changes appears below.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Purpose of Proposed Rule Changes

Rule A–3(d) contains procedures for the nomination and election of Board members. These procedures commence with the appointment by the Board of a Nominating Committee consisting of the five Board members serving the final year of their term on the Board and six persons who are not members of the Board, two representing bank dealers, two representing municipal securities brokers and non-bank municipal securities dealers, and two representing the public. Under the rule, the Nominating Committee is required to publish a notice soliciting public recommendations of candidates for the

five positions to be filled and to accept for its consideration all recommendations submitted for a period of a least 30 days from publication of the notice. Thereafter, the Nominating Committee nominates a slate of three persons for each position, and the Board selects one person from each slate of nominees.

The rule also provides a procedure for the nomination of additional industry candidates by municipal securities brokers and municipal securities dealers. Any such candidate must also meet the criteria of geography and size and type of municipal securities broker or municipal securities dealer designated by the Board for the position to be filled. In the event such additional candidates are nominated, the rule provides for an election in which the candidate receiving more than 50 percent of the votes cast will be duly elected to the contested position. In the event no candidate receives more than 50 percent of the votes cast on the first ballot, a run-off election is held between the two candidates receiving the highest percentage of votes.

Primarily as a result of the need to provide sufficient time to accommodate all of these procedures, the Board has had to commence the nomination process each year shortly after completing the election process for the prior year. In order to permit the nomination process to begin at a later date, while continuing to provide sufficient time for the Nominating Committee, the Board and the public to consider the credentials of prospective Board members, rule A–3(d) has been revised to eliminate the run-off election for contested positions. Instead, in the event additional industry candidates are nominated, the candidate receiving a plurality of the votes cast on the first, and only, ballot will be duly elected to the contested position.

In addition to revising the dates by which certain actions must be accomplished, the Board has adopted certain technical amendments to the rule for the purpose of clarification.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule changes pursuant to sections 15B(b)(2)(B) and 15B(b)(2)(I) of the Act. The proposed rule changes were adopted under the general authority conferred on the Board by section 15B(b)(2)(I) of the Act to provide for the operation and administration of the Board. In addition, section 15B(b)(2)(B) of the Act authorizes the Board to establish procedures for the nomination and election of members of the Board.

Comments Received From Members, Participants and Others on Proposed Rule Changes

The Board neither solicited nor received comments on the proposed rule changes.

Burden on Competition

Since the proposed rule changes are solely technical in nature, they should have no effect on the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule changes do not impose any burden on competition.

The foregoing rule changes have become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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, 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 on or before December 1, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 31, 1980.

*Text of Proposed Amendments**

Rule A–3 Membership on the Board

(a) through (b) No change.

[(c) Term of Office of Initial Members. The term of office of the initial members of the Board shall be two years, ending with September 4, 1977. Any vacancy on the Board resulting from the death, resignation or removal of an initial member prior to such date shall be filled by appointment by the Commission for the remainder of such initial member's term.]

[(d)] *(c)* Nomination and Election of Members.

(i) [Except for the initial members of the Board,] [m]*M*embers shall be nominated and elected in accordance with the procedures specified by this rule. [The members of the Board elected to succeed the initial members shall consist of five of the initial members who shall serve for a succeeding term of one year, five of the initial members who shall serve for a succeeding term of two years, and five individuals who are not initial members, who shall serve for a term of three years; provided, however, that each such category of initial members shall include at least one public representative, one broker-dealer representative and one bank representative. Subsequent to such first election of members,] [a]*A*ll members of the Board shall be elected for terms of three years, so that the terms of office of one-third of the whole Board shall expire each year. [Except for members of the Board elected on or prior to September 5, 1978,] [t]*T*he terms of office of all members of the Board shall commence on October 1 of the year in which elected and shall terminate on September 30 of the year in which their terms expire. [With respect to members of the Board elected on or prior to September 5, 1978, including initial members of the Board, the terms of such members shall end on September 30 of the year in which their terms would otherwise expire. Except for the succeeding terms for initial members as hereinbefore provided,] [n]*N*o member of the Board may succeed himself in office and no broker-dealer representative or bank representative may be succeeded in office by any person associated with the municipal securities broker or municipal securities dealer with which such member was associated at the expiration of his term.

[(ii) Not later than March 15, 1977, the chairman of the Board shall announce the names of five initial members of the Board whose membership on the Board will terminate on September 4, 1977, and shall nominate, after consultation with the other members of the Board, five initial members to serve for a succeeding term to expire September 4, 1978, and five initial members to serve for a succeeding term to expire September 4, 1979. Each such category of initial members shall include at least one but no more than two public

*Italics indicate new material; [brackets] indicate deletions.

representatives and bank representatives.]

[(iii)] *(ii)* [In each year, prior to March 15, 1977 and [p]*P*rior to [February] *April* 15 of each year [thereafter], the Board will appoint a Nominating Committee composed of eleven members. The membership of the Nominating Committee shall consist of the five members of the Board whose terms expire during such year and six persons who are not members of the Board, two of whom shall be associated with and representative of bank dealers, two of whom shall be associated with and representative of municipal securities brokers and municipal securities dealers other than bank dealers, and two of whom shall not be associated with any broker, dealer, or municipal securities dealer. The Chairman of the Nominating Committee shall be designated by the Board. In appointing persons to serve on the Nominating Committee, the Board shall take into consideration such factors as the need to achieve broad geographic representation on such Committee, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented on such Committee.

[(iv)] *(iii)* Not later than [March 30, 1977 and March 15] *May 15* of each year [thereafter], the Nominating Committee shall publish a notice in a financial journal having general national circulation among members of the municipal securities industry, soliciting public recommendations for nomination for the positions on the Board to be filled in such year. Such notice shall require that recommendations be accompanied by a statement of the position for which the person is recommended, the background and qualifications for membership on the Board of the person recommended and information concerning such person's association with any broker, dealer or muncipal securities dealer. The Nominating Committee shall accept recommendations pursuant to such notice for a period of at least 30 days. Any interested member of the public, whether or not associated with a municipal securities broker or municpal securities dealer, may submit recommendations to the Nominating Committee. The names of all persons recommended to the Nominating Committee shall be made available to the public upon request.

[(v)] *(iv)* Not later than [May 15] *July 15* of each year, the Nominating Committee shall nominate three persons for each of the Board positions to be filled and shall submit such nominations to the Board. In making such nominations, the Nominating Committee shall take into consideration such factors as the need to maintain broad geographic representation on the Board, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented. Each nomination shall be accompanied by a statement indicating the position for which such person is nominated, the nominee's qualifications to serve as a member of the Board, and information concerning the nominee's association with any broker, dealer, or municipal securities dealer. The names of the nominees will be confidential.

[(vi)] *(v)* [Not later than June 1, 1977 the Board will elect the ten initial members of the Board nominated in accordance with subparagraph (ii) above for the terms for which they are nominated and] *The Board* shall, not later than [June 1] *August 1* of each year, select from [the] *each* slate of *three* nominees submitted by the Nominating Committee [and announce] the name of one candidate for each of the [other] Board positions to be filled, taking into consideration such factors as the need to maintain broad geographic representation on the Board, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented. *The Board shall announce the names of the candidates which it has selected.* The public representatives so named shall be considered duly elected, subject to the requirements of subparagraph [(x)] *(ix)* below.

[(vii)] *(vi)* In naming the bank and broker-dealer representative candidates as provided in subparagraph [(vi)] *(v)* above, the Board shall announce the broad criteria applied to their selection in terms of geographic representation and size and type of municipal securities broker and municipal securities dealer to be represented. An additional candidate for each position of bank representative and broker-dealer representative to be filled may be nominated by 20 percent or more of the municipal securities brokers and municipal securities dealers that have paid the [initial fee prescribed by rule A-12 of the Board] *annual fee prescribed by rule A-14 of the Board for the fiscal year in which the election is conducted* (hereafter referred to as "registered" municipal securities brokers and municipal securities dealers), if notice in writing signed by the required number of municipal securities brokers and municipal securities dealers is filed with the Board within 30 days of the date of the announcement by the Board of its selection of candidates. Any additional candidate nominated as provided in this subparagraph must meet the criteria of geography, and size and type of municipal securities broker or municipal securities dealer designated by the Board for the position to be filled.

[(viii)] *(vii)* If no additional candidate or candidates are nominated as provided in subparagraph [(vii)] *(vi)* above for a position to be filled, the candidate selected by the Board for such a position shall be considered duly elected.

[(ix)] *(viii)* If any additional candidate or candidates are nominated for a position to be filled as provided in subparagraph [(vii)] *(vi)* above, the Board shall send to each registered municipal securities broker and municipal securities dealer, a ballot setting forth the names of each candidate for the contested position or positions. Such ballot shall indicate the date by which ballots must be returned to the Board, but such date may not be less than 20 nor more than 30 days from the end of the nominating period provided in subparagraph [(vii)] *(vi).* All ballots shall be opened by such representative of the Board as the Chairman of the Board shall designate, and in the presence of a representative of each candidate if such representation is requested in writing by a candidate. The candidate for each contested position receiving [more than 50 percent of the votes cast for such position] *the largest number of votes cast* (each registered municipal securities broker and municipal securities dealer having one vote for each contested position) shall be considered duly elected. [In the event no candidate receives more than 50 percent of the votes cast for such position on the first ballot there shall be a run-off election between the two candidates receiving the highest percentages of votes cast. Such run-off election shall be conducted in accordance with the procedures followed on the first ballot, provided that any such run-off election must be completed within 20 days from the date the ballots for such election are mailed by the Board.] In all elections under this paragraph, voting shall be by confidential mail ballot.

[(x)] *(ix)* The public representatives on the Board will, prior to their assumption of office, be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities.

[(xi)] *(x)* Upon completion of the procedures for nomination and election of new Board members as set forth above, the Board will announce the names of the new members.

[(e)] *(d)* Resignation and Removal of Members. A member may resign from the Board by submitting a written notice of resignation to the Chairman of the Board which shall specify the effective date of such member's resignation. In no event shall such date be more than 30 days from the date of delivery of such notice to the Chairman. If no date is specified, the resignation shall become effective immediately upon its delivery to the Chairman. In the event the Board shall find that any member has willfully violated any provision of the Act, any rule or regulation of the Commission thereunder, or any rule of the Board or has abused his authority or has otherwise acted, or failed to act, so as to affect adversely the public interest or the best interests of the Board, the Board may, upon the affirmative vote of two-thirds of the whole Board (which shall include the affirmative vote of at least one public representative, one broker-dealer representative and one bank representative), remove such member [(other than an initial member)] from office. [or, in the case of an initial member of the Board, recommend to the Commission that such member be removed from office or censured.]

[(f)] *(e)* Vacancies. Vacancies on the Board shall be filled by vote of the members of the Board, subject to the Commission's power of approval referred to in paragraph [(d)] *(c)* of this rule with respect to public representatives. Any person so elected to fill a vacancy shall serve for the term, or any unexpired portion of the term, for which such person's predecessor was elected. For purposes of this rule, the term "vacancies on the Board" shall include any vacancy resulting from the resignation of any person duly elected to the Board prior to the commencement of his or her term.

[(g)] *(f)* Compensation and Expenses. Members shall be entitled to an allowance for transportation expenses, to the extent provided by resolution of the Board, from their home to the site of a meeting of the Board and from the site of such meeting to their home, together with a per diem to be set by the Board for those days or fraction thereof on which the Board meets. Members of the Board shall also be entitled to reimbursement for actual and necessary expenses incurred by them in connection with any other official business of the Board. Except as provided in paragraph (c) of rule A-6, no member of the Board shall be entitled to receive any other compensation from the Board.

[FR Doc. 80-34763 Filed 11-6-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-17267; File No. SR-Amex-80-27]

American Stock Exchange, Inc.; Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 17, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. (the "Exchange") proposes to amend its rules to conform to Securities Exchange Act Rules 19c-1 and 19c-3.

Exchange's Statement of Purpose

The purposes of the proposed rule change are (1) to conform Rules 5, 189 and 550 with Securities Exchange Act Rules 19c-1 ("Rule 19c-1") and 19c-3 ("Rule 19c-3 "), and (2) to conform Rule 550 to the current Exchange staff organization. The proposed rule change would make no substantive changes in the Exchange's rules; it is intended only to clarify the scope and requirements of the rules which are proposed to be amended, so that members may better understand and comply with them.

Statement of Basis

The proposed amendments of Rules 5, 189 and 550 are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) of the Act in particular by clarifying the scope and meaning of the rules which are proposed to be amended, and thus helping members to understand and comply with them.

Comments Received from Members, Participants, or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

Burden on Competition

The Amex has determined that no burden on competition would be imposed by the proposed amendments.

On or before December 12, 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 six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will 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 on or before November 28, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 3, 1980.

[FR Doc. 80-34756 Filed 11-6-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-17268; File No. SR-Amex-80-26]

American Stock Exchange, Inc.; Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 27, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change, as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange proposes to adopt Rule 620, which would provide a simplified arbitration procedure for resolving small claim disputes between members involving sums of $5,000 or less.

The Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule changes are as follows:

In 1978, the Exchange adopted the uniform, simplified procedure for the arbitration of customer small claim disputes developed by the Securities Industry Conference on Arbitration (Rule 619). Subsequent experience with the uniform customer small claims procedure suggests that a similar mechanism would be useful in resolving small claim disputes between members involving sums of $5,000 or less. Proposed Rule 620 would track the procedures of the customer small claims rule, with certain differences, as set forth in the table below:

	General arbitration procedure	Customer small claims procedure (Rule 619)	Proposed member small claim procedure (Rule 620)
1. Panel composition	Three arbitrators	Single public arbitrator	Single member arbitrator.
2. Hearing	Full evidentiary	Full evidentiary if requested by customer; otherwise, decision is based on pleadings.	Full evidentiary if requested by any party; otherwise, decision is based on pleadings.
3. Dollar limit	None	$2,500	$5,000.
4. Availability of simplified procedure.	Not applicable	Only if requested by customer.	If requested by either party.
5. Fees	Variable, based upon size of claim.	$15	$100.

Proposed Rule 620 is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it will provide a more effective, efficient and economical small dispute resolution system for members.

Comments Received from Members, Participants or Others on Proposed Rule Changes

No comments were solicited or received with respect to the proposed rule changes.

Burden on Competition

The Exchange has determined that no burden on competition will be imposed by the proposed rule changes.

On or before December 12, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods 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, 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 in the caption above and should be submitted on or before November 28, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 3, 1980.

[FR Doc. 80-34757 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17263; File No. SR-CBOE-80-26]

Chicago Board Options Exchange, Inc, Self-Regulatory Organizations; 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. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 24, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Text of Substance of the Proposed Rule Change

This proposed rule change would add, as interpretation and policy .02, the following language to Rule 7.7 titled Displaying Bids and Offers in the Book.

.02. In effecting a transaction with an Order Book Official, the executing member must obtain an oral confirmation from the Order Book Official or his staff as to the material terms of the transaction, including the number of contracts bought or sold. Absent such oral confirmation, the Order Book Official shall not be obligated for more than 25 contracts per series in any transaction even though an indication for a greater number of contracts may be displayed.

Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed change is to encourage the securing of oral confirmations from Order Book Officials to minimize the chance for misunderstandings arising from the possible display of an erroneous indication of the price or size of bids or offers in the book maintained by the Order Book Official.

The proposed change makes trading with an Order Book Official less apt to involve an error because it requires oral confirmations. Its basis under the Act is section 6(b)(5) in that it protects investors and is therefore in the public interest.

No comments on this proposed rule change have been solicited or received.

The Exchange does not believe that the proposed rule change will impose any burden on competition.

On or before December 12, 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. 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

NW., 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 on or before November 28, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 31, 1980.

[FR Doc. 80-34755 Filed 11-6-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0410]

Clinton Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On August 28, 1980, a Notice was published in the **Federal Register** (45 FR 57632) stating that Clinton Capital Corporation, 135 Middagh Street, Brooklyn, New York 11201, had filed an application with the Small Business Administration pursuant to Section 107.102 of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business September 15, 1980, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on October 22, 1980 issued License No. 02/02-0410 to Clinton Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 3, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34796 Filed 11-6-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0398]

Columbia Pictures Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On May 19, 1980, a Notice was published in the **Federal Register** (45 FR 32815) stating that Columbia Pictures Capital Corporation, 711 Fifth Avenue, New York, New York 10022, had filed an application with the Small Business Administration pursuant to Section 107.102 of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business June 3, 1980, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on October 22, 1980 issued License No. 02/02-0398 to Columbia Pictures Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 3, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34797 Filed 11-6-80 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5259]

Milestone Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On February 8, 1980, a notice was published in the **Federal Register** (45 FR 8785), stating that Milestone Capital Corporation, located at 5401 Mission Street, San Francisco, California 94112, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business February 25, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-5259 to Milestone Capital Corporation, on October 22, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 3, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34798 Filed 11-6-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0242]

California Partners; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that California Partners, Two Palo Alto Square, Suite 700, Palo Alto, California 94304, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1980)) for approval of a conflict of interest transaction.

California Partners proposes to make an investment in Apollo Computer Inc. (Apollo), 5 Executive Park Drive, North Billerica, Massachusetts 01862. The proposed financing will be used to purchase 7,500 shares of Apollo's Preferred Stock at a price of $5.00 per share, for a total purchase price of $37,500.

California Partners is a California limited partnership. Its corporate general partner is Draper Associates, Inc., of which Mr. William H. Draper III is an officer, director, and its sole shareholder. The limited partners of California Partners are members of Mr. Draper's immediate family. Mr. Draper also is one of the general partners of Sutter Hill Ventures (Sutter Hill), a California partnership. SBA deems Sutter Hill and its other general partners as Associates of California Partners. Sutter Hill, its general partners and associates of general partners currently own approximately 32 percent of the voting power in Apollo and, following a proposed November 1980 financing, will own approximately 31 percent of the voting power in Apollo. California Partenrs currently owns approximately 2.5 percent of the voting power of Apollo, and will own approximately the same percentage following its proposed investment. Because Sutter Hill, its partners and their associates own more than 10 percent of the voting power of Apollo, Apollo is defined as an Associate of California Partners. Therefore the proposed investment of California Partners in Apollo falls within the purview of Section 107.1004(b)(1) of SBA Rules and Regulations and requires SBA prior written approval.

Notice is hereby given that any person may not later than November 24, 1980 submit written comments to the Acting Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Palo Alto, California and North Billerica, Massachusetts areas.

(Catalog of Federal Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: October 30, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34731 Filed 11-6-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1948]

Connecticut; Declaration of Disaster Loan Area

New Haven County and adjacent counties within the State of Connecticut constitute a disaster area as a result of damage caused by high tides, heavy rains, winds and flooding which occurred on October 25, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 29, 1980, and for economic injury until the close of business on July 29, 1981, at: Small Business Administration, District Office, One Financial Plaza, Hartford, Connecticut 06103.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 30, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-34734 Filed 11-6-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0399]

Noro Capital Corp.; Issuance of a license to Operate as a Small Business Investment Company

On September 9, 1980, a Notice was published in the **Federal Register** (45 FR 39465) stating that Noro Capital Corporation, 230 Park Avenue, New York, New York 10017, had filed an application with the Small Business Administration pursuant to § 107.102 of the SBA rules and regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business September 24, 1980, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA, on October 15, 1980, issued License No. 02/02-0399 to Noro Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 30, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34733 Filed 11-6-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 02/02-5418]

North American Funding Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*), has been filed by North American Funding Corporation (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1980).

The officers, directors and stockholders of the Applicant are as follows:

Frank R. Wong, 25-28 148th Street, Flushing, NY 11354—President
Franklin F. Y. Wong, 25-28 148th Street, Flushing, NY 11354—Vice President
Kai H. Lo, 33 Pearl Street, New York, NY 10038—Secretary-Treasurer

The Applicant, a New York corporation, with its principal place of business at 177 Cannal Street, New York, New York 10013, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 100 shares of common stock to 14 stockholders.

The Applicant will conduct its activities principally in the State of New York. Applicant intends to provide assistance to qualified socially or economically disadvantaged small business concerns.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than November 24, 1980, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34730 Filed 11-6-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Provisions on Employee Conduct Exempting Remote or Inconsequential Employee Financial Interests Under 18 U.S.C. 208(b)(2)

AGENCY: Internal Revenue Service, Treasury Department.

ACTION: Provisions on Employee Conduct.

SUMMARY: Section 208(a) of 18 U.S.C. prohibits Government employees from participating personally and substantially as a Government employee in any particular matter in which to their knowledge they or their spouse, minor child, partner, or organization in which they are an employee or prospective employee, has a financial interest. Under section 208(b)(2) of 18 U.S.C., employee financial interests may be excluded

from the provisions of section 208(a) if an agency, by a rule published in the **Federal Register**, determines that such financial interests are too remote or too inconsequential to affect the integrity of the employee's services. These provisions provide that certain financial interests of employees are excluded from the provisions of section 208(a) because they are deemed too remote or too inconsequential to affect the integrity of the services of an employee in any matter in which he/she may act in a governmental capacity. An employee's financial interest in any stock, bond or other security of an entity publicly traded on a securities exchange is remote or inconsequential if (1) the number of shares, bonds or other units of each type of security held is less than 1 percent of the total number of units of each such type of security outstanding, (2) the aggregate value of the employee's holdings in all types of securities of the entity is less than $5,000, and (3) the employee is not an officer, director, trustee, or employee of the entity, or the employee's spouse or dependent is not an officer, director, or trustee of the entity. An employee's financial interest in shares of a widely held, diversified, mutual fund or regulated investment company is remote or inconsequential, regardless of the value of such interest or number of shares held, if (1) the employee is not an officer, director, trustee, or employee, or the employee's spouse or dependent is not an officer, director, or trustee and (2) the matter being handled by the employee does not directly involve the mutual fund or regulated investment company itself.

EFFECTIVE DATE: These provisions take effect on November 7, 1980.

FOR FURTHER INFORMATION CONTACT: James W. Corbitt, Jr. of the General Legal Services Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:GLS:3) (202-566-6571).

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal author of this document was James W. Corbitt, Jr. of the General Legal Services Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel in the Office of Chief Counsel and the Internal Revenue Service participated in developing this document, both on matters of substance and style.

Public Procedure

The Service has determined that these provisions relate to agency management and personnel. Accordingly, it is found, pursuant to 5 U.S.C. 553(a)(2), that notice and public procedure on these provisions is unnecessary.

Nonapplicability of Treasury Directive

The provisions set forth in this document are part of the Internal Revenue Manual, an internal management document of the Internal Revenue Service. Accordingly, the provisions of paragraphs 8 through 14 of the Treasury Department directive (published in the **Federal Register** at 43 FR 52120) implementing Executive Order 12044 do not apply to this document.

The following rule is added to § 228 of Internal Revenue Manual 0735.1, Handbook of Employee Responsibilities and Conduct:

1. Pursuant to 18 U.S.C. 208(b)(2), the financial interests described below of employees are deemed too remote or too inconsequential to affect the integrity of the services of an employee in any matter in which he/she may act in a governmental capacity.

(a) An employee's financial interest in any stock, bond, or other security of an entity publicly traded on a securities exchange is remote or inconsequential if (1) the number of shares, bonds, or other units of each type of security held is less than 1 percent of the total number of units of each such type of security outstanding, (2) the aggregate value of the employee's holdings in all types of securities of the entity is less than $5,000, and (3) the employee is not an officer, director, trustee, or employee of the entity, or the employee's spouse or dependent is not an officer, director, or trustee of the entity.

(b) An employee's financial interest in shares of a widely held, diversified, mutual fund or regulated investment company is remote or inconsequential, regardless of the value of such interest or number of shares held, if (1) the employee is not an officer, director, trustee, or employee, or the employee's spouse or dependent is not an officer, director, or trustee and (2) the matter being handled by the employee does not directly involve the mutual fund or regulated investment company itself.

2. In determining whether the number of units of a type of security held and the aggregate value of an employee's holdings in all types of securities exceed the limitations in section 1(a) above, securities held outright by or in trust or a similar arrangement for the benefit of the employee or the employee's spouse or dependent will be taken into account. Also, securities held by any organization in which the employee or his/her spouse or dependent is serving as an officer, director, trustee, or employee will be taken into account.

3. The number of units of each type of security outstanding and the value of an employee's holdings in all securities of an entity under section 1(a) of these rules shall be determined at the time the employee first acts in a governmental capacity with respect to the financial interest. If at any future time during which an employee is acting in a governmental capacity with respect to a financial interest, the (1) number of shares, bonds, or other units of a type of security held increases to equal or exceed 1 percent of the total number of units of such type of security outstanding and/or (2) the aggregate value of the employee's holdings in all types of securities of the entity increases to equal or exceed $5,000, the foregoing exemption no longer applies and the employee must seek an exemption under 18 U.S.C 208(b)(1). This exemption must be sought within a reasonable period of time after the employee first becomes aware of the increase in securities and/or the increase in value.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80-34926 Filed 11-6-80; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 218
Friday, November 7, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., November 12, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Docket No. 78-6: Adel International Development, Inc. v. Puerto Rico Maritime Shipping Authority and Star Lines, Inc.—Consideration of the record.
2. Docket No. 80-40: Foreign Commerce Tariff Regulations—Amendments Implementing the Ocean Shipping Act of 1978—Consideration of comments submitted in response to notice of proposed rulemaking.
3. Docket No. 80-45: Agreement Nos. 10386, as Amended, 10388, 10382, as Amended, and 10389—Cargo Revenue Pooling/Equal Access Agreements in the United States/Argentine Trades—Consideration of motion to terminate or suspend proceeding.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-2046-80 Filed 11-5-80; 12:54 pm]

BILLING CODE 6730-01-M

2

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, November 6, 1980.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Discussion of Response to Congressional Request for the Commission's views on its Section 5 Authority over Unfair Acts or Practices; Discussion of Legal Interpretations of Commission Enforcement Authority.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523-3830; recorded message: (202) 523-3806.

[S-2050-80 Filed 11-5-80; 3:20 pm]

BILLING CODE 6750-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, November 13, 1980.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Development of Regulation Permitting Federal Credit Unions to Offer Alternative Mortgages.
3. Report on actions taken under delegations of authority.
4. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

FOR MORE INFORMATION CONTACT: Joan O'Neill, Program Assistant; telephone (202) 357-1100.

[S-2047-80 Filed 11-5-80; 2:53 pm]

BILLING CODE 7535-01-M

4

NEIGHBORHOOD REINVESTMENT CORPORATION.

TIME AND DATE: 2:30 p.m., November 10, 1980.

PLACE: Board room, sixth floor, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Associate Director, Communications (202) 377-6815.

AGENDA:

I. Call to Order and Remarks of the Chairman.
II. Approval of Minutes, September 3, 1980.
III. Resolution: Third Annual Meeting.
IV. Resolution: Regular Meetings of the Board, 1981.
V. Report of the Audit Committee.
VI. Report of the Personnel Committee.
VII. Treasurer's Report.
VIII. Executive Director's Report.

No. 16 November 4, 1980.

Donnie L. Bryant,
Secretary.

[S-2044-80 Filed 11-4-80; 4:09 pm]

5

NUCLEAR REGULATORY COMMISSION.

DATE: November 10, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Monday, November 10:

10 a.m.

Discussion of Policy on Anticipated Transient Without Scram (public meeting).

2 p.m.

Briefing on Inclusion of Steam Generator Transients as an Unresolved Safety Issue (public meeting).

ADDITIONAL INFORMATION: The affirmation of Request by UCS for Stay of Policy Statement, was postponed from October 31 until 3:30 p.m., November 3.

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.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,
Office of the Secretary.

[S-2049-80 Filed 11-5-80; 3:13 pm]

BILLING CODE 7590-01-M

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71700, OCTOBER 29, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m. on November 6, 1980.

CHANGES IN THE MEETING: This meeting has been *rescheduled for 11 a.m. on November 6, 1980.*

Dated: November 5, 1980.

[S-2048-80 Filed 11-5-80; 3:10 pm]

BILLING CODE 7600-01-M

7

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 10, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Wednesday, November 12, 1980, at 2.30 p.m. An open meeting will be held on Thursday, November 13, 1980, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Commissioners Loomis, Evans, Friedman and Thomas determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 12, 1980, at 2:30 p.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.
Litigation matters.
Formal orders of investigation.
Settlement of administrative proceeding of an enforcement nature.
Report of investigation.
Consideration of *amicus* participation.
Freedom of Information Act appeal.
Regulatory matter bearing enforcement implications.
Proposed order in administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, November 13, 1980, at 10 a.m., will be:

1. Consideration of whether to issue a release revising Form N–1Q under the Investment Company Act of 1940, which is used by all management investing companies to report the occurrence during the preceding quarter of any one or more of twelve specified events. The revisions are designed to eliminate the necessity for management investment companies to file Form N–1Q on a regular basis. For further information, please contact Anthony A. Vertuno at (202) 272–2107.

2. Consideration of whether to withdraw proposed staff guidelines for disclosure in registration statements and periodic reports filed by electric and gas utility companies. For further information, please contact William H. Carter at (202) 272–2604.

3. Consideration of whether to issue a release adopting technical amendments to Regulations S–X and S–K to the rules, forms and schedules under the Securities Act of 1933 and the Securities Exchange Act of 1934 and amendments to Rule 30–1, the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance. For further information, please contact Elizabeth K. Norsworthy at (202) 272–2589.

4. Consideration of whether to grant the application of Stephens, Inc. and Jackson T. Stephens for relief pursuant to Rule 252(f) of Regulation A. For further information, please contact Thomas J. Baudhuin at (202) 272–2644.

5. Consideration of whether to send a letter to Senator William Proxmire, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, expressing the Commission's views on S. 3188, the "Tender Offer Improvements and Investor Protection Act of 1980." For further information, please contact Alan Rosenblat at (202) 272–2428.

6. Consideration of whether to issue a release adopting amendments to the management remuneration disclosure requirements embodied in Item 4 of Regulation S–K. The amendments will remove from the Item 4(a) table remuneration resulting from stock option, pension and stock appreciation right plans and will establish separate disclosure of these forms of remuneration. The amendments also relate to the definition of the term "executive officer," compensation relating to the termination of employment, indebtedness of management and certain other technical amendments. These amendments are in response to concerns that have come to the Commission's attention during the administration of the new remuneration disclosure requirements. For further information, please contact Joseph G. Connolly, Jr. at (202) 272–3208.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Wojtas at (202) 272–2178.

November 4, 1980.

[S–2045–80 Filed 11–5–80; 10:43 am]
BILLING CODE 8010–01–M

Reader Aids

Federal Register

Vol. 45, No. 218

Friday, November 7, 1980

INFORMATION AND ASSISTANCE

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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
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DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

ENVIRONMENTAL PROTECTION AGENCY

66952 10–8–80 / Air pollution; submission of altitude performance adjustments for motor vehicles

66984 10–8–80 / Final high-altitude emission standards for 1982 and 1983 light-duty motor vehicles

66789 10–8–80 / Vermont State Implementation Plan revision

66789 10–8–80 / Virginia State Implementation Plan; approval of revisions

66792 10–8–80 / Virginia State Implementation Plan; approval of certain amendments

FEDERAL HOME LOAN BANK BOARD

67313 10–10–80 / Marketable certificates of deposit, brokered funds by institutions whose accounts are insured by the FSLIC

List of Public Laws

Note: The current listing of October 24, 1980 of public bills which have become law was the last until Congress reconvenes November 12, 1980. For a complete up to date cumulative listing see **Reader Aids** in the issue of Wednesday, November 5, 1980.

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A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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74158 Part II—HHS/FDA, PHS, HCFA:
Alpha-Fetoprotein Test Kits; Proposed Rule and Proposed Additional Quality Control and Testing Requirements

74178 Part III—Commerce/NOAA:
Shrimp Fishery of the Gulf of Mexico; Plan Approval and Proposed Regulations

74310 Part IV—Labor/ESA:
Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

74374 Part V—HHS/FDA:
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74378 Part VI—EPA:
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74384 Part VII—USDA/FNS:
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74444 Part XI—Labor/MSHA:
Criteria and Procedures for Proposed Assessment of Civil Penalties

74456 Part XII—HHS/HCFA:
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Part II

Department of Health and Human Services

Food and Drug Administration, Public Health Service and Health Care Financing Administration

Alpha-Fetoprotein Test Kits; Proposed Restrictions and Proposed Additional Quality Control and Testing Requirements

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 20, 899

[Docket No. 80N-0002]

Alpha-Fetoprotein Test Kits

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing, for public comment, regulations to restrict the sale, use, and distribution of alpha-fetoprotein (AFP) test kits. AFP test kits are used in prenatal detection of a class of birth defects known as neural tube defects (NTD's). A public hearing will be held on the proposed regulations. Elsewhere in this issue of the **Federal Register**, the Centers for Disease Control (CDC) and the Health Care Financing Administration (HCFA) are proposing additional quality control and testing requirements applicable to laboratories engaged in AFP testing.

DATES: Comments on or before January 6, 1981. Public hearing on January 15, 1981; notices of participation by December 8, 1980; applications of public hearing participants for reimbursement by November 28, 1980. FDA intends that the final regulations will be effective 60 days after the date of publication of the final rule and will expire 4 years after first approval of an AFP test kit.

ADDRESS: Written comments, notices of participation, and applications for reimbursement to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Bureau of Medical Devices (HFK-70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION:

I. Background

Neural tube defects (NTD's) are among the most common serious birth defects in the United States. About 5,000 of the 3 million babies born each year in the United States have NTD's, an incidence of between 1 and 2 per 1,000 births. NTD's result when the neural tube, the developmental structure from which the spinal cord and brain of the fetus form, does not close properly during the early development of the fetus. About half the NTD's are characterized by a missing or malformed cranial vault or brain (anencephaly). There are roughly the same number of cases of spina bifida, in which the spinal column is open or otherwise fails to develop properly. Almost all infants affected by anencephaly are stillborn or die shortly after birth. The health of patients with spina bifida is often significantly impaired by conditions including paralysis of the lower limbs, mental retardation, incontinence, recurrent urinary infections, and hydrocephalus (excessive cranial fluid).

The cause of NTD's is not known. Only about 5 percent of affected babies are born to couples who have a family history of NTD's; about 95 percent of the cases are born to couples with no known risk factors (Ref. 1). Geographic variations in incidence both within the United States and internationally have been reported (Ref. 2). The rate of NTD's in the United Kingdom, for example, is about three times that of the United States. NTD's occur twice as often among whites as blacks in the United States, and in certain parts of the country—notably, Appalachia—the incidence of NTD's is well above the overall incidence in the United States.

An AFP determination together with confirmatory diagnostic procedures can alert parents and physicians to the possibility of an NTD fetus. AFP is a protein produced by the developing fetus. Its function has not been determined, though there is some indication that it is involved in regulating the fetal immunological system. AFP appears in the amniotic fluid surrounding the fetus at increasing levels during the first 14 weeks of pregnancy, after which the level usually declines. Since 1972, investigators have noted abnormally high levels of AFP in the amniotic fluid of fetuses with open NTD's (Ref. 3). Anencephaly is an open NTD; about 85 percent of spina bifidas are open lesions. Fetuses with anencephaly and spina bifida apparently shed an increased amount of AFP, which accounts for a higher than expected amniotic fluid AFP level for a given gestational age. Closed lesions generally are not detected by measurement of AFP levels.

AFP is also found in the mother's blood, perhaps due to direct transfer across the placental barrier or to the AFP in the amniotic fluid crossing the fetal membranes. AFP levels in the maternal blood increase during pregnancy, reaching a maximum at 32 to 34 weeks. An elevated maternal serum AFP level can be an indirect indication of the possibility of an NTD in the fetus. However, it may also be due to other factors, such as multiple fetuses, e.g., twins, or intrauterine fetal death. Investigators have also noted raised AFP levels in women bearing children with other congenital defects (Ref. 4); women with elevated AFP blood levels have been reported to be at greater risk of spontaneous abortion, perinatal deaths, and other pregnancy complications (Refs. 3 and 5).

An elevated maternal serum AFP level, therefore, is not diagnostic for NTD's. Accordingly, the AFP test kits are usually used in conjunction with other procedures to detect NTD's. The protocol generally followed includes the following steps, although the sequence may vary:

1. The serum AFP test is performed between 15 and 22 weeks of gestation.
2. If the first serum AFP is elevated, a second serum test is usually performed.
3. If the second serum AFP level is elevated, ultrasonography (diagnostic ultrasound) is used to determine whether the test results can be explained by incorrect estimate of gestational age, multiple fetuses, or fetal death. Anencephalic fetuses can often be identified at this stage.
4. If the elevated AFP level remains unexplained, amniocentesis is performed before the 22d week of gestation and amniotic fluid AFP levels are measured.
5. If fetal blood is present and the AFP level is elevated, amniocentesis is repeated 7 to 10 days later. Fetal blood can contaminate the amniotic fluid and cause a false-positive test result.
6. If the AFP levels in the fluid remain elevated, the physician may conduct additional studies, such as amniography or more extensive ultrasonography, to confirm or rule out suspected NTD's. Biochemical tests for analytes involved in neural transmission and morphological analysis of amniotic fluid cells in short term cultures are research procedures currently being studied to enhance the reliability of NTD detection by the examination of amniotic fluid AFP levels. Measurements of acetylcholinesterase in amniotic fluid have also been used.
7. Information and counseling are provided to the patient throughout the testing to enable her to make informed choices about whether to proceed with the testing, how to interpret the results, and to understand options available to her.

Of the steps listed, an elevated amniotic fluid AFP level following an elevated maternal serum AFP test is currently the most reliable diagnostic indicator of an NTD given a normal sonogram (to establish fetal age, a single fetus, and the absence of anencephaly). Amniotic fluid is obtained, however, by means of amniocentesis, an invasive procedure that carries a small risk of

fetal death. The AFP blood test can be used to help screen out those pregnant women who are at high risk of carrying an affected baby, and for whom amniocentesis may be justified.

The analysis of amniotic fluid is not fully accurate, however. The proportion of women who will have elevated amniotic fluid AFP levels and be carrying a child without an NTD is probably about one in ten (Refs. 3, 11, and 12). (In some of these cases, the fetus may have a defect other than an NTD.) Subsequent tests, such as amniography and an extensive ultrasound examination, can further reduce the likelihood of misdiagnosis.

Interest in AFP testing of pregnant women is increasing both in the United States and abroad. A number of testing programs have been established in the United States for the purpose of diagnosing NTD's. In addition, AFP tests are sometimes conducted on the amniotic fluid of (1) women undergoing amniocentesis for indications other than high risk for an NTD; and (2) women who have previously given birth to an NTD baby.

The United Kingdom has been in the forefront of AFP testing and research. A number of local health centers of the National Health Service provide maternal serum screening; an extensive quality control program has been established; and test outcomes have been widely studies.

In 1977 and 1979, published results on a collaborative study of 19 centers doing AFP testing in the United Kingdom documented the effectiveness of AFP testing in the detection of NTD's and provided a framework for laboratory and clinical procedures (Refs. 7 and 8). The United Kingdom established a government commission that explored and recently reported on the feasibility of a national screening program (Ref. 10a). In France, a serum screening is done only in state hospitals (Ref. 9); Finland has a state-operated pilot screening program in two parts of the country; it serves annually about 5,000 of Finland's 70,000 pregnant women (Ref. 10).

In addition, AFP test kits have been marketed for the past several years in Canada, Japan, and some European countries for screening for germ cell tumors and to monitor the progress of patients in remission from germ cell tumors. In the People's Republic of China, AFP tests have been used extensively to screen for malignant hepatomas.

Because AFP test kits for measuring AFP in maternal serum or amniotic fluid for the detection of NTD's were not commercially marketed in the United States before the enactment date of the Medical Device Amendments of 1976 (see 44 FR 11832; March 2, 1979), these devices are classified as class III devices under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)). Class III devices must be approved by FDA prior to marketing (section 515a (21 U.S.C. 360e(a))); see also section 513(a)(1)(C) (21 U.S.C. 360c(a)(1)(C)). FDA has denied a petition by Abbott Laboratories to reclassify this product, under section 513(f) of the act (21 U.S.C. 360c(f)), into class II (standards) (see 44 FR 11832).

FDA has received several applications under section 515(c) of the act (21 U.S.C. 360e(c)) for premarket approval (PMA) of radioimmunoassay test kits to measure AFP as an aid to detect NTD's. In the **Federal Register** of August 3, 1979 (44 FR 45644), FDA published a notice of its intent to issue proposed regulations under section 520(a) of the act (21 U.S.C. 360j(e)) establishing restrictions on the sale, distribution, and use of AFP test kits as a condition of approval of any such applications. FDA has decided not to approve any applications for premarket approval of AFP test kits as an aid to detect NTD's until it has determined through this rulemaking process what restrictions, if any, are needed to assure the safety and effectiveness of the kits. Manufacturers may not distribute AFP test kits in the United States for investigational purposes in accordance with the FDA investigational device exemption (IDE) regulations (21 CFR Part 812). Firms that have submitted PMA's to FDA for AFP test kits before July 16, 1980 (the effective date of the IDE regulations), are considered to have in effect an approved IDE.

On February 26, 1979, FDA held a public hearing on AFP test kits before two of its advisory committees, the Obstetrics-Gynecology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel and the Immunology Device Section of the Immunology and Microbiology Devices Panel. Summary minutes of the Panel meetings are on file in the office of the FDA Hearing Clerk.

FDA and the National Center for Health Care Technology (NCHCT), in collaboration with the National Institutes of Health (NIH), the Centers for Disease Control (CDC), and the Health Services Administration (HSA) (all components of the Department of Health and Human Services (HHS)) held a national education symposium on maternal serum AFP on July 28–30, 1980, in Washington, DC. The proceedings of this symposium will be made part of the administrative record for this proposal when available.

II. Is There a Need for Restrictions?

Section 515(d) of the act requires approval of AFP test kits upon a showing that they are "safe and effective under the conditions of use prescribed, recommended, or suggested in the proposed labeling." That section further provides that the approval may be subject to such conditions as FDA may prescribe:

> If, because of its potentiality for harmful effect or the collateral measures necessary to (their) use, (FDA) determines that there cannot otherwise be reasonable assurance of (their) safety and effectiveness.

(Section 520(e)(1).)

Several health professional and consumer organizations, as well as specialists in AFP testing, have told FDA that although they recognize that the AFP test is beneficial, they fear that unrestricted use of the AFP test kits could increase the chance of the serious complications, e.g., abortion of normal fetuses, failure to identify affected fetuses, and prospective parents' becoming unnecessarily alarmed about the outcome of the women's pregnancy (Ref. 13–24). Others have expressed the view that the AFP test kits are safe and effective and should be made available as widely as possible, to give women who may be carrying NTD fetuses the greatest possible access to this technology for identifying them (Refs. 41 and 42).

These potentially conflicting concerns have created a dilemma for FDA in deciding the conditions under which AFP test kits can be used safely and effectively. FDA believes any restrictions must take into account both the goal of appropriate access to this useful test and the need for assurance that the entire set of test procedures is available to any woman who undergoes AFP testing. FDA has considered various alternatives (which are described later) for meeting those requirements and decided to propose in regulatory language an approach which emphasizes use of the test under controlled conditions. FDA believes this approach best raises the difficult issues concerning AFP tests for public consideration and gives the public notice of the range of restrictions that could be imposed. FDA is proposing regulations which, if adopted, would require that AFP test kits be used only as part of a program in which a coordinator certifies in writing to FDA that an array of specified services would be provided to patients. These services

would include laboratory testing, ultrasonography, amniocentesis, and counseling. The regulations would also prescribe, in considerable detail, requirements for the laboratories and other service providers, and would require detailed recordkeeping. In addition, manufacturers would be required to provide comprehensive information to physicians, laboratories, and patients. FDA emphasizes, however that the scheme set out in this notice is only a proposal. FDA hopes by this notice to stimulate a broad range of discussion among affected interests and the general public before developing a final rule.

Each of the proposed restrictions is described below, together with many questions about particular provisions, there are more general issues on which public comment is especially invited:

(1) As with screening tests in general, AFP kits are not 100 percent specific. Thus, of 1,000 pregnant women whose blood is tested with an AFP kit, about 50 will have elevated AFP levels. A second blood test will reduce that number to about 30, sonography to about 15, and amniotic fluid AFP testing to about 2. Moreover, of 10 women who manifest elevated AFP levels in amniotic fluid, 1 will be carrying a normal child.

Thus, AFP testing presents in microcosm a problem frequently encountered with diagnostics: It can considerably improve the physician's and patient's knowledge of the situation, but it is not perfect. The error can occur in either direction. That is, an AFP test may predict that the fetus has an NTD when, in fact, it does not—a false-positive; or it may predict that the fetus does not have an NTD when, in fact, it does—a false-negative. If confirmatory procedures are available to reduce the error rate, as they are here, what is the best means of ensuring that patients and physicians are aware of the need for doing the confirmation procedures? Should FDA require that these confirmation procedures be conducted or at least made available to the patient?

What role should patient autonomy play in this decision? That is, once a technology is available which can give a patient some information, why and when should that information be denied her or him merely because the information is not perfect?

a. Excessive restrictions on AFP testing may discourage physicians, laboratories and patients from engaging in AFP testing. To the extent that the restrictions limit access to AFP testing, many women will not be tested and, therefore, will not have the information upon which to base decisions on the future of the pregnancy. How should the balance be struck between restrictions on use of the kits and the widest possible patient access to the technology? Is widespread access desirable?

b. Under the proposed restrictions, AFP testing may be available for the most part at medical centers capable of providing under one roof—or at least within a relatively small geographical area—all the necessary services. How would physicians gain access to program participation if there were no program in their areas? Or there is a program in the area, but the coordinator does not allow a particular physician to participate? Would the proposed restrictions unfairly deny women in certain geographic areas or of limited income access to AFP testing?

(2) AFP test kits have been under active review by FDA for several years. Much of the concern expressed about their unrestricted use came in the earlier part of that time. In the interim, have increased experience with AFP test kits and greater familiarity with them by the medical profession reduced the need for restrictions on their distribution?

(3) One manufacturer has estimated that the proposed restrictions would increase the costs of a test kit by 50 percent, e.g., from $150 to $225 for a kit that can be used for 40 patients. Are these figures accurate? Are the additional costs that the proposed restrictions would impose on consumers justified by the benefits?

(4) Are there sufficient resources in this country to provide the ancillary services required for AFP testing? If not, will the existing capacity for delivery of these services expand as necessary in response to demand? Even if the capacity might not expand as necessary, should FDA nevertheless approve AFP test kits so that at least some women will benefit from AFP testing?

III. The Proposed Restrictions

1. *Diagnostic protocol.* The regulations in effect establish a preferred diagnostic protocol. Should alternative protocols be suggested as well? Measurement of acetylcholinesterase in amniotic fluid, for example, has been suggested as useful in the diagnosis of NTD's in pregnancies with positive amniotic fluid AFP results (Ref. 12a). Has the development of the acetylcholinesterase test reached the stage that it should routinely be used in the diagnostic protocol? Would the use of the acetylcholinesterase test diminish the need for quality ultrasound to confirm the presence of an NTD?

2. *The coordinator.* The proposed regulation would require a program to have a coordinator who provides a written assurance to FDA that the program will comply with FDA regulations on AFP testing. The coordinator would oversee the timely delivery and quality of needed followup services. The coordinator may, for example, be the director of an existing genetics program or an individual responsible for a program established specifically for AFP testing.

To qualify as a coordinator under the proposed regulations, an individual would submit a letter containing his or her name, address, and telephone number, and the certification that is described in proposed § 899.82(a). That certification states that certain requirements FDA considers essential for an AFP testing program have been met. Proposed § 899.82(b) provides that when FDA receives a letter from the coordinator containing the certification required by the regulations, FDA would provide the coordinator with an enrollment number. The coordinator would then provide this number to physicians and laboratories that are part of the coordinator's program.

One proposed requirements is that the program have within its organization, or obtain through written agreements with other providers, access to services, for example, amniocentesis, ultrasonography, and laboratory services, enabling the program to offer patients all procedures necessary for proper diagnostic followup. FDA is proposing the requirement in the belief that it may not be enough for the coordinator merely to locate a facility providing the services. As proposed, the coordinator would be required to have written agreements for patients in the program to use that facility. Any written agreement would have to establish that the provider of the service would agree to provide services to patients within the AFP testing program and would comply with applicable provisions of the proposed regulations.

Are people available to fill the role of coordinator? Who would pay them? What would they cost? What are the incentives and disincentives to volunteer as a coordinator?

Are coordinators essential to assure the timely delivery of ancillary and confirmatory services for AFP testing? Is a prearranged program the only means of assuring the availability and timely delivery of services? Are there other, more appropriate, mechanisms available? Are there parallels between AFP testing and other diagnostic procedures which suggest alternative mechanisms?

3. *Ultrasonography.* Ultrasonography may be used several times in the course

of screening for NTD's. First, an ultrasound examination is conducted to estimate gestational age because AFP values can be correctly interpreted only in relation to the age of the fetus. Ultrasonography should also be able to rule out multiple fetuses, fetal death, and to identify anencephalic fetuses. If these alternate explanations for elevated AFP serum levels cannot be ruled out, either because ultrasound is unavailable or because it is not of adequate quality, some women will be unnecessarily exposed to risks, costs, and anxieties associated with subsequent procedures. Clinical trials suggest that close to half of all women with elevated serum readings might be spared further testing by effective use of ultrasound before amniocentesis.

Ultrasonography is also used in conjunction with amniocentesis to locate the placenta and the fetus and to identify the best site for inserting the needle. More extensive ultrasound examinations may be used after a positive amniotic fluid AFP test to provide a detailed image of the fetus to attempt to locate a suspected defect. This latter examination is complex and time-consuming and requires additional expertise and, perhaps, more sophisticated equipment.

Proposed § 899.83(a)(2) would require that a competent diagnostic ultrasound service be available that is capable of identifying multiple fetuses and anencephaly, accurately determining gestational age and detecting fetal death. Such a facility would have to agree to comply with applicable provisions of the regulation.

The availability of equipment for ultrasonography early in the testing protocol does not appear to be a significant problem. In 1974, an FDA survey of 1,000 United States hospitals of various sizes indicated that there was sufficient ultrasound imaging instrumentation to provide ultrasound examinations for approximately one-third of the total pregnancies at these institutions (Ref. 26). The substantial growth rate of ultrasound since that time suggests that there is access to ultrasound facilities for obstetric applications. A limited 1979 survey reported in *Radiology/Nuclear Medicine Magazine* showed that ultrasound facilities are available in radiology or obstetric services at over 70 percent of the responding institutions (Ref. 27).

Although ultrasonography may be widely available, FDA is concerned that all patients have access to services of sufficiently high quality for use in AFP testing. FDA welcomes comment on the degree of expertise needed to do AFP testing and the availability of that level of expertise. In addition, it would be useful to know how much training and experience is needed to reach that level of expertise. FDA has received comments from the Society of Obstetric and Gynecologic Ultrasound (SOGU) stating that "the technology continues to outpace user experience" (Ref. 28). The Public Citizen Health Research Group (HRG), citing SOGU's discussion of limited training in ultrasonography and quoting other sources, concludes that "the present inadequacy of expertise in ultrasound and the unlikelihood of significant expansion of expertise in the near future should preclude, at present, the setting up of neural tube defect screening programs except on a limited, tightly controlled basis with firm quality control assurances for all components of the screening program" (Ref. 29).

Training and experience for both technologists and physicians has been discussed in the professional literature (Refs. 30 through 33). Education and certification guidelines for technologists have recently been recognized by the American Medical Association's Committee on Allied Health Education and Accrediation. Some questions about ultrasound are now included in the Board Examinations in Obstetrics and Radiology.

The Commission on Ultrasound of the American College of Radiology (ACR) has recommended that: (1) Residents in radiology receive a minimum of 3 months training in ultrasound; (2) radiologists wanting a career in ultrasound seek a fellowship of a minimum of 1 year; and (3) practicing radiologists just starting in ultrasound receive a minimum of 1 month of formal training in ultrasound technique and interpretation before using the modality (Refs. 39 and 40).

SOGU has recommended that the equivalent of 2 months out of a 4-year postgraduate residency training course in obstetrics and gynecology be devoted to interpretation and supervised performance of both static and real-time B-scan ultrasound examinations.

Under proposed § 899.83(a)(2), competent diagnostic ultrasound service would require ultrasound equipment and competent physicians to interpret ultrasound scans. There are currently no uniform ultrasound training criteria. Therefore, FDA has not attempted to define "sufficient" training and experience. Should it? Would program coordinators be able to determine that ultrasound services are of sufficiently high quality? Is the coordinator in a better position to make this determination than the patient's own physician?

4. *Amniocentesis.* Proposed § 899.83(a)(3) would require that amniocentesis for the purpose of obtaining amniotic fluid to measure AFP levels be available to all women in the testing program who require it. The proposal requires the coordinator to assure that the program has available facilities to draw the amniotic fluid and to analyze that fluid for AFP, and that these facilities agree to comply with applicable provisions of the regulations. This requirement is intended to reduce the possibility that a woman with elevated maternal serum AFP would not have access to the diagnostic AFP amniotic fluid test.

HSA has told FDA that it believes resources are inadequate to meet the demand if AFP screening were undertaken as a routine procedure (Ref. 34).

Amniocentesis may be done in a physician's office, a hospital, or at a tertiary genetics center (a facility usually affiliated with a major medical center that offers a wide range of genetic services).

The procedure is done in either the second or third trimester of pregnancy, depending on the reason for the test. It is usually performed in the second trimester for chromosomal analyses of cells in amniotic fluid of women who, because of advanced maternal age or other reasons, are at increased risk of bearing a child with a birth defect.

FDA is not aware of any complete source of data on the total number of second trimester amniocenteses performed in the United States each year. The report of the NIH Consensus Development Conference, published in April 1979, however, estimates on the basis of surveys and regional data that about 15,000 second trimester procedures were performed in the country in the preceding year (Ref. 20).

FDA cannot predict exactly how widespread and how rapid adoption of AFP testing will be. FDA believes, however, that approval of the AFP test kit would generate a significant increase in the number of amniocentesis procedures being performed.

Of the women who have the first serum AFP test, approximately 2 percent will need to have access to second trimester amniocentesis. If all pregnant women were tested, an additional 60,000 amniocentesis procedures could be generated each year. Not all pregnant women, however, receive prenatal care in time to benefit from AFP testing. Furthermore, some women or physicians can be expected not to participate. It is unlikely, therefore, that there will be a demand for the maximum number of 60,000 additional amniocenteses. Taking

into account likely participation in a national NTD screening program, Goldberg and Oakley have projected that approximately 28,000 amniocenteses annually would be generated in a national screening program (Ref. 2). this figure does not include possible repeat amniocenteses, for example, where fetal blood contaminates the first sample and the test is positive, or where the test result is borderline.

Would the suply of amniocentesis services be adequate to meet the demand caused by increased AFP testing? If not, how quickly could the supply be increased?

5. *Counseling.* Proposed § 899.83(a)(4) would require that counseling be available to all women who are considering being tested or who are participating in the testing. Under the proposal, the program coordinator must ensure that as part of the program there would be qualified personnel to discuss several issues relating to AFP testing and NTD's including: The procedures that may be performed as part of the testing; the risks and benefits of the testing; the likelihood of false-positive and false-negative test results; the significance of the test results; the range of severity of NTD's; and options available to the patient with abnormal diagnostic test results. The counseling services should be based on a policy of voluntarism about the options of a patient with abnormal test results, especially with respect to the choice of termination of pregnancy.

Should it be left open whether counseling should be done by the physician, nurses, other health care professionals, or specially trained laypersons; or should genetics counseling be provided by qualified counselors? Should access to counseling be left to the patient's individual physician? Or must the program coordinator perform that function? Who would pay the counselors? What would they cost?

The American College of Obstetricians and Gynecologists (ACOG) has told FDA that the level of expertise and numbers of trained counselors necessary to deal with the patient's anxiety are "insufficient" to handle the need for counseling that would be associated with unrestricted use of AFP test kits (Ref. 36). Historically, has the availability of counselors to consult with patients about birth defects increased in rough proportion to the demand so that government intenvention to assure the availability of counseling is unnecessary?

FDA invites comment on whether patient anxiety would in fact occur, and if so, whether it would be any greater than, or different from, anxiety patients now manifest about other possible birth defects. Are comparably comprehensive counseling systems for other potential problems such as Down's Syndrome available? Could such existing systems be adapted to serve women ungoing AFP testing? Would the availability of appropriate printed patient information, together with interpretative aid from the patient's physician, family, or others, be sufficient?

6. *Laboratories.* Proposed § 899.85(a) would require that a laboratory be part of a program enrolled with FDA to purchase AFP test kits for use in NTD testing. A laboratory would prove that it is part of a program by providing the enrollment number of the program to the manufacturer.

Proposed § 899.85(b) would provide that laboratories may accept samples for AFP tests only from physicians who are part of a program enrolled with FDA. All samples would have to be accompanied by the FDA enrollment number.

Proposed § 899.85(c) would require that laboratories doing AFP testing follow the manufacturer's approved labeling unless alternative procedures are justifiable. The labeling would specify that each laboratory must establish its own normal median values for serum and amniotic fluid for each manufacturer's test kit used by the laboratory. The normal median values would have to be independently established for each manufacturer's AFP test used by each qualifying laboratory for each appropriate gestational week (that is, the 15th to 22d gestational weeks) from a statistical basis that includes maternal sera or amniotic fluids obtained from at least 100 screened women, each with a singleton conceptus that is unaffected by NTD's.

While normal median values are being established in a laboratory, that laboratory would be permitted to provide AFP test results to a physician, using, as a guide for interpretation, normal values obtained from the manufacturer of the AFP test kit used by the laboratory. Any abnormal AFP values during this period, however, would be required to be confirmed by repeat analysis of the same sample at a laboratory with an established range of normal values using the same manufacturer's approved AFP test kit. FDA believes that verifying results in this way would adequately ensure that analysis of samples by laboratories that have not yet developed normal AFP values would not lead to inaccurate reporting of normal samples as containing elevated AFP levels.

Laboratory labeling for each manufacturer's test kit would include summaries or explanations of the following: (1) AFP measurement procedures; (2) the protocol for AFP assay; (3) the principles of radioimmunoassy procedure; (4) the reagents and their preparation; (5) indications of instability; (6) radioactivity warnings; (7) specimen collection and preparation; (8) sample preparation; (9) the procedure for testing; (10) results of data accumulation; (11) a description of cutoff levels; (12) limitations of the procedure; (13) expected values; (14) performance characteristics; (15) the protocol and flow charts for AFP and associated modality testing; (16) the standard curve preparation calculations and quality control procedures; and (17) summary tables of maternal serum and amniotic fluid values obtained in clinical studies. The physician would send a manufacturer-supplied tear-off sheet to the laboratory with each sample to be tested; the laboratory would return the tear-off sheet to the physician along with the test results; it would include the median values and multiples of the median for gestational weeks 15 to 22 and a description of the need for followup procedures if the test result is positive.

To facilitate statistical comparison of normative and cutoff data obtained with different manufacturers' AFP test kits, each manufacturer would be required to calibrate its AFP test kit against the World Health Organization Reference Standard for Human Alpha-Fetoprotein (72/225) and report, in its professional and laboratory labeling, the mass of AFP found by use of its AFP test kit that is equivalent to one International Unit of AFP.

Under proposed § 899.85(d), the laboratory would be required to participate successfully on a regular basis in an FDA endorsed proficiency survey. Generally, proficiency testing programs are designed to monitor a particular laboratory's performance by comparing its quantitative results to those obtained by reference laboratories. FDA is working with CDC on a proficiency testing program for AFP. The College of American Pathologists (CAP) has informed FDA that it will be establishing a proficiency testing program shortly. The Commission on Inspection and Accreditation of the CAP is one of several national accreditation bodies approved by the Secretary, HHS, for accrediting laboratories under 42 U.S.C.

263a. (See § 74.1(e) of CDC's clinical laboratories regulations (42 CFR 74.1(e))). Proposed § 899.85(d) would require laboratory participation in either CDC's or CAP's proficiency testing programs or any other one subsequently endorsed by FDA.

As with other facilities participating in the program, proposed § 899.85(d) would require any laboratory that wishes to obtain AFP test kits for NTD testing to agree to participate in an inspection program authorized by FDA. Inspections would be made on a surveillance basis or for-cause to assure compliance with the regulations. HCFA would share responsibility for laboratory inspections with FDA, and both agencies are currently working to develop a Memorandum of Understanding to avoid duplicative inspections. The records the laboratory would be required to keep for inspectors to assure compliance are set out in proposed § 899.85 (f) through (h).

Proposed § 899.85(i) would require a participating laboratory to report test results greater than 2.5x the median to the program coordinator as well as to the attending physician. Because of the need for rapid followup testing, FDA believes that it is desirable that the laboratory telephone the results while the written report is being delivered. The laboratory would make data on AFP testing available to the coordinator, as requested, for submission in the manufacturer's reports so that coordinators may monitor the program.

A joint task force of ACOG and the American Academy of Pediatrics (AAP), HRG, CDC, and two NIH conferences on AFP (Refs. 20 and 37) have recommended that AFP testing be restricted to laboratories that conduct what they consider to be an adequate volume of AFP tests. The NIH workshop report (Ref. 37) suggested 50 maternal sera AFP samples and 10 amniotic fluid samples weekly. The ACOG/AAP report (Ref. 22) suggested 100 maternal sera tests weekly. CDC has proposed a minimum weekly sample workload of 50 mid-pregnancy patient specimens as regulatory requirements. The CAP does not favor minimum volume or frequency requirements on the grounds that they are not necessary to ensure proficiency. CDC asserts that there are statistics on several assays that indicate that laboratories routinely testing only a few samples each week have a much larger number of unacceptable results than do laboratories with a larger workload. CDC also points out that some State regulations prohibit laboratories from offering certain types of tests unless the laboratories perform tests of samples at a fixed workload and frequency.

After consultation with CDC, FDA has decided that it would be appropriate to propose at this time that, within 1 year after enrollment in the program, a laboratory be required to test a minimum total of 50 of any combination of maternal serum and amniotic fluid samples each week and proposed § 899.85(e) so provides. A CDC/HCFA joint proposal, published elsewhere in this issue of the **Federal Register**, would require the same weekly sample workload for clinical laboratories licensed by CDC to conduct AFP testing, and to be reimbursed by HCFA under the medicare program. Are these requirements necessary to assure the quality of laboratory performance? Any comments dealing with volume or assay frequency should, if possible, cite data or other pertinent supporting information.

7. *Reporting requirements.* Proposed § 899.84(c) would require manufacturers of AFP test kits also to submit quarterly and annual reports to FDA summarizing the results of AFP testing at each program. Quarterly reports would enable FDA to determine the abnormal/normal fetus abortion ratio at the individual programs. The proposed annual reports would include more detailed data to rates associated with each manufacturer's AFP test kit. FDA will specify the content and timing of submissions in the premarket approval orders to individual manufacturers.

Proposed § 899.83(d) would require the coordinator to secure written agreement from each physician involved in the program to notify the coordinator of the pregnancy outcome in all cases with an elevated AFP level and of all pregnancies involving fetuses with an NTD. All facilities associated with the program would also report abnormal test results to the coordinator, as well as to the attending physician. These data would enable the coordinator to monitor the performance of the program. They would also form a part of the data submission that proposed § 899.83(e) requires the coordinator to provide to the manufacturer of each kit used by that program.

FDA proposes that each coordinator would be required to furnish the current data FDA requires as part of the approval of a premarket approval application for an AFP test kit to the manufacturer of any AFP test kit used by a laboratory within the coordinator's program 15 days before the manufacturer must submit its quarterly report. FDA also proposes that, for any pateint undergoing amniocentesis to enable the measurement of AFP in amniotic fluid, the coordinator be required to furnish the manufacturer the information required by § 899.83(g) within 35 days of amniocentesis. The data would, in turn, be used by the manufacturers for quarterly and annual reports to FDA.

FDA intends to make available to the public, on a regular basis, summary analyses of the data it receives as part of the program, and to include in these summaries as much relevant information as is permissible under sections 301(j) and 520(c) of the act (21 U.S.C 331(j) and 360j(c)), the Trade Secrets Act (18 U.S.C. 1905), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act of 1974 (5 U.S.C. 552a). For example, these summaries will include data identified by the manufacturer. The data will not be retrievable by the name of the individual patient, and there will be no other means of identifying an individual patient. Thus the Privacy Act of 1974 does not prohibit the public disclosure of these data (see 5 U.S.C. 552a(a)(5)). FDA has determined that this information does not constitute trade secret information.

In addition to the postmarketing data requirements described above, CDC intends to conduct an epidemiological study to obtain additional information on AFP testing and NTD's. FDA will cooperate with CDC in this effort.

For inspectors authorized by FDA to determine whether a program is in compliance, the proposal would require coordinators, manufacturers, physicians, and facilities associated with the program to keep certain records. These are set out in appropriate sections of the regulations.

Proposed § 899.83(g) describes the records the coordinator would be required to keep. These records would enable authorized inspectors to identify facilities and physicians used by patients associated with the program who test abnormal or whose pregnancies involve an NTD fetus. The records would also be used to verify data submitted in the manufacturers' quarterly and annual reports and to identify facilities or circumstances which may require further followup investigation.

To verify distribution of test kits to approved programs, proposed § 899.84(d) would require manufacturers to maintain distribution records for AFP test kits.

Authorized inspectors must also be able to inspect raw data generated by facilities within the program as part of the AFP testing. Proposed §§ 899.85(f) and 899.87(a) respectively, therefore, would require the laboratory and the ultrasound and amniocentesis facilities

either to maintain specified records or to identify the location of such records. FDA does not anticipate that these proposed recordkeeping requirements would create an undue burden on the facilities because the records are those that would typically be generated in the delivery of services.

As proposed, physicians participating in an enrolled AFP testing program would be required to maintain records for each patient involved in AFP testing as described in proposed § 899.86(e). These records could be inspected to verify information supplied to the coordinator. FDA believes that this proposed required recordkeeping is typical of patient records a physician would keep and, therefore, should not create an undue burden on the physician. Further, FDA would not expect to inspect physicians' offices on a routine basis. Rather, it generally would expect to examine records in participating physicians' offices, including those ultrasound and amniocentesis facilities which are physicians' offices, only on a "for cause" basis.

Proposed § 899.89 would provide that program records must be maintained for 2 years following the expiration of the final regulations to permit FDA to conduct any necessary followup investigations and to verify the manufacturers' data submissions.

The recordkeeping and periodic reporting requirements contained in this proposal are subject to clearance by the Office of Management and Budget (OMB) under the Federal Reports Act of 1942 (44 U.S.C. Chapter 35). FDA intends to submit to the Director, OMB, copies of this proposal and other related materials during the comment period on the proposal. If OMB approves the proposed requirements, FDA will include them, along with any changes resulting from comments, in the final regulations as necessary to comply with OMB's determination. FDA will, if appropriate, also make conforming changes in any recordkeeping and reporting requirements applied in premarket approval orders for individual AFP test kits. Any comments received from OMB will become part of the administrative record for this matter and will be placed on file for public review in the office of the Hearing Clerk, FDA, in Docket No. 80N-0002.

Are all of these recrodkeeping requirements necessary to the safe and effective use of AFP test kits? Would requiring the provision of information about abortions invade a patient's privacy, or deter her use of an AFP test? Are the costs of these requirements commensurate with their benefits?

8. *Physician education.* Proposed § 899.83(b) would require the program coordinator to ensure that all physicians in the program have a sufficient supply of professional labeling prepared by the manufacturer and approved by FDA. Professional labeling for each manufacturer's AFP test kit would include: (1) A description of the measurement of AFP as an indicator of NTD's; (2) the nature, incidence, and consequences of NTD's; (3) the AFP testing protocol, including the importance of adhering to time requirements and using confirmatory diagnostic procedures; (4) the significance of test results, including how to adjust interpretations for racial and geographic population int he United States; (5) the specificity and sensitivity of the tests; (6) expected values; (7) a description of the cutoff levels used to distinguish abnormal and normal values for the manufacturer's product; (8) the protocol and flow charts for AFP and associated modality testing; and (9) summary tables of maternal serum and amniotic fluid values obtained in clinical studies.

ACOG has emphasized to FDA its concern that physicians are not prepared to use the AFP test safely. ACOG also called for restricted distribution of AFP test kits and a major educational campaign for physicians to ensure that AFP screening for NTD's is fully understood before it is undertaken (Ref. 36).

Are the AFP test kits and confirmatory diagnostic procedures more difficult to understand or to undertake than diagnostic procedures now in use?

9. *Patient information.* Women must be aware of the risks as well as the benefits of AFP tests in order to make an informed decision about participating in the testing and taking actions on the basis of test results. Faced with test results indicating elevated AFP levels, women must be provided detailed information about the significance of the results and the likelihood that an elevated level signifies an affected fetus. A discussion of NTD's and the options available must also be provided to women at risk. General information could be provided to patients at an early stage of the testing; more detailed information at the later stages may also be helpful.

The Spina Bifida Association of America (SBAA), HRG, and the ACOG/AAP Task Force have emphasized the importance of patient education for safe and effective screening for NTD's (Refs. 16, 17, and 22). Without such information, women: (1) May not understand that further diagnostic tests may be necessary to confirm or rule out a diagnosis of NTD based on an elevated AFP level; (2) may not be aware of the time sensitivity of the initial tests and may report for tests or receive abnormal results too late to take action on the medical options; (3) may forego followup tests without understanding that these tests could relieve anxiety about the child; (4) may not know that many spina bifida children, with treatment, can lead productive lives; or (5) may fear that once they have an affected pregnancy they cannot bear normal children. These groups believe that patient information must address these issues. The following is a sample patient brochure on which FDA invites comment.

Patient Information for AFP Testing

This is about a new test called the alpha-fetoprotein (al-fah-fee-toe-pro-teen) (AFP) test. Doctors can use this test to help identify those pregnant women who may have an increased chance that their unborn baby has certain birth defects called neural tube defects (NTD's).

This leaflet will help you learn more about the AFP test and NTD's. If you are thinking of having this test you should read this leaflet and use it as you talk with your doctor.

What Are Neural Tube Defects?

In the early development of the unborn baby, the spinal cord and brain grow from a structure called the neural tube. As the unborn baby grows, this tube changes its shape, with the head region developing into the brain and the rest of the tube becoming the spinal cord. Together, the brain and the spinal cord make up the central nervous system. NTD's result when the neural tube does not completely close during the early development of the unborn baby.

What Are Some Types of Neural Tube Defects?

Two common and serious types of NTD's are *anencephaly* (an-en-sef-a-lee) and *spina bifida* (spy-nah biff-ah-da).

Anencephaly. In this disorder, much of the brain, head and spinal cord have not developed normally. Newborn children with this severe disorder usually die shortly after birth.

Spina bifida. This disorder is also called "open spine." It is a defect of the spine and nervous system. There are several forms of spina bifida.

(Illustration showing normal neural tube and varying degrees of severity of spina bifida.)

Children born with spina bifida are often handicapped in a number of ways.

In a few cases, normal development of the child with little physical handicap is possible. Often, however, paralysis of the lower limbs, repeated urinary tract infections, hydrocephalus ("water on the brain"), and mental retardation occur.

The spine malformation and nerve damage caused by this disorder hamper movement in varying degrees. Some individuals with spina bifida can walk by themselves. Others use braces and crutches or a wheelchair. Through modern surgical and corrective techniques, many children born with spina bifida can lead healthy and productive lives.

What Causes Neural Tube Defects?

The cause of neural tube defects is not known. It may be a genetic (inherited) defect, or it may be caused by environmental factors. The occurrence of this problem in the United States varies from region to region; neural tube defects seem to occur more often in areas which are highly populated. Much more research must be conducted to find out the cause of this problem.

What Are the Chances of a Baby Born With a Neural Tube Defect?

In the United States, about 1 to 2 live births per thousand involve a neural tube defect: About 3,000 to 6,000 of the three million annual babies. These birth defects are about equally split into the two main types: Anencephaly and spina bifida.

Of the 3,000 to 6,000 births that result in a neural tube defect, approximately 2,700 to 5,400 (90 percent) babies with such a defect will be born to women who have no special or common "risk" characteristic. The remaining 300 to 600 babies with neural tube defects will be born to women who have any one of the following "special risk" characteristics:

Women who have already given birth to a child with a neural tube defect; one or both parents have neural tube defects or; women whose mother or father has a history of neural tube defects.

Alpha-Fetoprotein Blood Test

What is Alpha-Fetoprotein (AFP)?

Alpha-fetoprotein is a substance that is produced by the unborn baby as it grows and is passed into the amniotic fluid around the unborn baby and then into the mother's blood.

When the neural tube is not properly formed, too much alpha-fetoprotein "leaks" into the amniotic fluid around the unborn baby and reaches the mother's blood. By measuring the amount of AFP in the mother's blood and amniotic fluid, it is possible to tell whether or not there is a *chance* that the unborn baby has a neural tube defect.

What is the AFP Blood Test?

A blood test is the first step that the doctor will take to determine whether or not an unborn baby may have a neural tube defect.

The AFP blood test is simple and does not present any significant risk to the mother or the unborn baby. The doctor will take a sample of blood from the vein in the mother's arm and send it to a laboratory. The laboratory will test the mother's blood to see how much AFP is present and then send the doctor the results of the test.

When Should a Pregnant Woman Have the AFP Blood Test?

The best time to have the AFP blood test is during the second trimester of pregnancy. The best time is 15–22 weeks after your last menstrual period. Unreliable results may be obtained if the blood sample is taken too early during the pregnancy. If the sample is taken too late, there may not be enough time to complete all the tests.

What Will the Test Results Mean?

If the mother's blood has normal levels of AFP, the test results will be considered negative and there will be no need for further tests. Approximately 950 out of 1,000 women who have this blood test will have a negative result.

It is important for parents to understand that an AFP blood test result in the normal range cannot guarantee a perfect baby at birth, but it can offer some reassurance that the baby will not have an open neural tube defect.

An elevated result indicates that there are high levels of AFP in the mother's blood. This does not always mean an NTD is present. It means that the woman requires more care and additional tests to see whether or not the unborn baby has an NTD. These additional tests are described later in this brochure. Approximately 50 out of 1,000 women who have the AFP blood test may have a positive result from the first blood test.

If a high AFP blood level is obtained, there is about a 2-in-100 (2 percent) chance that the unborn baby has an NTD. More likely reasons for the positive result are that the pregnancy is further advanced than you think, or that you are carrying twins.

A week after the first elevated blood sample, the doctor will take a second sample of blood from your arm. If the result of the second test is also elevated, there is about a 4 to 10-in-100 chance (4 to 10 percent) that your unborn baby has an NTD. At this time, the doctor will discuss the need for you to have additional tests that will give a more accurate diagnosis than blood tests.

Is There a Possibility of False Results?

Women who are thinking of having the AFP blood tests should be aware it is possible that NTD's may be missed by the test or that a healthy fetus may wrongly be identified as having an NTD. The possibility of these false results should be openly discussed by you and your doctor.

What Are the Other Tests That May Be Needed If the Second AFP Blood Test Is Elevated?

Sonography (so-nog-raf-fee). The first test is pulse echo sonography, in which high-frequency sound waves are used to obtain an image of the unborn baby. The results of this test can be used to tell whether the blood test was elevated because the woman is carrying twins, or because the week of pregnancy was estimated incorrectly. Sonography can also show if an unborn baby has died, and often whether an NTD is present.

Amniocentesis (*am*-nee-o-sen-*tee*-sis). In this test, the doctor will take a sample of the amniotic fluid around the unborn baby and send it to the laboratory to measure the AFP level in the fluid. If the AFP level is high and other possible causes (twins or the age of the fetus when the test was taken) have been ruled out, there may be a 19-in-20 (95 percent) chance or more that the unborn baby has a neural tube defect. This test cannot tell how bad the defect will be or the possible degree of the handicap.

If the amniotic fluid AFP is elevated, the physician may wish to attempt to visualize the possible defect by means of gray scale sonography (a more advanced and accurate type of ultrasound), or by amniography, in which the baby is outlined by radiopaque dye injected into the uterus.

The chart attached to this brochure shows for 1,000 pregnancies the estimated results from the full testing sequence on determining whether an unborn baby has an NTD.

What Are the Risks and Costs of the AFP Blood Test and Other Tests?

Women who receive two positive results from the AFP blood test should be aware that other tests are needed to be more sure whether the unborn baby has an NTD. The AFP blood tests carry little risks—no more than any other blood tests people can get. In addition, these blood tests do not cost too much to have done. If the blood tests are elevated, the other tests described above (sonography and amniocentesis) may present a small risk, and can cost more money. It is not known whether

sonography carries any risk. You should ask your doctor about these tests; the risks that they present; how much they cost; where these tests are given; and any other questions that may be of concern to you.

What Should You Do if the Tests Show That Your Unborn Baby Has a Neural Tube Defect?

Counseling can help parents to assess the choices they have in relation to their own personal capabilities, needs, and desires. Women should ask their doctor for information about counseling.

Estimated Results of AFP Testing Program

Number of pregnant women tested		1,000
Elevated result—1st serum sample		50
Elevated result—2nd serum sample		30
Referred for sonography		30
Twins	8	
Corrected gestational age	6	
Fetal death	1	
Unexplained elevated serum AFP	15	
Referred for amniocentesis		15
Normal AFP	13	
unexplained elevated amniotic fluid AFP	2	
Referred for amniography or gray scale sonography		2
Normal	1	
NTD	1	

FDA invites comments on the brochure, particularly in the form of suggested alternative language to make the brochure more understandable and to add or delete information.

10. *Patient acknowledgment.* Under proposed § 899.86(a) a physician in the program would be required to obtain from each patient written acknowledgment that she: (1) Has been provided with the patient brochure prior to receiving the first AFP test, (2) has had an opportunity to discuss questions related to AFP testing with the physician or a counselor familiar with the subject, and (3) authorizes government employees to review and if necessary copy her records related to AFP testing.

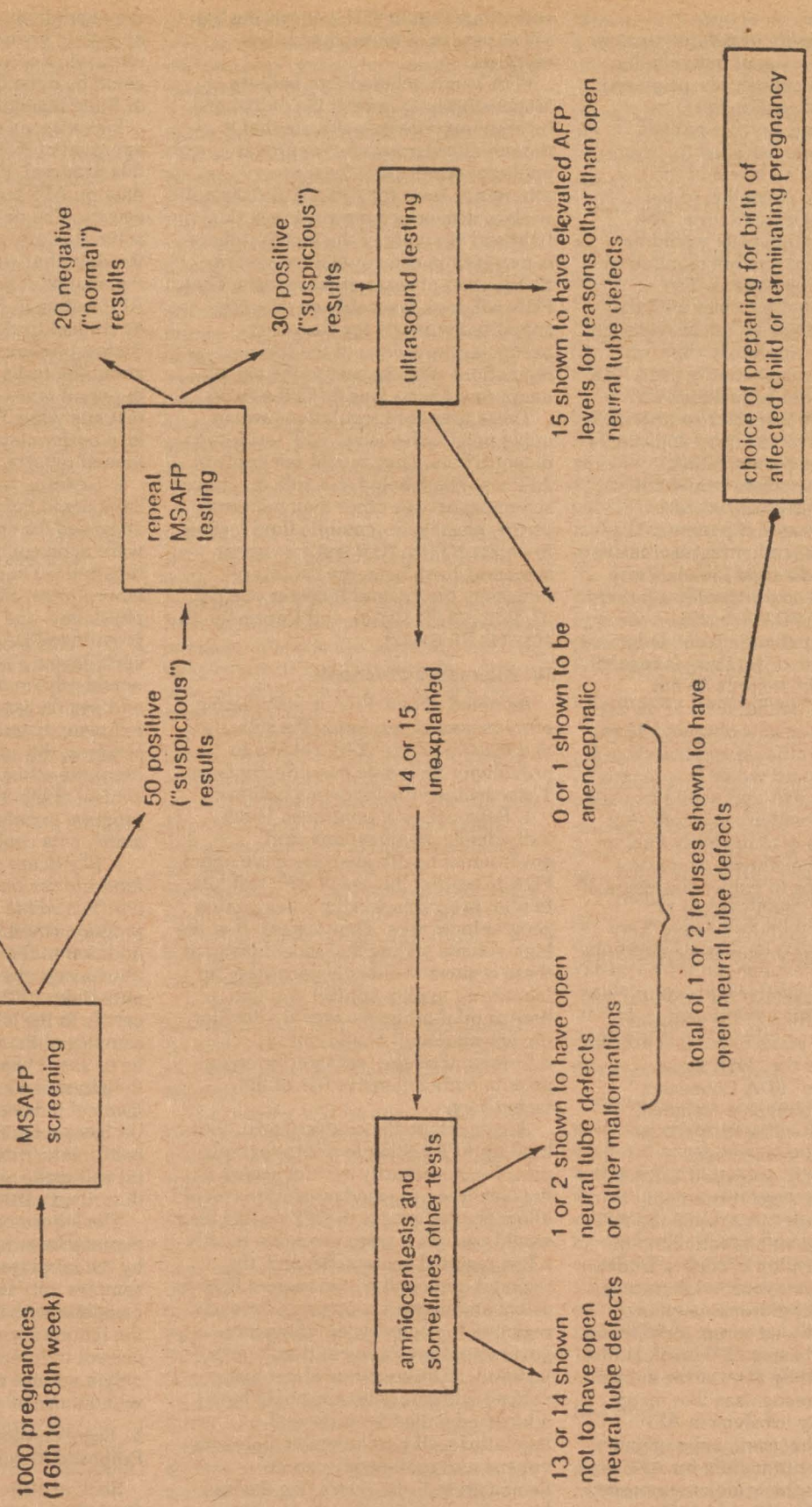
Proposed § 899.85(k) would require the laboratory to maintain a file by physician name of a copy of a signed patient acknowledgment for each sample analyzed. Proposed § 899.86(b)(4) would require the physician to submit a copy of the signed patient acknowledgment to the laboratory with each sample to be analyzed. This requirement would make the acknowledgment accessible to FDA authorized agents at a central point. This requirement would also reduce the need for FDA to visit physicians' offices to ascertain whether patient acknowledgment was obtained.

A majority of women tested will have a negative test. For these women the proposed brochure might cause some anxiety that would prove to have been unnecessary. Is this concern important enough, or are there other reasons, to choose instead a requirement that patient information be provided only if the first test is elevated (rather than before the first test)?

The proposal would require the patient to sign an acknowledgment authorizing the review and copying of her records by government officials prior to the first time blood is drawn for AFP testing. The acknowledgment would accompany any samples sent to laboratories. Is patient acknowledgment necessary for safe and effective use of AFP test kits? Would the proposed acknowledgment requirement intrude on the patient's privacy? Should "informed consent" be required instead? Or nothing? Should the patient acknowledgment accompany the sample to the laboratory or should it be sent to the program coordinator, or stay in the physician's office? Would providing such information to the government violate the patient's privacy? Would requiring the provision of such information deter women from having AFP tests performed? Could the information be limited in some way to avoid these problems?

BILLING CODE 4110-03-M

MATERNAL SERUM ALPHA-FETOPROTEIN SCREENING AND FOLLOW-UP TESTS



The above flow chart shows the sequence of tests available in a maternal serum alpha-fetoprotein screening program. Although not indicated above, counseling also is given at each stage. The numbers on the chart are those expected if at each stage all women remaining in the high-risk category choose to undergo further testing.

BILLING CODE 4110-03-C

11. *Confidentiality of patient records.* To ensure the privacy of individually identifiable medical records, proposed § 899.83(f) would require the establishment and use of a patient identification code designed to ensure confidentiality at all levels of the program with the exception of the patient acknowledgment form. The patient identification code would be used on all patient records required by these proposed regulations. The proposal would not interfere with the use of patient names by the provider on documents, e.g., laboratory slips, on which names are customarily used. The patient code would be included on records to enable inspectors authorized by FDA to retrieve and copy documents without using the patient name.

Authorized inspectors would not ordinarily copy medical records containing the names of patients. The coordinator or his or her representative would be given the right to delete any information that could identify a patient except when: (1) FDA has reason to believe that the patient acknowledgment was not obtained; or (2) there is reason to believe that the records do not represent actual patient tests or do not represent actual results obtained. If an individually identifiable medical record is copied, the record would be properly safeguarded by FDA and would be used or disseminated under conditions that protect the privacy of the individual to the fullest possible extent, consistent with laws relating to public disclosure of information (e.g., the Freedom of Information Act and the Privacy Act) and the law enforcement responsibilities of FDA.

12. *Other elements of the AFP test Kit program.* In addition to the proposed regulation, FDA plans to publish articles of AFP testing in the "FDA Drug Bulletin" and the "FDA Consumer." ACOG plans to publish a technical bulletin on AFP testing that will be distributed to all its members.

13. *Applicability.* Proposed § 899.80 provides that the regulations apply to the use of AFP test kits to measure AFP in serum, plasma, or amniotic fluid in the prenatal detection of NTD's. Under the proposed regulations, a laboratory would be prohibited from analyzing either maternal blood serum (or plasma) or amniotic fluid using AFP test kits that are not approved by FDA or the subject of an IDE. FDA recognizes that many persons currently involved in AFP testing believe that there are methods for analyzing amniotic fluid for AFP that are preferable to the radioimmunoassay used in the test kits for which FDA approval is sought. No one has yet submitted data to FDA concerning the effectiveness of these alternative methods.

FDA has concluded that both its responsibility to protect the public and its statutory mandate dictate that it require either premarket approval applications or IDE's for these alternative tests for AFP. FDA does not wish to discourage innovation in this field and is aware of the fact that there is as yet little commercial interest in distribution of some of these tests. Thus, FDA will look favorably on properly supported requests for waiver of particular provisions of the IDE regulations with respect to the use of unapproved tests (see 21 CFR 812.10).

These proposed regulations would apply only to the use of AFP test kits to detect NTD's. They would not apply to AFP test kits labeled and sold for cancer screening or uses other than maternal serum, plasma, or amniotic fluid testing to detect NTD's. AFP test for cancer screening have been the subject of notices in the **Federal Register** of April 27, 1973 (38 FR 10488), and December 16, 1977 (42 FR 63472).

IV. Alternative Proposals

As noted above, FDA is considering other means of regulating the sale, use, and distribution of AFP test kits to provide for their safe and effective use. These include the following options:

1. *Regional pilot programs.* Some individuals, organizations, and government health agencies have urged FDA to restrict the use of AFP test kits to pilot programs serving a designated geographical area. They suggest that the high-volume testing that would occur at these regional centers is necessary for laboratory quality control and that limited pilot programs would allow for the accumulation of additional information on the test's performance prior to more extensive use of the technology.

Arguments to the contrary posit that limiting AFP testing to pilot programs would unnecessarily restrict access to the test. The proposed regulations would allow greater access to AFP testing than would occur if it were available in only a few regional centers. Second, the regional approach would require FDA to select and oversee a program for each region of the country, entailing more government involvement than seems justified. Also, concerns about high-volume laboratory testing could be addressed under the proposed regulations—if a relationship between volume and proficiency can be demonstrated—by restricting the test kits to laboratories that conduct the minimum volume of tests required by the regulations. Finally, FDA does not appear to have the authority to set up regional pilot programs per se. This could be done through funding agencies or State regulatory bodies.

Likewise, as part of the premarket approval of AFP test kits and as part of this proposal, FDA would require that data on AFP testing be submitted to the agency. The data proposed to be submitted are essentially the same as the data that would be generated by a regional pilot program. FDA believes AFP testing in foreign countries, as well as clinical trials within the United States, provides sufficient assurance about the test's safety and effectiveness to permit more extensive use of the AFP test kits while FDA monitors the test kits' performance through quarterly and annual reports.

2. *General availability.* Some persons have urged that AFP test kits be approved for unrestricted use. If this were done each manufacturer would be required (a) to develop labeling for laboratories, and prepare brochures for physicians and patients, and (b) to provide to FDA postmarketing data on each device's performance. This plan would rely on comprehensive labeling to address the issue of the availability of followup diagnostic and counseling services, the coordination of the elements of the testing, and the quality control of laboratories. No compliance program to enforce any of the labeled statements could be implemented.

3. *Physician certification to laboratories and laboratory certification to manufacturer.* A program could be adopted in which, in addition to the provisions of paragraph 2 above, any physician wishing to undertake AFP testing would have to certify to the laboratory analyzing any samples of the physician's patients, that he or she (a) has read and will follow the physician's labeling, except where medical judgment supports deviation, (b) has access to all necessary confirmatory diagnostic procedures, and (c) will make available to FDA the data described earlier in this proposal.

The laboratory would certify to the manufacturer of any AFP test kit used by the laboratory that it would accept samples only from physicians who complied with (a), (b), and (c) and that the laboratory would meet quality control criteria. This approach would be only a variant of the current proposal without use of a "program coordinator."

V. Legal Authority and Need for the Proposed Regulations

Section 520(e) of the act (21 U.S.C. 360j(e)) provides authority for the FDA (acting upon delegation of authority

from the Secretary of Health and Human Services) to restrict the use of medical devices. The issuance of the proposed regulations initiates the procedure to provide FDA authority to enforce the restrictions, if adopted, with respect to persons other than the manufacturers of AFP test kits. Thus, if the regulations that FDA is proposing in this document are made effective, any person who failed or refused to comply with the requirements, including manufacturers, laboratories, physicians, and others involved in the AFP process, would be violating the act (sections 502(q)(2); 301(a), (b), (c), (k) (21 U.S.C. 352(q)(2); 331(a), (b), (c), (k))). Publication of the proposed regulations in final form would also provide FDA other remedies under the act, besides withdrawal of the kits, if violations of the restrictions occur. Violation of restrictions imposed by regulation can result in seizure, (section 304 (21 U.S.C. 334)), injunction, (section 302 (21 U.S.C. 332)), and prosecution, (section 303 (21 U.S.C. 333)).

VI. Sunset

The proposed regulations would expire 4 years after the first approval of an AFP test kit. At the end of 4 years, the period would be extended if FDA determined that continued restrictions were necessary. Throughout the period restrictions, FDA would closely monitor the performance of the AFP test kits. Comments are especially invited on this projected "sunset" provision.

VII. Public Hearing

An open hearing will be held beginning at 9 a.m. on January 15, 1981, to give the public an opportunity to make oral comments on the proposed regulations. The hearing will be held under § 15.1(a) (21 CFR 15.1(a)), of FDA's administrative practices and procedures regulations, in the auditorium 1st floor, North Health and Human Services Building, 330 Independence Ave. SW., Washington, DC. The presiding officer will be Stuart L. Nightingale, M.D., Acting Associate Commissioner for Health Afffairs.

The purpose of the hearing is (1) to provide an open forum to present views concerning the merit of the proposed regulations and their general applicability and practicality and, (2) to foster greater consideration of the proposal among the scientific community, the regulated industry, and the public. Although the hearing will encompass all aspects of the proposal the agency seeks specific advice on the several areas of consideration discussed in the preamble above.

In preparing final regulations, FDA will consider the administrative record of this hearing along with all other written comments previously received and received during the comment period specified in this proposal.

A written notice of participation under the requirements of § 15.21 (21 CFR 15.21) must be filed with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, not later than December 8, 1980. The notice of participation should contain Hearing Clerk Docket No. 80N-0002, the name, address, and telephone number of the person desiring to make a statement, along with any business affiliation, a summary of the scope of the presentation, and the approximate amount of time requested for the presentation (suggested to be limited to 10 minutes). To facilitate identification, the envelope containing the notice should be marked "AFP Hearing." A schedule for the hearing will be filed with the Hearing Clerk and mailed to each person who files a notice of participation within the specified filing time. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation.

If the response to this notice of hearing is such that insufficient time is available to accommodate the full amount of time requested in the notices of participation received, the agency will allocate the available time among the persons making the oral presentation. Formal written statements on the issues may be presented to the presiding officer on the day of the hearing for inclusion in the administrative record.

If the response to this notice of hearing is such that all persons cannot be accommodated, the hearing will be extended for an additional day, as appropriate.

The hearing will be open to the public. Any interested person may be heard on matters relevant to the issues under consideration.

FDA has established a pilot program for financial assistance to participants in certain agency proceedings, including hearings under Part 15. This program is described in regulations (21 CFR Part 10, Subpart C) that were published in the **Federal Register** of October 12, 1979 (44 FR 59174) and that became effective October 25, 1979 (44 FR 72585; December 14, 1979). Subject to the availability of funds and other factors, FDA may reimburse participants meeting the criteria set forth in these regulations for certain costs of participating in this proceeding. Applications for reimbursement must be filed by December 8, 1980 in accordance with § 10.210(a) (21 CFR 10.210(a)). For more information regarding the reimbursement program, contact Curtis Noah, Office of Consumer Affairs (HFE-88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3170.

Although reimbursement may be made available for the hearings under Part 15, the program's priority will be given to funding participating in formal evidentiary pubic hearings under Part 12 or public boards of inquiry under Part 13 of FDA's regulations (21 CFR Part 12 or 13).

As permitted by § 10.210 of FDA's public reimbursement regulations (21 CFR 10.210), the agency has established expedited procedures for review of any applications for reimbursement submitted in this proceeding. FDA will make a decision on any such applications within about 10 days after the deadline for their submission. Applicants whose applications are approved will have about 15 days to prepare for the public hearing on the AFP test kit proposal.

Conforming Amendments

FDA is proposing to amend the procedural regulations (21 CFR 16.1) regarding regulatory hearings before the FDA to add a cross-reference to the procedures proposed in this document regarding withdrawal of the enrollment for coordinator's AFP testing program.

To conform appropriately the rules on the public availability of summaries of data generated by AFP test programs, FDA purposes to add § 899.90 to the list regulations in § 20.100(c) (21 CFR 20.100(c)) that contain special rules on availability of records.

Environmental Impact

FDA has carefully considered the potential environmental impacts of this proposal and has concluded that the action will not have a significant effect on the human environment and that an environmental impact statement will not be prepared. FDA's finding of no significant impact and the evidence supporting this finding contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the office of the Hearing Clerk, FDA.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

(1) Erickson, J. D., "Racial Variations in the Incidence of Congenital Malformations," *Annals of Human Genetics*, 39-315, 1976.

(2) Goldberg, M. F., G. P. Oakley, "Prenatal Screening for Anencephaly-Spina Bifida: Some Epidemiologic Projection for a National Program," *in* "Service and Education in Medical Genetics," Academic Press, 1979.

(3) Brock, D. J. H., L. Barron, P. Duncan, J. B. Scrimgeour, M. Watt, "Significance of Elevated Mid-Trimester Maternal Plasma-Alpha-Fetoprotein Values," *Lancet*, June 1, 1979, pp. 1281–1282.

(4) Kjessler, B., S. G. O. Johansson, G. Lidbjork, and M. S. Sherman, "Alpha-Fetoprotein (AFP) Levels in Maternal Serum in Relation to Pregnancy Outcome in 7, 158 Pregnant Women Prospectively Investigated During Their 14th-20th Week Post Last Menstrual Period," *Acta Obstet Gynecol Scand*, Suppl., 69:25–44, 1977.

(5) Hay, D. L., et al., "The Relation Between Maternal Serum Alpha-Fetoprotein and Fetomaternal Haemorrhage," British Journal of Obstetrics and *Gynaecology*, 86:516–520, 1979.

(6) McIntire, K. R., C. L. Vogel, A. Primack, T. A. Waldmann, S. K. Kyalwazi, "Effect of Surgical and Chemotherapeutic Treatment on Alpha-Fetoprotein Levels in Patients with Hepatocellular Carcinoma," *Cancer*, 37:677–683, 1976.

(7) Wald, N. J., H. Cuckle, "Maternal Serum-Alpha-Fetoprotein Measurement in Antenatal Screening for Anencephaly and Spina Bifida in Early Pregnancy," *Lancet*, June 25, 1977, pp. 1323-1332.

(8) Wald, N. J., H. S. Cuckle, "Amniotic-Fluid Alpha-Fetoprotein Measurement in Antenatal Diagnosis of Anencephaly and Open Spina Bifida in Early Pregnancy," *Lancet*, September 29, 1979, pp. 651–661.

(9) Letter dated 8 Aout (August), 1979, from Mme. Hermine Nagel to Monsieur Michel Bernon.

(10) Letter dated July 27, 1979, from Markku Seppala, M.D., to Dr. Alison Carlson.

(10a) Report by the Working Group on Screening for Neural Tube Defects, July, 1979 Department of Health and Social Security, Health Notice No. HN(79)116, London, England.

(11) Milunsky et al., "Prenatal Diagnosis of Neural Tube Defects IV. Maternal Serum Alpha-Fetoprotein Screening," *Obstetrics and Gynecology*, 55-60–66, January 1980.

(12) Cowchok, F. S. and L. G. Jackson, "An Analysis of Pregnancies With Elevated Alpha-Fetoprotein Levels in Maternal Serum and/or Amniotic Fluid Samples," *Birth Defects*, 15:75–85, 1979.

(12a) Smith, A. D., et al., "Amniotic-Fluid Acetylcholinesterase as a Possible Diagnostic Test for Neural-Tube Defects in Early Pregnancy," *Lancet*, March 31, 1979, pp. 685–688.

(13) Letter dated April 16, 1979, from Ervin E. Nichols, M.D., to Donald Kennedy, Ph.D.

(14) Letter dated April 13, 1979, from Charles Scriver, M.D., to Donald Kennedy, Commissioner, Food and Drug Administration.

(15) Letter dated May 2, 1979, from Jean H. Priest, M.D., to Donald Kennedy, Commissioner, FDA.

(16) Statement by Mrs. Carol Buchholz and Mr. Thomas Tapke on behalf of the Spina Bifida Association of America at the February 26, 1979, public hearing on AFP.

(17) April 23, 1979 letter and enclosed petition from Robert B. Leflar, Staff Attorney, and Sidney M. Wolfe, M.D., Public Citizen Health Research Group, to Dr. Donald Kennedy, Commissioner, Food and Drug Administration.

(18) Memorandum dated March 9, 1979, from Director, Center for Disease Control, to Ms. Ruth Hanft.

(19) Statement by Health Services Administration on Issues Relating to AFP Tests for FDA Public Meeting on February 26, 1979.

(20) "Antenatal Diagnosis," report of a Consensus Development Conference, National Institutes of Health, NIH Publication No. 79–1973, April 1979.

(21) Letter dated February 1, 1980 from Dr. John L. Hamerton, D.Sc., F.C.C.M.G., to Dr. Renie Schapiro.

(22) Report of the ACOG/AAP Alpha-Fetoprotein Task Force, August 3, 1979.

(23) Letter dated July 26, 1979 from Carol Buchholz, to Mark Novitch, M.D.

(24) Macri, J. N., J. E. Haddow, and R. R. Weiss, "Screening for Neural Tube Defects in the United States. A Summary of the Scarborough Conference," *American Journal of Obstetrics and Gynecology*, 133:119, 1979.

(25) Alpha-Fetoprotein (AFP) Testing Program Facilities Survey, sponsored by Wampole Laboratories, Division of Carter-Wallace, Inc.

(26) Roney, P. L. and R. M. Albrecht, "Hospital Survey of Obstetric Ultrasound-United States, 1974," *in* "Symposium on Biological Effects and Characterizations of Ultrasound Sources," HEW Publication (FDA) 78–8048, December 1977.

(27) "Ultrasound Forum '79," conducted by Technology Marketing Group Ltd., reported in Radiology/Nuclear Medicine Magazine, August 1979, pp. 4–24.

(28) "User Training for Obstetric and Gynecologic Ultrasound Diagnosis by Physicians," Society of Obstetric and Gynecologic Ultrasound response to Notice of Intent of FDA, (Docket No. 78N–0288), **Federal Register**, 44 FR 9542; February 13, 1979.

(29) Letter dated August 28, 1979, from Robert B. Leflar, Staff Attorney, and Sidney M. Wolfe, M.D., to Mark Novitch, M.D.

(30) "Editorial," *Journal of Clinical Ultrasound*, 6(2):73–75, 1978.

(31) McKinney, William M., "Editorial," *Journal of Clinical Ultrasound*, 4(1):1–2, 1976.

(32) Wilson, Robert L., "Editorial," *Reflections*, 4(2):66, 1978.

(33) Lyons, E. A., "Guest Editorial," *Reflections*, 5(2):11, 1979.

(34) Memorandum dated June 12, 1979, to Director, Bureau of Medical Devices from Administrator, Health Services Administration.

(35) Letter dated November 14, 1979, from Duane Alexander, M.D., to Renie Schapiro.

(36) Letter dated May 14, 1979, from Ervin Nichols, M.D., American College of Obstetricians and Gynecologists to Donald Kennedy, Ph.D., Commissioner, Food and Drug Administration.

(37) Wald, N. J., H. S. Cuckle, and B. Stoll, "Antenatal Screening and Diagnosis of Open Neural-Tube Defects—Quality Control of Alpha-Fetoprotein Reagents and Assay," (in press) *Clinica Chemica Acta*, 1980.

(38) Memorandum dated January 7, 1980, from Stephen W. Smith, Ph.D., to Staff Fellow, Office of Health Affairs, FDA.

(39) Letter dated October 22, 1979, from Marc S. Lapayowker, M.D., American College of Radiology, to Mark Novitch, M.D.

(40) "System Design of a Clinical Facility for Diagnostic Ultrasound," prepared by Alliance for Engineering in Medicine and Biology, September 1977.

(41) Letter dated June 13, 1980, from Joseph D. Schulman, M.D., National Institutes of Health, to Mark Novitch, M.D.

(42) Memorandum dated August 4, 1980 from Joseph D. Schulman, M.D. to Mark Novitch, M.D. and Seymour Perry, M.D.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 520(e), 701(a), 52 Stat. 1055, 90 Stat. 567 (21 U.S.C. 360j(e), 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. In Part 16, § 16.1(b)(2) is amended by adding the following:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * * § 899.82(d), relating to withdrawal of the enrollment for a coordinator's alpha-fedoprotein testing program.

* * * * *

PART 20—PUBLIC INFORMATION

2. In Part 20, by adding new paragraph (c)(34) to § 20.100, to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(34) Data and information submitted in periodic reports for alpha-fetoprotein test kits, in § 899.90 of this chapter.

* * * * *

3. By adding new Part 899, to read as follows:

PART 899—RESTRICTED DEVICES

Subparts A–D [Reserved]

Subpart E—Alpha-Fetoprotein Test Kits

Sec.
899.80 Definitions.
899.81 Designation as restricted device; specific restrictions.
899.82 Enrollment of AFP testing programs.
899.83 Responsibility of program coordinators.
899.84 Restrictions on manufacturers.
899.85 Restrictions on laboratories.

899.86 Restrictions on physicians.
899.87 Restrictions on ultrasonography and amniocentesis facilities.
899.88 Permission to inspect.
899.89 Record retention.
899.90 Release of information.

Subparts A-D [Reserved]

Subpart E—Alpha-Fetoprotein Test Kits

§ 899.80 Definitions.

As used in this subpart:

"AFP test kit" means reagents and other materials for use in the diagnosis of neural tube defects in fetuses by analysis of the amount of alpha-fetoprotein (AFP) in the blood serum (or plasma) and amniotic fluid of pregnant women;

"AFP testing program" means all services that are covered by the certification made by a coordinator pursuant to § 899.82;

"Coordinator" means an individual who, on behalf of a program, makes the written certification required by § 899.82

§ 899.81 Designation as restricted device; specific restrictions.

(a) AFP test kits are restricted devices.

(b) AFP test kits may be distributed, sold, or used only in compliance with an approved investigational device exemption application under Part 812, or in compliance with the specific restrictions set out in this subpart.

§ 899.82 Enrollment of AFP testing programs.

(a) To initiate an AFP testing program, a coordinator shall certify in writing to the Bureau of Medical Devices, Division of Clinical Laboratory Devices (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, that he or she is capable of complying and will comply with the requirements of this section and §§ 899.83, 899.88, and 899.89. The certification shall contain the coordinator's name, address, and telephone number and shall state that the facilities referred to in § 899.83(a) either (1) exist within an organization, such as a hospital or medical center, of which the coordinator is an authorized representative, or (2) have agreed in writing to provide services to patients within the AFP testing program and to comply with applicable provisions of this subpart.

(b) When a certification under paragraph (a) of this section has been submitted, the Food and Drug Administration (FDA) will review it and if not deficient, will enroll the AFP testing program, and will provide an enrollment number to the coordinator. Upon receiving an enrollment number, the coordinator shall inform each physician and laboratory associated with his or her program of that enrollment number.

(c) If the coordinator determines that the certification made pursuant to paragraph (a) of this section can no longer truthfully be made, the coordinator shall notify FDA and all persons associated with the program that the enrollment of that program is terminated.

(d) Whenever FDA has reason to believe that the certification made by a coordinator under paragraph (a) of this section was not made truthfully or, because of changed circumstances, can no longer be truthfully made—

(1) The Director of the Bureau of Medical Devices (the Director) will furnish the coordinator written notice of the matter complained of in general terms and offer the coordinator an opportunity to explain the matter informally or in writing;

(2) If an explanation is offered but not accepted by the Director, the coordinator shall have an opportunity for a regulatory hearing before FDA, pursuant to Part 16 of this chapter, on the question of whether the enrollment for the coordinator's AFP testing program should be withdrawn;

(3) If, after evaluating all available information, the Commissioner of Food and Drugs determines that the certification made by the coordinator was not true when made or can no longer truthfully be made, the Commissioner will withdraw the enrollment of that coordinator's AFP testing program;

(4) If, in the judgment of the Director, the alleged deviations from the certification required to be made by the coordinator are such that they place patients involved in the coordinator's AFP testing program at significant risk, the Director may withdraw the enrollment of the coordinator's AFP testing program prior to, and pending completion of, a regulatory hearing; in such case, the regulatory hearing will be expedited.

(5) The remedies provided by § 899.82(d) shall be in addition to other remedies provided for enforcement of the restrictions contained in this subpart.

§ 899.83 Responsibility of program coordinators.

(a) Each coordinator of an AFP testing program shall assure that there is available to each patient utilizing the program, as needed, all of the following—

(1) A laboratory that has agreed to comply with the requirements of §§ 899.85, 899.88, and 899.89;

(2) Ultrasonography capable of identifying multiple fetuses and anencephaly, detecting fetal death, and determining gestational age at a facility that has agreed to comply with the requirements of §§ 899.87, 899.88, and 899.89;

(3) Amniocentesis for the purpose of obtaining amniotic fluid to measure AFP at a facility that has agreed to comply with requirements of §§ 899.87, 899.88, and 899.89;

(4) Appropriate counseling for all women who are considering participation or who participate in the AFP testing program, including a description of the risks associated with the testing procedures, the significance of the test results, the range of severity of neural tube defects, and the options available to the patient.

(b) Each coordinator shall establish a procedure for providing all physicians participating in that coordinator's AFP testing program with professional and patient brochures prepared by the manufacturer and approved by FDA.

(c) Each coordinator shall make arrangements to receive timely notification of any test result on a patient within the coordinator's program which suggests either that the patient carries a fetus with a neural tube defect or that further testing is appropriate, e.g., an elevated result from analysis of a maternal serum specimen or an ultrasonography test that fails to account for high AFP serum levels as resulting from causes other than a neural tube defect.

(d) Each coordinator shall secure agreements from each physician associated with that coordinator's program that the physician will:

(1) Notify the coordinator of the pregnancy outcome for any patient with an AFP test result greater than 2.5x the median,

(2) Notify the coordinator if any patient involved in the AFP testing program has a pregnancy involving a fetus with a neural tube defect or any other condition associated with elevated AFP,

(3) Notify the coordinator if any patient has an induced or spontaneous abortion within 3 weeks of an amniocentesis performed to obtain amniotic fluid upon which to measure AFP, and

(4) Make available to the coordinator, as requested, all data related to AFP testing of that physician's patients within that coordinator's program, including copies of patient

acknowledgments, as required by § 899.86(d).

(e) Each coordinator shall furnish to each manufacturer of an AFP test kit used by a laboratory within that coordinator's program, 15 days before the manufacturer is required to submit the quarterly report, current data required by FDA as part of the approval of premarket approval applications for such AFP test kit(s). In addition, the coordinator shall furnish to each manufacturer, for inclusion in its report, the information required by § 899.83(g) within 35 days of amniocentesis for each patient who undergoes amniocentesis to obtain amniotic fluid for measuring AFP.

(f) Each coordinator shall establish and implement written procedures for coding the identification of patients within the program to ensure the confidentiality of patient records.

(g) Each coordinator shall maintain, for each woman who has a result greater than 2.5x the median in any AFP test or who is tested for AFP and whose pregnancy involves a fetus that has a neural tube defect or any other condition associated with elevated AFP, records listing, as applicable:

(1) Patient code;

(2) Physician identification;

(3) Date of initial test and estimated gestational age on that data;

(4) For each serum and amniotic fluid test—

(i) Result in mass units or in International Units and in multiples of the normal median value at the same gestational week;

(ii) Designation of that result as greater or less than 2.5x the median;

(iii) Identification of the facility that performed each test;

(iv) For an amniotic fluid test, identification of the facility at which amniotic fluid was withdrawn;

(v) Relation of fetus to any first or second degree family relative with anencephaly or spina bifida;

(5) For each amniotic fluid test—

(i) Age, race, and county and State of residence of patient;

(ii) Specific indication for test, or other test performed, where primary indication for amniocentesis was not to measure AFP;

(6) For each ultrasonography examination—

(i) Whether the pregnancy involved a single fetus or multiple fetuses;

(ii) Whether the pregnancy involved fetal death;

(iii) Gestational age as determined by ultrasonography;

(iv) Identification of the facility that performed the examination;

(v) Whether the fetus or fetuses have anencephaly or other defects;

(7) Statement of whether or not the pregnancy involved a fetus with a neural tube defect or any other condition associated with elevated AFP.

(h) Each coordinator shall make arrangements to receive timely (within 1 week of the abortion) reports of any pathologic examination of the fetus for the presence of external congenital malformations following any spontaneous induced abortion occurring within 3 weeks after an amniocentesis performed to obtain amniotic fluid upon which to measure AFP.

§ 899.84 Restrictions on manufacturers.

Each manufacturer of an AFP test kit shall—

(a) Distribute any AFP test kit—other than for investigational use in compliance with Part 812—only to laboratories that are associated with an enrolled AFP testing program and that notify the manufacturer of the enrollment number of that program;

(b) Prepare and provide to coordinators at their request professional brochures and patient brochures approved by FDA;

(c) Submit quarterly and annual reports to the Bureau of Medical Devices, Division of Clinical Laboratory Devices (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, of data generated by those programs using that manufacturer's AFP test kit as specified in the approval of that manufacturer's premarket approval application for its AFP test kit;

(d) Maintain distribution records for each AFP test kit distributed by that manufacturer under the provisions of § 899.84(a) that include, or identify the location of, the name and address of the consignee, the consignee's enrollment number, the date shipped, and the control number used.

§ 899.85 Restrictions on laboratories.[1]

Each laboratory using an AFP test kit shall—

(a) Measure AFP for the purpose of testing for neural tube defects only by use of—

(1) An AFP test kit approved by FDA pursuant to 21 U.S.C. 360e, or

(2) An AFP test kit for which an investigational device exemption application has been approved pursuant to Part 812;

(b) Use AFP test kits to analyze only samples submitted by physicians who are part of an AFP testing program with which the laboratory is associated and who demonstrate that fact by including the enrollment number for the program with each sample submitted;

(c) Follow the product labeling prepared by the manufacturer of the AFP test kit used and approved by FDA except where there is a clear justification for using alternative procedures;

(d) Participate satisfactorily in—

(1) A laboratory inspection program authorized by FDA, and

(2) A proficiency testing program established by the Center for Disease Control or the College of American Pathologists or one endorsed by FDA.

(e) Within 1 year after enrollment in the program, test a minimum total of 50 of any combination of maternal serum and amniotic fluid samples each week.

(f) For each AFP test performed, maintain, or identify the location within the program of, separate records that include—

(1) Type of specimen (i.e., serum or amniotic fluid);

(2) Sample identification;

(3) Physician identification;

(4) Program number;

(5) Patient code;

(6) Date test performed;

(7) Estimated week of gestation on date specimen drawn;

(8) Result (numerical and as a multiple of the median value);

(9) Identity of AFP test kit manufacturer and control number of the AFP test kit used in the test;

(10) Median value used;

(11) Quantitation of fetal blood, if any, in amniotic fluid samples.

(g) Until it has established its own normal median values, maintain, or identify the location within the program of, separate records of samples having values greater than 2.5x the median that were referred to another laboratory, which records shall include—

(1) Original sample identification;

(2) Program number of laboratory to which sample is referred;

(3) Date test performed by laboratory to which sample is referred;

(4) Result obtained by laboratory to which sample is referred (numerical and as a multiple of the median value);

(5) Identity of AFP kit manufacturer and control number of the AFP test kit used by laboratory to which the sample is referred;

(6) Median value used;

(7) Quantitation of fetal blood, if any, in amniotic fluid samples.

(h) Document the establishment of normal median values for each manufacturer's AFP test kit that the laboratory uses;

(i) Notify immediately by telephone (and confirm in writing) both the coordinator and the attending physician

[1] See also 42 CFR 74.22 and 42 CFR 405.1317.

of any test result greater than 2.5x the median;

(j) Make available to each coordinator, as requested, all data related to AFP testing by that laboratory of patients within that coordinator's program; and

(k) Maintain a file by physician name containing a copy of the signed patient acknowledgement for each sample analyzed.

§ 899.86 Restrictions on physicians.

Each physician participating in an enrolled AFP testing program shall—

(a) Obtain from each patient, prior to taking the sample for the first AFP test, acknowledgment, by signature and date on a document that contains the patient's code, that the patient has—

(1) Been provided an approved patient brochure;

(2) Been provided an opportunity to discuss AFP testing and neural tube defects generally with the physician or with a counselor familiar with the subject;

(3) Authorized review and copying of her records by authorized agents of FDA, if necessary, for compliance purposes.

(b) Include with each sample submitted to a laboratory for analysis—

(1) Enrollment number of the program with which the physician is associated;

(2) Patient code;

(3) Estimated week of gestation on date specimen drawn;

(4) A copy of the signed patient acknowledgement;

(c) Notify the coordinator immediately of—

(1) Any pregnancy involving a fetus with a neural tube defect or other condition associated with elevated AFP;

(2) The pregnancy outcome of all women who have a result greater than 2.5x the median in an AFP test;

(d) Make available to the coordinator, as requested, all data related to AFP testing of that physician's patients within that coordinator's program, including copies of patient acknowledgments;

(e) Maintain records for each of that physician's patients involved in AFP testing which include—

(1) Signed patient acknowledgment documents;

(2) For all AFP-related tests, including any followup amniocentesis, ultrasound or other confirmatory tests—

(i) Type of test;

(ii) Date specimen drawn for serum and fluid tests and date of testing for all other tests;

(iii) Identification of testing facility;

(iv) Test result;

(v) Patient code;

(3) Record of whether or not the pregnancy involved a fetus with a neural tube defect or any other condition associated with elevated AFP;

(4) Program enrollment number;

(5) Estimated gestational age for serum and fluid tests and record of how that age was determined for each such test.

§ 899.87 Restrictions on ultrasonography and amniocentesis facilities.

Each ultrasonography and amniocentesis facility that performs confirmatory tests on any patient as a result of that patient's participation in AFP testing shall—

(a) For each AFP-related test performed, maintain, or identify the location within the program of, records that include:

(1) Type of test and date performed;

(2) Patient code;

(3) Identification of patient's physician;

(4) Program enrollment number;

(5) For each ultrasonography examination—

(i) Whether the pregnancy involves a single fetus or multiple fetuses;

(ii) Whether the pregnancy involves fetal death;

(iii) Gestational age as determined by ultrasonography;

(iv) Whether the pregnancy involves anencephaly or other defects;

(6) Identification of the individual who performed the test;

(b) Make available to each coordinator, as requested, all data related to AFP testing by that facility of patients within that coordinator's program.

§ 899.88 Permission to inspect.

Any coordinator, laboratory, physician, amniocentesis facility, or ultrasonography facility associated with an AFP testing program shall permit authorized agents of FDA—

(a) To inspect the person's establishment at reasonable times and in a reasonable manner; and

(b) To have access to and to copy all records relating to AFP testing.

§ 899.89 Record retention.

All records required to be maintained as part of an AFP testing program shall be retained until 2 years following the expiration of the regulations in this subpart.

§ 899.90 Release of information.

FDA will release to the public summaries of data from AFP test programs submitted by manufacturers. These summaries will, if feasible, report results by AFP test program and by manufacturer.

Interested persons may, on or before January 6, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

The restrictions that are being proposed by informal rulemaking under section 520(e) of the act (21 U.S.C. 360j(e)) are essentially the same as those that are part of the premarket approval of the device under section 515 of the act (21 U.S.C. 360e). The reason for the additional rulemaking is to expand the reach of the restrictions to ensure the safe and effective use of the device. FDA will only approve the device if its safe and effective use can be ensured by the restrictions being imposed under section 520(e) of the act. Thus, those restrictions are functionally, if not technically, part of the approval process. Under the act, the premarket approval of a drug for human use, a veterinary drug, or a class III device, is a licensing decision ("adjudication"), not a regulation ("rule"). Because Executive Order 12044 only applies to regulations, it does not require regulatory analyses for premarket approval decisions for these products. FDA has concluded that a regulatory analysis is not required for a regulation that imposes the same restrictions as those that were conditions to premarket approval, and whose purpose is to expand the reach of these conditions.

Furthermore, because the preamble to the proposed regulation identifies and discusses thoroughly several alternatives to the proposed restrictions and their impacts, FDA has determined that preparation of a discretionary regulatory analysis would contribute nothing further at this stage of the development of the regulation. It should be noted, however, that in addition to reviewing written comments on the proposal, FDA will hold a public hearing to afford interested persons the opportunity to discuss the proposed restrictions, their impact, and alternatives.

Dated: September 26, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-34052 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-03-M

Public Health Service

Health Care Financing Administration

42 CFR Parts 74 and 405

Clinical Laboratories: Quality Control Standards Regarding Alpha-Fetoprotein Test Kits

AGENCIES: Center for Disease Control, Public Health Service, and Health Care Financing Administration, Department of Health and Human Services.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: See the notice of Proposed Rulemaking by the Food and Drug Administration (FDA), immediately preceding this Notice, in which the FDA proposes conditions for marketing commercial test kits for use by clinical laboratories in measuring alpha-fetoprotein (AFP) levels in maternal sera, plasma, and amniotic fluid. In this Notice, the Department proposes additional quality control and testing requirements applicable to AFP testing for the prenatal detection of fetal neural tube defects conducted by laboratories licensed under the Clinical Laboratories Improvement Act of 1967 (CLIA) and laboratories certified for reimbursement under Title XVIII of the Social Security Act (Medicare).

DATE: Comments must be received on or before January 6, 1981.

ADDRESS: Comments or inquiries may be submitted to: Dr. Joseph H. Boutwell, Deputy Director, Bureau of Laboratories, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Comments will be available for public inspection at this address between 8 a.m. and 4:30 p.m. Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Dr. Joseph H. Boutwell (404) 329-3263 or FTS 236-3263.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this Notice is to propose addtional quality control and testing requirements with respect to AFP testing. As discussed in the FDA NPRM immediately preceding this Notice, it has been determined that the additional quality control and testing requirements proposed in the NPRM are necessary in order to assure the safe and effective use of AFP testing kits.

Provision of the Regulations

Current quality control regulations include requirements of a general nature which are applicable to AFP testing. Because of the tentative FDA decision, which has the potential for increasing the application of AFP testing technology, it is necessary to amend the current regulations to include additional quality control testing requirements of a more specific nature in order that this technology may be safely and effectively used in clinical laboratories which have little or no experience in this test procedure. The proposed provisions are regarded as good laboratory practice and employed by many laboratories presently doing this test.

New requirements of a substantive nature indlude:

- The provision of specified demographic and epidemiolgic data in order to assure that the physician can be provided with the information required for valid interpretation values by specific gestational week for maternal sera, plasma, and amniotic fluid and to provide the basis for method validation;
- Confirmation of positive results by a referral laboratory while normal median values are being developed in order to assure proper interpretation of patient results while relevant local norms are being developed;
- Specification of minimum weekly workload requirements for testing maternal sera, plasma, and amniotic fluid to insure the timely development and continued current maintenance of local normative data for patient interpretation;
- A specification that serum specimens are not to be tested for neural tube defect screening except during the 15th through 22nd completed gestational weeks;
- The use of a specified number of calibrators and controls sufficient to insure accurate and reproducible patient results;
- Patient specimens to be tested in duplicate to increase the assurance against the possibility of aberrant results not detected by the usual quality control system.

Some of these new AFP requirements (including the mandatory submission of patient data and the minimum weekly workload requirements) are more stringent quality control measures than those which are currently applied to other laboratory procedures. These stricter quality control measures are necessary because of the potentially serious consequences that could arise out of inaccurate AFP testing. Such undesirable consequences, as pointed out in the accompanying FDA NPRM, include therapeutic abortion of normal fetuses, failure to identify affected fetuses, and women becoming unnecessarily alarmed about the outcome of their pregnancies.

Applicability

CDC/HCFA regulations apply to the performance of AFP tests without regard to the nature of the procedure used or the source of reagents used. Certain details with respect to reporting the results of AFP testing (for fetal abnormalities) in 42 CFR 74.22(d)(1)(xii) and 74.22(d)(4)(i), and possibly other sections, may be modified if alternative proposals (FDA NPRM Preamble, IV) are adopted.

Expanded Patient Data and Minimum Workload Requirements

The Department has decided that it is necessary for the laboratory to require that some additional patient data accompany the patient specimen. This is essential to insure correct patient identification and to insure that the physician is provided correct and appropriate results related to the normal expected results which may vary by gestational age of the fetus, race, family history, geographic variations, and source of specimen (maternal sera, plasma, or amniotic fluid). Unless complete relevant information accompanies the test result, the patient may be inappropriately subjected to the further risks of sonography and amniocentesis and to the emotional trauma of considering the relative merits of terminating the pregnancy. We invite comments on whether these data requirements are necessary for the safe and effective use of AFP tests. We also invite comments as to whether requiring this information intrudes on a patient's privacy and deters her use of an AFP test or, on the other hand, whether any additional information should be required in order to assure a more accurate interpretation of the laboratory results.

The Department has determined that the required accuracy of results cannot be assured unless laboratories performing AFP testing do so with a reasonable frequency and in sufficient numbers to provide accuracy of performance and the data for the required internal cross correlations. The FDA notice which appears elsewhere in this issue of the **Federal Register** summarizes the various points of view on appropriate workload requirements. The Department invites comments on whether these requirements are necessary to assure the quality of laboratory performance. The Department also invites comments on the specific minimum workload requirements proposed in this notice and the effect of those requirements on the ability of laboratories to participate in AFP testing.

Use of Non-Commercial Reagents for AFP Testing

The question has arisen as to whether laboratories should be permitted to use reagents other than those included in a commercial test kit. Clinical laboratory quality control regulations are intended to insure the quality of performance of laboratory tests regardless of the source of the reagents employed in such tests. Accordingly, it is the Department's intent that these quality control requirements should apply to AFP testing using either commercial or noncommercial reagents. It should be noted that these proposed regulations require that the method used to measure AFP levels must rely on a working curve which has been calibrated against the World Health Organization Standard for AFP (72–225), or its equivalent. The calibration process must also be documented.

Interagency Agreement Between the Public Health Service (PHS) and the Health Care Financing Administration (HCFA)

Under an Interagency Agreement between the PHS and HCFA, approved on March 17, 1979, for administration of Departmental regulatory programs affecting clinical laboratories, the Center for Disease Control is responsible for developing scientific and technical standards in the areas of quality control, proficiency testing, personnel requirements, and records, equipment and facilities; conducting a program of proficiency testing for laboratories licensed under the Clinical Laboratories Improvement Act of 1967; monitoring the performance of State Agencies and approved accreditation bodies to evaluate effectiveness and uniformity in the application of standards; and determination of training needs and design and presentation of seminars and courses for State Agency surveyors, HCFA regional office laboratory specialists, and representatives of approved accreditation bodies.

HCFA responsibilities under the Interagency Agreement include the initial surveys and annual resurveys of CLIA licensed and Medicare certified laboratories, working through State Agencies and other accrediting bodies; the issuance of licenses and necessary certification documents; and the execution of any adverse actions which may be necessary with respect to the termination or limitation of licenses, or the Medicare certification status, of clinical laboratories.

AFP Proficiency Testing

The Center for Disease Control (CDC) is developing a proficiency testing program for AFP which can be operational within 90 days of publication of this NPRM. For a period of time, this proficiency testing program will be operated on an experimental basis in order to develop data with respect to an appropriate grading system and to develop appropriately referenced samples with sufficient stability so that they can be distributed through the mail systems.

The CDC program will assign a gestational week to each of the proficiency testing samples and then ask for a laboratory assessment of "normal" or "abnormal" which will be compared with an evaluation of the same materials by a panel of experts.

Until such time as other proficiency testing programs, such as the one conducted by the College of American Pathologists, are operational, CDC will provide proficiency testing services to Medicare certified laboratories upon request by HCFA.

Cost Implications

We estimate the cost of the proposed quality control and testing requirements for AFP testing in a laboratory performing at a minimal workload (50 per week) to be no more than 10–15 percent of the cost of performing the tests, or about $300–$500 per year. One manufacturer has estimated that the proposed restrictions would increase the cost of a test kit by 50 percent, for example, from $150 to $225 for a kit that can be used for 40 patients. We invite comments on the accuracy of our estimates of the costs of complying with the proposed quality control requirements and on whether those additional costs are justified.

It is anticipated that some laboratories, particularly some smaller facilities, that might otherwise be interested in performing AFP testing, may choose not to engage in such testing because they might find it difficult to meet, and to comply with on a continuing basis, the quality control and testing requirements that are set forth in the attached NPRM. Accordingly, it is possible that the supply of laboratories qualified to perform AFP testing services may not be sufficient to meet the demand for these services, and further, that the market forces in such a situation could result in the escalation of the cost of AFP testing services.

The Department invites comment on the cost implications of the proposed requirements, their impact on small laboratories, and their effect on the supply of AFP testing services.

Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements to be included in the final rule will be submitted for approval by the Office of Management and Budget (OMB) in accordance with the Federal Reports Act of 1942 (44 U.S.C. 3501 et seq.). OMB approval will be obtained before the recordkeeping and reporting requirements are implemented.

It is, therefore, proposed to amend Parts 74 and 405 of Title 42, Code of Federal Regulations, as set forth below.

Dated: May 27, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Dated: June 4, 1980.

Earl M. Collier, Jr.,

Acting Administrator, Health Care Financing Administration.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

PART 74—CLINICAL LABORATORIES

It is proposed to amend 42 CFR Part 74 as follows:

Section 74.22 is amended by adding a new paragraph (d) which reads as follows:

§ 74.22 Serology.

* * * * *

(d) The following requirements are applicable to screening and diagnostic tests to determine alpha-fetoprotein (AFP) levels on sera, plasma, or amniotic fluid obtained from pregnant patients.

(1) The laboratory's requisition form for AFP testing must provide for the following information:

(i) Name of the person from whom the specimen was taken.

(ii) State and county of residence of person from whom the specimen was taken.

(iii) Age of person from whom the specimen was taken.

(iv) Race/ethnicity of person from whom the specimen was taken.

(v) Date the specimen was collected and the nearest gestational age of the fetus calculated in weeks from the first day of the last menstrual period.

(vi) Source of specimen (maternal sera, plasma, or amniotic fluid).

(vii) Indication of whether the specimen is the first specimen or a repeat specimen.

(viii) Relation of fetus to any first or second degree family member relative with anencephaly or spina bifida.

(ix) Identification of any preservative added to the specimen, concentration, and the consequent dilution of the specimen if greater than one percent.

(x) For amniotic fluid, a statement indicating that the specimen has not been centrifuged; or, if it has, an evaluation of the whole fluid (uncentrifuged) has been made for the presence of fetal red blood cells of fetal hemoglobin by the shipper. The results of that evaluation must accompany the specimen.

(xi) Name and address of person, clinic, center, or laboratory submitting the specimen.

(xii) A statement specifying that a report will not be issued unless the name of the patient and items (v), (vi), (vii), (ix), (x), and (xi) are provided to the laboratory. Items (ii), (iii), (iv), and (viii) do not have to be provided to the laboratory if the physician, coordinator, or laboratory determines that the lack of such information does not jeopardize the identification of that patient or the interpretation of the test results for the patient.

(2) The following requirements apply to AFP testing of maternal serum or plasma specimens:

(i) Only those serum or plasma specimens taken between the 15th and 22nd gestational week as measured from the first day of the last menstrual period may be used for testing. The report (phoned and written) shall include the patient's name, type of specimen, numerical value of the test result as a multiple of the normal median value at the same gestational week, and the equivalent mass or international units.

(ii) The laboratory must validate its own serum AFP method by assaying at least 100 normal maternal serum or plasma specimens at each gestational week between the 15th and 22nd weeks measured from the first day of the last menstrual period and document the median AFP levels for each gestational week. While normal values are being determined, a laboratory may use the normal values specified in the manufacturer's package insert. An elevated value must be confirmed, however, with repeat testing by a laboratory which has established its own normal values. If commercial kits are used, the medians determined by the laboratory must fall within 10 percent of those stated in the manufacturer's literature. The laboratory must maintain its competency by assaying a total of at least 50 mid-pregnancy patient specimens, in duplicate, per week. Maternal serum, plasma, and amniotic fluid specimens may all be counted for purposes of attaining this stated minimum workload level. The laboratory must attain the stated minimum workload level within 12 months of licensure or certification to provide AFP services.

(iii) The laboratory must document that the alpha-fetoprotein working curve has been calibrated against the World Health Organization Standard for AFP (72-225) or its equivalent within the lifetime of the working curve. The laboratory must perform its own calibration against the World Health Organization Standard or equivalent for its working curve or use a working curve certified by the manufacturer to have been calibrated against the World Health Organization Standard. At least a six point dose response regression analysis (3 dilutions in duplicate per curve) must be used in this calibration comparison to permit a valid statistical evaluation of the results. Each analytical run must contain at least 5 dilutions of the laboratory's AFP calibrator covering a range of at least 0.5 times to 8.0 times the median AFP level of the unaffected pregnancies at the 17th week of gestation. At least three quality control sera must be assayed in duplicate in each analytical run. The respective concentrations of AFP used for control purposes must have values near the median mid-pregnancy maternal serum AFP concentration of normal unaffected population at the 17th weeks, near the maternal serum positive screening cut off value at 2.5 times the unaffected population median at the same gestational age, and near the median pathological level for spina bifida at 4 times the unaffected population median. Patient specimens must be tested in duplicate. Control limits for calibrators and reference samples shall be recorded and displayed and shall include the course of action to be instituted when the results are outside of acceptable limits. The limits may not be less stringent than those recommended by the manufacturer in the package insert.

(3) The following additional requirements apply to AFP testing of amniotic fluid specimens:

(i) The laboratory must validate its amniotic fluid method for AFP by assaying at least 100 amniotic fluid specimens at each gestational week between the 15th and 22nd week for which it can be confirmed that a normal fetus was delivered. While normal values are being determined, a laboratory may use normal values specified in the manufacturer's package insert. An elevated level must be confirmed, however, with repeat testing by a laboratory which has established its own normal values. Median values for each gestational week are established based upon these assays.

(ii) The standardization procedure, quality control, and reporting requirements for serum and plasma specimens also are required when testing amniotic fluid specimens.

(4) The following requirements apply for reporting the results of AFP testing:

(i) Test results will be released by the laboratory only if the laboratory is in possession of information required in §§ 74.22 (d)(1)(i), (v), (vi), (vii), (ix), (x), and (xi). If the laboratory is not in possession of items (ii), (iii), (iv), and (viii), the laboratory will release the test results only if the physican, coordinator, or laboratory determines that the lack of such information does not jeopardize the identification of that patient or the interpretation of the test results for that patient. In addition to the requirements for reporting at § 74.54, all positive screening test results must be communicated promptly to the attending physician and to the coordinator as defined in 21 CFR Part 899, Subpart E, by telephone or other rapid system. Written confirmation of results will be transmitted to the physician as soon as possible.

(ii) The report (phoned and written) shall include the patient's name, type of specimen, numerical value of the test result as a multiple of the normal median value at the same gestational week, and the equivalent mass or international units. In addition, the report must include a statement in the same terms of the laboratory's cutoff values above which a result is considered abnormal.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

It is propsoed to amend 42 CFR Part 405 as follows: § 405.1317(b) is amended by adding a new subparagraph (9) reading as follows:

§ 405.1317 Condition—quality control.

* * * * *

(b) * * *

(9) Any laboratory performing screening or diagnostic tests to determine alpha-fetoprotein levels on serum or amniotic fluid obtained from pregnant patients shall meet the requirements specified in 42 CFR 74.22(d). These tests may be performed in serology or chemistry.

[FR Doc. 80-34053 Filed 11-6-80; 8:45 am]

BILLING CODE 4110-86-M

federal register

Friday
November 7, 1980

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Shrimp Fishery of the Gulf of Mexico; Plan Approval and Proposed Regulations

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611 and 658

Shrimp Fishery of the Gulf of Mexico; Plan Approval and Proposed Regulations

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

ACTION: Approval of Fishery Management Plan, Proposed Regulations and request for comments.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has approved the fishery management plan for the shrimp fishery of the Gulf of Mexico (FMP), which was prepared by the Gulf of Mexico Fishery Management Council. The FMP governs the fisheries for six species of shrimp (brown, pink, white, royal red, seabobs and rock) which occur in the fishery conservation zone in the Gulf of Mexico. Regulations implementing the FMP are proposed. Comments on the FMP, the regulatory analysis, and the proposed regulations are invited.

DATE: Comments will be received until January 1, 1981.

ADDRESS: Please send comments to: Mr. Harold Allen, Acting Regional Director, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Allen (813) 896–3141.

SUPPLEMENTARY INFORMATION: The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (the "Act") authorizes the Secretary of Commerce (the "Secretary") to promulgate regulations implementing approved FMPs prepared by the Regional Fishery Management Councils for their geographic areas of concern. Pursuant to Title III of the Act, the Gulf of Mexico Fishery Management Council prepared and submitted to the Secretary an FMP for shrimp in the fishery conservation zone (FCZ) in the Gulf of Mexico.

A. Background

The Gulf shrimp fishery is the most valuable of all domestic commercial fisheries. From 1964 through 1977, shrimp averaged 23 percent of the total exvessel value of all fish landed in the United States. In 1977 shrimp accounted for $355.2 million of $1,515 million for all fish. From 1964 through 1977, Gulf shrimp comprised 83 percent of the total U.S. exvessel value of shrimp landings. The target species of the Gulf shrimp fishery are brown, white, pink, and royal red shrimp. Seabob and rock shrimp are taken incidentally to the target species.

The three most valuable species of shrimp (brown, white, and pink) are biologically impervious to the effects of intense fishing pressure because of the following factors:

1. The rapid growth rate of shrimp, under favorable conditions, results in sexual maturity within one year; and
2. The high fecundity of shrimp protects them from being depleted by overfishing.

There is not current evidence of overfishing of brown, white, or pink shrimp, because the rapid growth and high fecundity of these species offset current levels of natural and fishing mortality. The chief threat to the continuance of the major species of shrimp is loss of habitat, principally the estuarine environment. Continued mineral exploration, bulkheading, dredge and fill operations, channelization, and pollution could result in depletion of shrimp resources through the loss of productive estuarine nursery grounds. The other shrimp species (royal red, seabob, and rock shrimp) are not estuarine-dependent because they spend their entire life in the open waters of the Gulf. Royal red shrimp are found at depths of 100–300 fathoms in a relatively stable environment, and do not reach maturity in one year. Up to five year classes occupy the same fishing ground. Seabob are harvested with white shrimp in shallow water, primarily in the territorial sea off Louisiana. Rock shrimp are harvested with pink shrimp off Florida.

The Gulf States' regulations establish minimum legal sizes of shrimp that reflect the requirements of their respective industries. Louisiana, Mississippi, and Alabama have a size limit of 68 whole shrimp to the pound. Tremendous numbers of small shrimp are caught and landed in those States, which encourage use of small shrimp for canning and bait. Florida has a size limit of 47 whole shrimp to the pound (average of shrimp landed). The minimum Texas size limit is 39 whole shrimp to the pound. Small shrimp are culled from the catch and discarded from vessels' catches in Florida or Texas because of the States' size limits.

There are two general categories of vessels used in the Gulf shrimp fishery: (1) Small vessels from 16 to 50 feet that fish in State territorial waters and in sheltered inshore waters; and (2) larger, more mobile vessels more than 50 feet in length that may fish anywhere in the Gulf and are capable of remaining at sea for extended periods.

There is a live-bait shrimp fishery in shallow inshore waters which takes shrimp that are held live for sale as fish bait. Also, recreational shrimping is conducted from pleasure craft in shallow inshore waters. The shrimp are taken for personal use with small trawls and other nets.

B. The Management Regime

The Council, in preparing the FMP, identified problems in the shrimp fishery and proposed solutions which require both Federal regulation and State and Federal support. The primary problem addressed in the FMP is the harvest of shrimp well below optimal size and value. To optimize the yield of shrimp and the economic return to the fishermen, the FMP specifies an optimum yield (OY) for brown, pink, white, seabob, and rock shrimp. The specification of OY for shrimp presents a unique problem. Brown, pink, and white shrimp provide an annual crop because most are harvested when less than six months of age and very few live as long as 12 months. It is presently not possible to harvest so many shrimp that the survivors are unable to repopulate the fishery. A given year's yield is primarily dependent on temperature and salinity in the estuarine nursery areas. As a result, for the purpose of this FMP, OY for those three species and the associated rock and seabob is all the shrimp that can be taken each year during open seasons in open areas with existing gear and technology. The OY for the royal red shrimp is 177.8 metric tons (m.t.) (tails).

The U.S. capacity to harvest and process the shrimp resource meets or exceeds OY for all species except royal reds. A surplus of royal red shrimp of 66.2 mt is identified in the FMP and will be made available for foreign fishermen. No adverse impact on foreign fishermen is expected to result from implementation of the FMP.

If shrimp are harvested at a small size, the weight and value of the total landings may be reduced. If the shrimp are given additional time for growth before harvest, there will be a greater total yield in weight, even though the total number of shrimp will be less. The main purpose of the FMP is to encourage harvest of larger and more valuable shrimp through area closures.

The FMP establishes a permanent closure of an area off the State of Florida known as the "Tortugas Shrimp Sanctuary." The purpose is to protect small pink shrimp until most have reached a size larger than 69 shrimp tails to the pound. This measure re-

establishes in the FCZ a shrimp conservation area formerly maintained by the State of Florida. The State presently prohibits all shrimp trawling by Florida vessels, except for live-bait fishing, within the proposed sanctuary.

Establishment of a closure of the FCZ off the State of Texas for a 45-day period (normally June 1 through July 15) to protect small brown shrimp is also proposed. This controversial closure, which is a "trial measure," is expected to benefit the shrimp industry.

A seasonal closure of the entire FCZ in the Gulf was not selected because of possible adverse impacts on the Louisiana canning industry that depends on a continuing supply of smaller shrimp from the FCZ during the proposed period of closure. When brown shrimp reach the FCZ off Mississippi and Alabama they are of a larger and more economically desirable size.

The State of Texas traditionally closes its nine-nautical-mile territorial sea to shrimp fishing for a 45-day period, during which brown shrimp generally are less than the size of 39 whole shrimp to the pound. The purpose is to allow for further growth that will increase the weight and value of the harvest when the area is opened. The dates of the closure may be adjusted up to 15 days on either end, but the closure may not exceed 60 days, nor be less than 45 days.

The State measure has not been completely effective because small shrimp move beyond State jurisdiction into the FCZ and because many shrimp vessels are alleged to enter the territorial sea at night when most brown shrimp fishing occurs. Many small shrimp are taken which, because of the Texas size limit, cannot be landed in Texas and are culled from the catch and discarded. While the State closure is in effect, some Texas vessels tie up, others continue to fish in the FCZ off Texas (and allegedly in the territorial sea), and others shift effort to the Louisiana coast or elsewhere.

The FMP indicates that the proposed cooperative Texas closure will result in an increase in exvessel value of $7.1 million (increased growth and use of previously discarded shrimp). However, the Council recognizes that the seasonal closure could result in displacement and shift of effort in the shrimp fleet. For example, Louisiana shrimp fishermen may fish in the FCZ off Texas after the closure terminates and thus share in the benefits.

Six Council members filed two minority reports stating their opposition to the Texas closure. The statements cite the importance of Texas' eliminating its size limitation and the possible adverse impact of the closure on Louisiana shrimp fishermen. The Louisiana shrimp fishermen protested that, if the closure of the FCZ off Texas is implemented, more vessels will move to the Louisiana coast during the 45-day period.

Because of the concern about the potential impact on Louisiana fishermen, the Council will evaluate further the effect of the Texas closure on fishermen from all States and consider whether any alternatives, such as extending the area of the FCZ closure, would prevent undue adverse impact. A baseline study comparing the 1980 season (closure of Texas waters only) and the 1981 season cooperative closure of both FCZ and Texas waters) will assist the Council in this evaluation. The FMP could be amended, as appropriate, prior to the 1982 fishing season.

The FMP incorprates the seasonal closure of a portion of the Tortugas shrimp grounds to avoid gear conflict with stone crab fishermen. This measure was implemented under the stone crab fishery management plan, (44 FR 18031) and has been effective in preventing damage to stone crab gear and in increasing the size and value of shrimp harvested outside the line.

To encourage harvest of optimal-size shrimp, the FMP also encourages establishment of State sanctuaries in nursery grounds inside the territorial sea and elimination of State restrictions on landing of small shrimp.

The Council recommends that the Gulf States adopt flexible management procedures to regulate shrimp fisheries in the internal waters and territorial sea by State administrative agencies, rather than by direct State legislative actions. The FMP also urges the States to adopt procedures to allow joint management of shrimp fisheries with other States and NMFS.

All the sea turtles of the Gulf of Mexico are threatened or endangered and need protection. Sea turtles are caught incidentally in the trawls of shrimp fishermen. The catch of sea turtles in shrimp trawls results in some level of mortality. The implementation of closures recommended by the FMP will have direct and coincidental benefits for sea turtles by reducing the level of mortality. Two of the recommendations adopted by the Council are specifically aimed at sea turtle conservation: the encouragement of research and development of trawl gear that excludes turtles; and the recommendation to develop and implement an education program for fishermen regarding sea turtles.

A consultation was held in accordance with Section 7 of the Endangered Species Act to determine whether implementation of the FMP would be likely to jeopardize the continued existence of any endangered or threatened species or to result in the destruction or adverse modification of critical habitat of such species. It has been determined that the actions to be implemented through the FMP are not likely to jeopardize the continued existence of any listed species or adversely affect their habitat. The NMFS Southeast Region has a Sea Turtle program designed to conserve sea turtles in accordance with the Endangered Species Act. In addition to projects concerning turtle biology and habitat, the program involves: (1) monitoring the incidental catch and mortality of sea turtles from commercial shrimp vessels; and (2) developing gear moification to exclude turtles from shrimp trawls. A recovery team has been formed to prepare a sea turtle recovery plan. NMFS believes its Sea Turtle Program is a more appropriate vehicle than the Shrimp FMP to address the problem of the incidental catch of sea turtles in all trawl fisheries.

The FMP encourages research on, and development of, finfish gear that would reduce the incidental catch of finfish without decreasing the overall efficiency of shrimping or imposing an excessive cost for such modified gear.

The Council has established a committee to monitor and review the proposed construction of artifical offshore reefs. The committee intends also to meet with representatives of the oil and gas industries in order to minimize the capping of well-heads above the sea floor.

C. Measures of Major Impact

Better information is needed for effective management of the Nation's most valable fishery. Because of the complex and diverse nature of the commercial and recreational shrimp fisheries, the cost of obtaining specific biological, environmental, social, and economic information from each user would be prohibitively high. Therefore, the FMP recommends that NMFS develop a system whereby sampling methods will be used whenever a sample will be representative and will provide information of adequate precision. The Center Director will determine the number of shrimp fishermen who will be required to keep records and to report based on the data required for specific management needs. When only a portion of such individuals are needed to provide information, the Center Director will select those individuals through use of standard statistical sampling procedures.

The NMFS will design, test, evaluate, and implement procedures for collecting all information on individual fishing trips required from shrimp dealers on receipts at the time of sale. The procedures proposed in the regulations would require all shrimp dealers and processores to keep records and report but would require only those shrimp fishermen specifically selected by the Center Director to keep records and report. However, current methods of data collection based on port agent contact with dealers and fishermen will be used prior to implementation of the sales receipt system described in the regulations.

The area of the Texas closure, depicted in Figure 3 of the regulations, encompasses the FCZ off Texas between the territorial sea and the outer boundary of the FCZ. It is bounded by extensions of the boundary lines separating Texas from Louisiana and Mexico. Although the dates of the closure are June 1 to July 15, under the criteria listed below, the NMFS Regional Director may adjust the closing or opening date by as much as 15 days to provide for an earlier, later, or longer closure. However, the closure may not exceed 60 days, nor be less than 45 days. The criteria upon which the Regional Director must base an adjustment of the closing or opening date are: (1) Biological data collected by the Texas Parks and Wildlife Commission (TPWC) used to predict when brown shrimp in the central northern bays of Texas will reach a total length of 80 to 90 mm; (2) the strength of outgoing tides at the time predicted under (1); and (3) other biological data relevant to the timing or duration of the closure.

Although no permit is rquired for vessels of the United States fishing for shrimp in the FCZ, a letter of authorization is required for those United States vessels fishing for royal red shrimp beyond 100 fathoms in the FCZ off of Texas during the period of the Texas closure. Application is made to the Regional Director of NMFS, who will issue such letters of authorization by May 1.

The boundary line separating the geographical areas of the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) has been the subject of controversy. In a legal opinion to NOAA, the Department of Justice stated that the boundary line should be based only upon geographical factors. In response to that opinion, NOAA has proposed that the geographical boundary line accepted by the United States Supreme Court in *U.S.* v. *Florida* separate the areas of authority of the Councils.

The shrimp regulations apply only in the Gulf of Mexico Council's area of authority. Therefore the line delineating the Tortugas closure area in the regulations is different from the one described in the FMP, which extends into the South Atlantic Council's ara. If the boundary line separating the areas of authority of the Councils is changed in the final rulemaking on that issue, then the area of coverage of these regulations also would be changed.

Subpart D of 50 CFR Part 611 has been amended to incorporate all regulations, including those for royal red shrimp, governing foreign fishing in the FCZ in the Caribbean Sea, Gulf of Mexico, and the Atlantic Ocean south of 35°00′ N. latitude. Only §§ 611.60, 611.61, and 611.62 are affected. No changes have been made to those sections other than a restructuring to provide for the inclusion of shrimp. Those proposed sections are reprinted in their entirety in this document.

The adoption and implementation of the FMP is a major Federal action that will have a significant impact on the quality of the human environment. Pursuant to the National Environmental Policy Act and NOAA Directive 02–10, a draft environmental impact statement was filed with the Environmental Protection Agency. The notice of availability was published in the **Federal Register** on November 6, 1979 (44 FR 64114). The final environmental impact statement is being prepared and will soon be filed.

The Assistant Administrator for Fisheries, NOAA, has determined that this is a significant action under Executive Order 12044, and a regulatory analysis has been prepared. A copy of the draft regulatory analysis may be obtained by writing to: Mr. Harold Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. The regulations and the FMP are set forth below.

Signed in Washington, D.C. this 22d day of October 1980.

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

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

A. It is proposed to amend 50 CFR Part 611 as follows:

Subpart D is amended by the addition of §§ 611.60, 611.61 and 611.62 as follows:

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

* * * * *

§ 611.60 General Provisions.

(a) *Purpose.* This subpart regulates:

(1) All foreign fishing conducted under a Governing International Fishery Agreement (GIFA) within the fishery conservation zone (FCZ) in the Atlantic Ocean south of 35°00′N. latitude, in the Gulf of Mexico, and in the Caribbean Sea; and

(2) All foreign longline fishing conducted under a GIFA which involves the catching of any species of billfishes, sharks, or other fish in the FCZ in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable allocations.

(2) *TALFF.* The TALFFs are set forth in Appendix 1 to § 611.20

(3) *Permitted fishing.* Foreign fishing authorized under this subpart may be conducted only during the seasons, in the open areas, and with the gear specified in §§ 611.61 and 611.62

(c) *Prohibited species.* (1) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no applicable allocation are prohibited species and shall be treated in accordance with § 611.13. Fish caught in excess of an applicable national allocation are prohibited species.

(2) As a means of rebutting the presumption of § 611.13(c), a vessel may store all prohibited species caught outside the FCZ in a separate part of the hold that can be sealed, and may have its holds inspected and sealed before commencing fishing in the FCZ. Seals affixed during such inspection shall be maintained in an unbroken condition during the time the fishing vessel is in the FCZ. Such inspections may be obtained at Venice or New Orleans, La., Key West, Fla., Mayaquez, P.R., or Norfolk, Va., upon 48 hours advance notification to: Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9430 Koger Boulevard, St. Petersburg, Fla. 33702. Telephone: (813) 893–3145.

(3) Additional ports for hold inspection may be arranged with the Regional Director.

(4) The designation of ports for hold inspections does not modify the port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

(d) *Open area.* Except for the closed area set forth in paragraph (e) of this section, foreign fishing authorized under this subpart may be conducted in that portion of the FCZ in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

(e) *Closed area.* The area known as East and West Flower Garden Banks is closed to directed foreign fishing. Flower Garden Banks is the Ocean space including the water column and the surface waters within two intersecting circles 9 nautical miles in radius from the center of each bank. The area of this proposed national marine sanctuary is 432 square nautical miles. The geographical centers of the banks are as follows: for the West Flower Garden Bank, the center point, P2, is located at 27°52′ 14.21″N. lat., 93°48′54.79″W. long.; and for the East Flower Garden Bank, the center point is located at 27°55′07.44″N. lat., 93°36′08.49″W. long.

§ 611.61 Atlantic billfish and sharks fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted pursuant to a GIFA which involves the catching of any species of billfishes, sharks, or other fish in the FCZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(b) *Open season and closures.* Foreign fishing under this section may be conducted throughout the year, except that any retention of sharks shall terminate when the applicable national allocation has been reached. The closure provisions of § 611.15(a) do not apply to this section.

(c) *Prohibited species.* Unless otherwise specifically instructed by a U.S. observer or Authorized Officer, all billfish and all prohibited sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(d) *Gear restrictions.* Foreign vessels participating in a directed fishery for sharks must use a minimum sized hook of 7 inches shank length and 2.5 inches gap (distance between tip and shank) when fishing inside the 100-fathom depth contour. There is no hook size restriction seaward of the 100-fathom depth contour.

(e) *Statistical reporting.* (1) In addition to the requirements of § 611.9, a vessel of a nation with an applicable allocation shall submit the following additional quarterly reports:

(i) Catch and effort data, summarized weekly by one degree squares, containing the following information:

(A) Number of hooks set,

(B) Number of sharks caught under allocation,

(C) Number of prohibited species (by species code from Appendix I to § 611.9) caught and released,

(D) Number of prohibited species (by species code) released alive.

(ii) Summary of vessel activities containing the following information:

(A) Permit number of each vessel fishing,

(B) For each successive day of the reporting period, the noon-day location (within 0.1 degree of latitude and longitude) of each vessel in the fishery.

(2) A vessel of a nation with no applicable allocation is exempt from the requirements of § 611.9(d) and (e), but shall provide the reports required by § 611.9(f) and (g), when applicable. In addition, a vessel of a nation with no applicable allocation shall submit the quarterly reports described in paragraph (e)(1)(i)(A), (C), and (D), only, and (ii) of this section.

(3) The quarterly reports required by paragraphs (e)(1) and (2) of this section shall be submitted, not later than 60 days from the end of the quarter for which the report is being made, to: Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone: (305) 361–5761.

§ 611.62 Royal red shrimp fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted pursuant to a GIFA which involves the catching of royal red shrimp in the FCZ of the Gulf of Mexico.

(b) *Closed areas.* Fishing by foreign vessels for royal red shrimp is prohibited in depths less than 100 fathoms.

(c) *Gear restrictions.* No foreign vessel may use gear other than trawl gear to fish for royal red shrimp, except as specifically authorized in writing by the Regional Director.

Appendices to §§ 611.9 and 611.20

1. Amend Appendix 1 to § 611.9, Atlantic Ocean Fishes, Invertebrates, by adding a new Code 630—Royal Red Shrimp, as follows:

Appendix I—Species Codes

A. Atlantic Ocean Fishes (Including the Gulf of Mexico)

Code	Common English name	Scientific name
*	*	*
	Invertebrates	
*	*	*
630	Shrimp, royal red	*Hymenopenaeus robustus*

2. Amend Appendix I to § 611.20 by adding the following B. to 2. Atlantic and Gulf Fisheries:

Appendix I.—*OY, DAH, JVP, TALFF*

Species	Species code	Areas	OY optimum yield (mt)	Domestic allowable harvest (DAH) (mt)	Est. joint venture processing capacity (JVP) (mt)	Reserve	TALFF
*	*	*	*	*	*	*	*
2. Atlantic and Gulf Fisheries:							
*	*	*	*	*	*	*	*
B. Royal red Shrimp fishery	630		177.8	111.6			66.2
*	*	*	*	*	*	*	*

B. It is proposed to add a new 50 CFR Part 658 as follows:

PART 658—GULF SHRIMP FISHERY

Subpart A—General Measures

Sec.
658.1 Purpose and scope.
658.2 Definitions.
658.3 Relation to other laws.
658.4 Vessels, permits, and fees.
658.5 Recordkeeping and reporting.
658.6 Vessel identification.
658.7 Prohibitions.
658.8 Enforcement.
658.9 Penalties.

Subpart B—Management Measures

Sec.
658.20 Fishing year.
658.21 Allowable levels of harvest.
658.22 Tortugas Shrimp Sanctuary.
658.23 Stone crab closure.
658.24 Texas closure.
658.25 Size restrictions.

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

Subpart A—General Measures

§ 658.1 Purpose and scope

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters, developed by the Gulf of Mexico Fishery Management Council pursuant to the Fishery Conservation and Management Act of 1976, as amended.

(b) The regulations in this Part govern fishing for brown shrimp, white shrimp, pink shrimp, royal red shrimp, seabobs, and rock shrimp by vessels of the United States within that portion of the Gulf of Mexico over which the United States exercises exclusive fishery management authority.

(c) Regulations governing foreign fishing for royal red shrimp appear in 50 CFR Part 611. Appendix I to § 611.20 contains the TALFF for royal red shrimp.

§ 658.2 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, National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

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 Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the 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.

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone (305) 361–5761.

Catch, take, or harvest includes, but it not limited to, any activity which results in bringing any shrimp on board a vessel.

Fishery Conservation Zone (FCZ) means that area adjacent to the territorial sea of the constituent States of 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 Shrimp Fishery of the Gulf of Mexico, U.S. Waters, and any amendments thereto.

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

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

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

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

(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 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.

Gulf of Mexico means geographic area of authority of the Gulf of Mexico Fishery Management Council.

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

Owner, with respect to any vessel, means:

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

(b) Any charterer of that 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 other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

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

Person means any individual (whether or not a citizen or national of the Untied 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.

Regional Director means the Regional Director, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, or a designee.

Shrimp means the following species:

Brown shrimp, *Penaeus aztecus*

White shrimp, *P. setiferus*

Pink shrimp, *P. duorarum*

Seabobs, *Xiphopeneus koyeri*

Rock shrimp, *Sicyonia brevirostris*

Royal red shrimp, *Hymenopenaeus robustus United States harvested shrimp* means shrimp caught, taken, or harvested by vessels of the United States under this Part, whether or not such shrimp is landed in the United States.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under United States law; or

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

§ 658.3 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) The regulations found in this Part are intended to be compatible with regulations pertaining to the Everglades National Park in the State of Florida. These regulations are found at 36 CFR 7.45 and 36 CFR 7.27.

(c) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel in accordance with a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 658.4 Vessel permits and fees.

(a) *General.* No permit is required for vessels of the United States fishing for shrimp under this Part.

(b) *Royal red shrimpers.* During the Texas closure, a vessel may fish for royal red shrimp beyond the 100-fathom curve in the area described in § 658.24(a), if the vessel has on board a letter of authorization signed by the Regional Director.

(c) *Application for letter of authorization.* (1) By April 1, the owner or operator of a vessel intending to fish for royal red shrimp during the Texas closure shall submit a letter to the Regional Director stating such intent and including 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; and

(iii) The vessel's U.S. Coast Guard documentation number or the vessel's State registration number for vessels not

required to be documented under Title 46 of the U.S. Code.

(d) *Issuance of letter of authorization.* By May 1, the Regional Director will issue letters of authorization to applicants under paragraph (c) of this section.

§ 658.5 Recordkeeping and reporting.

(a) *Owners and operators.* The owner or operator of any fishing vessel or boat engaged in fishing for shrimp shall report to the National Marine Fisheries Service (NMFS) the information required by this section.

(1) *Selection.* The Center Director will use statistical sampling procedures to select all or a portion of shrimp fishermen to report information. The number of individuals selected, the reporting interval, and the duration for reporting will be determined by the Center Director according to data requirements for specific management needs. The NMFS may conduct surveys to obtain information on recreational shrimp fishing and to assess the accuracy and precision of any data collected under this section.

(2) *Information.* When notified by agents authorized by NMFS of his/her selection for reporting, the owner or operator of a shrimp vessel shall provide the information requested on a form available from the dealer at the time of sale. The information may include any of the following items:

(i) Vessel identification, including official number.

(ii) Date landed.

(iii) Days fished.

(iv) Area and depth of catch.

(v) Fishing time by species, area, and depth.

(vi) Gear type, number, and quantity.

(vii) Kinds and quantities of incidental catch and discards.

(viii) Other biological, social, and economic information.

(b) *Dealers.* Shrimp dealers shall provide the following information on individual fishing trips on forms provided by NMFS:

(1) Dealer or plant identification number.

(2) Official number.

(3) Date landed.

(4) Shrimp landed in pounds and value by species and class.

(5) Other social and economic information.

(c) *Processors.* Shrimp processors shall provide the following information on forms provided by NMFS:

(1) Processor identification.

(2) Type of product(s).

(3) Shrimp processed (quantity and value by product).

(4) Number of employees.

(5) Other social and economic information.

(d) *Filing.* Reports under this section shall be recorded on a form provided by the Center Director, or as otherwise described in this paragraph, as follows:

(1) Owners/operators of fishing vessels/boats—Required information shall be recorded at the time of the sale on a form provided by NMFS.

(2) Dealers—Copies of forms required to be submitted containing the required information shall be forwarded to NMFS within three days of the close of a business week.

(3) Processors—Required information shall be submitted on a form and at times specified by the Center Director.

§ 658.6 Vessel identification.

(a) *Offical number.* Each vessel of the United States engaged in the shrimp fishery in the Gulf of Mexico FCZ shall:

(1) 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 Coast Guard for documented vessels, or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) 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.

(4) The official number shall be permanently affixed to or painted on the vessel.

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

(1) Keep the name or registration number clearly legible and in good repair, and

(2) Insure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the official number from any enforcement vessel or aircraft.

§ 658.7 Prohibitions.

It is unlawful for any person to:

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

(b) Fish for shrimp in a closed area or during a closed season within the FCZ, except as allowed under § 658.4(b);

(c) Transfer directly or indirectly, or attempt to so transfer, any United States harvested shrimp 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 United States harvested shrimp;

(d) Falsify or fail to affix and maintain vessel markings as required by § 658.6;

(e) Falsify or fail to make, keep, maintain, or submit any record or report required by § 658.5;

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

(g) Refuse to permit an Authorized Officer to inspect any record required to be kept under § 658.5;

(h) Fail to comply immediately with enforcement and boarding procedures specified in § 658.8;

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

(j) Resist a lawful arrest for any act prohibited by this part;

(k) Interfere with, 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;

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

(m) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shrimp or the final disposition of such shrimp through the sale of the shrimp; or

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

§ 658.8 Enforcement.

(a) *General.* The owner or 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, 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 any other vessel or aircraft authorized to enforce provisions of the Act, the operator of a fishing vessel shall be alert for communications conveying enforcement instructions. The VHF-FM radiotelphone is the normal method of communicating between vessels. Should radiotelphone communications fail, however, other

methods of communicating between vessels, 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" meaning "You should stop your vessel instantly."

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

(3) "AA AA AA etc." which is the call to an unknown station, to which the signaled vessel should respond by illuminating the name or number required by § 658.6, and

(4) "RYCY" meaning "You should proceed at slow speed, a boat is coming to you."

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

(1) Guard Channel 16, VHF-FM, if so equipped;

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

(3) Provide a safe ladder, if required, for the Authorized Officer and his party;

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

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

§ 658.9 Penalties

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

Subpart B—Management Measures

§ 658.20 Fishing year

The fishing year for all species of shrimp, except royal red shrimp, begins on May 1 and ends on April 30. The fishing year for royal red shrimp begins January 1 and ends December 31.

§ 658.21 Allowable levels of harvest

(a) *Catch quotas.* The domestic quota for royal red shrimp is 111.6 metric tons. There is no domestic quota for other species of shrimp.

(b) *Territorial waters.* These regulations do not limit the harvest of shrimp resources in waters landward of the FCZ. However, harvest from these waters will be taken into account in the calculation of the maximum sustainable yield and optimum yield from the fishery.

(c) *Closure.* When the domestic quota for royal red shrimp is reached, the Regional Director shall close the fishery by publishing a notice in the **Federal Register**

§ 658.22 Tortugas shrimp sanctuary

The area commonly known as the "Tortugas Shrimp Sanctuary," off the State of Florida, is closed to all fishing for shrimp. The area is that part of the fishery conservation zone shoreward of the following line (see Figure 1):

Begin at the intersection of the Florida territorial sea with a line drawn between point N (Coon Key Light, 25°52.9' N. lat., 81°37.95' W. long.) and point F (24°50.7' N. lat., 81°51.3' W. long.); thence proceed on a straight line to point F; thence proceed on a straight line to point G (New Grounds Shoals Light, 24°40.1' N. lat., 82°26.7' W. long.); thence proceed on a straight line to point H (Rebecca Shoals Light, 24°34.7' N. lat., 82°35.1' W. long.); thence proceed on a straight line to the intersection of the Florida territorial sea with a line drawn from point H to point P (Marquesas Keys, approximately 24°35' N. lat., 82°08' W. long.).

BILLING CODE 3510—22—M

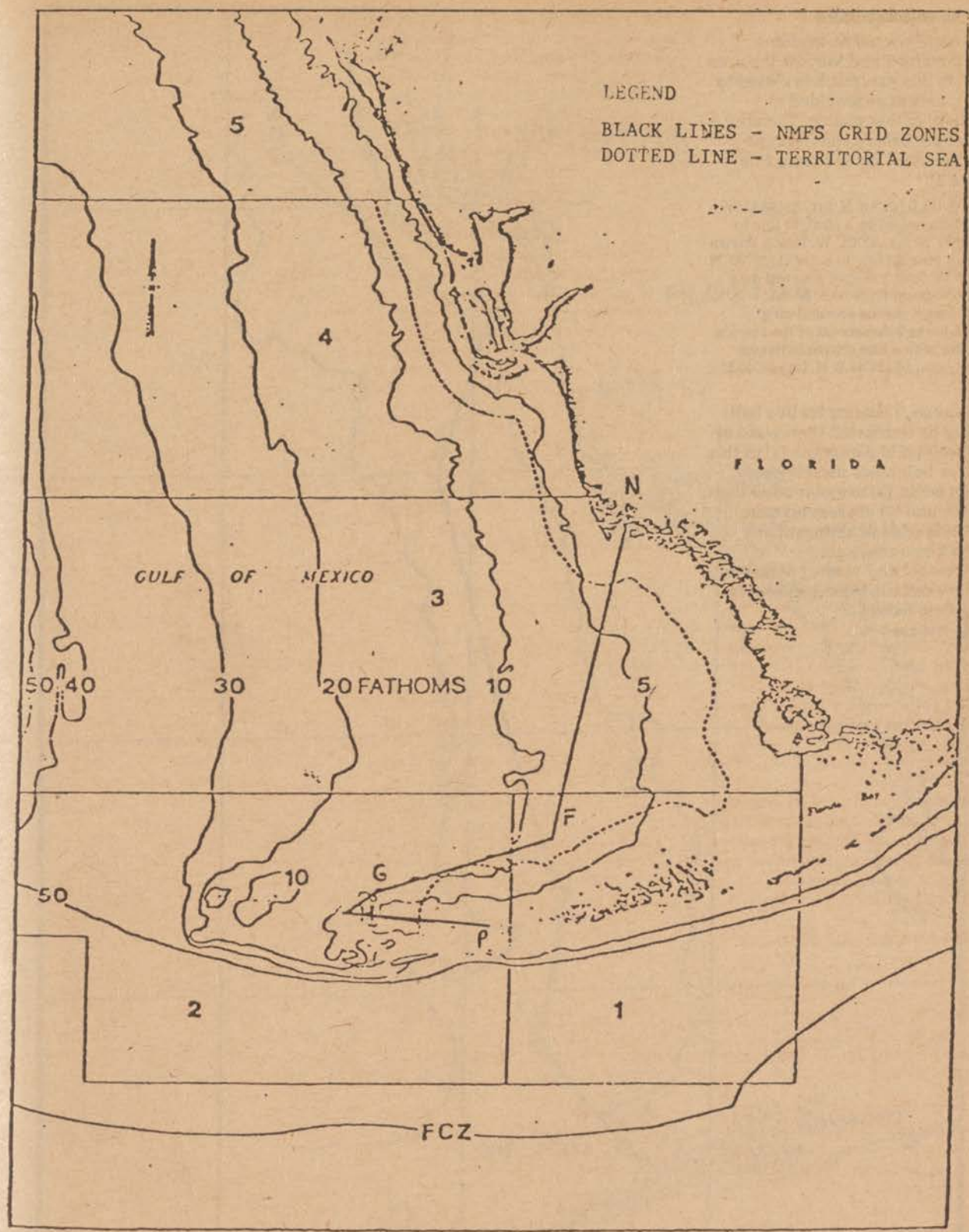


FIGURE 1. LOCATION OF PROPOSED TORTUGAS SHRIMP SANCTUARY.

BILLING CODE 3510—22—C

§ 658.23 Stone crab closure

(a) *Area and season restrictions.* Between January 1 and May 20, the area described in this paragraph is closed to trawl gear, except as provided in paragraph (b) of this section. The area is that part of the fishery conservation zone shoreward of the following line (see Figure 2):

Begin at point B (26°16′ N. lat., 81°58.5′ W. long.); thence proceed on a straight line to point C (26°00′ N. lat., 82°04′ W. long.); thence proceed on a straight line to point D (25°09′ N. lat., 81°47.6′ W. long.); thence proceed on a straight line to point E (24°54.5′ N. lat., 81°50.5′ W. long.); thence proceed on a straight line to the intersection of the Florida territorial sea with a line drawn between point E and point M (24°41.9′ N. lat., 81°40.5′ W. long.).

(b) *Exception.* Trawling for live bait shrimp may be conducted shoreward of the line specified in paragraph (a) of this section. Live bait boats must (1) have live shrimp wells, (2) use gear other than otter trawls, and (3) possess no more than 5 pounds of dead shrimp at any time. It shall be a rebuttable presumption that any vessel not meeting all the above criteria is not engaged in the bait shrimp fishery.

BILLING CODE 3510-22M

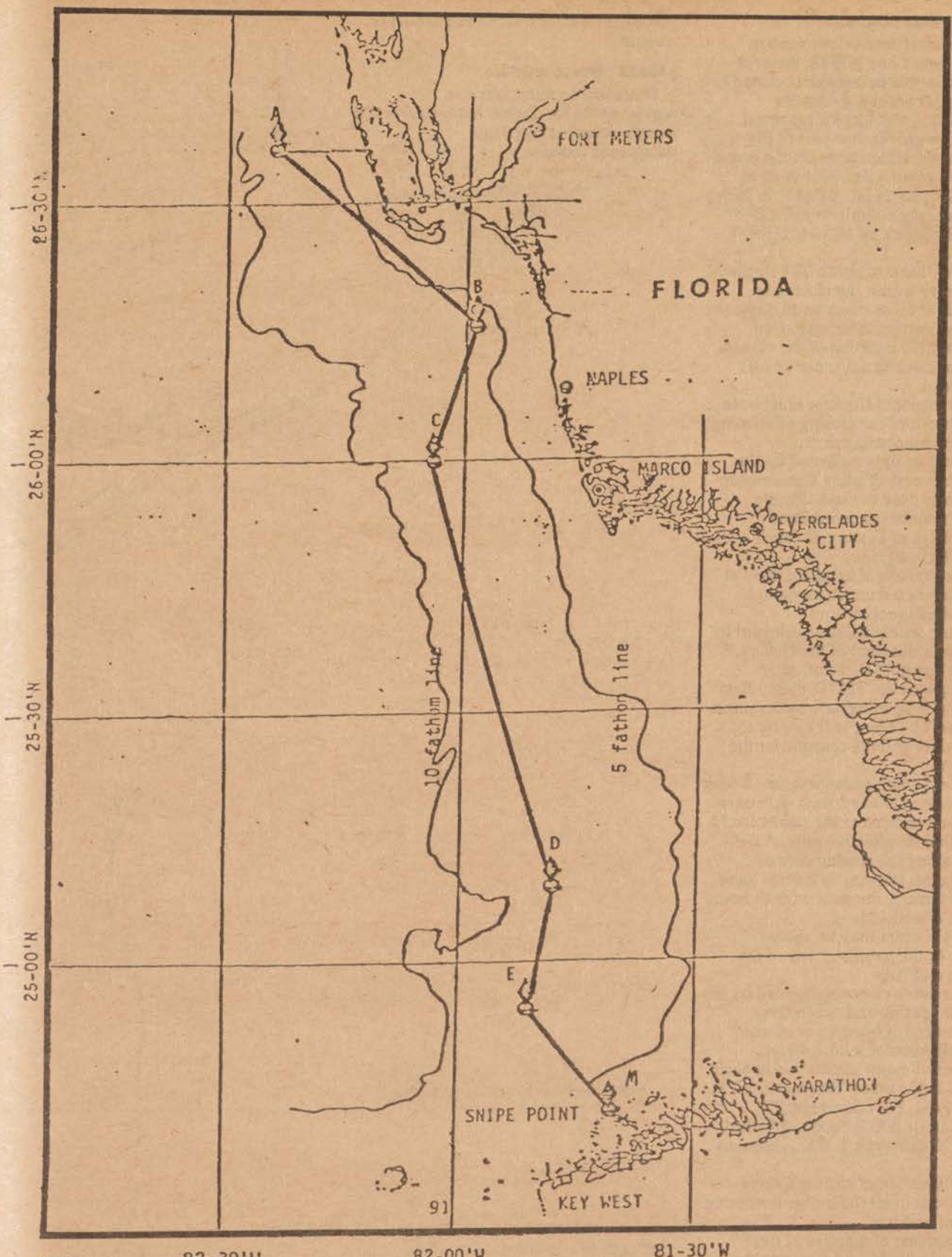


FIGURE 2. AREA CLOSED TO SHRIMPING BETWEEN JANUARY 1 AND MAY 20.

BILLING CODE 3510-22-C

§ 658.24 Texas closure.

(a) *Area and season restrictions.* Between June 1 and July 15, the area described in this paragraph is closed to all fishing for shrimp, except as permitted in § 658.4(b) for royal red shrimp. The area is that part of the fishery conservation zone off the State of Texas west of a line beginning at point A (29°32.1′ N lat., 93°47.7′ W long.) and proceeding directly to point B (26°11.4′ N lat., 92°53′ W long.) (see Figure 3).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date by as much as 15 days, to provide an earlier, later, or longer closure; but the duration of the closure may not exceed 60 days, nor be less than 45 days.

(1) The Regional Director must base an adjustment of the closing or opening date on the following criteria:

(i) Biological data collected by the Texas Parks and Wildlife Commission (TPWC) and used to predict when brown shrimp in the central and northern bays of Texas will reach a total length of 80 to 90 mm;

(ii) The strength of outgoing tides at the time predicted under paragraph (b)(1)(i) of this section; and

(iii) Other biological data relevant to the timing or duration of the closure.

(2) The Regional Director, after consulting with the TPWC, may adjust the closing or opening date by issuing a field order. The order will specify the adjusted date and the reasons for the adjustment.

(3) A field order advancing the closing date or delaying the opening date must have been available to the public for 72 hours before its effective date. A field order delaying the closing date or advancing the opening date must have been available to the public for 24 hours before its effective date.

(4) A field order may be made available to the public by any of the following methods:

(i) Procedures customarily used by the TPWC for posting and publicizing similar notices of opening or closure;

(ii) Publication of a notice in a newspaper of major circulation in each of the following cities: Brownsville, TX; Aransas Pass, TX; Galveston, TX; Corpus Christi, TX; Freeport, TX; Port Arthur, TX; Cameron, LA; and Morgan City, LA;

(iii) Notification of shrimp fishery organizations in all the States bordering the Gulf of Mexico;

(iv) Broadcast of a notice at time intervals, channels, and frequencies customarily used by the TPWC to broadcast similar notices of opening or closure.

§ 658.25 Size restrictions.

There are no minimum size requirements for shrimp harvested in the fishery conservation zone.

BILLING CODE 3510-22-M

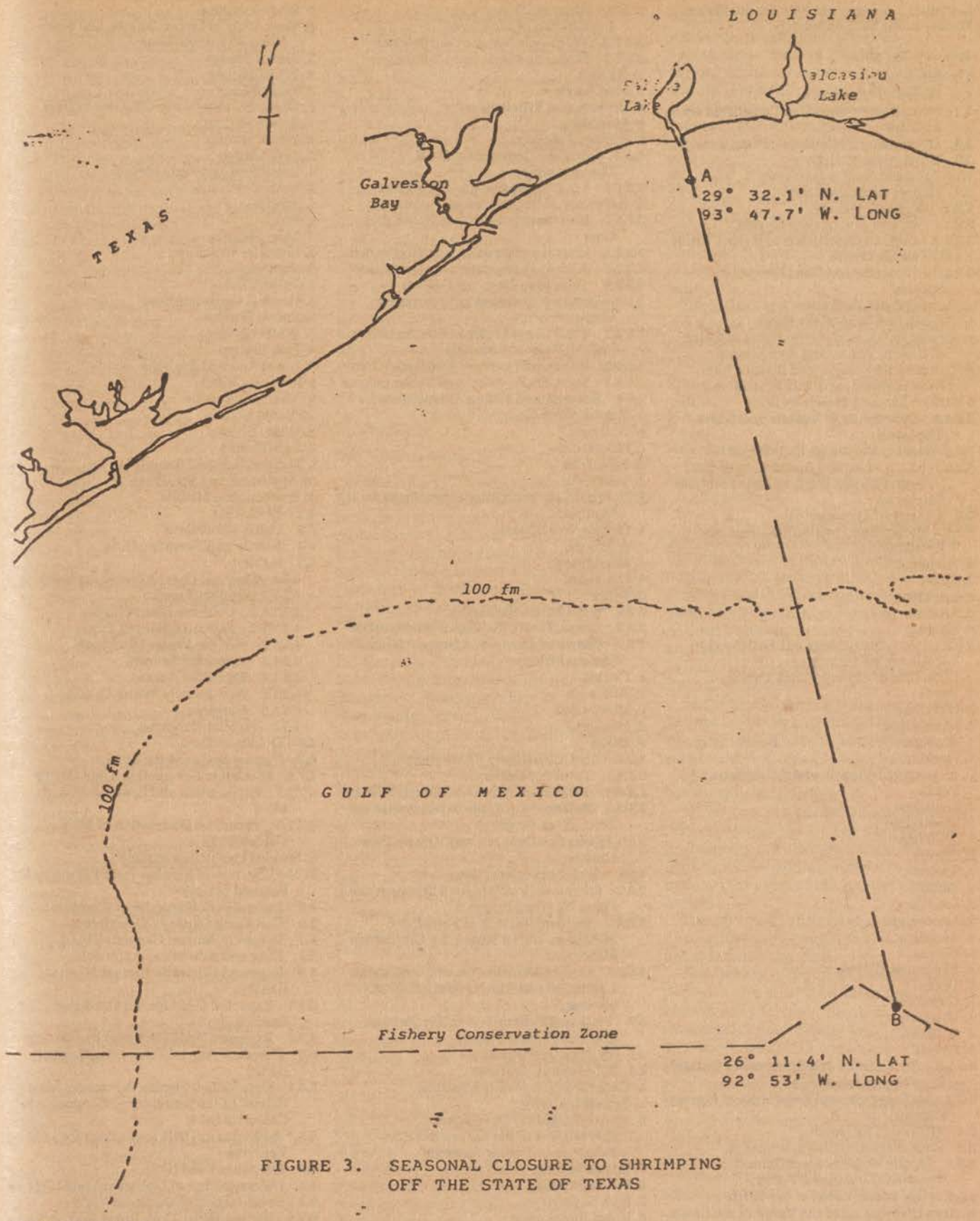


FIGURE 3. SEASONAL CLOSURE TO SHRIMPING OFF THE STATE OF TEXAS

BILLING CODE 3510-22-C

C. Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico

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2.0 Introduction

The Fishery Conservation and Management Act of 1976 (Pub. L. 94–265) provides for exclusive United States management authority over the fishery resources within a fishery conservation zone extending from the seaward boundary to the United States territorial sea (three nautical miles for the Gulf of Mexico states of Louisiana, Mississippi, and Alabama and nine nautical miles for Texas and the west and northwest coasts of Florida) to a point 200 miles from shore. Responsibility for developing a shrimp fishery management plan for the Gulf of Mexico is vested in the Gulf of Mexico Fishery Management Council; and implementation and enforcement of any regulations pertinent to the management of fisheries within the fishery conservation zone are the responsibility of the Secretary of Commerce and Secretary of the Department wherein the U.S. Coast Guard is located.

Successful implementation of the plan will require unity of purpose between Federal regulations and those of the five Gulf states (Florida, Alabama, Mississippi, Louisiana, and Texas). Authority for implementing state regulations is vested in the Florida Department of Natural Resources, the Alabama Department of Conservation and Natural Resources, the Mississippi Marine Conservation Commission, the Louisiana Wildlife and Fisheries Commission, and the Texas Parks and Wildlife Commission.

The fishery addressed is comprised of six species, occurring in the area of jurisdiction of the Gulf of Mexico Fishery Management Council as well as in the territorial seas adjacent thereto and the associated bays, inlets, wetlands, and upland areas as appropriate. Species include brown shrimp (*Penaeus aztecus* Ives), white shrimp (*Penaeus setiferus* Linnaeus), pink shrimp (*Penaeus duorarum* Burkenroad), and royal red shrimp (*Hymenopenaeus robustus* Smith [1]), plus seabobs (*Xiphopeneus kroyeri* Heller) and rock shrimp (*Sicyonia brevirostris* Stimpton), which are incidental bycatch. The management unit is to be equal to the fishery throughout its range; however, federal implementation will occur only in the fishery conservation zone.

Biological aspects of the shrimp species have been reviewed, and the maximum probable catch is estimated at: (see Sec. 4.7.1.1)

Brown shrimp—132 million pounds (tails) per year
White shrimp—64 million pounds (tails) per year
Pink shrimp—20 million pounds (tails) per year
Royal red shrimp—0.392 million pounds (tails) per year

Each year's take of brown, white, and pink shrimp will be heavily influenced by water salinity and temperature during critical periods of estuarine shrimp growth. Maximum sustainable yield (MSY) estimates for the seabobs and rock shrimp cannot be made with any authority because they are caught incidentally by fishermen trawling for the other species.

Seabobs and rock shrimp are caught incidental to the three main species of penaeid shrimp. MSY estimates are weakened because of lack of data.

None of the stocks appear to be biologically overfished.

Major concern for future stocks is related to concern for adequate habitat, particularly for the estuarine-dependent brown, white, and pink shrimp, which account for most of the annual shrimp harvest.

The effects of shrimping on sea turtles and incidentally caught finfish are considered in the plan.

The fishery is the most valuable and probably the most diverse in the nation. Harvesters include (1) a large commercial fleet fishing the inshore, nearshore Gulf, and open Gulf waters, (2) an undetermined (but large) number of recreational shrimpers mainly fishing the inshore and nearshore Gulf waters, and (3) a substantial number of bait shrimpers mainly fishing the inshore waters. Processed products include frozen, canned, fresh, and breaded shrimp as well as a host of specialty

[1] The genus *Hymenopenaeus* is the same as *Pleoticus* according to Isabel Farfante.

items. Present management regimes differ in the fishery over the allowable size of shrimp at first harvest as size is related to whom can harvest and process the shrimp.

Unfortunately, socioeconomic data are insufficient for this complex fishery to evaluate fully the relative needs of various user groups for shrimp of different sizes. Care has therefore been taken in making recommendations to reduce the waste of current culling practices so that one user group will not be favored over another. No recommendations are made on limiting fishing effort because the resource is not biologically overfished. There is insufficient socioeconomic data to suggest methods or reasons, consistent with FCMA, to limit entry at this time.

During a period of public review of the Draft Fishery Management Plan and Environmental Impact Statement, 21 public hearings were held and written comments were received by mail. Public comments and responses are contained in the Final Environmental Impact Statement.

The plan is to be reviewed annually so that management measures can be evaluated for their fairness and effectiveness and so that other methods of optimizing yield can be assessed.

Problems in the Fishery (See Section 8.3)

The Council has identified the following problems associated with the fishery and the present management regime and has prepared the plan objectives to address and alleviate them. In a free access fishery a management regime to maximize protein yield and economic return of the fisherman is of importance.

(1) Conflict among user groups as to area and size at which shrimp are to be harvested.

(2) Discard of shrimp through the wasteful practice of culling.

(3) The continuing decline in the quality and quantity of estuarine and associated inland habitats.

(4) Lack of comprehensive, coordinated and easily ascertainable management authorities over shrimp resources throughout their ranges.

(5) Conflicts with other fisheries such as the stone crab fishery in southern Florida, the groundfish fishery of the north central Gulf, and the Gulf's reef fish fishery.

(6) Incidental capture of sea turtles.

(7) Loss of gear and trawling grounds due to man-made underwater obstructions.

(8) Partial lack of basic data needed for management.

2.1 Goal and Objectives

Goal: To manage the shrimp fishery of the United States waters of the Gulf of Mexico in order to attain the greatest overall benefit to the nation with particular reference to food production and recreational opportunities on the basis of the maximum sustainable yield as modified by relevant economic, social or ecological factors.

Objectives: 1. Optimize the yield from shrimp recruited to the fishery.

2. Encourage habitat protection measures to prevent undue loss of shrimp habitat.

3. Coordinate the development of shrimp management measures by the GMFMC with shrimp management programs of the several states, where feasible.

4. Promote consistency with the Endangered Species Act and the Marine Mammal Protection Act.

5. Minimize the incidental capture of finfish by shrimpers, when appropriate.

6. Minimize conflicts between shrimp and stone crab fishermen.

7. Minimize adverse effects of underwater obstructions to shrimp trawling.

8. Provide for a statistical reporting system.

2.2 Management Measures Considered and Adopted (See Sec. 8.5.1.1)

In order to obtain the above objectives, the Council has adopted the following management measures:

Measure 1: Establish a cooperative permanent closure with the State of Florida and the U.S. Department of Commerce of the area delineated in Table 8.3–1 to protect small pink shrimp until they have generally reached a size range larger than 69 tails to the pound.

Measure 2: Establish a cooperative closure of the territorial sea of Texas and the adjacent U.S. FCZ with the State of Texas and the U.S. Department of Commerce during the time when a substantial portion of the brown shrimp in these waters weigh less than a count of 65 tails to the pound (39 heads-on shrimp to the pound).

Measure 3: Recommend that all Gulf states consider establishing shrimp management sanctuaries in important segments of nursery grounds under their sole jurisdiction.

Measure 4: The Gulf of Mexico Fishery Management Council has established an internal committee to review and assess the status of Gulf fishery habitats, with particular attention to those factors which might further stimulate "the downward trends in quality and quantity of fish habitats." (Atlantic States Marine Fisheries Commission et al., 1977.)

Measure 5: The Gulf states are encouraged to adopt flexible management procedures which would provide regulation by administrative agencies of the shrimp resources in inland waters and territorial seas.

Measure 6: The Gulf states are encouraged to adopt reciprocal internal management decisions flexible enough to allow joint management of shrimp with other states and with the Department of Commerce.

Measure 7: Develop and implement an educational program to inform shrimpers of the current status of sea turtle populations and of proper methods of resuscitation and return to sea of incidentally captured sea turtles.

Measure 8: Encourage research on and development of shrimping gear in order to reduce the incidental catch without decreasing the overall efficiency of shrimping or excessively increasing the cost of gear.

Measure 9: Consistent with the Stone Crab management Plan, establish a seasonal closure of a portion of the Dry tortugas shrimp grounds in order to avoid gear conflicts with stone crab fishermen.

Measure 10: The Gulf of Mexico Fishery Management Council will attempt to reduce, where feasible, the loss of offshore trawlable bottom by establishing within GMFMC, a committee to monitor and review construction of offshore reefs, with attention to the needs of the reef fish and shrimp user groups.

Measure 11: All statistical reporting requirements will be mandatory.

2.3 Operational Definitions of Terms Used

Acceptable Biological Catch (ABC) is a seasonally determined catch that may differ from MSY for biological reasons. It may be lower or higher than MSY in some years for species with fluctuating recruitment. It may be set lower than MSY in order to rebuild overfished stocks.

Annual Crop is a species which is harvested essentially as a 0-year class (less than one year of age).

Boats are crafts that displace less than five gross tons.

Catch Per Unit of Effort (CPUE) is the total number or weight of fish harvested by a defined unit of fishing effort.

Commercial Shrimpers are shrimpers who sell any portion of their catch.

Culling is the practice of discarding those shrimp caught which are smaller than a size the fisherman wishes to retain.

Determination for Total Allowable Level of Foreign Fishing (FTALFF). The foreign allowable catch is determined by

deducting the expected domestic annual harvest from the optimum yield.

Detritus is considered as decaying plant material and its associated community of microscopic plants and animals.

Domestic Annual Fishing Capacity (DAFC) is the total potential physical fishing capacity of the fleet, modified by logistic factors. The components of the concept are:

a. An inventory of total potential physical capacity, defined in terms of appropriate vessel and gear characteristics (that is, size, horsepower, hold capacity, gear design, etc.).

b. Logistic factors determining total annual fishing capacity, (that is, variations in vessel and gear performance, trip length between fishing locations and landing points, weather constraints, etc.).

Domestic Annual Processing Capacity (DAPC) is the amount that can be processed if supplies are available.

Equilibrium Yield (EY) is the annual or seasonal harvest that maintains the resource at approximately the same level of abundance (apart from the effects of environmental variation) in succeeding seasons or years.

Estuarine Dependent Species are those organisms that must complete a portion of their life cycle within an estuary.

Expected Domestic Annual Harvest (EDAH) is the total expected catch of the U.S. shrimp fleet.

Fishery conservation Zone (FCZ) is the area of federal jurisdiction, beginning at the outer limit of the states' territorial seas and extending 200 miles from shore.

Fishing Effort is the total fishing gear in use for a specified period of time.

Fishing Mortality includes all deaths to the exploited populations associated with the harvesting practices.

Growth Overfishing is a level of effort which prevents the exploited population from attaining its maximum size.

Incidental Catch refers to the catch of species other than the target species (bycatch).

Inland Waters (inside waters) are areas of state jurisdiction and include all bays and lagoons inland from the baseline from which the territorial sea is measured.

Maximum Economic Yield (MEY) is the level of harvest from the common property resource that maximizes the stream of generated net incomes over time.

Maximum Sustainable Yield (MSY) is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock, under current environmental conditions.

Natural Mortality includes deaths from all causes except capture by man.

Omnivore is an animal which eats whatever dead or alive animal or plant material is available.

Optimum Yield (OY) with respect to the yield from a fishery, means the amount of fish:

(a) which will provide the greatest overall benefit to the nation, with particular reference to food production and recreational opportunities; and

(b) which is prescribed as such on the basis of the maximum sustainable yield from such fishing, as modified by any relevant economic, social, or ecological factor.

Recreational Shrimpers are shrimpers who do not sell their catch.

Recruitment Overfishing is used to denote that level of fishing effort which reduces the spawning stock size to the point where there is a reduction in the amount of young recruited to the fishery.

Spawner-Recruit Relationship is the quantifiable relationship between the number of reproducing adults and the resulting number of young recruited to the fishery.

Stock is a group of fish manageable as a unit.

Target Species are the species at which the fishery is directed.

Territorial Sea is the area of state jurisdiction extending from the baseline to three nautical miles seaward for Alabama, Mississippi, and Louisiana, and to nine nautical miles for Texas and the Florida west and northwest coasts.

Total Allowable Level of Foreign Fishing (TALFF) is any surplus in the optimum yield above the expected domestic annual harvest.

Unit Fishing Effort is a measure of harvesting pressure which has been adjusted to account for differences in the ability of boats and vessels of different types to harvest the resource.

Vessels are crafts with displacement greater than or equal to five gross tons.

Year-class is the fish spawned in a given year.

Yield is the amount of a species harvested by man.

3.0 Description of Fishery

3.1 Area and Stocks Involved

The fishery being addressed is comprised of the species listed below and occurs in the area of jurisdiction of the Gulf of Mexico Fishery Management Council as well as in the area of jurisdiction of the various Gulf states including their territorial seas, associated bays, inlets, wetlands, and upland areas as appropriate.

Consideration of this large area is necessary because of the migratory natures of the exploited species and fishermen, the critical role of estuaries in the life cycles of the dominant shrimp species, and the impacts upland alterations may have on the quality of shrimp habitat.

Shrimp species within the fishery are:

Brown shrimp *(Penaeus aztecus* Ives)
White shrimp *(Penaeus setiferus* Linnaeus)
Pink shrimp *(Penaeus duorarum* Burkenroad)
Royal red shrimp *(Hymenopenaeus robustus* Smith)
Seabobs *Xiphopeneus Kroyeri* Heller) Incidental bycatch
Rock shrimp *Sicyonia brevirostris* Stimpton) Incidental bycatch

In addition to these shrimp species, shrimpers also catch sea turtles and other shellfish and finfish. The sea turtle catch is of concern to the development of this plan because all the sea turtles which occur in the Gulf are listed as either endangered or threatened under the U.S. Endangered Species Act which prohibits capture of endangered species. Though primary responsibility for protection of these sea turtle species lies with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, the plan contains appropriate suggestions to minimize the impact on sea turtle populations. The incidental catch of other shellfish and finfish is also of concern because much of this catch is discarded at sea. Since much of the discarded catch is dead or dies as a result of being caught, this operation largely represents a direct conversion of national resources into food for scavengers. Many of these resources can be used by other national interests. Primary responsibility for managing these resources lies with the GMFMC, NMFS, and the Gulf states. Management plans are currently being prepared by GMFMC for two major bycatch groups—groundfish and reef fish—in which appropriate measures are suggested to reduce this bycatch. In addition, the groundfish management plan contains a thorough treatment of current efforts to develop markets for these discarded species.

Brown shrimp range along the north Atlantic and Gulf of Mexico coasts from Martha's Vineyard, Massachusetts, to the northwestern coast of Yucatan. The range is not continuous but is marked by an apparent absence of brown shrimp along Florida's west coast between the Sanibel and the Apalachicola shrimping grounds (Perez Farfante, 1969). In the U.S. Gulf of Mexico, catches are high along the Texas, Louisiana, and Mississippi coasts.

Mark-recapture experiments indicate a mixing of brown shrimp populations along the north central and

northwestern Gulf coast. A southward drift of brown shrimp off the Texas coast towards Mexico has been proposed (Gunter, 1962). There is some speculation that the Mississippi River may act as a barrier to east-west migration.

Brown shrimp are caught out to at least 50 fathoms, though most come from less than 30 fathoms. The season begins in May, peaks in June and July, and gradually decline to an April low.

White shrimp range along the Atlantic coast from Fire Island, New York, to Saint Lucie Inlet, Florida, and along the Gulf coast from the mouth of the Ochlachonee River, Florida, to Campeche. In the Gulf there are two centers of abundance: one along the Louisiana coast and one in the Campeche area (Perez Farfante, 1969).

There appears to be a general mixing of white shrimp west of the Mississippi River to at least the northeast coast of Mexico, with an observed northward migration along the Mexico-Texas shore to at least Aransas Pass, Texas, during the spring (Lindner and Anderson, 1956). A reciprocal southward movement in the fall and winter has been proposed (Gunter, 1962). It has been suggested that again the Mississippi River may act as a barrier in east-west migration (Linder and Anderson, 1956; Perez Farfante, 1969).

White shrimp are a comparatively shallow-water shrimp, with most of the catch coming from less than 15 fathoms. Annual catch has two peaks: the major one in late summer-early fall, with an October high; the minor one is the "Easter fishery" on over-wintered shrimp which peaks in May. Largest U.S. catches occur west of the Mississippi River to the Freeport, Texas, area, though catch is considerable along the entire north central and western Gulf.

Pink shrimp range along the Atlantic from lower Chesapeake Bay south to around the Florida Keys and up and around the Gulf coast to Isla Mujeres, Mexico. They are also found in the Bermuda Islands and the northern coast of Yucatan. Major concentrations are off southwest Florida and in the southeastern part of Golfo de Campeche (Perez Farfante, 1969).

The two major pink shrimp grounds in the United States are the Tortugas and Sanibel grounds in southwestern Florida. There is little movement of shrimp between these grounds, and they are derived from largely different estuarine areas (Costello and Allen, 1965).

Pink shrimp catch comes mainly from less than 25 fathoms, with a peak catch at 11 to 15 fathoms. Because of continuous recruitment in southeastern Florida, the catch exhibits a broad peak October through May. U.S. catch is mainly restricted to Florida and is greatest in southwestern Florida.

Royal red shrimp are deepwater shrimp occurring as far north as Cape Hatteras, North Carolina, to as far south as the coast of the Guianas, and primarily in depths of 140 to 300 fathoms. Concentrations of royal red are known to exist in three geographical areas: (1) East of St. Augustine, Florida, in the western Atlantic; (2) south-southeast of the Dry Tortugas in the Florida Straits; and (3) southeast of the Mississippi River Delta in the Gulf of Mexico (Roe, 1969).

Seabobs are caught most often in shallow waters at six to seven fathoms or less and almost never in estuaries (Renfro and Cook, 1963). U.S. catch is highest along the Louisiana coast in October through December.

Rock shrimp occur along the Atlantic coast from Virginia to the Florida Keys and up along the Gulf coast to Cabo Catoche, Mexico (Cobb, et al., 1973; Hildebrand, 1954). Major concentrations occur at Cabo Catoche, Mexico, and in the Cape Canaveral, Florida, area (Christmas and Etzold, 1977). Major Gulf catch (1971–1975) comes from the Panhandle area of Florida at depths of 10 to 22 fathoms (Christmas and Etzold, 1977).

3.2 History of Exploitation

3.2.1 Domestic Fishery

3.2.1.1 Description of User Groups

The shrimp fishery of the Gulf can be divided into four general categories of users—harvesters (directly involved in the taking of shrimp), processors, marketers, and consumers.

The actual taking of shrimp is done by recreational fishermen, commercial bait shrimpers, and commercial (food) shrimpers. The commercial shrimp user category includes employees as well as owner's of vessels and may be divided into smaller boat operations, which are restricted to inland bay and shallow offshore activities, and the offshore vessels, which range from the territorial seas out to the limits of the FCZ and into foreign waters.

The economics of the shrimp fishery include vessel owners who do not actually shrimp themselves, the boatyard and gear industry, and the suppliers of ice and fuel (essential inputs for shrimping operations).

Processors include the shrimper as a first level processor, if he heads the shrimp. fish houses may perform one or all processing activities such as heading, peeling, grading, packing in ice, and freezing, cooking, or drying. The non-shrimper processors handle the shrimp between the fish house and the purchaser. The three basic types of processors are: (1) Producers of "green" (fresh) or frozen shrimp; in 1974 they accounted for 86.25 million pounds valued at $152.6 million, or 59 percent of the total value of shrimp produced in the Gulf that year; (2) "breaders," who in 1974 produced 52.66 million pounds of breaded shrimp (including imports) valued at $75.7 million, or 29 percent of the total value of shrimp processed in the Gulf region (Florida and Texas accounted for 91 percent of the breaded shrimp); (3) canners, who generally use small- to medium-sized shrimp; such canning plants are located primarily in South Louisiana and Mississippi, with the greatest concentration found in the New Orleans area. They accounted for $13.1 million worth of canned shrimp represented by 1.9 million standard cases, or seven percent of the total value of all shrimp processed in the Gulf region. In addition, there is a wide array of specialty items such as dried shrimp, gumbo, etc.

Restaurants are also an important processing entity. It is estimated that more shrimp are consumed in restaurants than used in homes. The role of restaurants as processors ranges from minimal, limited to the actual cooling process, to the handling of shrimp in raw and unpeeled form.

Marketing of shrimp involves every stage of the industry; there also are groups which engage solely in marketing, with their processing function limited to possible repackaging. Transportation of shrimp is usually handled by trucks operated by the wholesale marketing entitles.

Consumers are given a choice of several different ways to purchase shrimp, ranging from heads-on to stove-ready status.

3.2.1.2 General Description of Fishery Effort

Prior to the introduction of the otter trawl in 1917, most shrimp were commercially harvested in shallow inshore areas with haul seines. White shrimp were the main shrimp caught and marketed until the early 1950's; quantities of seabobs and brown shrimp were used for dried products. During these years fishing efforts were concentrated in areas where white shrimp were abundant. From 1917 to the late 1940's, most shrimp were caught from vessels rigged with single otter trawls which operated within about six miles of shore. However, vessels occassionally went out about ten miles and, in some instances off Louisana, out fifty miles. By the early 1950's, increased

markets for brown and pink shrimp and the discovery of new fishing grounds initiated a period of rapid expansion of the shrimp industry. As a result, some vessels began to move farther offshore because of the increasing difficulty of making profitable catches on traditional fishing grounds. By the early 1960's, U.S. shrimp vessels were fishing off the coasts of Mexico and South America. A major change in gear methodology took place in the late 1950's with the introduction of double-rig trawling. Two small trawls were pulled instead of a single large net, resulting in a substantial increase in catch efficiency and a reduction of handling problems. Double-rig trawls were used by most vessels fishing for pink and brown shrimp. More recently the twin-trawl has become popular in the offshore Gulf shrimp fleet because of its efficiency (Figure 3.2–11). With this arrangement four small trawls are towed instead of two from a single vessel. The inshore shrimp fishery is primarily confined to the internal waters fo each of the Gulf states. There are numerous small boats rigged with single otter trawls which harvest shrimp commercially from the bays and marshes. Some of the boats may fish in the Gulf during favorable weather conditions, especially for white shrimp.

Fishing efforts for royal red shrimp occur intermittently when shrimping along the coast is poor. Royal red shrimp are harvested from vessels using a single trawl. The deep-water habitat of the species necessitates the use of heavier inches and cables than are used to catch shallow-water shrimp species and, in general, the use of larger vessels.

The live-bait shrimp fishery is generally limited to the shallow inshore waters of the Gulf. Bait shrimp catches on the Florida west coast consist primarily of pink shrimp, which are harvested in shallow grass beds from boats equipped with single or double side-frame trawls. The bait shrimp fishery in the remaining Gulf states is usually dependent upon white and brown shrimp, which are harvested with boats rigged with a single otter trawl. Mortality of the live shrimp is minimized by trawling for short durations during the cooler early morning hours and then rapidly sorting the catch. The limited capacity of live-holding facilities aboard the boat and the perishability of live shrimp probably restrict bait shrimping operations to areas near the dealer where the catch is sold. The dealer in turn, however, may transport live shrimp considerable distances, i.e., 200 or more miles.

Recreational shrimping efforts are generally concentrated in shallow inshore waters, though few individuals may occasionally venture into the territorial sea during favorable weather conditions. It is unlikely, however, that any recreational shrimpers operate in the fishery Conservation Zone. The boats used in the recreational shrimp fishery are usually outboard or inboard pleasure craft rigged tow for a single otter trawl ranging from about 16 to 40 feet in width. Although most of the recreational catch is harvested with otter trawls, other gears such as cast nets, wing nets, channel nets, and dip nets may account for a substantial amount of the harvest in localized areas.

3.2.1.3 Catch Trends

Trends in the shrimp fishery discussed here are based on two data sets. The first is the reported commercial catch by species (U.S. Department of Commerce, 1959.1975). The second is the reported commercial landings by state (U.S. Department of Commerce, 1880–1975). These two data sets are not identical. The catch is the amount of shrimp caught in a specific inshore or offshore area. Landings are the total catch, whose origin may not be known, delivered at a port and sold commercially.

3.2.1.3.1 Commercial Catch Trends by Species

Annual Catch Patterns.—Average annual reported commercial catches of shrimp (plus or minus one standard deviation) in the U.S. Gulf are:

Brown shrimp,* 60.4 ± 17.4, million pounds (tails)
White shrimp,* 32.8 ± 8.9, million pounds (tails)
Pink shrimp,* 12.7 ± 2.2, million pounds (tails)
Royal red shrimp,* 0.83 ± .091, million pounds (tails)
Seabob shrimp,* 1.4 ± 1.6, million pounds (tails)
Rock shrimp,** .331 ± .358, million pounds (tails)

Three species—brown, white, and pink shrimp—account for 98 percent of the total average catch.

Annual catches of the dominant species (brown, white and pink shrimp) are highly variable. The annual variation has long been a concern to shrimpers, processors, and consumers. As with other annual crops (such as wheat or corn), success is associated with prevalent environmental conditions. In the case of brown, white, and pink shrimp, the effects of environmental forces are most dramatic during the critical esturaine phase of growth (Section 4.1). The variation in the catch of the three minor species appears to be related more to market conditions and the supply of other shrimp than to variation in shrimp abundance.

There are no apparent or significant linear trends in annual catches of brown, white, or pink shrimp (Fig. 3.2–1 and Table 4.7–1). Although annual catches appear somewhat cycilical, they are caused by environmental conditions. A poor year can be followed by an exceptionally good year for any of these species. Catch for a given year appears to be independent of the preceding year's catch, and no spawner-recruit relationship suggests itself.

Annual catch of minor species has tended to increase with time. This increase in catch is associated with an increase in the effort applied to harvest the major species (Table 4.7–6). Annual catch of royal red shrimp has ranged between 4,600 and 270,000 pounds of tails annually but has generally increased at the rate of 14,000 ± 5,000 pounds of tails per year (1963–1976).

Reported catch of seabob shrimp has generally increased over the 1963–1975 period, though the most dramatic increase occurred over the 1971–1975 period (Fig. 3.2–2). The reported catch of seabob shrimp may be much greater incidentally with other shrimp (Table 4.7–8), an increase in effort on white shrimp (as seabobs are an incidental catch to this fishery). Seabobs are retained when the price expected is high or the supply of other shrimp is limited (P. Juneaux, LDWF, personal communication, 1978).

The reported catch of rock shrimp is relatively recent, with the first report occuring in 1971. Catch for the 1971–1976 period is listed in Table 4.7–6. Rock shrimp are mostly caugth incidentally with other species, especially pink shrimp (Table 4.7–9), however, a small directed fishery does exist.

Area Distribution of the Catch

The reported commecial catch of shrimp is classified by NMFS into 21 areas along the U.S. Gulf coast (fig. 3.2–3).

The average annual commercial catch by area is compared for brown, white, and pink shrimp in Fig. 3.2–4 and for royal red, seabob, and rock shrimp in Fig. 3.2–5.

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*(1959–1975)
**(1971–1976)

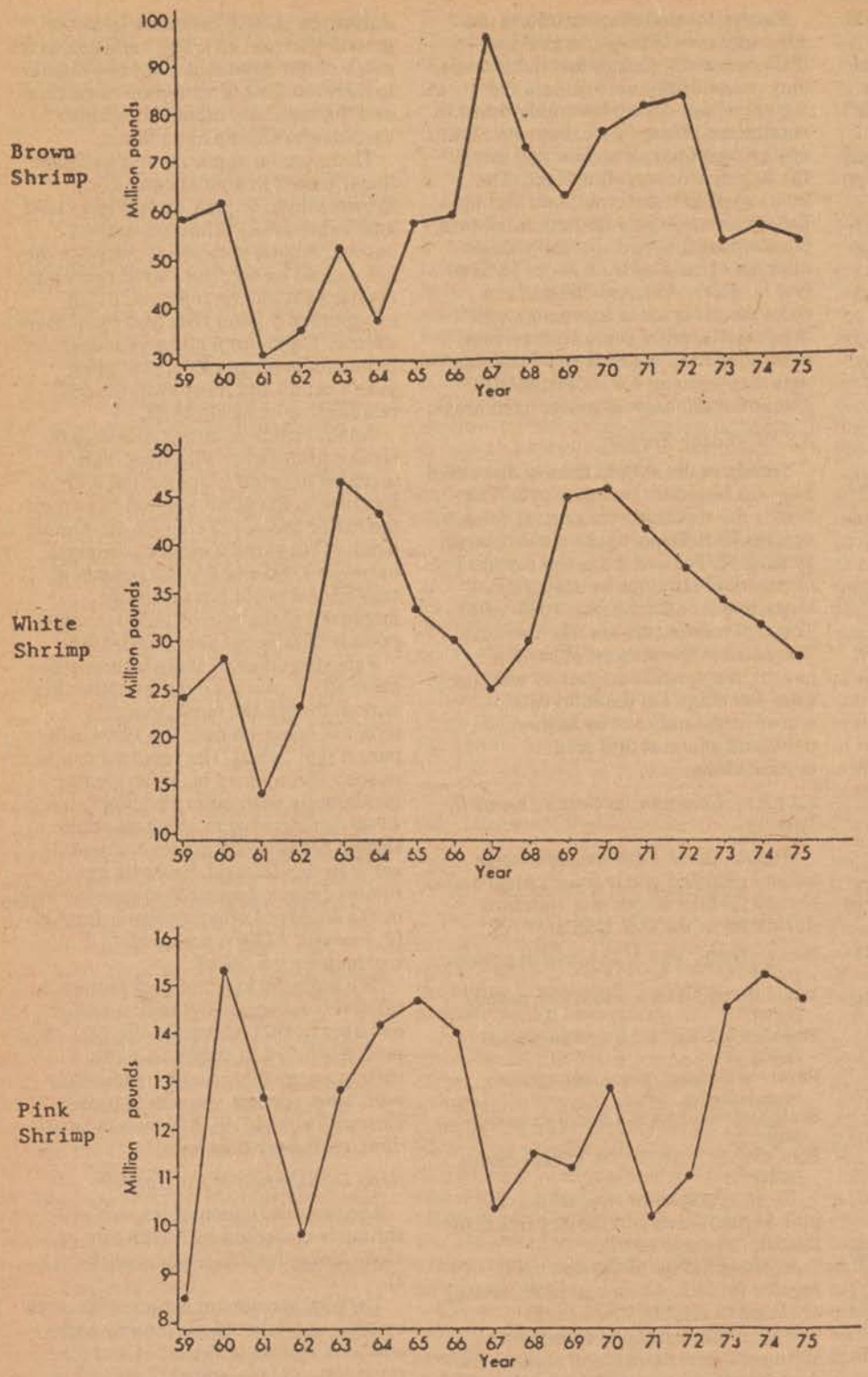
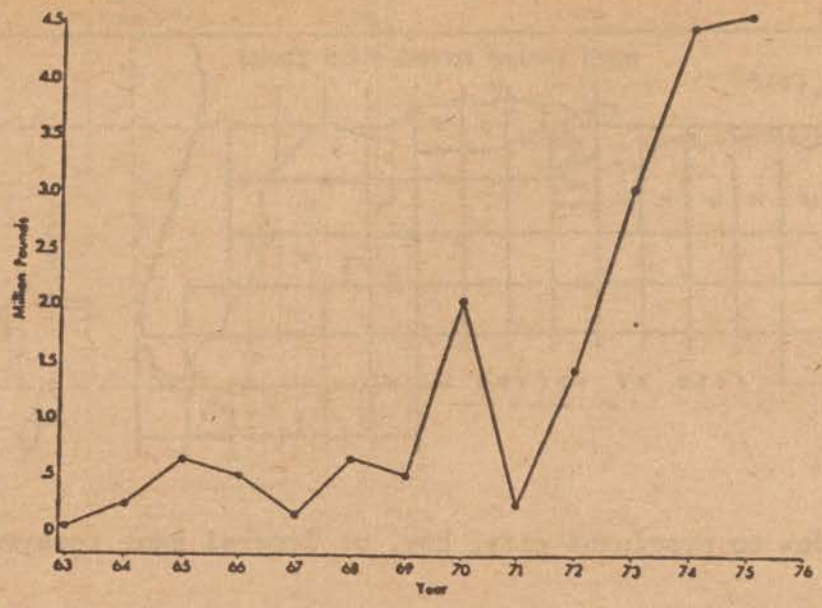


Figure 3.2-1. Trends in annual reported commercial catch of brown, white, and pink shrimp from the US Gulf of Mexico (US Dept. Com., Gulf Coast Shrimp Data, 1963-1975). Weight is in pounds of tails.

Seabob Shrimp



Royal Red Shrimp

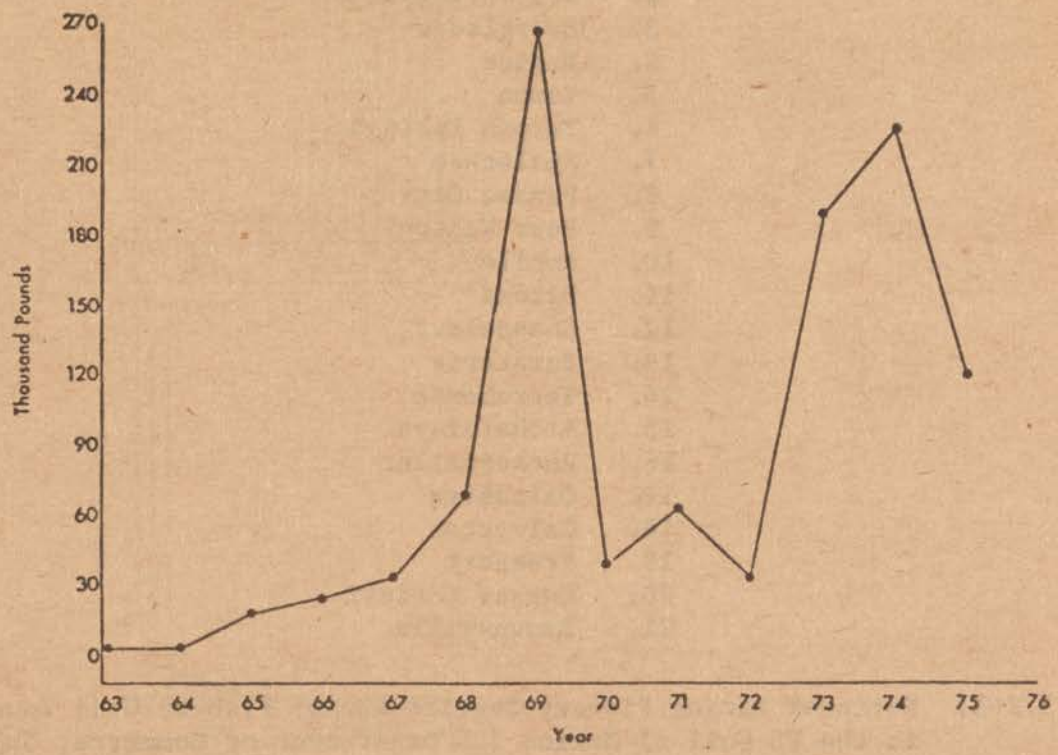
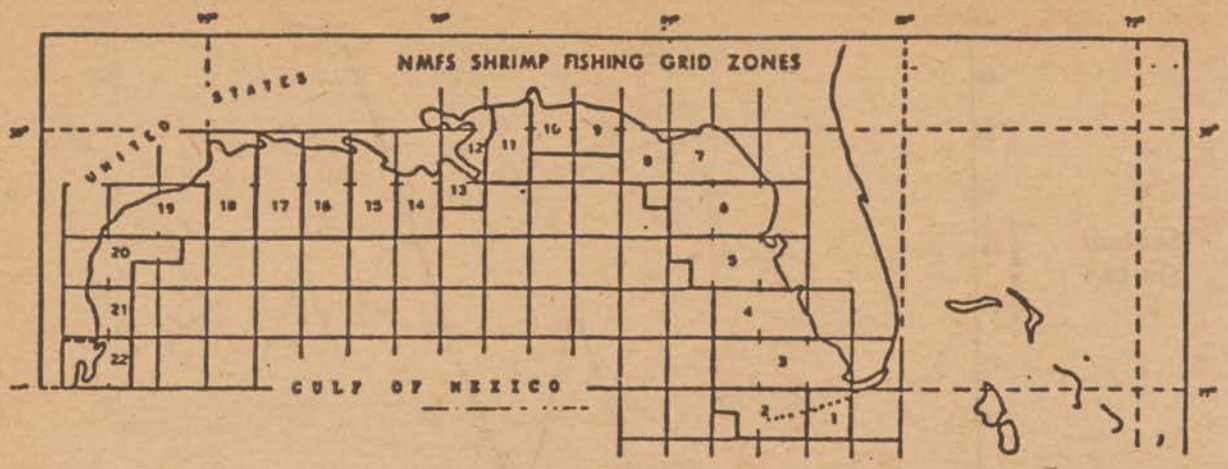


Figure 3.2-2. Trends in annual reported commercial catch of seabob and royal red shrimp from the US Gulf of Mexico (US Dept. Com., Gulf Coast Shrimp Data, 1963-1975). Weight is in pounds of tails.



Area code index to prominant city, bay, or federal game reserve associated with the area:

1. Key West
2. Dry Tortugas
3. Everglades
4. Naples
5. Tampa
6. Tarpon Springs
7. Apalachee
8. Panama City
9. Fort Walton
10. Mobile
11. Biloxi
12. Chandeleur
13. Barataria
14. Terrebonne
15. Atchafalaya
16. Rockerfeller
17. Calcasieu
18. Galveston
19. Freeport
20. Corpus Christi
21. Brownsville

Figure 3.2-3. National Marine Fishery Service Shrimp Fishery Grid Zones in the US Gulf of Mexico (US Department of Commerce, Gulf Coast Shrimp Data, 1959-1975).

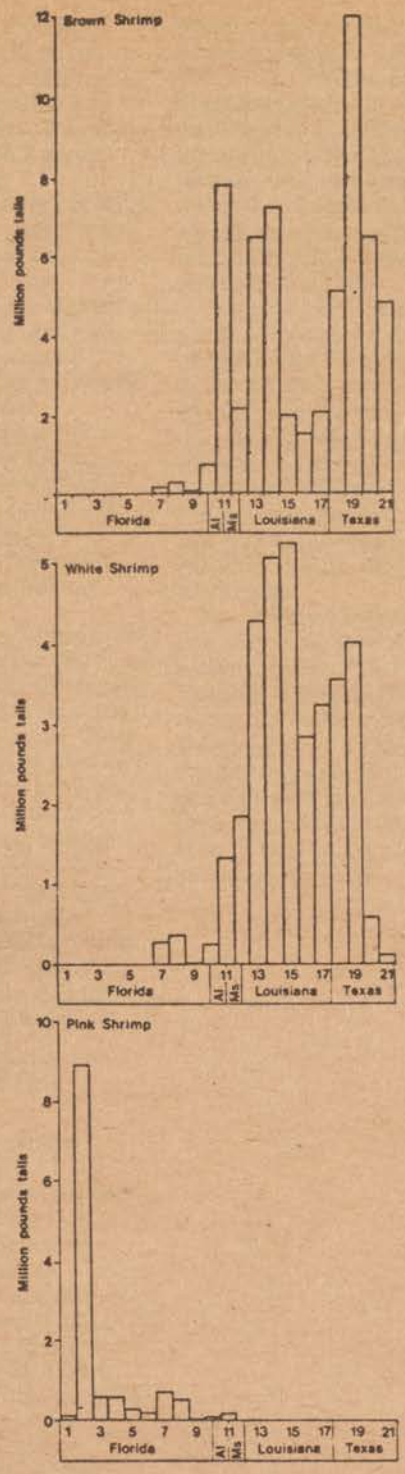
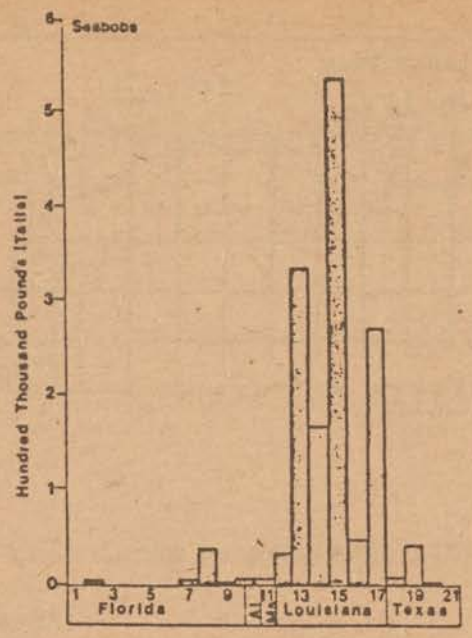
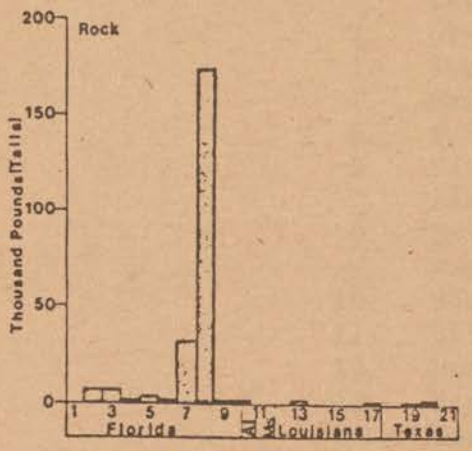


Figure 3.2-4. Average reported commercial catch of brown, white, and pink shrimp along the US Gulf Coast (US Dept. Com., Gulf Coast Shrimp Data, 1959-1975). Catch is represented as averages reported for the 21 NMFS statistical reporting zones along the US Gulf Coast (Fig. 3.2-3).





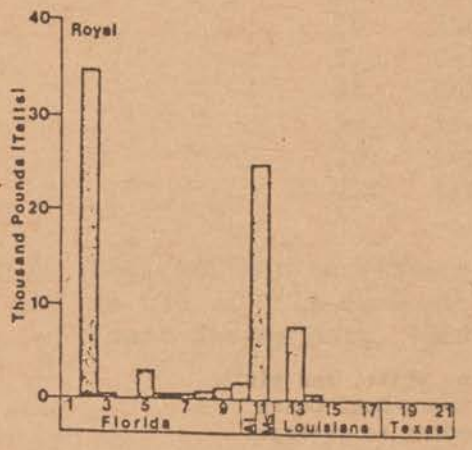


Figure 3.2-5. Average reported commercial catch of seabob (1963-1975), rock (1971-1975), and royal red shrimp (1963-1975) along the US Gulf Coast (US Dept. Com., Gulf Coast Shrimp Data, 1963-1975). Averages are for the 21 NMFS statistical reporting zones (Fig. 3.2-3).

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Brown and white shrimp exhibit a similar broad peak in catch from the Apalachee to Brownsville areas. Pink shrimp catch is substantial in the Key West to Apalachee Bay areas. There is little overlap of dominant pink areas with brown or white shrimp.

Brown shrimp catch normally exceeds two million pounds of tails annually in each of the NMFS grid areas in the Biloxi to Brownsville areas. The Freeport area normally has the largest catch, averaging 12 million pounds of tails annually. White shrimp catch normally exceeds four million pounds of tails annually in the Barataria, Terrebonne, and Atchafalaya areas. Catches from the Rockefeller through Freeport areas are also normally high, averaging above 2.5 million pounds of tails annually. Pink shrimp harvest is concentrated in the Dry Tortugas area with an annual catch of nine million pounds of tails.

There are two main areas for the royal red shrimp catch. One is off the Dry Tortugas area; the other is off the mouth of the Mississippi River and is reported for the Biloxi and Barataria areas. Catch is highest from January through June and in September and occurs at depths of 100 to 300 fathoms. Seabob catch is normally highest in waters associated with the Louisiana coast, peak catch normally occurring in the Atchafalaya area at 0.5 million pounds annually. Rock shrimp catch (1971–1975) is mainly limited to waters associated with Florida. Annual catch is highest in the Panama City and Apalachee areas.

Month, Depth, and Size Patterns in Catch of Brown, White, and Pink Shrimp

Brown and white shrimp exhibit distinct annual cycles in their abundance and size at different depths in the shrimping grounds of the U.S. Gulf. Although pink shrimp have an expected size-depth relationship (Section 4.1), their seasonal and size patterns in reported commercial catch are not as dramatic as those of brown and white shrimp; pink shrimp have a more or less continual recruitment in the Dry Tortugas area and Florida has practiced areal closures to protect undersized pink shrimp. Pink shrimp catch (Fig. 3.2–8) exhibits a peak from October through May at 11 to 15 fathoms. Seasonal patterns in size or depth of catch are not pronounced because of the fairly continual recruitment of pink shrimp in the Dry Tortugas area and closure of the Tortugas shrimp bed by Florida to protect undersized shrimp.

As shown in Fig. 3.2–6, the fishery on 0-year class brown shrimp normally starts in inland waters in May on shrimp of a count greater than 67 tails to the pound. The inshore catch peaks in June at an average catch of 6.6 million pounds of tails. Although it consists mainly of smaller size shrimp, this inshore catch is popular among recreational and small boat commercial shrimpers whose gear does not normnally allow them to fish the open waters of the Gulf.

The offshore fishery for brown shrimp peaks in July and August at depths of 11 to 20 fathoms. The dominant size class in the reported commercial catch is 31 to 40 tails to the pound. The actual average size shrimp caught may be much smaller since a considerable number of undersized shrimp are discarded off the Texas coast (Baxter, 1973; Sections 4.7 and 8.3) and the primary brown shrimp catch during this time also occurs off the Texas coast.

The September brown shrimp catch is dominated by 26 to 30 tails-to-the-pound shrimp at 16 to 20 fathoms. The catch becomes further restricted to deeper waters and larger shrimp in October to December. The January to April pattern is relatively constant, with greatest catch in open Gulf waters of 21 to 40 fathoms and of shrimp of a count less than 21 tails to the pound.

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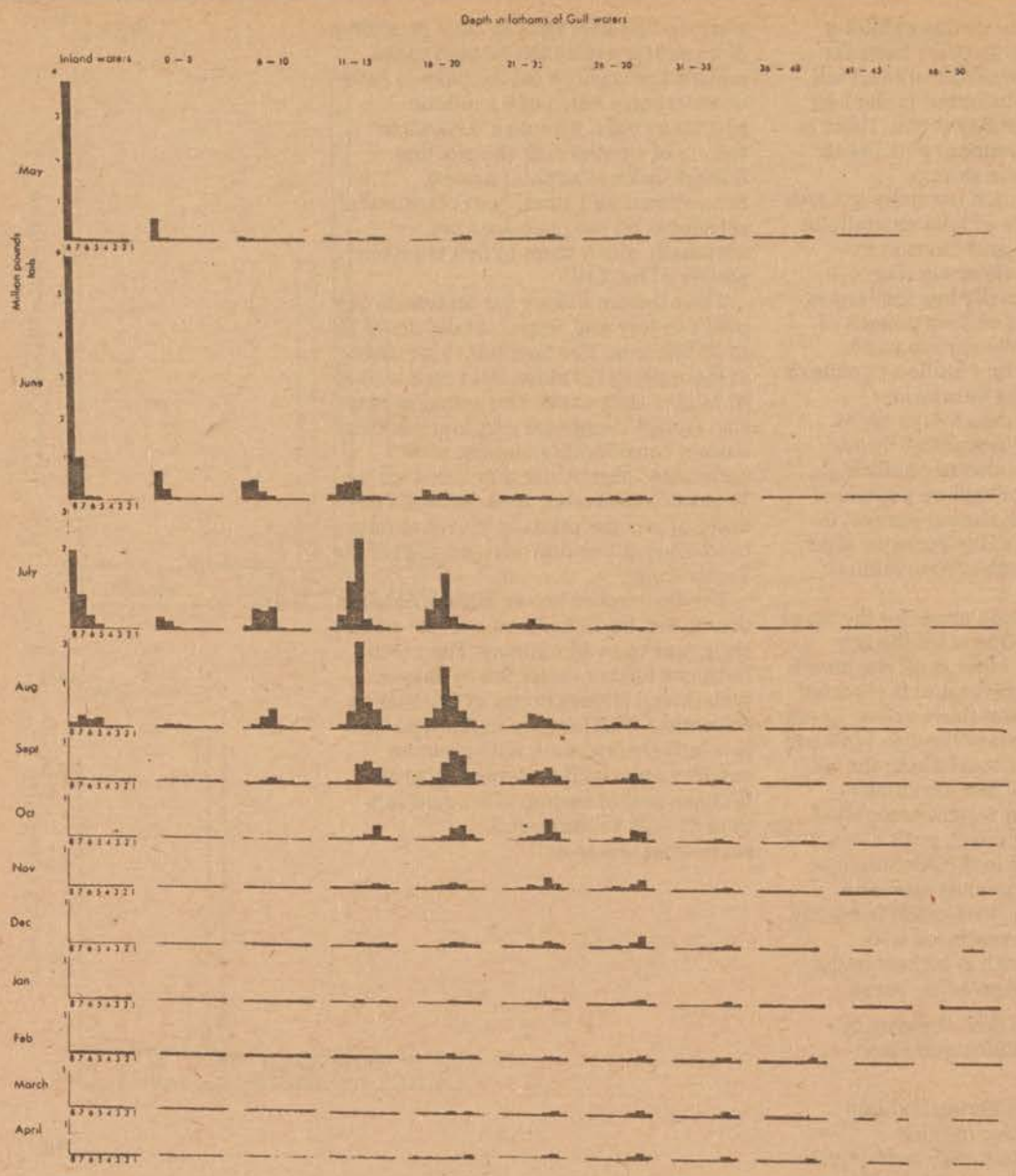

Figure 3.2-6. Brown shrimp average catch in the US Gulf by size, class, depth, month (US Dept. Com., Gulf Coast Shrimp Data, 1959-1975). Code to size of shrimp: 1 = under 15 tails per pound; 2 = 15-20 tails per pound; 3 = 21-25 tails per pound; 4 = 26-30 tails per pound; 5 = 31-40 tails per pound; 6 = 41-50 tails per pound; 7 = 51-67 tails per pound; 8 = 68 and over tails per pound.

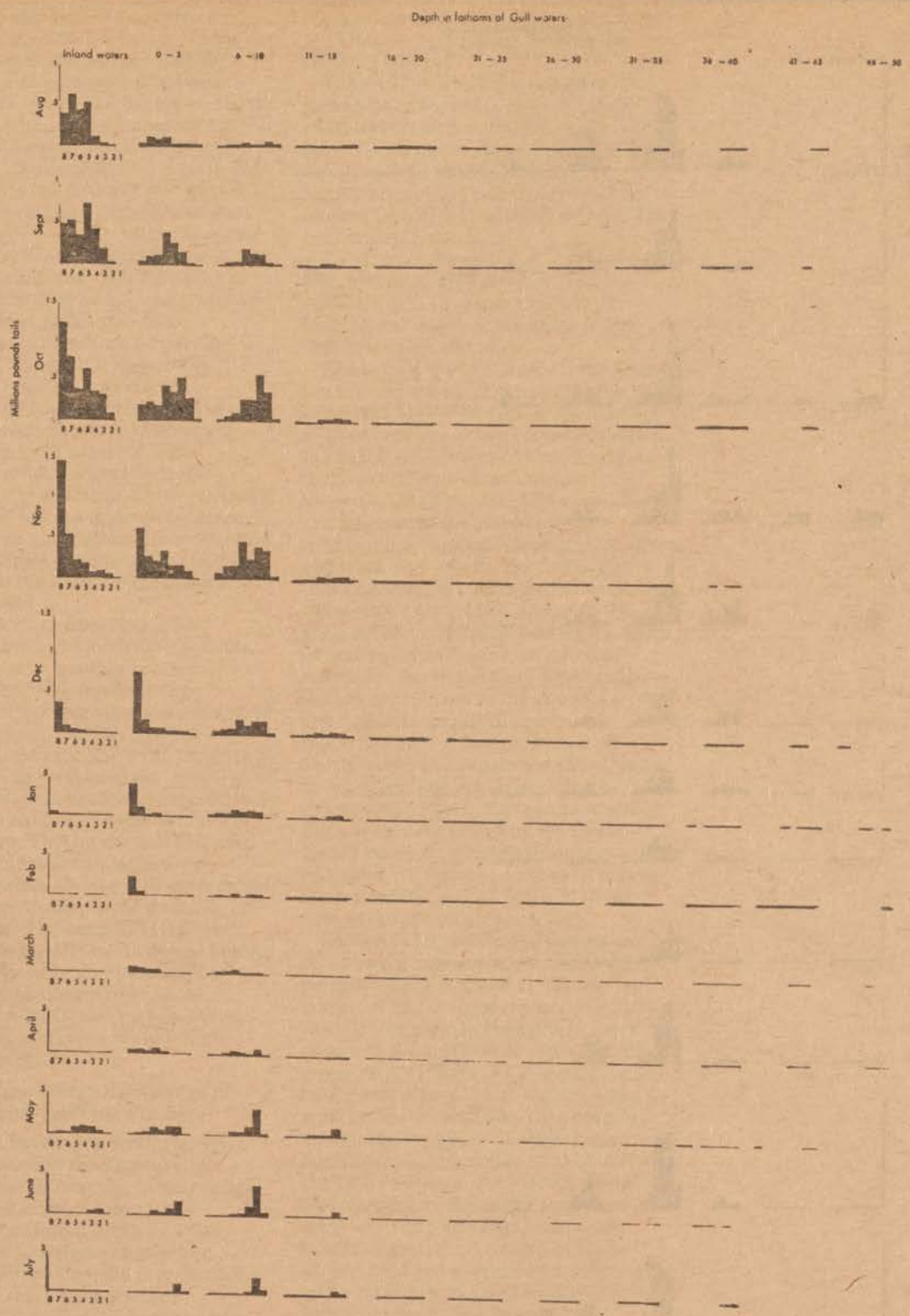

Figure 3.2-7. White shrimp average catch in the US Gulf by size, class, depth, month (US Dept. Com., Gulf Coast Shrimp Data, 1959-1975). Code to size of shrimp: 1 = under 15 tails per pound; 2 = 15-20 tails per pound; 3 = 21-25 tails per pound; 4 = 26-30 tails per pound; 5 = 31-40 tails per pound; 6 = 41-50 tails per pound; 7 = 51-67 tails per pound; 8 = 68 and over tails per pound.

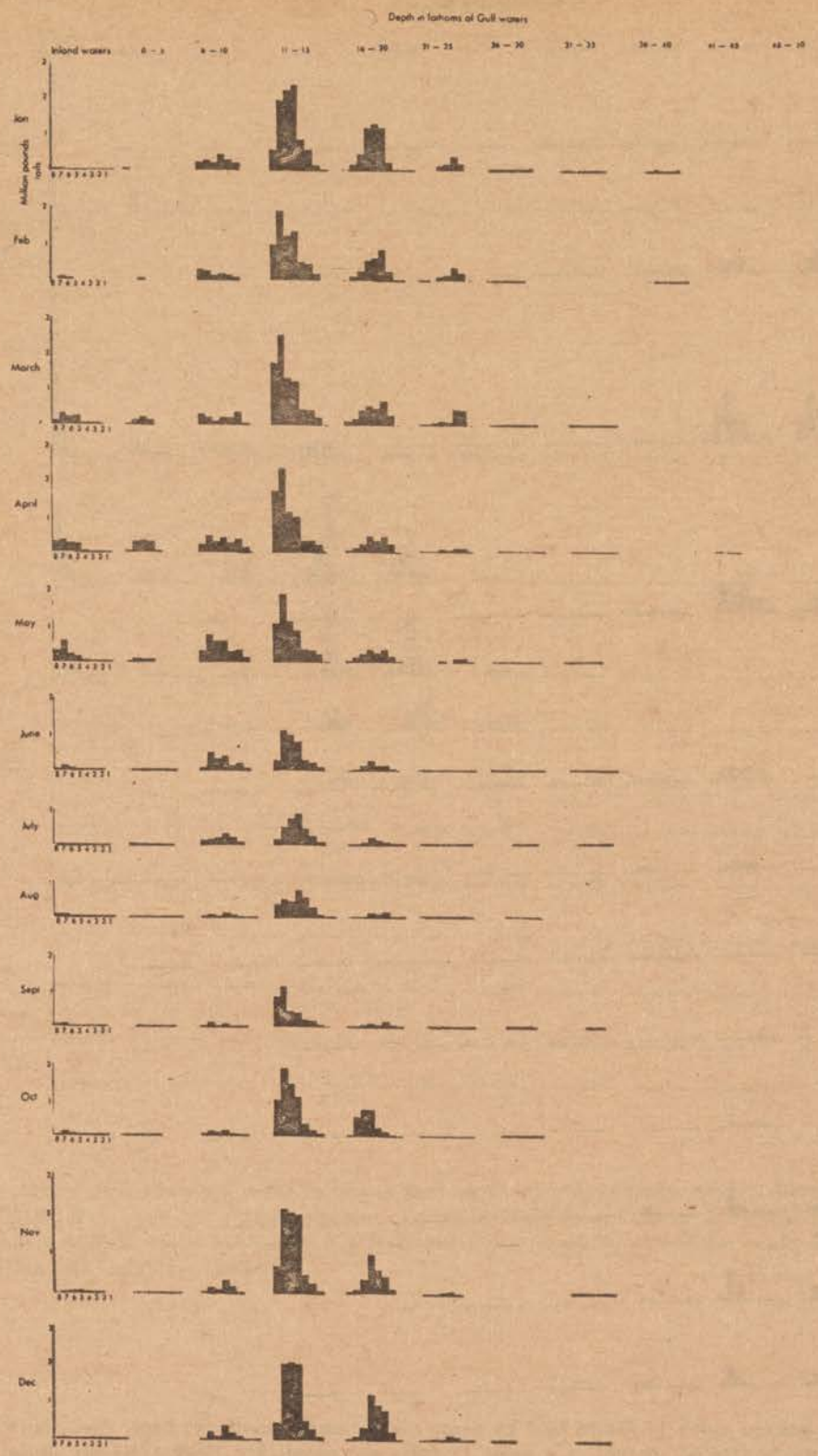

Figure 3.2-8. Pink shrimp average catch in the US Gulf by size, class, depth, month (US Dept. Com., Gulf Coast Shrimp Data, 1959-1975). Code to size of shrimp: 1 = under 15 tails per pound; 2 = 15-20 tails per pound; 3 = 21-25 tails per pound; 4 = 26-30 tails per pound; 5 = 31-40 tails per pound; 6 = 41-50 tails per pound; 7 = 51-67 tails per pound; 8 = 68 and over tails per pound.

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The size-depth-month patterns in white shrimp catch are not as simple as those of brown shrimp, but they do reflect the annual nature of the white shrimp's life cycle. The fishery on the 0-year class white shrimp, spawned in the spring and summer, essentially begins in August and September (Fig. 3. 2–7). The white shrimp catch in internal waters contains much larger size shrimp than does the brown shrimp catch. This size difference reflects the rapid growth rate of white shrimp and their tendency to leave the estuaries at a larger size than brown shrimp. Catch remains comparatively high from August to November, though it it essentially limited to water shoreward of 11 fathoms. The comparative increase in shrimp catch in the 68 tails and over count group in October through December reflects a decline in the growth rate of white shrimp as well as a migration of shrimp to deeper waters. Both of these phenomena are associated with cold fronts advancing during these months and the accompanying decline in temperature.

Catch declines from December through February. The decline reflects, in part, adverse weather conditions for shrimping but also the dwindling supplies and comparatively small size of white shrimp during this period.

In March through June with the spring warming of the estuaries and shallow Gulf, the overwintered white shrimp are believed to exhibit an increase in their growth rates. This increase is reflected in the commercial catch: peak size classes of white shrimp shift from those greater than 67 tails to the pound to 31 to 40 tails to the pound in March to shrimp 15 to 20 tails to the pound in June and July. The May and June inshore catch of white shrimp reflects the reentry of overwintering white shrimp into the estuaries for a period of pre-spawning growth.

Catch by Size, State, and Species for Brown, White, and Pink Shrimp

Different harvesting strategies have developed among the several Gulf States. These differences largely relate to the evolution of the dominant fisheries at different times (Section 3.2.1.2). The Louisiana-Mississippi fishery developed comparatively early on inshore and nearshore Gulf concentrations of white, brown, and seabob shrimp. The brown shrimp fishery in Texas and the pink shrimp fishery in Florida developed in the 1950's on offshore concentrations of shrimp in comparatively deep water. In large part local management still reflects the needs of the historical fisheries in these areas for shrimp of certain sizes or of their gear restrictions limiting the depth of harvest.

Tables 3.2–1 and 3.2–2 compare estimates of the average commercial (1963–1976) catch of brown, white, and pink shrimp in the various reported size categories in terms of pounds and estimated number (see Table 3.2–2 for method in which number of shrimp were estimated).

Catch from the states of Mississippi and Alabama were combined due to similarities in the minimum size of harvest and overlapping areas in the reported catch statistics.

The brown shrimp catch off the Texas coast accounts for 46 percent of the total poundage and 25 percent of the number of brown shrimp caught commercially in the U.S. Gulf of Mexico. Conversely, the catch associated with Louisiana accounts for 40 percent of the poundage and 64 percent of the number of commercially caught brown shrimp. The apparent discrepancy lies in the fact that Louisiana is estimated to harvest a tremendous number of shrimp in the smallest commercial size category, some 54 percent of average total catch of brown shrimp in the Gulf. Much of these shrimp are utilized in the Louisiana canning industry. Conversely, the reported catch of brown shrimp off Texas peaks at a larger size, 31–40 tails to the pound shrimp. There are no shrimp canneries in Texas and much of this product is utilized by the fresh-frozen industry. The Mississippi-Alabama and Florida catches of brown shrimp exhibit a peak catch at 51–67 tails to the pound size category.

Louisiana has by far the largest catch of white shrimp, accounting for some 82 percent by number and 77 percent by weight of the average reported catch. As with brown shrimp, the peak in catch occurs in the smallest commercial size group, though there is a comparatively better mix of larger size shrimp than with brown shrimp. The Texas white shrimp catch peaks at a size similar to the brown shrimp catch, or 31–40 tails to the pound. Though the Florida white shrimp catch peaks at the same size class as its brown shrimp catch, the Mississippi-Alabama catch of white shrimp peaks at a larger size, 15–20 tails to the pound in terms of weight, and 31–40 tails to the pound in terms of numbers.

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Table 3.2-1. Average weight of brown, white, and pink shrimp by size and state[1] in thousand pounds of tails (US Dept. of Comm., 1963-1975).

Shrimp	State	Size (Tails per Pound) 68 & over	51-67	41-50	31-40	26-30	21-25	15-20	Under 15	Total
Brown	FLA	37	84	50	64	18	4	2	---	259
	ALA-MISS	1724	2223	1288	1513	784	674	467	73	8746
	LA	13598	2612	1625	2636	1256	1550	1974	520	25771
	TX	1323	2287	3398	8726	4426	5234	3506	483	29383
	GULF	16682	7206	6361	12939	6484	7462	5949	1076	64159
White	FLA	189	154	81	104	64	34	22	1	649
	ALA-MISS	74	133	164	260	220	345	379	31	1606
	LA	7220	3646	2187	3780	2212	2640	2593	516	24794
	TX	519	587	490	1212	773	793	679	135	5188
	GULF	8002	4520	2922	5356	3269	3812	3673	683	32237
Pink	FLA	1135	3199	2164	2786	1411	1245	547	27	12514
	ALA-MISS	16	79	61	46	23	16	5	1	247
	LA	1	3	3	3	1	1	---	---	12
	TX	---	---	---	3	1	1	1	---	6
	GULF	1152	3281	2228	2838	1436	1263	553	28	12779
Species Combined	GULF	25836	15007	11511	21133	11189	12537	10175	1787	109175

[1] Florida = statistical area 1-9. ALA-MISS = statistical area 10-11. Louisiana = statistical area 12-17. Texas = statistical area 18-21. See Fig. 3.2-3 for location of statistical areas.

Table 3.2-2. Estimated average number[1] of brown, white, and pink shrimp by size and state[2] in thousands of shrimp (US Dept. of Comm., 1963-1975).

Shrimp	State	Size (Tails per Pound) 68 & over	51-67	41-50	31-40	26-30	21-25	15-20	Under 15	Total
Brown	FLA	2536	4954	2253	2270	513	99	31	---	12656
	ALA-MISS	151742	131134	58618	53699	21942	15513	8174	912	441734
	LA	2189355	154116	73920	93597	35159	35640	34554	6496	2622837
	TX	89949	134949	154594	309764	123920	120393	61364	6043	1000976
	GULF	2433582	425153	289385	459330	181534	171645	104123	13451	4078203
White	FLA	12848	9089	3669	3709	1782	789	384	8	32278
	ALA-MISS	6341	7834	7461	9236	6148	7939	6636	389	51984
	LA	620918	215132	99528	134204	61933	60721	45371	6446	1244253
	TX	35298	34634	22283	43020	21638	18240	11886	1690	188689
	GULF	675405	266689	132941	190169	91501	87689	64277	8533	1517204
Pink	FLA	77200	188731	98487	98920	39497	28645	9570	343	541393
	ALA-MISS	1392	4658	2765	1628	640	371	90	11	11555
	LA	241	197	122	122	31	14	7	---	734
	TX	1	18	23	115	29	19	18	1	224
	GULF	78834	193604	101397	100785	40197	29049	9685	355	553906
Species Combined	GULF	3187821	885446	523723	750284	313232	288383	178085	22339	6149313

[1] The number of shrimp caught in each size category was estimated in the following manner:

If size equals	Then number equals pounds times
Under 15	12.5
15-20	17.5
21-25	23
26-30	28
31-40	35.5
41-50	45.5
51-67	59
68 and over in Fla or Tx	68
68 and over brown or pink shrimp Miss-Ala	88
68 and over brown or pink shrimp in La	161
68 and over white shrimp in La or Miss-Ala	86

[2] Florida = statistical area 1-9. ALA-MISS = statistical area 10-11. Louisiana = statistical area 12-17. Texas = statistical area 18-21. See Fig. 3.2-3 for location of statistical area.

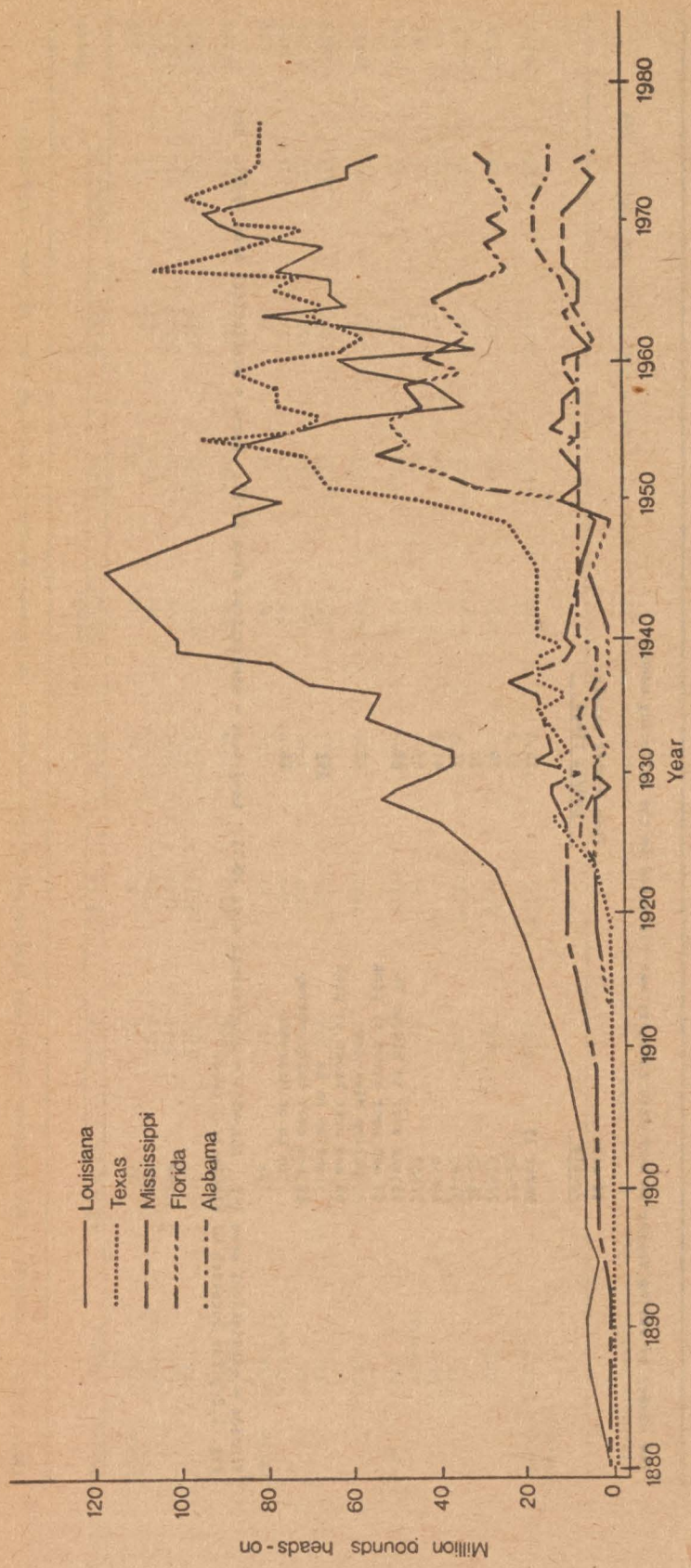

Figure 3.2-9. Annual trends in reported commercial landings of shrimp (heads-on) by Gulf state (US Dept. Com., 1880-1975). Note that landings data are for heads-on shrimp off-loaded within a state regardless of where they were caught. This graph is not directly comparable with catch data used in this report.

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Florida accounts for 98 percent of the pounds and numbers of pink shrimp caught in the reported commercial fishery of the U.S. Gulf of Mexico. Pounds and numbers both peak at a size of 51–67 tails to the pound.

Calliouet, et al. (in press) has noted a shift in harvest over the 1963 to 1976 period to smaller shrimp in both the Louisiana and Texas reported catch. Basic data on growth and mortality (Section 4.1) indicate a decrease in total yield in weight is expected with this shift in catch to smaller shrimp.

3.2.1.3.2 Landing Trends by State

Catch trends by species are not available before 1957. In order to provide some historical overview, Fig. 3.2–9 shows reported landings by state from 1880 to 1975. These landings data are not comparable to the catch data used in this report because they are pounds of heads-on shrimp (instead of tails) and are for shrimp landed in a state regardless of where they were caught—including foreign countries. Further, there is considerable debate as to whether the data were collected consistently over the long time span. Regardless of these questions, however, the data reflect important historical trends.

Before about 1920, Louisiana and Mississippi were the dominant shrimp producing states in the Gulf. Between 1920 and 1948 the fisheries off Texas and Alabama began to rival that of Mississippi. At the same time, Louisiana's landings far exceeded any of the other states. During these early years the fishery was mainly an inshore and shallow water fishery predominantly of white shrimp, with minor catches of seabob and brown shrimp used mainly as dried shrimp. After World War II, the fishery began to expand. Sudden increases of landings in Texas and Florida were due to the discovery of concentrations of offshore populations of brown and pink shrimp, respectively, and the successful development of markets for these species. The gradual decline in landings from Florida (west coast) after 1954 may reflect a change in landings patterns of shrimp caught in Central and South America. The dramatic decline in landings in Lousiana from 1945 to about 1961 may reflect a salinity-induced shift in estuarine production of the state from predominantly white shrimp to a mixture of brown and white shrimp. However, data are insufficient to support this hypothesis. The patterns from 1960 to 1975 reflect the mature nature of the fishery.

3.2.1.4 Description of Vessels and Gears Employed

Early Gulf coast shrimp trawlers were generally shallow-draft open skiffs ranging in length from 15 to 25 feet and powered by inboard gasoline engines. These early designs were gradually replaced in the 1920's by trawlers constructed with decks and pilot houses (Christmas and Etzold, 1977). The introduction of the diesel engine in the 1930's was considered a major advancement over gasoline engines in terms of safety, reliability, and reduced maintenance. The limited holding facilities and range of these early trawlers confined shrimping operations to areas relatively near the major shrimping ports. As a result, many coastal areas of the Gulf were inaccessible to the small trawlers (Johnson and Lindner, 1934, cited in Christmas and Etzold, 1977).

Until the late 1940's commercial shrimp landings in the Gulf of Mexico consisted primarily of white shrimp (Idyll, 1963). By the early 1950's, however, increasing quantities of brown and pink shrimp were being caught and sold in response to a growing public acceptance of these unfamiliarly pigmented species (Idyll, 1963). The strong demand for shrimp and the opening of new fishing grounds off Florida, Alabama, Texas, and Mexico initiated a period of rapid growth in the size of the shrimp fleet. The expansion of offshore fishing grounds dictated the need for larger vessels with greater horsepower capable of remaining at sea for extended periods. Innovations in design and construction, such as steel hulls and onboard freezer units, were incorporated into the newer offshore trawlers of the late 1940's (Christmas and Etzold, 1977).

Captiva (1966) stated that the modern trends in the design and construction of shrimp trawlers were: (1) the increasing use of all-welded steel construction instead of wood; (2) more powerful engines; (3) onboard installation of sorting, packaging, and freezing equipment; (4) more comfortable crew accommodations; (5) development of multipurpose vessels which may be rapidly rerigged with a variety of fishing gears; (6) modern hydraulic equipment; (7) increased use of modern electronic equipment; and (8) increased use of newer hull materials such as aluminum and fiberglass-reinforced plastics.

The shrimp boat design most commonly seen in the offshore waters of the Gulf of Mexico is believed to be a derivation of Greek designs used in the sponge fishery on the Florida west coast (Idyll, 1963). The "Florida-type" vessels are characterized by the forward placement of the wheelhouse and engine room. Current construction trends are toward larger offshore Florida-type vessels ranging from 75 to 80 feet or more in length (Christmas and Etzold, 1977).

The "Biloxi-type" vessel design, with the wheelhouse and engine room aft, is used primarily for shrimping in the inshore waters of the Gulf region (Idyll, 1963). These vessels range from 30 to 45 feet in length and are less common than the Florida-type designs (Idyll, 1963).

The boats used in inshore shrimp fisheries are made of wood or fiberglass and range in length from 16 to 50 feet. Most of the boats use gasoline-powered inboard or outboard motors for propulsion, and some may be equipped with powered winches to retrieve nets. The smaller boats are rigged in a variety of ways and are primarily confined to sheltered inshore waters. The larger boats may occasionally fish offshore if weather conditions are suitable. The "mosquito" fleet of Louisiana is made up of numerous small boats, generally operated by one person, that shrimp commercially in the inshore bays and marshes. These boats are typically shallow-draft, open skiffs.

Deep-water trawling for royal red shrimp in the Mississippi and Tortugas grounds has been steadily increasing in the past few years. Royal reds are fished by wood, steel, and aluminum vessels ranging in length from 56 to 86 feet. Most of the vessels are double-rigged and are capable of shrimping both the shallow and deep water of the Gulf. Smaller vessels and boats usually do not have the winch capacity or sufficient stability in rough seas to fish for royal reds (Klima and Ford, 1970).

Although the otter trawl is the most common of the gears used in the Gulf shrimp fisheries, other kinds of gear are also used. The star trawl was developed for shallow-water shrimping in the Gulf of Mexico (Marinovich and Whiteleather, 1968, cited in Klima and Ford, 1970). Sideframe trawls, used almost exclusively to harvest bait shrimp on the Florida west coast from Cedar Key to Naples (Woodburn, et al., 1957; Saloman, 1965), are virtually unknown in the other Gulf states. Researchers are conducting experiments with the electric trawl, beam trawl, separator trawl, and excluder panels. Other gear types used by both commercial and recreational shrimp fishermen include haul seines, cast nets, channel nets, wing nets, and push nets.

The haul seine was the primary gear used to harest shrimp until the introduction of the otter trawl in Beaufort, North Carolina, between 1912

and 1917 (Christmas and Etzold, 1977). Tulian (1920) reports that the otter trawl was introduced into the Louisiana shrimp fisheries in 1917. The use of the otter trawl spread rapidly among shrimp fishermen in Louisiana because of the increase in catch per man-hour possible over haul seines.

An otter trawl consists of a a heavy mesh bag with wings on each side designed to funnel the shrimp into the codend or tail. A pair of otter boards or trawl doors positioned at the end of each wing hold the mouth of the net open by exerting a downward and outward force at towing speed.

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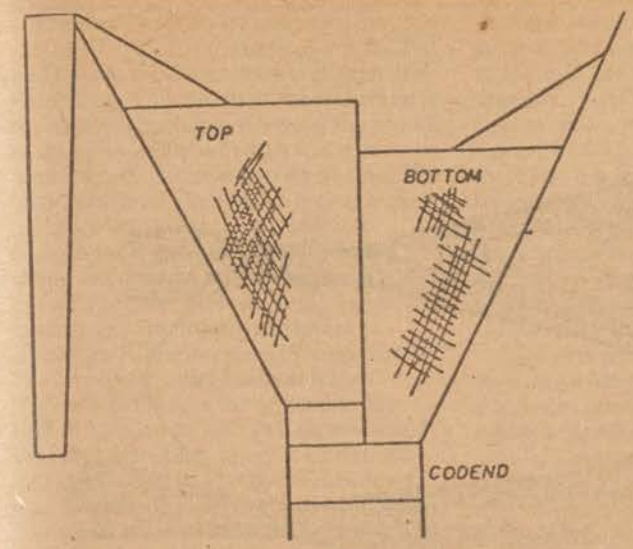
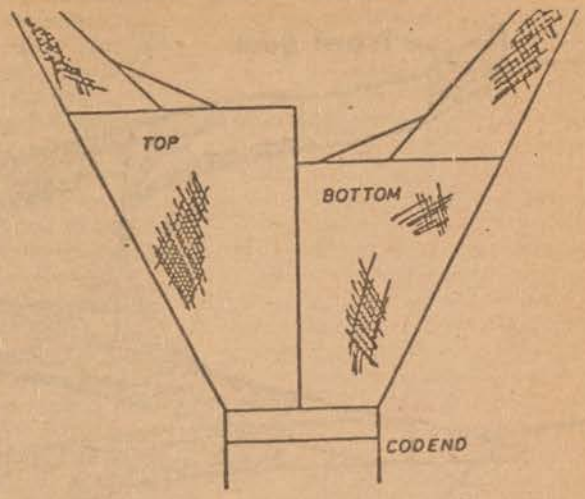
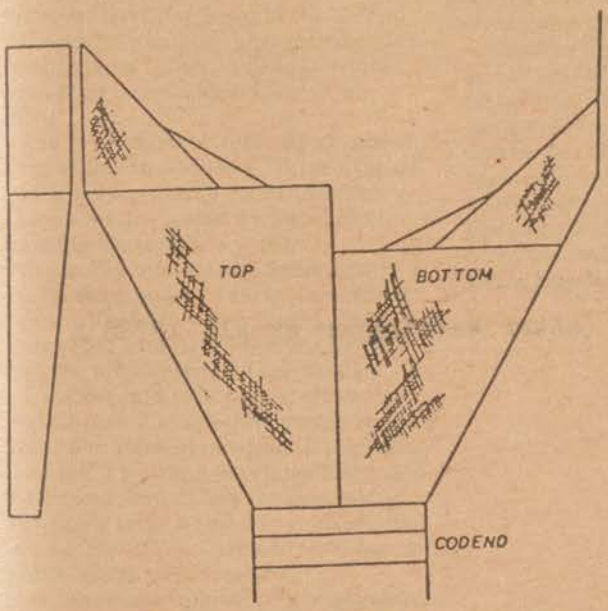


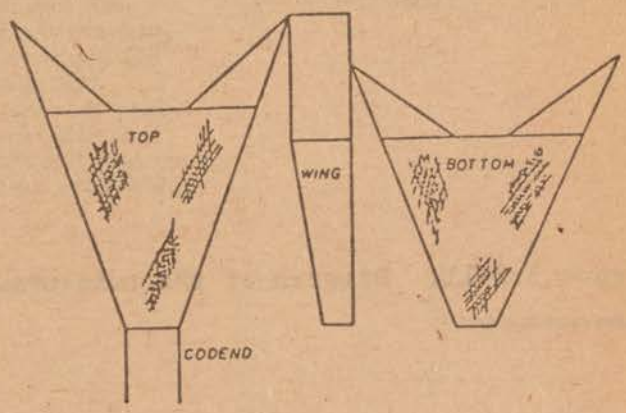
Gulf flat net



Two-seam semi-balloon trawl



Gulf four-seam semi-balloon trawl



Star net

Figure 3.2-10. Diagrams of the four basic designs of otter trawls used by the Gulf of Mexico shrimp fleet (after Christmas and Etzold 1977).

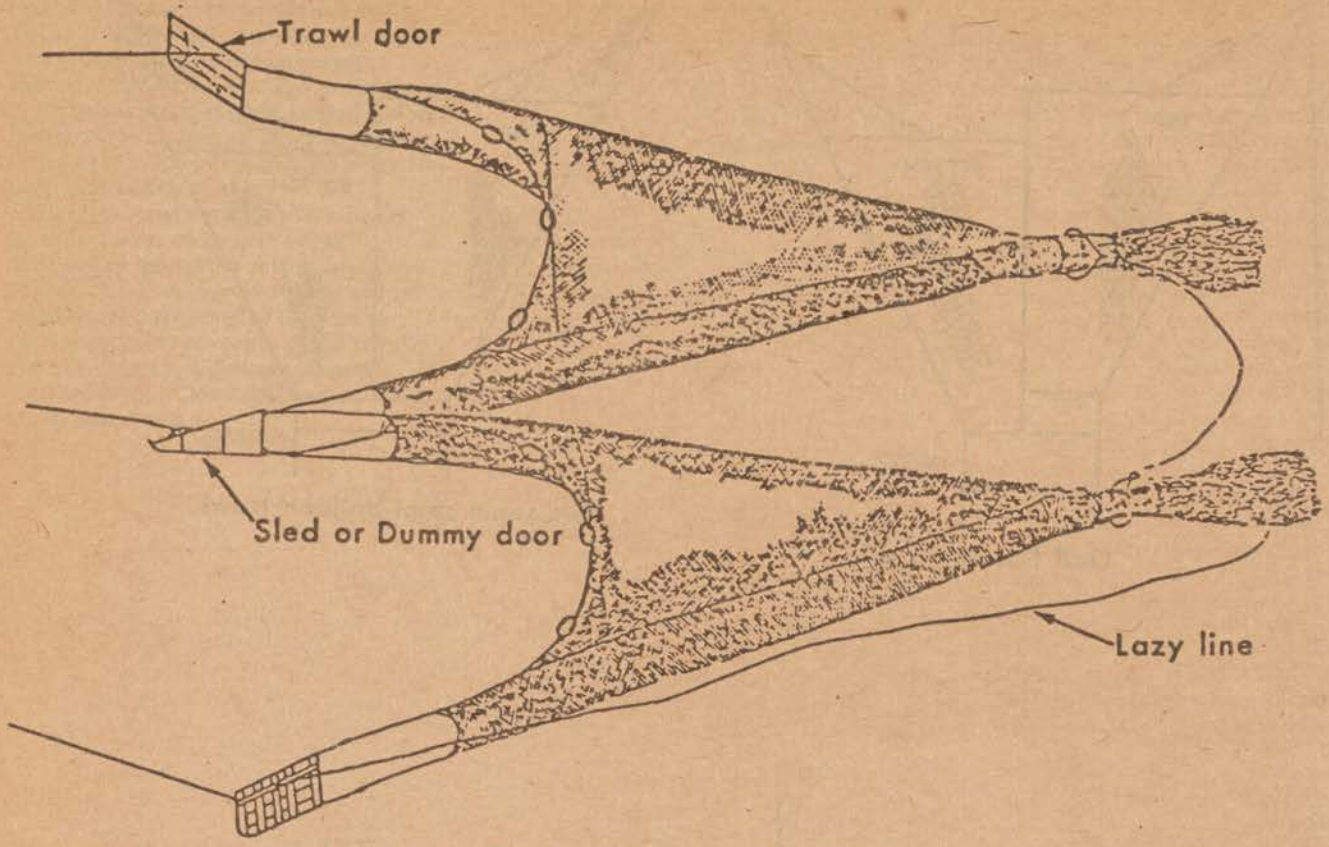


Figure 3.2-11. Diagram of the twin-trawl rig (after Harrington et al. 1972).

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The two basic otter trawl designs used by the Gulf shrimp fleet are the flat and the semi-balloon trawls (Klima and Ford 1970). The mouth of the flat trawl is rectangular in shape, whereas the mouth of the semi-balloon design forms a pronounced arch when in operation. The basic design of each trawl type is shown in Figure 3.2–10. The semi-balloon designs tend to maintain an efficient shape under repeated towing strains; flat nets require periodic rerigging and rehanging to maintain maximum efficiency (Christmas and Etzold, 1977). The two-seam semi-balloon trawl (Figure 3.2–10) was introduced in the Gulf of Mexico in 1947 (Marinovich and Whiteleather, 1968, cited in Christmas and Etzold, 1977). The two-seam design was followed by the development of the four-seam semi-balloon trawl, which has "a shorter jib with wings on either side between the top and bottom bellies," whereas the "top and bottom bellies were joined directly together" in the two-seam design (Christmas and Etzold, 1977). The four-seam trawl maintains an efficient shape under towing strains and therefore creates less resistance in the water than the two-seam trawl.

About 90 percent of the fishermen in the royal red fishery use 55- to 75-foot flat otter trawls, and the remainder use semi-balloon trawls ranging in width from 45 to 60 feet (Klima and Ford, 1970).

Try nets are small otter trawls about 12 to 15 feet in width which are used to test areas for shrimp concentrations. These nets are towed during regular trawling operations and lifted periodically to allow the fishermen to assess the amount of shrimp and other fish and shellfish being caught. These amounts in turn determine the length of time the large trawls will remain set.

Until the late 1950's, most shrimp vessels pulled single otter trawls ranging from 80 to 100 feet in width (Idyll, 1963). Double-rig trawling was introduced into the shrimp fleet during the late 1950's. The single large trawl was replaced by two smaller trawls, each 40 to 50 feet in width, which were towed simultaneously from stoutly constructed outriggers located on the port and starboard sides of the vessels. The port trawl was towed about 150 feet in back of the starboard trawl to prevent fouling. The advantages of double-rig trawling are (1) increased catch per unit of effort, (2) fewer handling problems with the small nets, (3) lower initial gear costs, (4) a reduction in costs associated with damage or loss of the nets, and (5) greater crew safety (Idyll, 1963).

The haul seine consists of a large rectangular panel of webbing ranging up to 1,000 feet in length and 20 feet in depth. It was mainly used before 1917. At that time mesh size ranged from 0.5- to 1.5-inch bar and a large crew was required to set and fish the net. Typically, a corkline buoyed the top of the net and a leadline was attached to the bottom edge. Haul seines were frequently constructed with bags or pockets where the captured shrimp were forced to congregate. Although the haul seine is no longer used to harvest commercial quantities of shrimp, it is still licensed in some states.

Cast nets are used mostly by sportsmen along tidal creeks, bayous, and weirs where shrimp congregate seasonally. Cast nets are circular, usually ranging from 6 to 12 feet in diameter, with a leadline sewn around the periphery of the net. A cord line passes through a metal or plastic thimble in the center of the net and radiates out to several smaller cords which are attached at even intervals to the leadline. Cast nets are usually constructed of nylon webbing with a 0.25- to 0.75- inch mesh. The nets are thrown in a circular pattern and allowed to sink to the bottom. The cord line is pulled in, causing the leadline to be drawn to the center of the net where the shrimp are trapped.

Channel nets are stationary nets which resemble otter trawls and catch emigrating shrimp in narrow cuts and bayous in areas with large tidal amplitude. The mouth of the net is held open with anchors or poles instead of trawl doors. The contents of the net are periodically dumped into a small skiff or a box located onshore.

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Table 3.2-3. Estimates of Foreign Catch (in tails) of Shrimp (1971-1976) in Waters Now Considered as Within the US Fishery Conservation Zone of the Gulf of Mexico (Data from Charles Fuss, NMFS, personal communication 1978).

Bordering state	Year	Foreign country involved: Estimated catch			Total estimated foreign catch
		Cuba	Mexico	Panama	
		Pounds			
Florida	1971	57,440	0	0	57,440
	1972	10,240	0	0	10,240
	1973	20,480	0	0	20,480
	1974	75,000	0		75,000
	1975	135,000	105,000	0	240,000
	1976	0	0	0	0
6-year average		49,693	17,500		67,193
Texas	1971	0	2,783,300	0	2,783,300
	1972	0	83,820	0	83,820
	1973	1,710,000	0	0	1,710,000
	1974	1,110,000	90,000	0	1,200,000
	1975	1,665,000	225,000	0	1,890,000
	1976	722,750	0	126,000	848,750
6-year average		867,958	530,353	21,000	1,419,311

Table 3.2-4. Estimates of Monthly Foreign Effort and Catch Directed Toward Shrimp (1971-1976) in Waters Now Considered as Within the US Fishery Conservation Zone of the Gulf of Mexico (Data from Charles Fuss, NMFS, personal communication 1978). Weight is tail weight.

Bordering states	Year	Principal fishing months	Estimated # vessels	Estimated fishing days per vessel	Estimated number of vessel days	Estimated catch per vessel day	Estimated total catch (pounds)
		Mexico					
Florida	1971	--	--	--	--	--	--
	1972	--	--	--	--	--	--
	1973	--	--	--	--	--	--
	1974	--	--	--	--	--	--
	1975	July	7	30	210	500	105,000
	1976	--	--	--	--	--	--
Texas	1971	June	128	16	2,048	195	
		July	345	16	5,520	418	
		August	11	16	176	435	2,783,300
	1972	June	7	16	112	435	
		July	5	16	80	[439]	83,820
	1973	--	--	--	--	--	--
	1974	July	3	30	90	500	
		October	3	30	90	500	90,000
	1975	July	8	30	240	500	
		August	7	30	210	500	225,000
	1976	--	--	--	--	--	--
		Cuba					
Florida	1971	January	10	16	160	215	
		February	6	16	96	240	57,440
	1972	February	2	16	32	320	10,240
	1973	February	4	16	64	320	20,480
	1974	January	1	30	30	500	
		November	4	30	120	500	75,000
	1975	February	3	30	90	500	
		August	6	30	180	500	135,000
	1976	--	--	--	--	--	--
Texas	1971	September	7	2	14	--	--
	1972	--	--	--	--	--	--
	1973	April	3	30	90	500	
		May	5	30	150	500	
		June	15	30	450	500	
		July	59	30	1,770	500	
		August	32	30	960	500	1,710,000
	1974	April	3	30	90	500	
		May	10	30	300	500	
		June	16	30	480	500	
		July	35	30	1,050	500	
		August	10	30	300	500	1,110,000
	1975	June	25	30	750	500	
		July	46	30	1,380	500	
		August	40	30	1,200	500	1,665,000
	1976	June	25	25	625	350	
		July	31	25	775	350	
		August	19	25	[475]	350	[656,250]
		Panama					
Florida	1971	--	--	--	--	--	--
	1972	--	--	--	--	--	--
	1973	--	--	--	--	--	--
	1974	--	--	--	--	--	--
	1975	--	--	--	--	--	--
	1976	--	--	--	--	--	--
Texas	1971	--	--	--	--	--	--
	1972	--	--	--	--	--	--
	1973	--	--	--	--	--	--
	1974	--	--	--	--	--	--
	1975	--	--	--	--	--	--
	1976	January	1	30	30	350	
		September	5	60	300	350	
		October	1	30	30	350	126,000

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Butterfly or wing nets are bags constructed of nylon webbing which are hung on a rectangular frame and attached to the side of a boat. Boats equipped for "butterfly" shrimping anchor themselves heading into the current and lower the nets into the water perpendicular to the gunwales. The tidal currents are then allowed to sweep emigrating shrimp into the mouth of the net. The net can be checked without raising the frame by lifting the codend on board with a lazy line and emptying the contents into a sorting box. The net is than put overboard to resume fishing while the catch is sorted.

Push nets, which are occasionally used to catch shrimp is shallow-water areas of Florida and Texas, are small mesh bags hung on rectangular frames. The operation of a push net usually involves an individual wading and pushing the net before him in shallow water.

3.2.2 History of Foreign Exploitation

3.2.2.1—3.2.2.3 General Description of User Groups, Fishing Effort, Vessels and Gear Employed

Foreign shrimp fishing in the U.S. Gulf of Mexico has been virtually nonexistent in 1977–1978 (Charles Fuss, NMFS, personal communication, 1978) as a result of the passage of the FCMA. Prior to 1971, Mexican vessels had been shrimping in U.S. waters for many years; Cubans entered the fishery in 1971, and some Panamanian boats shrimped off Texas in 1976 (Table 3.2–3). Annual harvest for the years 1971–1976 from zero to 2.8 million pounds in tails off Texas and zero to 135,000 pounds in tails off Florida. Mexican harvest off Texas ranged from zero to 2,783,000 pounds in talis. Cuban boat activities off Texas were concentrated in the months of June, July, and August, the peak brown shrimp season (Table 3.2–4). It is estimated that 30 boats worked 29 days per month and harvested 408,000 pounds in tails per month. Mexican boats, present in the same waters duing the same period, in 1971 totaled 345 and took an estimated 2.3 million pounds. The catch fell sharply in ensuing years. Cuban boat activities off Florida occurred mainly during the winter months; from one to ten vessels were involved, and the take was as high as 135,000 pounds in tails annually. Seven Mexican vessels took 105,000 pounds of shrimp tails off Florida in july 1975 (Charles Fuss, NMFS, personal communication, 1978). Foreign vessels are of the same configuration as the U.S. offshore fleet and utilize similar gear.

3.3 History of Management

3.3.1. Management Institutions, Policies, Jurisdiction

Inland water management of the Gulf shrimp fishery is based on the laws and regulations of the five states affected. All the states have restrictions on the size of shrimp which may be taken; all have exclusive state authority for the determination of shrimping seasons; all require licensing of or permits for various types of shrimp dealers and vessels; all provide for restricted waters to some degree; all have penalties for violations of law and regulations; Florida, Alabama, Mississippi, and Louisiana have some administrative authority to negotiate reciprocal shrimp agreements with other states while Texas has none. All Gulf states have agencies concerned with wetlands management; shrimp habitat protection in nursery areas comes within their purview as advisory or rule-making bodies. However, none of the states have yet a federally approved Coastal Zone Management Program which would embrace all the laws and regulations of the governing bodies, both local and state, affecting the state-controlled shrimp fishery and nursery areas. The five states all have reporting requirements, but the type of information asked for and the diligence with which it is sought vary. Louisiana, Mississippi, and Alabama are authorized to collect taxes based on volume from shrimpers and/or processors. None of the states have a limited entry law.

Alabama: The Department of Conservation and Natural Resources is responsible for shrimp fishery management. Its powers include determination of open and closed seasons, regulation of time, place, and method of taking seafood, and authority to require submission of statistical information from shrimpers and processors. Direct supervision of seafoods is handled by the Department's Division of Marine Resources, headed by a director named by the Commissioner of Conservation and Natural Resources. A thirteen-memeber advisory board meets at least twice each year to review regulations proposed by the Commissioner and to establish policy on proposed legislation. The advisory board can revise or repeal regulations proposed by the Commissioner, or it can adopt its own regulations by a two-thirds vote and the consent of the Governor. All seafood in state-owned waters is declared to be state property. Wetlands management in Alabama is under the jurisdiction of the Coastal Area Board (appointed by the Governor). Its area of authority begins at the ten-foot contour line and is concerned with habitat protection. A fourteen-member advisory committee of experts in all fields of coastal usage advises the Coastal Area Board. Alabama has entered into reciprocal shrimp agreements with Louisiana, Mississippi, and Florida.

Texas: Overall control of the Texas shrimp fishery is either vested in the six-member Parks and Wildlife Commission appointed by the Governor or controlled by the legislature. The Commission establishes rules and regulations in some coastal counties and may adjust the closed Gulf season; enforcement is handled by the Texas Parks and Wildlife Department. The Texas Shrimp Conservation Act is applicable all along the Texas coast because the Commission has adopted it as a regulatory policy. State jurisdiction extends seaward three leagues (nine nautical miles) from the coast line. The state distinguishes between inside waters—all bays, passes, rivers, or other bodies of water landward from the Gulf—and outside waters, extending from the shoreline seaward to the extent of Texas jurisdiction. The Texas Coastal Coordination Act requires the Texas Natural Resources Council to study problems and issues in connection with coastal natural resources and to submit a biennial study with recommendations for action on identified problems. The Council is also to recommend research and data acquisition priorities. Texas has no reciprocal shrimp agreement with the other Gulf states; legislative approval of any such agreement would be required. The Commission is empowered to coordinate any Texas shrimp management plans with those drafted for the federal fishery zone.

Louisiana: The Wildlife and Fisheries Commission has exclusive control over the shrimp fishery and the shrimp industry. Rules and regulations are promulgated by the seven-member Commission. Its members are named by the Governor to serve overlapping terms and represent various segments of fish- and wildlife-related industries and sportsmen's groups. Administration is handled by the Department of Wildlife and Fisheries. The Department's Office of Coastal and Marine Resources is responsible for enforcing regulations and monitoring the shrimp fishery. A severance tax, payable by the first purchaser and collected by the Department, is levied on shrimp taken from Louisiana waters. Data reporting is required from shrimp processing plants and wholesale dealers. The Department has a limited degree of authority to enter

into reciprocal agreements with other states. Louisiana's jurisdiction extends seaward three nautical miles from the coastline. The state differentiates between inside waters, including the large bays, and outside waters. Shrimping seasons are set for inside waters; there is no closed season for outside waters. Regulations proposed by the Commission are subject both to review by the Joint Senate and House Natural Resources Committee and to the Administrative Procedures Act which requires public notice through publication in the Louisiana State Register prior to ther adoption by the Commission. The State Department of Transportation and Development is in the process of developing a Coastal Zone Management Program covering coastal marshes and estuaries and extending to Louisiana's seaward boundary. The vast Louisiana shrimp nursery grounds are included in the territorial limits to be covered by the program.

Mississippi: A thirteen-member Mississippi Marine Conservation Commission has full power to manage, control, supervise, and direct all matters pertaining to saltwater aquatic life. This Commission was superseded on July 1, 1979, by the newly-created Mississippi Commission on Wildlife Conservation as part of a restructuring of Mississippi government. Executive authority is vested in the Director of Wildlife who is elected by the Commission for a four-year term. The reorganization will bring into being a Bureau of Marine Resources to be supervised by a director experienced in marine conservation; this Bureau is to aid the Commission in "formulating policies, discussing problems and considering other matters." The Commission determines seasons, restricted waters, and size of shrimp to be taken. The Commission is authorized to require such reporting as may be needed to meet the needs of any research project, and persons receiving such questionnaires are required to respond factually. Fines are imposed for failure to respond or for falsifying data. A severance tax is imposed on all shrimp processed, transported in or from the state, or caught within state waters. The state has a broadly-worded statute covering reciprocal agreements. The Mississippi Marine Resource Council is authorized to study "plans, proposals, reports, and recommendations" for development and utilization of coastal and offshore lands, waters, and marine resources.

Florida: The Florida Department of Natural Resources is the state's shrimp fishery regulating agency. It is empowered to adopt rules and regulations governing "method, manner, and equipment" used in taking shrimp and to define areas where shrimp may be caught. Its Division of Marine Resources is charged to "preserve, manage, and protect" fishery resources and to regulate vessels and fishermen "within or without" the boundaries of the state. However, the legislature has adopted numerous local laws (general bills of local application) which regulate shrimping in the particular counties. Special county acts govern shrimping seasons in Apalachicola Bay, St. Vincent Sound, and the area from Cape San Blas to Cape St. George. By legislative act, some nursery areas are permanently closed to all except bait shrimping. Florida has uniform rule-making procedures for all administrative agencies; these procedures require prior notice, an economic impact statement, and an opportunity for "substantially affected" persons to challenge proposed rules on the grounds of invalid exercise of the agency's legal authority. Proposed rules are also to be reviewed by a legislative Administrative Procedures Committee. Florida has no statute specifically taxing the taking or handling of shrimp. The Department of Natural Resources is authorized to enter into reciprocal agreements with other states, giving shrimpers based in such states the same "rights and privileges" that residents of states in which they are fishing have.

3.3.1.1 Regulatory Measures Employed to Regulate the Fishery

The following is summarized from Craig, et al. (1978).

Legal Size of Shirmp; Catch Limits

Texas: Thirty-nine to the pound, heads on, and 65 to the pound for tails, based on a three- to five-pound sample of shrimp per 1,000 pounds. Commercial shrimpers are not limited as to amount of shrimp taken in outside waters; 300 pounds per day limit in spring open season for inside waters; no limit on fall catch in major bays, however, August 15 to October 31, minimum count of 50 whole is required; no count restriction November 1 to December 15. Recreational shrimpers may take 100 pounds per day in outside waters, 15 pounds per day from major bays in spring, and 100 pounds per day in fall open season. Commercial bait shrimpers are limited to 150 pounds per day.

Louisiana: Inside waters size limit is 68 whole shrimp to the pound; limit not applicable in outside waters or to any species taken during spring inside waters open season, nor to brown shrimp taken after November 20. There are no catch limits on commercial shrimpers; unlicensed recreational shrimpers are limited to 100 pounds per boat per day. Bait shrimp are excluded from size requirements.

Mississippi: Size limit is 68 whole shrimp to the pound. Bait shrimpers are not subject to size limitation. No catch limits.

Alabama: Size limit is 68 whole shrimp to the pound. Bait shrimp are excepted. There are no catch limits for commercial including bait shrimpers. Recreational boats are limited to 25 pounds per boat in areas open to commercial shrimpers and 15 pounds per boat in bait shrimping areas.

Florida: Statewide size limit is 47 to the pound, heads on, and 70 tails to the pound; in three panhandle counties local size limit is 55 to the pound, heads on, in open inside bays and sounds. No catch limits.

Licensing of Vessels and Fishermen

Texas: Commercial Gulf shrimp boat, bay shrimp boat, bait shrimp boat, and sport shrimp trawl must be licensed; "John Doe" licenses are also required for the captain and each crewman of commercial vessel and a personal license for each recreational shrimper.

Lousiana: Commercial boat license based on length; no license needed for recreational boats; license required for all gear except noncommercial under 16 feet in length.

Mississippi: Vessel license is based on length; bait shrimp boats and interstate vessels pay additional annual fees. No shrimp gear license required.

Alabama: Vessel license for Alabama residents and non-resident shrimpers required unless there is reciprocal agreement with state of their residence; gear license is based on length of trawl.

Florida: Vessels are registered according to size; permits are required for trawling but no charge is assessed. Alien and nonresident commercial fishermen are required to obtain license.

Season

Texas: Inside waters in major bays are open May 15 to July 15 and August 15 to December 15. Outside waters are normally closed June 1 to July 15, subject to 15-day alteration in opening and closing. White shrimp may be caught during the closed season at zero to four fathoms during the day. Outside waters are also closed December 16 to February 1. During the closed season seabobs may be harvested during the day, but catch can contain no more than ten percent of other species. Zero to seven fathoms at night closed year round.

Louisiana: For inside waters, the spring season opens no later than May

25 and continues for at least 50 days or until technical data indicate a closure is needed to protect newly recruited white shrimp; however, at least one zone must have a 50-day open season. Fall season opens the third Monday in August and closes December 21. Commission may set special seasons. No closed season in outside waters.

Mississippi: The season opens first Wednesday in June, dependent on shrimp size of sample catch, and usually runs from the second or third week of June until following April 30 unless declared otherwise.

Alabama: Closed from late April to mid-June, depending on samples.

Florida: Season varies according to area.

Restricted Waters

Texas: All passes to and from outside waters are closed to trawling. Shrimping in inside waters is limited to major bays and bait bays as defined by law. Other inside waters are classified as nursery areas and no shrimping is allowed.

Louisiana: State and federal wildlife refuges, Bayou Judge Perez, and sanctuaries in Lake Pontchartrain and Lake Catherine are restricted waters.

Mississippi: Commercial shrimping is forbidden within one-half mile of mainland from Mississippi-Alabama line west to Bayou Caddy, off Gulf Island National Seashore, and in all bayous with the exception of two pipeline ditches in Hancock County.

Alabama: All rivers, streams, bayous, creeks, and portions of bays designated as nursery areas are restricted. No shrimping is allowed within 200 yards of the beach off Dauphin Island and Mobile Point from May 5 to September 15.

Florida: Portions of Santa Rosa Sound, Tortugas shrimp bed in Florida waters, and that portion of the Tortugas shrimp bed in the FCZ are closed to Florida residents. Other areas are subject to local seasonal restrictions. Certain areas designated as state parks or recreational areas are closed to commercial fishing.

3.3.1.2 Consistency Requirements of Coastal Zone Management Act

Consistency provisions of the Coastal Zone Management Act require a Council, in preparation of a fishery management plan, to address and consider the extent of fishing within State waters, on the premise that good management principles "require that the FMP address an individual stock of fish as a unit throughout its range, including its presence within state waters." Councils should "make every effort to coordinate their FMP development activities with the state coastal zone agencies."

3.3.2 Management and Regulation of Foreign Fishery

The present extent of the U.S. fishery conservation zone in the Gulf of Mexico is defined on the basis of two treaties on maritime boundaries, one with Mexico and the other with Cuba. Both treaties are now pending Senate advice and consent to ratification. In the meantime, the maritime boundaries specified in the treaties are being applied provisionally.

Access to the FCZ for foreign shrimp fishermen must be predicated on an available surplus of shrimp in excess of the U.S. harvesting capacity, as well as a Governing International Fishery Agreement (GIFA) with their home country. Likewise, for U.S. shrimp fishermen to gain access to the zones of exclusive fisheries jurisdiction of Mexico or Cuba, there must be a surplus over the harvesting capacity of the domestic fishermen involved. Cuba has a GIFA with the United States effective September 26, 1977, and Mexico a GIFA effective December 28, 1977. However, the FCMA does not permit allocations to the fishermen of either country unless a shrimp surplus is determined.

For the past three years the U.S.-Mexico Fisheries Agreement has authorized U.S. fishermen to fish for shrimp within Mexico's fishery zone, but the Agreement allows for no further access after 1979. The United States has therefore initiated negotiations with Mexico in an effort to obtain some form of continued shrimp access. U.S. fishermen have no access to fish for shrimp in the Cuban fishery zone. The U.S.-Cuba Convention for the Conservation of Shrimp was terminated on April 28, 1978, after being in force twenty years.

3.4 History of Research

Other than the work of Percy Viosca and various annual reports by the Gulf states, little was recorded about Gulf shrimp until the 1930's. During the 1930's, the various Gulf states and the U.S. Bureau of Commercial Fisheries initiated a series of intensive studies on the life history of white shrimp (Lindner and Anderson, 1956). These mark-recapture and associated studies provided the basis for our knowledge of Gulf shrimp as well as providing a model for subsequent studies and an initial group of fishery scientists knowledgeable about Gulf shrimp and their environment.

The history of research since that time is too extensive and diverse to summarize in this section. Indeed, this entire plan attempts to summarize only that portion of the research which is directly relevant to the mandates of FCMA.

No articles were encountered which would indicate studies on U.S. Gulf shrimp had been supported by foreign countries.

3.5 Socioeconomic Characterization

3.5.1 Output of the Subject Domestic Reported Commercial Fishery

Measured by the value of shrimp at dockside, the shrimp fishery is the most valuable of all domestic fisheries, averaging 23 percent of the value of all fish landed in the United States for the period 1964 through 1977. Translated into dollars, the 1977 fish and shellfish landings were worth $1,515,000,000. Shrimp accounted for $355,200,000; salmon, $221,900,000; and tuna, $135,800,000.

The Gulf of Mexico commercial shrimp fishery accounted for 83 percent of the dockside value of the U.S. shrimp landings and in terms of pounds of shrimp, the relative Gulf contribution is 67 percent of the U.S. landings.

3.5.1.1 Ex-vessel Value of the Catch

Table 3.5–1 gives the ex-vessel or dockside value of all shrimp species reported in the Gulf states from 1958 through 1977. These figures are for landings and do not reflect the actual areas where shrimp were taken (shrimp caught off the coast of one state, or another country, may be landed in another state). The Gulf-wide average annual increase in value of shrimp landed was 8.9 percent.

Texas, with an average of 46 percent of the value of all landings, has consistently had the largest ex-vessel value of all the Gulf states. Louisiana accounts for 28 percent of the average annual value of the landings. Florida ranks third at 15 percent of the total value.

The pronounced increase in dockside values between 1974 and 1977 is primarily the result of significant increases in price—from $1.17 in 1974 to $1.66 in 1975, a high of $2.08 in 1976, and $1.78 in 1977. Poundage figures for the years were: 117 million pounds of tails in 1974, a drop to 107 million in 1975, 132 million in 1976, and up to 166 million pounds (tails) for 1977.

The main factors cited for the recent increase in total value (1974–1977) of the landings are (1) the recovery of domestic demand for shrimp products, (2) world demand, (3) decreases in the supply of U.S. imports, (4) general inflation, (5) domestic inventory reductions after 1974–1975 (due to U.S. and world demand), and (6) increased landings.

Area Distribution of the Value of the Catch

Fig. 3.5–1 compares the average value distribution of the combined brown, white and pink shrimp catches from 1959 to 1975. Area 19 (the Freeport, Texas, grid) has the highest ex-vessel value. It has accounted for an average of 19 percent of the total value. Waters adjacent to Texas provide 42 percent of the average shrimp catch value. The value of the catch off Louisiana accounts for 36 percent of the total value; Florida, 11 percent; and Alabama and Mississippi each six percent.

A comparison of the value of landings (Table 3.5–1) and the average percent of the value of catch (Fig. 3.5–1) indicates some apparent differences, for example, Texas and Florida have larger percentage values in landings (see above) than are accounted for in percentage value of catch, whereas Mississippi and Louisiana have smaller values in landings than expected from the reported value of the catch. These differences reflect the mobility of much of the Gulf fleet. For example, until recently many vessels from Florida and Texas, because of their proximity, had shrimped off Mexico and landed a portion of their catch in the United States. Some vessels from Florida often migrate north in the spring and summer to fish off Mississippi and Louisiana and then Texas. Vessels from Louisiana frequent the shallow waters off Galveston, Texas, fishing for white and brown shrimp. Texas boats may fish off Louisiana during the Texas closed season in June and part of July. Alabama's Bayou La Batre vessels have the capability to "roam" the Gulf in search of shrimp, though they are larger than the average sized vessel in the northern Gulf.

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Table 3.5-1
EXVESSEL VALUE OF
SHRIMP LANDINGS BY STATE

(In thousands of $)

	Florida West Coast	Alabama	Mississippi	Louisiana	Texas	Total Gulf
1958	$16,312	$1,984	$2,377	$13,533	$29,665	$63,871
1959	9,752	1,991	2,345	13,067	23,193	50,348
1960	12,155	2,090	2,899	15,881	24,606	57,631
1961	11,094	1,154	1,281	8,913	21,208	43,650
1962	14,556	1,647	2,220	14,985	27,149	60,557
1963	12,256	2,419	2,484	19,789	26,591	63,539
1964	13,322	2,630	1,805	18,794	26,144	62,695
1965	13,905	3,654	2,523	19,584	31,241	70,907
1966	12,427	4,920	2,751	24,390	38,485	82,973
1967	10,476	6,049	3,122	24,573	46,355	90,575
1968	12,695	7,964	3,677	25,623	45,870	95,829
1969	12,021	8,788	4,011	33,358	42,884	101,062
1970	13,108	8,040	3,810	34,614	48,614	108,186
1971	12,985	11,451	4,362	43,285	64,191	136,274
1972	17,309	14,661	4,966	47,066	80,099	164,101
1973	22,601	14,165	3,698	44,511	86,879	171,854
1974	21,445	13,490	3,225	32,203	67,679	138,042
1975	27,799	17,843	3,825	40,968	87,902	178,337
1976	36,842	30,393	8,418	79,688	119,881	275,222
1977	39,971	33,487	10,113	87,183	125,620	296,374
Average Annual % Change	5.2%	16.6%	6.5%	9.5%	9.1%	8.9%

From Fishery Statistics of the United States.

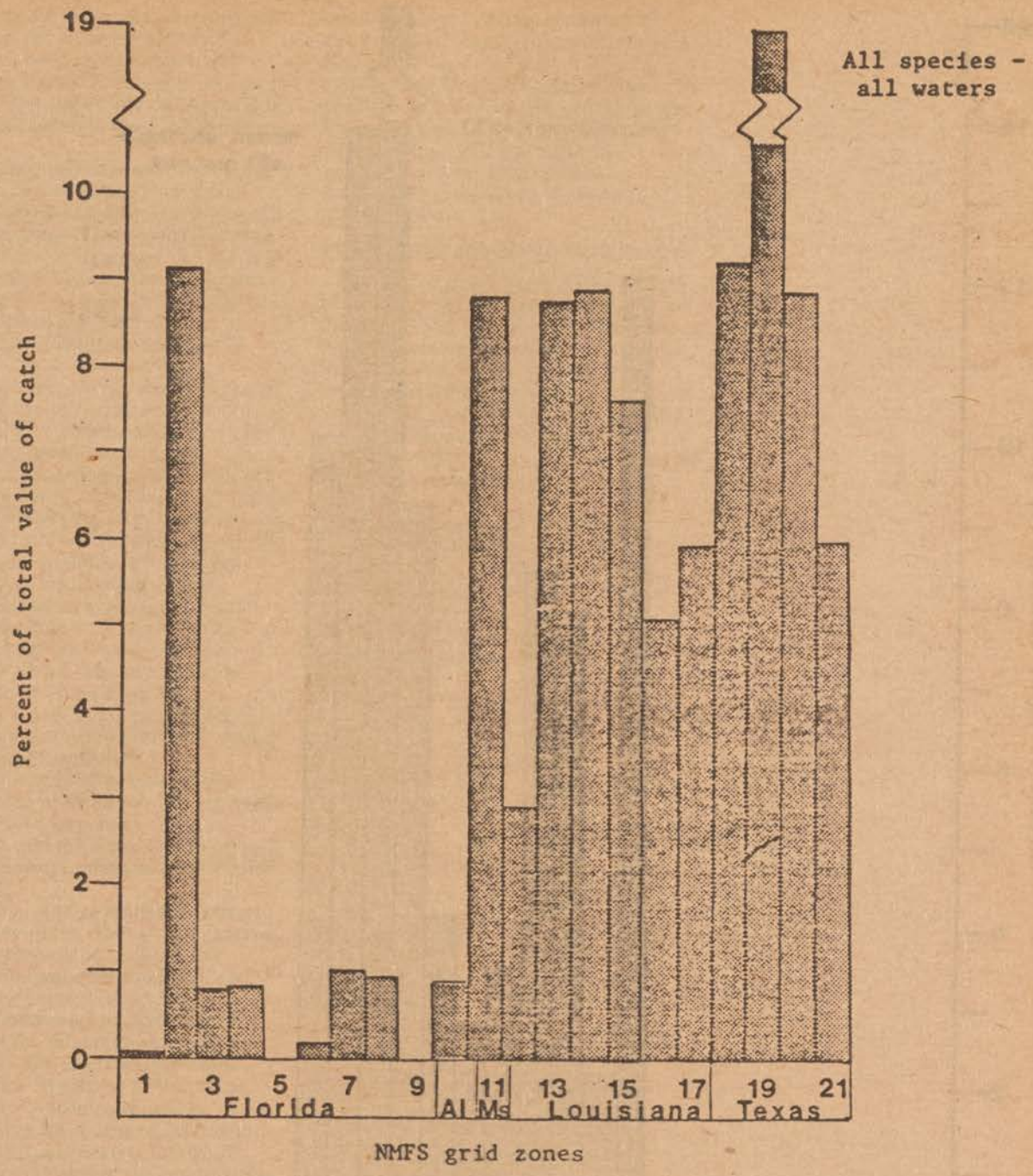

Figure 3.5-1. Average percent of total value of the Gulf catch for all species 1959-1975 by area (US Dept. Com., 1959-1975).

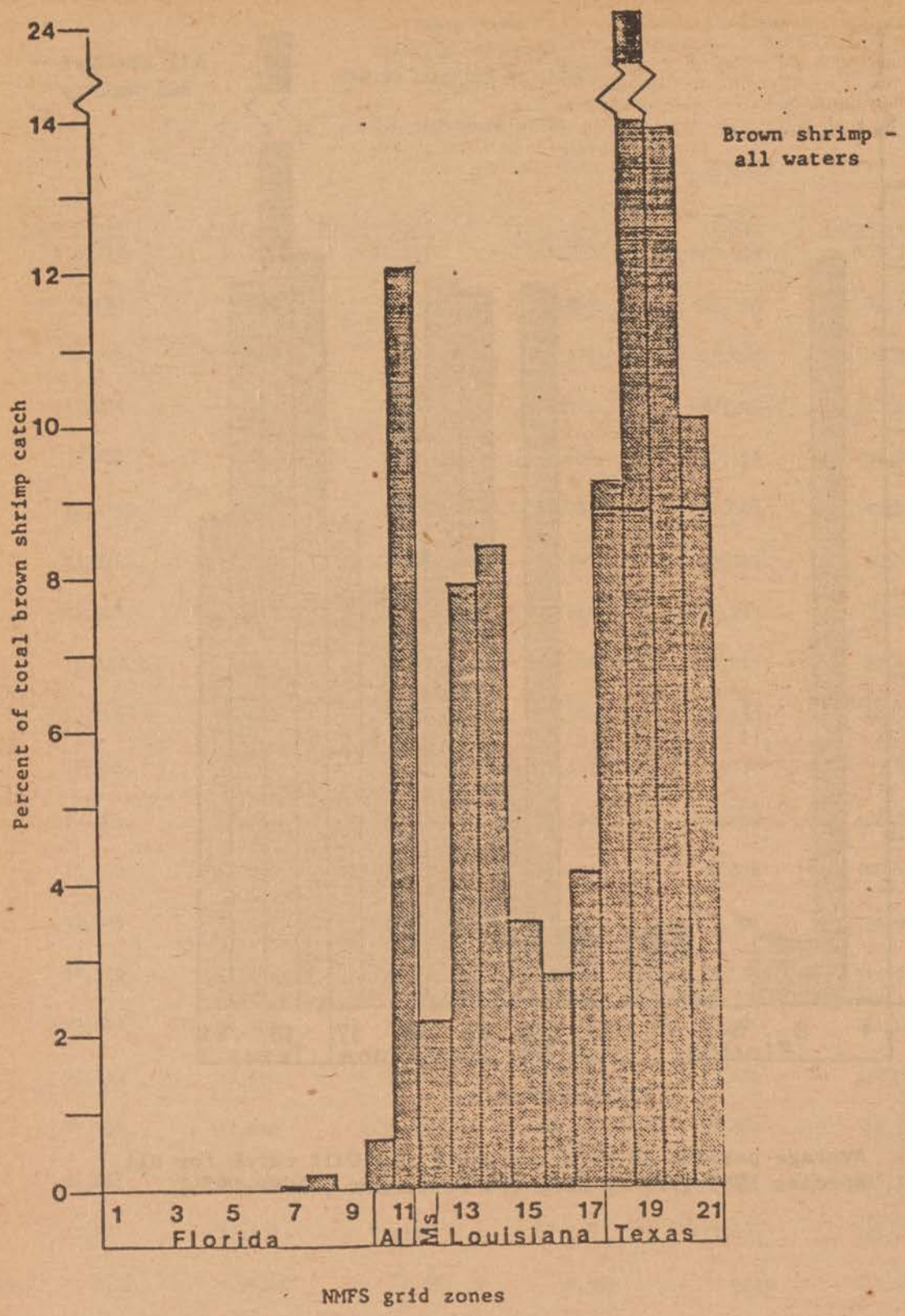

Figure 3.5-2. Average percent o the total value of the brown shrimp catch 1959-1975 by area (US Dept. Com., 1959-1975).

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Studies now underway may pinpoint current casual evidence of mobility; there have been recent reports of movement into Gulf waters by the south Atlantic fleet, especially during periods of low production in the south Atlantic states.

Harvesting regimes exert a substantial influence on ex-vessel value. Texas regulations, for example, result in much greater landings of larger-sized shrimp than do those of Louisiana. A 1958–1975 study showed Texas prices for brown shrimp to be 1.6 times that of Louisiana brown shrimp, and 1.2 times that of white shrimp (Caillouet and Patella, 1978).

Although there have been variations in the relative importance of the ex-vessel value of brown, white, and pink shrimp, the brown shrimp is the most valuable, accounting for 52 percent of the total value of all species from 1958 to 1967 and for 56 percent of the total value from 1968 to 1977. White shrimp are the second most valuable species. The relative position of white shrimp increased from 25 percent of the total value in the 1958–1967 period to 30 percent of the total value during the 1968–1977 period. The percentage of total value of Gulf shrimp catch attributable to pink shrimp has fallen from 21 percent in the 1958–1967 period to 13 percent for 1968–1977.

Approximately 57 percent of the annual value of the brown shrimp catch is from Texas, 28 percent from Louisiana, and the remaining 15 percent from Mississippi, Alabama, and Florida (Fig. 3.5–2).

Louisiana, waters furnish 61 percent of the value of the white shrimp harvest, Texas 30 percent, Mississippi five percent, Alabama three percent, and Florida one percent (Fig. 3.5–3).

The Florida catch accounts for 97 percent of the total pink shrimp value (Fig. 3.5–4). The Dry Tortugas area accounts for 70 percent of this value. Seabob are concentrated in the Atchafalalya River area of Louisiana (Fig. 3.5–5). These waters furnish 92 percent of the value of the catch. Texas adds four percent and the remainder comes from areas east of the mouth of the Mississippi (Fig. 3.5–5). Florida accounts for 98 percent of the rock shrimp ex-vessel value (Fig. 3.5–6). The royal red fishery is concentrated in two areas (Fig. 3.5–7): the Dry Tortugas catch is 45 percent of the total value, while the catch off the Mississippi delta is 42 percent of the value.

Price Structure Sensitivity to Size Distribution of the Catch

The price per pound for shrimp varies in direct proportion to size. There are significant price differences between size groups of shrimp. Price differentials play a key role in the substitution of certain sizes for others into various products such as breaded shrimp, fresh-frozen, and specialty items. This price structure appears to be partially sensitive to changes in the size distribution of the catch (Toevs and Johnson, 1978).

3.5.1.2 Wholesale Value of the Product

Table 3.5–2 gives the wholesale prices of shrimp in various processed forms for the Gulf of Mexico fishery for 1958–76. Prices for all categories have fluctuated frequently, but on the average, they have increased at a rate of 4.0 to 7.5 percent per year between 1958 and 1976. Prices of breaded, cooked, and otherwise processed shrimp increased at smaller rates than raw shrimp input prices.

The wholesale value of processed shrimp for the Gulf states (Table 3.5–3) was 529 milliom dollars in 1977.

A diagram of the 1976 breakdown of product categories by value is shown in Fig. 3.5–8 and Figure 3.5–9.

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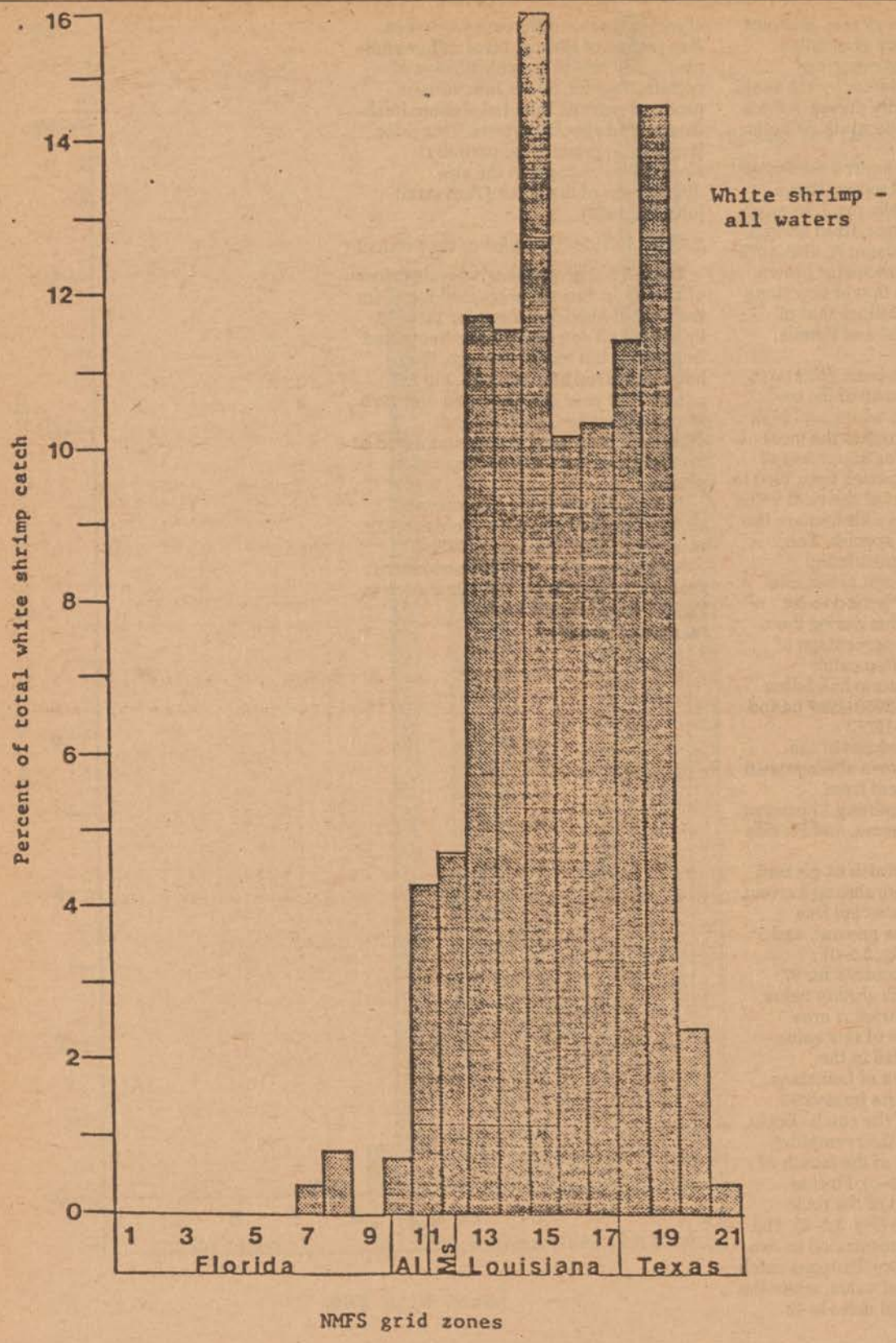

Figure 3.5-3. Average percent of the total value of the white shrimp catch 1959-1975 by area (US Dept. Com., 1959-1975).

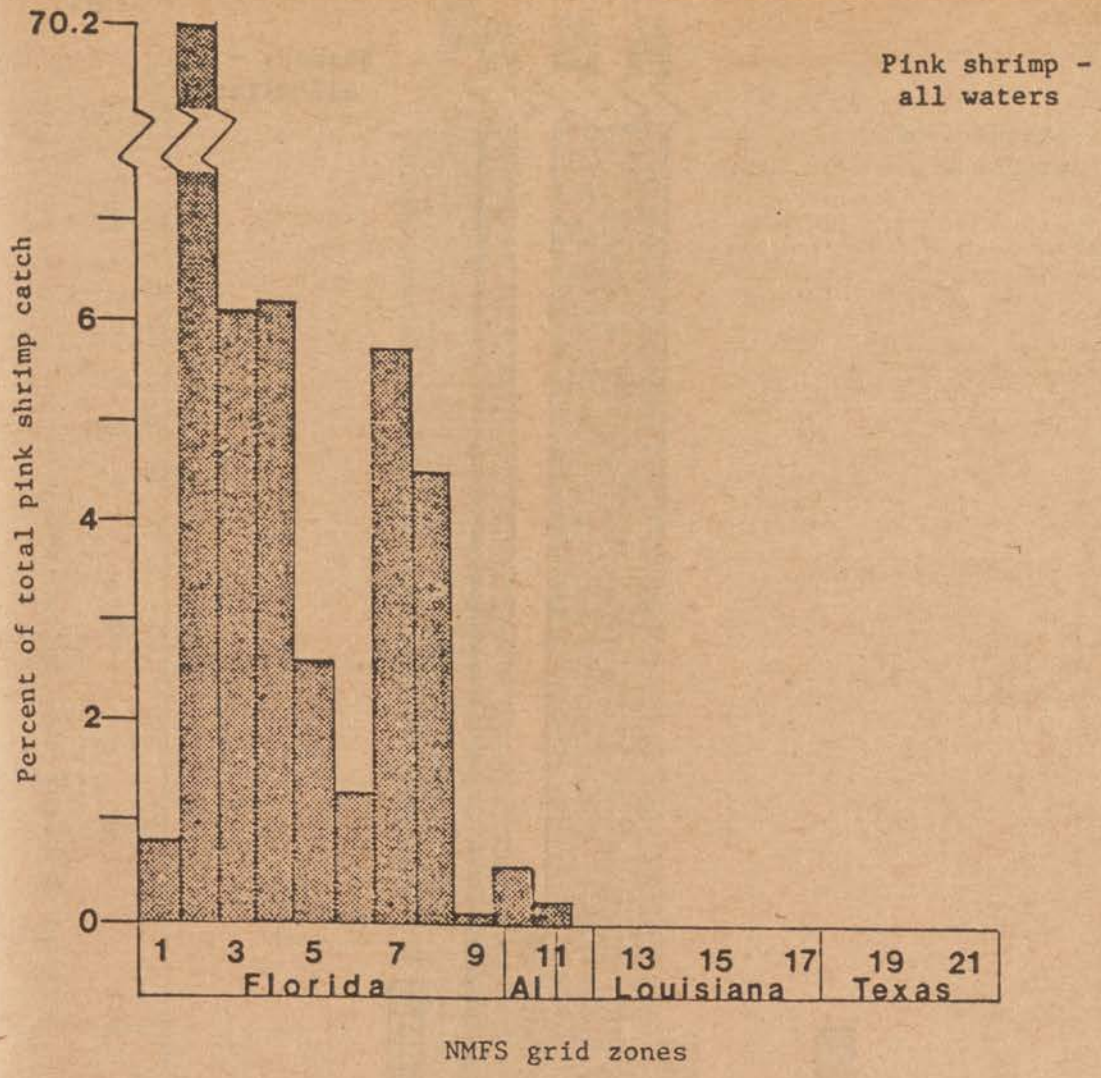

Figure 3.5-4. Average percent of the total value of the pink shrimp catch 1959-1975 by area (US Dept. Com., 1959-1975).

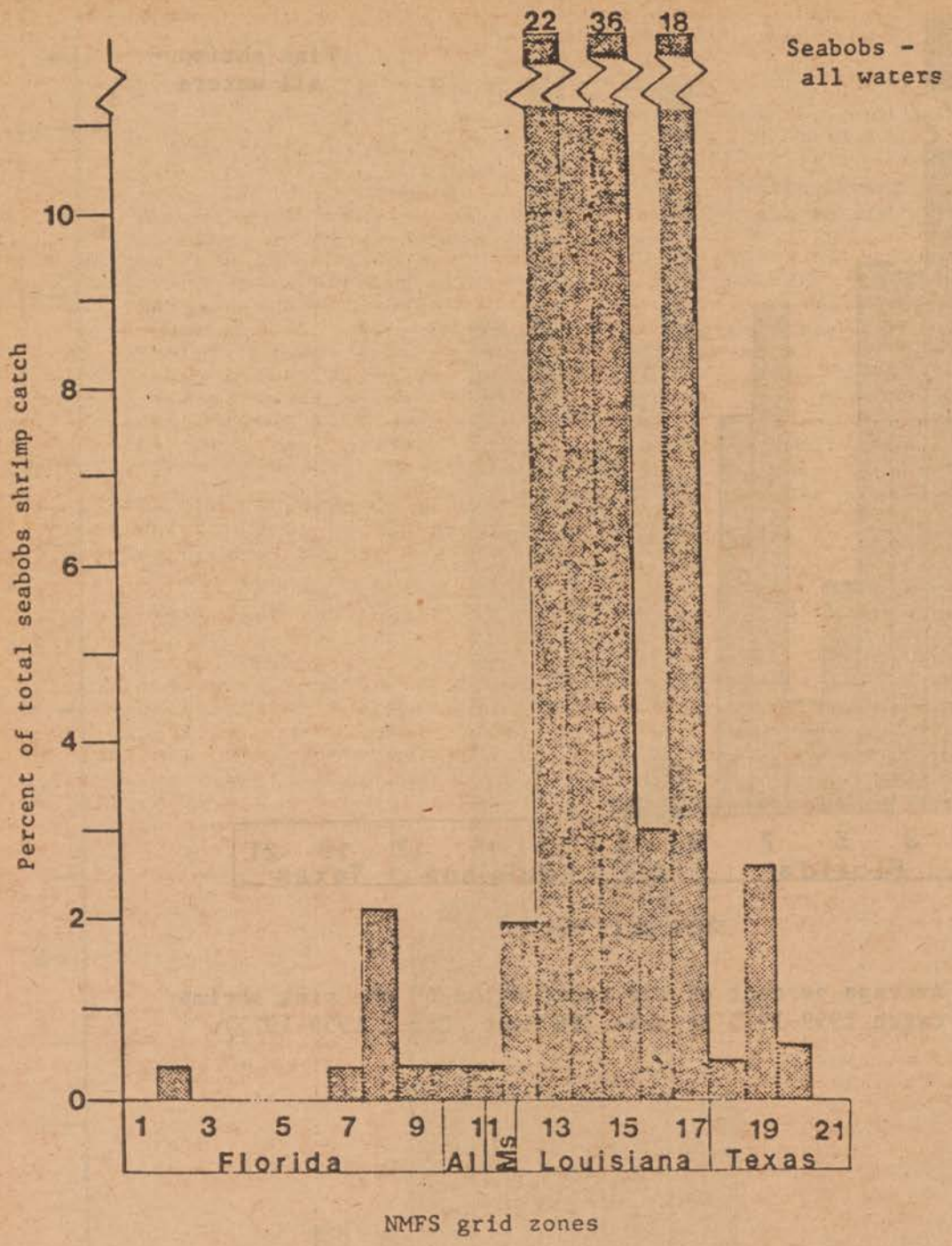

Figure 3.5-5. Average percent of the total value of the seabob shrimp catch 1963-1975 by area (US Dept. Com., 1963-1975).

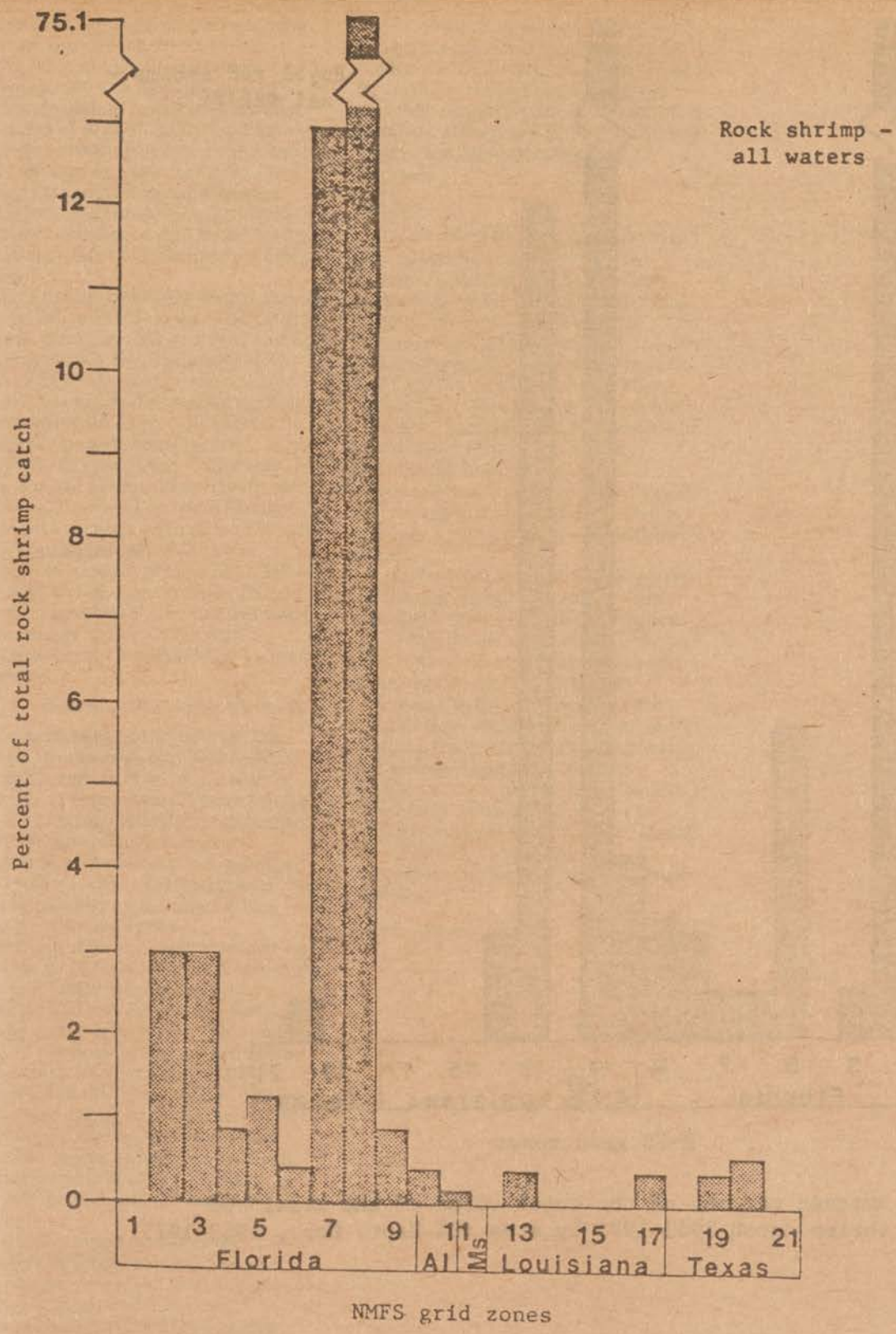

Figure 3.5-6. Average percent of the total value of the rock shrimp catch 1963-1975 by area (US Dept. Com., 1963-1975).

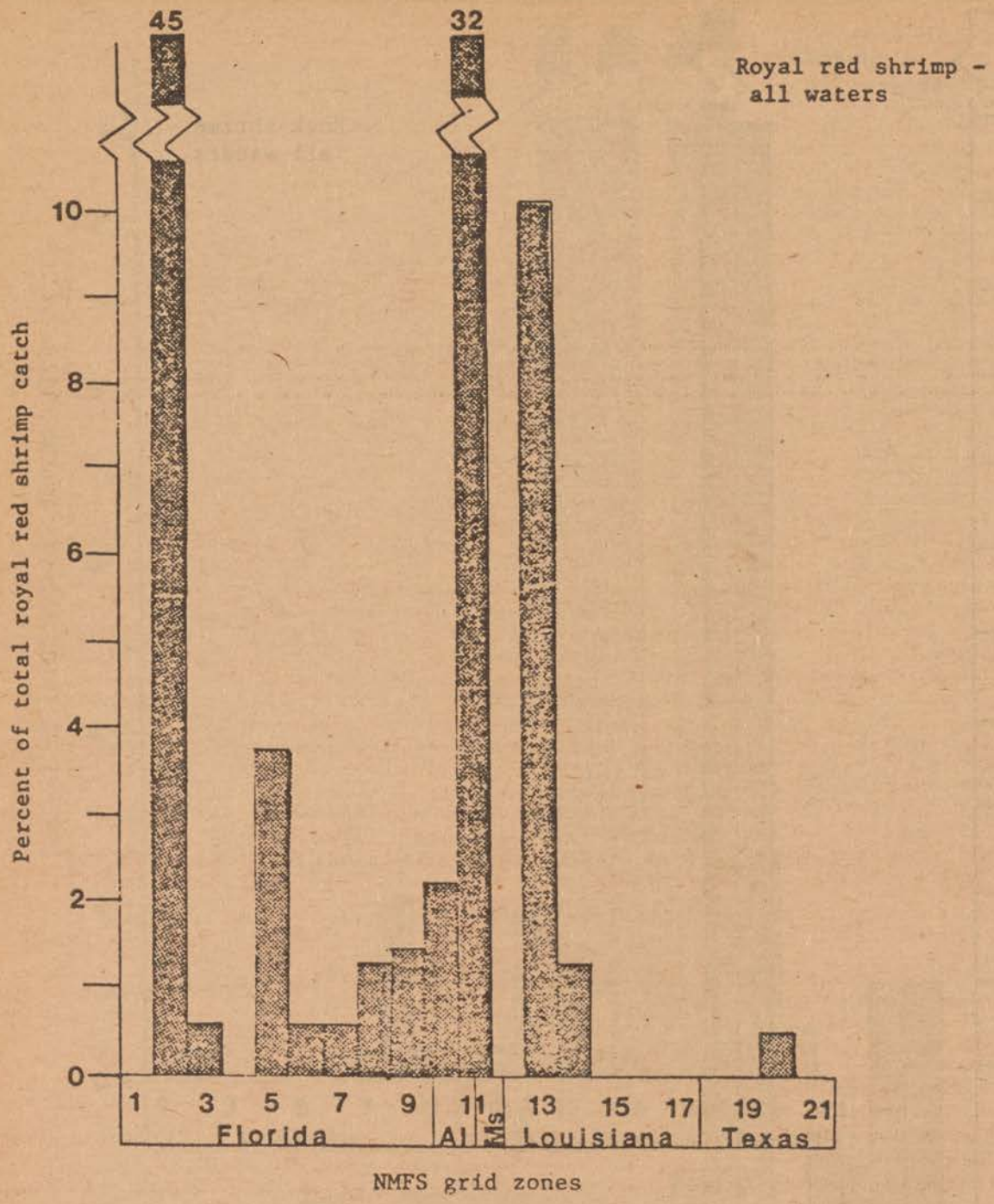

Figure 3.5-7. Average percent of the total value of the royal red shrimp catch 1963-1975 by area (US Dept. Com., 1963-1975).

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Processors in the Gulf are becoming increasingly dependent on shrimp imported from outside the region. Between 1958 and 1967, the average Gulf-wide shrimp landings consituted 84.2 percent of production requirements. During the 1968–1976 time period, the Guld shrimp landings declined to 73.1 percent of production requirements while total production has increased. (Fishery Statistics of the United States, U.S. Department of Commerce, various years.)

The shortage of locally landed shrimp is most pronounced on the west coast of Florida. Between 1968 and 1976, shrimp landings in this area were only 39 percent of total usage by processors. Mississippi has had a roughly similar experience with 49 percent of total processed pounds being locally supplied. The remaining Gulf states have not had to depend as heavily on non-local sources. Louisiana fishing ports have recently been able to supply more than 85 percent of the state processors' raw supply needs; in Texas and Alabama the percentages are 90 and 80, respectively. The relative sizes of the supply deficits have varied considerably for the individual years in all states.

3.5.1.3 Domestic Marketing Channels

The marketing of shrimp from the vessels to consumer may be handled through a variety of channels with as many as 11 components (Figure 3.5–10). The usual participation is more limited, however, involving fishermen, wholesalers, processors, transporters, and retailers. Other seafood product are usually handled by members of the shrimp marketing system.

Since shrimp may range from five to more than 200 tails per pound, size is the principal factor influencing market channels and use. Larger size shrimp usually go the restaurants; those in the 30 to 65 per pound range go principally to breaders, fresh seafood retailers, canners, and other processors. Smaller shrimp are use by canners, driers, and specialty producers. In recent years there has been a growing trend to use the full range of shrimp sizes for breaded, peeled, and stove-ready products.

Variation in use of marketing channels depends on many factors: shrimp size, processed form, location of processor, degree of industry concentration, source of raw shrimp, amount of imported shrimp used, and amount of foreign labor involved in processing. Area differences prevent extrapolation of the Alvarez, et al. (1976) study of Florida's marketing channels to the entire Gulf coast (Christmas and Etzold, 1977). A telephone survey of shrimp processors and middlemen in each of the Gulf states was conducted in the drafting of this plan. The survey revealed a general pattern of marketing channels, shown in Fig. 3.5–10. The bold lines in the figure indicate major channels.

Dealers

The dealer is the first middleman to take possession of the shrimp. He normally operates docking facilities with allied provisions for service and storage. His relationship with the fisherman is that of purchaser of shrimp and, on occasion, purveyor of fuel, ice, and supplies. But he may also offer financial services ranging from credit extension to maintenance of records for boats based at his dock. In this relationship there is usually an understanding that the shrimper's catch will be handled by the dealer; such a relationship may have a corrolary price impact.

Louisiana dealers surveyed reported purchasing shrimp on a regular basis from 80 to 120 craft, with the median about 110. Dealers may also get shrimp from other craft on a part-time basis; some operate craft of their own.

Among the dealer's functions are processing of shrimp for the market—heading, grading, packing, refrigerating, and storing. Some, especially in Louisiana, have operations for handling of heads-on shrimp for drying. The drying operations reduce loss of shrimp due to spoilage and permit the utilization of shrimp in periods of peak landings.

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Table 3.5-2

WHOLESALE PRICES OF GULF SHRIMP PROCESSED PRODUCTS

1958-1976

	Raw Headless*	Raw Peeled*	Breaded Raw*	Cooked and Peeled*	Canned**	Dried*
1958	.76	1.06	.67	1.89	10.38	1.41
1959	.59	.82	.62	1.54	8.89	.90
1960	.61	.98	.63	1.64	8.29	1.12
1961	.76	1.09	.75	1.63	9.09	1.78
1962	.92	1.24	.81	1.93	10.43	1.61
1963	.72	1.18	.71	1.77	8.59	.84
1964	.80	1.12	.71	1.61	9.14	2.04
1965	.83	1.16	.80	1.67	9.63	1.99
1966	.96	1.32	.90	1.97	10.66	2.02
1967	.88	1.37	.85	1.92	10.21	1.65
1968	1.03	1.55	.94	2.39	10.92	1.90
1969	1.09	1.75	1.00	2.04	10.29	1.74
1970	1.04	1.45	.99	1.57	10.51	no data
1971	1.28	1.69	1.07	2.51	11.14	1.87
1972	1.44	1.90	1.24	1.95	13.28	2.42
1973	2.42	2.25	1.48	3.44	18.91	3.87
1974	1.74	1.80	1.44	3.11	16.25	2.72
1975	2.35	1.77	1.61	3.36	16.74	4.92
1976	2.79	2.67	2.02	3.82	19.74	3.81
Average % increase	7.5%	5.0%	5.7%	4.1%	4.0%	6.7%

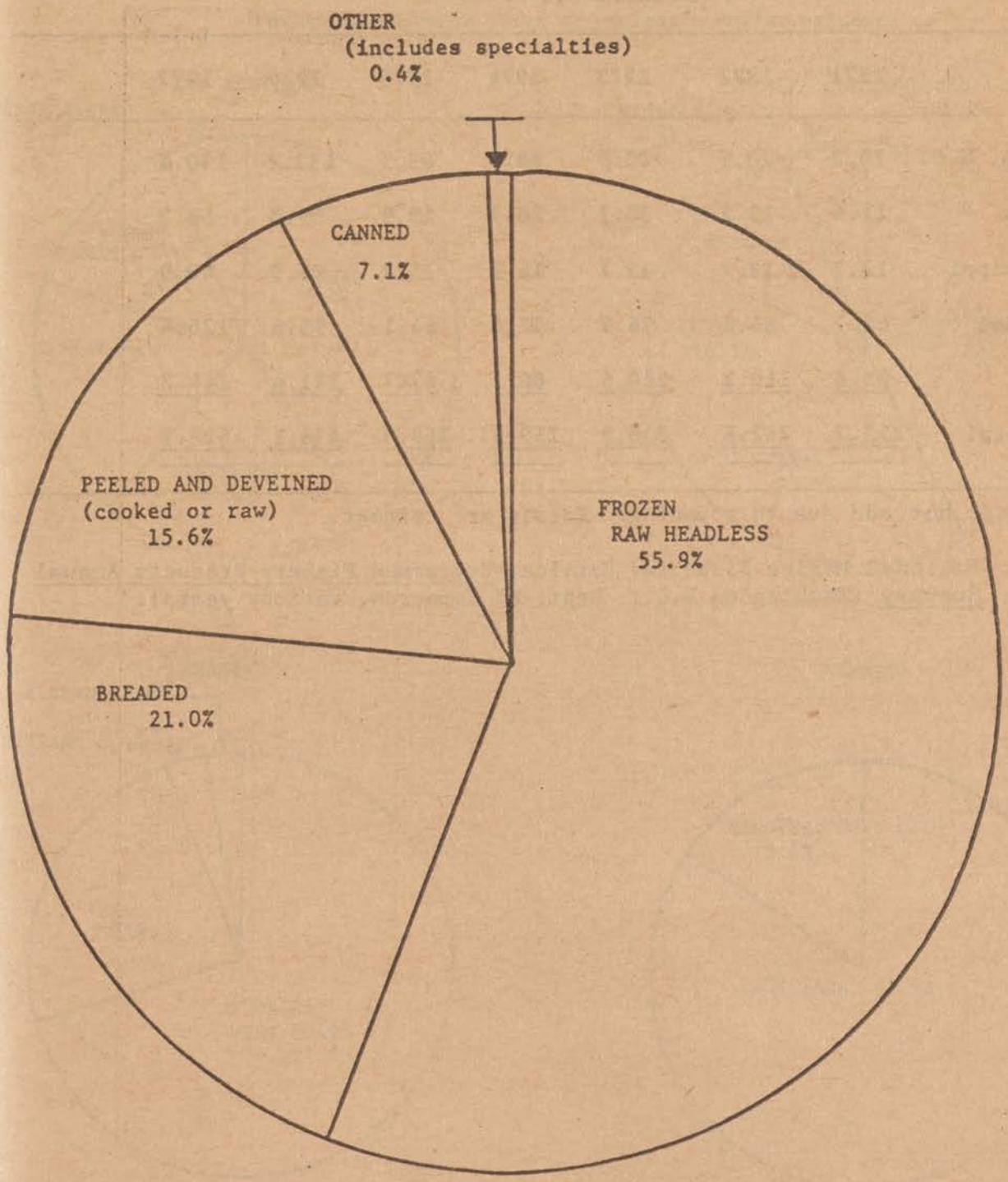
* Price per pound of finished product.

** Price per standard case of canned shrimp

From Fishery Statistics of the United States and Current Fishery Statistics

Figure 3.5-8

Value of Shrimp Products of the Gulf States, 1976



NOTE: Some of the products have been processed from raw products imported from other states or from foreign countries.

SOURCE: National Marine Fisheries Service, Processed Fishery Products, Annual Summary, 1976 (Washington D.C.: Dept. of Commerce).

Table 3.5-3

Wholesale Values of Processed Shrimp for the Gulf States
(millions of dollars)

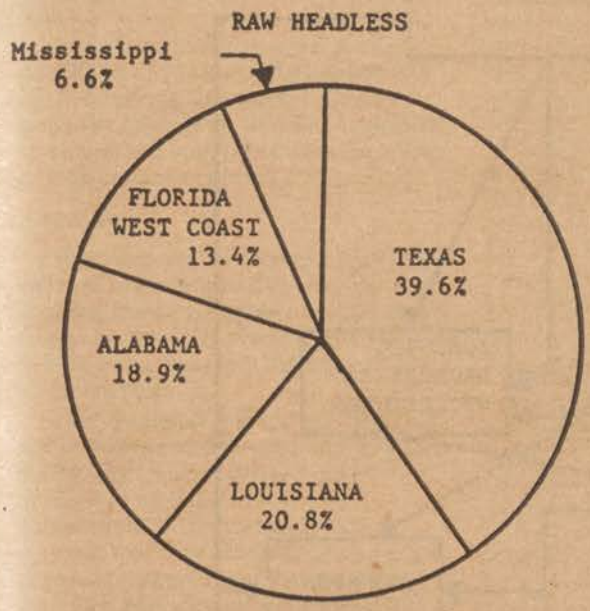
STATE	1971	1972	1973	1974	1975	1976	1977
Florida, W.C.	70.2	70.9	80.0	69.5	83.3	133.2	150.9
Alabama	11.6	23.2	30.7	20.3	28.9	59.0	68.3
Mississippi	12.7	13.7	15.7	16.9	15.7	26.9	40.0
Louisiana	65.7	64.8	76.9	72.4	64.1	95.6	125.4
Texas	93.6	110.2	120.6	80.7	67.7	141.4	144.2
Gulf Total	253.7	282.6	330.0	259.9	259.8	456.1	528.9

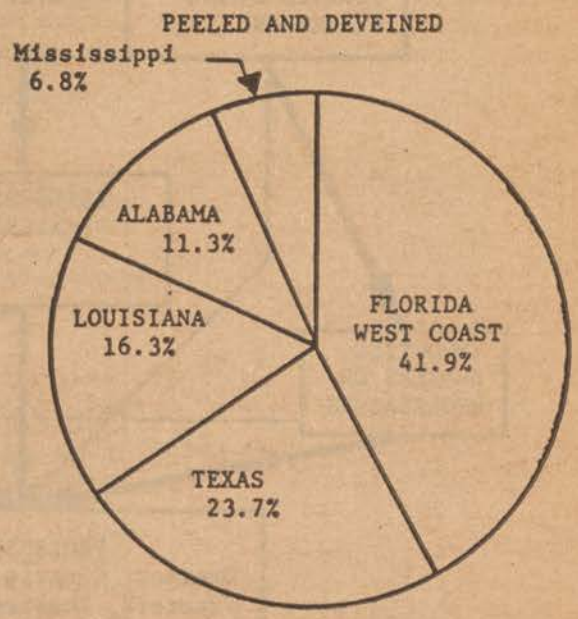
Numbers do not add due to rounding. Totals are correct.

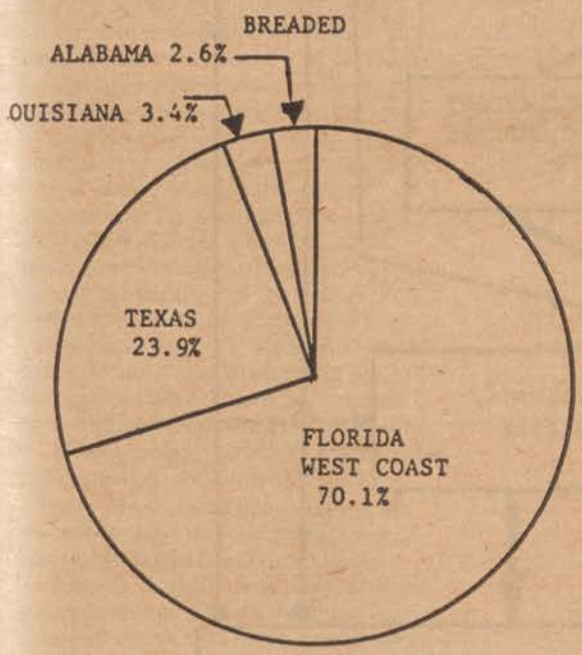
From National Marine Fisheries Service, Processed Fishery Products Annual Summary (Washington D.C.: Dept. of Commerce, various years).

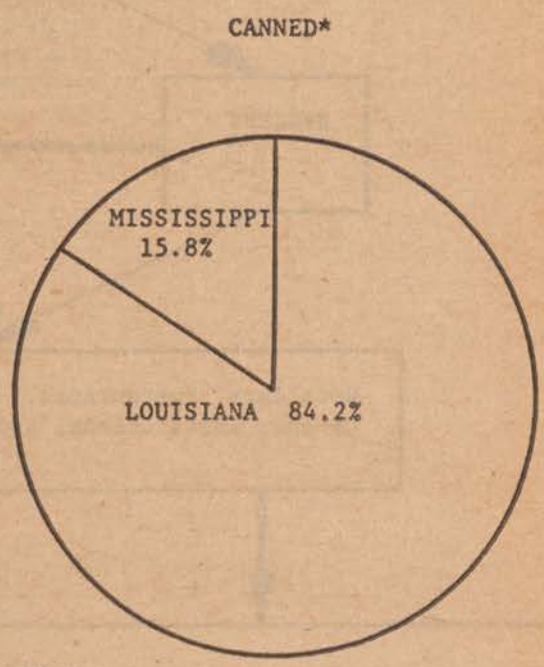
Figure 3.5-9
Percentage Production, by States, of
the Major Gulf Shrimp Products

(Percentage figures based on wholesale dollar values)





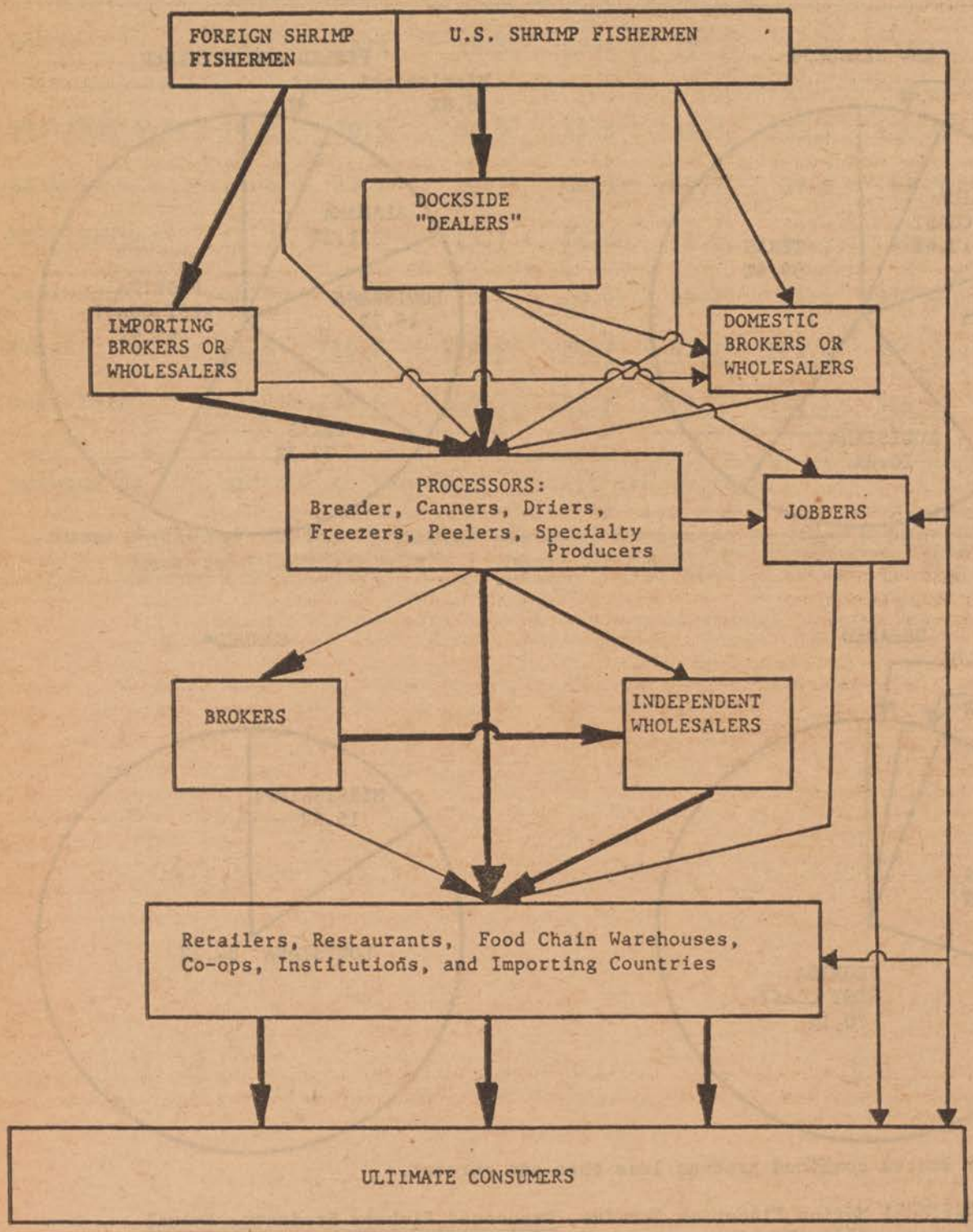




*All other states combined produce less than one percent.

SOURCE: National Marine Fisheries Service, Processed Fishery Products, Annual Summary, 1976 (Washington D.C.: Dept. of Commerce)

Figure 3.5-10
Major Marketing Channels for Shrimp Products



Bold lines indicate most heavily used channels

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Dealer operations tend to be seasonal in nature. At peak periods the work force is augmented largely by women, teenagers, and members of the fishermen's families. The workweek can vary from three to seven days, and the working day can last from six to fifteen hours.

Most of the dealer's output is sold directly to processors; wholesalers also figure largely in this market. Dealers generally have up to 10 major customers and ship their output in their own trucks or with common carriers.

Processors

Processors are the shrimp companies engaged in peeling and deveining, cooking, freezing, canning, breading, and preparing specialty products. Some also deal in green, headless shrimp, requiring no processing.

In the southeast region, including the south Atlantic and the Gulf of Mexico shrimp fisheries, 69 percent of the processors are single facility corporation; 25 percent are either corporations with branches or divisions of parent corporations. Nearly half of the individual corporations are family owned; six percent of all southeastern processors are partnership operations.

The shrimp handling and processing industry is expanding in total volume, but the rate of withdrawal of individual firms exceeds the rate of new entrants. A shortage of domestic landings appears to put a severe constraint on the entrance of new firms and the expansion of existing ones. Major factors contributing to the shrimp shortage are: (1) The decline in U.S. landings of shrimp caught in Central South American waters, and (2) the current exploitation of the major domestic Gulf stocks at their MSY levels. An example of the decline in U.S. landings from foreign waters is Florida's landings of Campeche shrimp, which have declined from a high of more than 30 million pounds in 1953 to two to three million pounds annually (1970–1975).

There are an increasing number of processors who maintain their own fleets or dockside facilities. Others continue to depend on dealers for their shrimp supplies. Due to the seasonal nature of the shrimp catch, processors carry large raw product and frozen finished product inventories. Unlike dealers, processors tend to operate their plants throughout the year. Market forms of processed shrimp include breaded, frozen, canned and specialty products (dried, pastes, sauces, and convenience dishes).

Brokers and Wholesalers

Brokers act as an intermediary between the buyers and sellers of shrimp products at the various marketing levels, usually from the various marketing levels, usually from the processor level on up. The biggest use of brokers is in interstate and international contracts and sales, promotion of new products, and establishment of business contacts for new firms.

Wholesalers also act as intermediaries in the marketing system. They take possession of shrimp products and provide storage and transportation functions for firms in the industry, thereby creating benefits and economies for all firms.

Marketing

Channels used to market processed shrimp products vary firm to firm. Some processors have their own distribution channels—such as an organization of sales representatives or a subsidiary seller—while many other firms almost exclusively employ brokers to sell their products. Though net flows cannot be given, most processors do not limit their geographic marketing territories as much as dealers do; indeed, most processors sell on a national or at least regional basis, and many of them export shrimp, primarily to Canada, Mexico, and Japan. Tables 3.5–4 through 3.5–6 provides data on U.S. exports for 1977. Data on exports by Gulf processors are unavailable.

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Table 3.5-4
United States Exports of Domestic and Foreign Shrimp Products (Fishery Statistics of the United States, 1977)

Item	Percent of Total		Quantity	
	Pounds	Dollars	Thousand Pounds	Thousand Dollars
Fresh and frozen:				
Domestic	74.6%	69.5%	26,089	$60,731
Foreign*	25.4	30.5	8,902	26,643
Total	100.0	100.0	34,991	87,374
Canned:				
Domestic	99.5	99.2	8,966	18,066
Foreign*	0.5	0.8	48	144
Total	100.0	100.0	9,014	18,210
Total:				
Domestic	79.7	74.6	35,055	78,797
Foreign*	20.3	25.4	8,950	26,787
Total	100.0%	100.0%	44,005	$105,584

Table 3.5-5
Exports of Domestic Fresh and Frozen Shrimp, By Country of Destination (Fishery Statistics of the United States, 1977)

Country	Percent of Total		Quantity	
	Pounds	Dollars	Thousand Pounds	Thousand Dollars
Canada	33.1%	33.9%	8,634	$20,610
Mexico	33.8	31.3	8,811	19,003
Japan	18.1	19.7	4,718	11,957
Sweden	6.6	6.3	1,734	3,815
United Kingdom	2.4	2.4	630	1,474
Denmark	1.6	1.6	428	941
Bermuda	0.4	0.7	115	412
New Zealand	0.7	0.6	176	363
Netherlands	0.5	0.5	124	312
Other	2.8	3.0	719	1,844
Total	100.0%	100.0%	26,089	$60,731

*Foreign shrimp exports are shrimp exported out of the United States that were of foreign origin prior to processing.

Table 3.5-6
Exports of Domestic Canned Shrimp, by Country of Destination, 1974

Country	Percent of Total		Quantity	
	pounds	dollars	Thousand pounds	Thousand dollars
Canada	70.7%	72.4%	6,340	$13,076
Sweden	5.5	6.7	493	1,205
United Kingdom . . .	6.0	4.7	542	845
Switzerland.	3.3	3.2	293	582
Australia.	4.1	3.0	368	536
Japan.	3.9	2.9	345	526
France	1.9	2.3	169	417
New Zealand.	0.9	0.8	82	151
Other.	3.7	4.0	334	728
Total	100.0%	100.0%	8,966	$18,066

From National Marine Fisheries Service, Fisheries of the United States, 1977, (Washington, D.C.: US Department of Commerce, April 1978).

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Domestic per capita consumption of shrimp has increased at a rate of 2.8 percent per year (1960–1977), a remarkable increase given that shrimp prices increased by 600 percent while the Consumer Price Index increased by slightly more than 100 percent. Exceptions to this general increase in shrimp consumption are associated with a slowing in the growth of the U.S. economy (1961–1962, 1966, late 1973–1974) or with extraordinarily high increases in shrimp prices (1971, 1975). In addition, the energy crisis in 1974 was a factor in reducing important consumption in restaurants.

Shrimp is becoming a larger portion of the total seafood products consumed in the nation (1960–1977). A large part of this relative increase has come within the last few years despite a faster growing price for shrimp than for other processed fish products.

The socioeconomic characteristics of domestic consumers of shrimp were assessed in 1969 (U.S. Department of Commerce, 1973). An update of this data is necessary in order to evaluate what effect, if any, management of shrimp decisions may have on different types of consumers.

Pricing of Shrimp

A limited insight into the mechanism of shrimp pricing was obtained from a telephone survey (conducted in development of the plan) of processors and dealers. Shrimpers feel prices are established by dealers; dealers suggest prices are set by processors from current key port trends.

Prices seem to reflect supply and demand conditions in general and the economic strengths of the U.S. and Japanese markets in particular. Since both are large importers of shrimp, any change in the quantities imported by either country can substantially influence price.

The quantity of shrimp demanded, in a normal good year, varies inversely with price (Gillespie, et al., 1969; Bell, 1970; Doll, 1972). This suggests that management measures to increase the supply of domestic shrimp would decrease the price to consumers, all other factors being equal. Conversely, measures which would result in a decline in U.S. production would increase the cost to consumers.

The consumption of shrimp also increases as income increases (Bell, 1970; Doll, 1972). Dependence of consumption on income reflects the general dependence of shrimp prices on the economic well-being of the nation.

3.5.2 Domestic Commercial Fleet Characteristics

3.5.2.1 Total Gross income of the Fleet

Reported annual pounds and ex-vessel value for domestic catch of U.S. Gulf shrimp by vessels and by boats is compared in Table 3.5–7. Annual total income for both vessels and boats increased over this time period 1962–1974.

A 10.3 percent average annual growth rate in gross income of shrimp vessels is due to a 2.3 percent average annual growth rate in pounds of shrimp landed, plus an 8.0 percent increase in ex-vessel price. A ten percent growth rate in gross income to shrimp boats is due to a 3.2 percent increase in pounds caught and a 6.8 percent increase in ex-vessel price.

Some incidentally-caught finfish are also marketed, but the value of these marketed fish is small in comparison with that of shrimp (Figs. 3.6–1 through 3.6–5).

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Table 3.5-7. Reported annual pounds and value of the domestic catch of US Gulf Shrimp by boats and by vessels, 1962-1974 (Christmas and Etzold 1977).

Year	Million Pounds (Heads-off)	Value (Million $)	Price Per Pound ($)	Total Days Fished (1000)	Effort (1000)	Pounds Per Day Fished	
1962	45.4	33.4	0.74	88.5	144.0	513	Vessel Fishery
1963	77.0	41.5	0.54	112.9	181.8	682	
1964	71.0	40.7	0.57	114.4	186.3	621	
1965	80.1	49.1	0.61	113.7	187.6	704	
1966	78.3	61.9	0.79	187.6	190.5	688	
1967	99.7	68.5	0.69	116.0	201.7	859	
1968	83.7	68.4	0.82	121.5	218.1	688	
1969	82.4	74.3	0.90	147.8	273.6	557	
1970	96.1	81.4	0.85	134.6	249.1	713	
1971	91.3	100.8	1.10	137.0	259.0	566	
1972	94.3	120.1	1.27	146.8	282.6	642	
1973	71.0	118.6	1.67	140.0	269.7	507	
1974	73.9	99.8	1.35	132.4	243.6	558	

Year	Million Pounds (Heads-off)	Value (Million $)	Price Per Pound ($)	Total Days Fished (1000)	Pounds Per Day Fished	
1962	25.2	11.9	0.47	58.0	434	Boat Fishery
1963	33.3	9.4	0.28	38.5	865	
1964	23.5	9.6	0.41	55.4	424	
1965	25.5	9.5	0.37	56.7	450	
1966	24.6	12.2	0.50	62.2	395	
1967	30.6	12.1	0.40	66.1	463	
1968	29.9	13.2	0.44	70.0	427	
1969	35.5	17.8	0.50	52.6	675	
1970	40.1	17.6	0.44	65.4	613	
1971	42.5	23.7	0.56	67.9	626	
1972	37.7	27.5	0.73	82.1	459	
1973	33.6	34.3	1.02	98.0	343	
1974	33.0	22.7	0.69	90.3	363	

From The Shrimp Fishery of the Gulf of Mexico United States: A Regional Management Plan, J.Y. Christmas and D.J. Etzold et al.

Table 3.5-8 Annual estimates of vessels and boats in the U.S. Gulf shrimp fishery

Year	Number of Gulf Shrimping Vessels*	Gross Tons Per Vessel	Otter Trawls Per Vessel	Number of Gulf Shrimping Boats
1960	2,941	41.3	1.76	3,089
1961	2,686	42.6	1.80	2,987
1962	2,600	41.9	1.77	3,927
1963	2,697	41.5	1.76	4,481
1964	2,782	42.0	1.74	4,360
1965	2,849	42.7	1.72	4,785
1966	2,942	44.9	1.74	4,797
1967	3,146	48.9	1.76	4,983
1968	3,430	52.5	1.77	5,109
1969	3,569	53.7	1.76	4,817
1970	3,579	53.8	1.73	4,495
1971	3,487	57.8	1.77	4,828
1972	3,683	59.2	2.20	4,500
1973	4,091	59.9	1.78	4,723
1974	3,785	61.5	1.77	4,589
1975	3,690	59.5	1.78	5,054

* This total is exclusive of duplication.

From NMFS data from Fishery Statistics of the United States.

Table 3.5-9. Cost of new US Gulf shrimp vessels by various sizes and types of construction, 1971-1977 (from Warren and Griffin 1978).

Year	Vessel Length and Type		Cost
1971:	53-65'	wood and steel	$ 57,000
	66-72'	wood and steel	76,000
1973:	63-69'	wood	93,000
	63-69'	steel	118,000
	70-78'	steel	144,000
1975:	68'	wood	121,000
	73'	wood	134,000
	68'	steel	148,000
	73'	steel	185,000
1977:	68'	wood	147,000
	73'	wood	164,000
	68'	steel	195,000
	73'	steel	220,000

Table 3.5-10

Annual Participation in the Subject Fishery by Vessels and Boats (Fishery Statistics of the United States)

Year	Vessels	Days* fished per vessel	Boats	Days fished per boat
1962	2600	34.0	3927	14.8
1963	2697	41.9	4481	8.6
1964	2782	41.1	4360	12.7
1965	2849	39.9	4785	11.8
1966	2942	38.6	4797	13.0
1967	3146	36.9	4983	13.3
1968	3430	35.4	5109	13.7
1969	3569	41.8	4817	10.9
1970	3579	37.6	4495	14.5
1971	3487	39.3	4828	14.1
1972	3683	39.9	4500	18.2
1973	4091	34.2	4723	20.7
1974	3785	35.0	4589	19.7

* Day = 24 hours of fishing time

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Estimates of Net Income of Vessels

Net income estimates for 50–90 foot vessels varies considerably from year to year. The variation reflects a difference in annual production of shrimp (due largely to changes in environmental forces), a variation in ex-vessel value (due largely to conditions of U.S. and Japanese economy), and the limited usefulness of shrimp vessels in other economic endeavors.

3.5.2.2 Investment in Vessels, Boats, and Gear

Table 3.5–8 lists estimates of the number of vessels and boats in the domestic shrimp fleet, as well as estimated gross tons and otter trawls per vessel. These estimates indicate that since 1970 Gulf shrimp vessels have averaged 76 percent of the number and 83 percent of the gross tonnage of total U.S. shrimp vessels. The average gross tons per vessel in the Gulf is half again as large as that in the south Atlantic fleet. Since 1970 Gulf shrimp boats have averaged 83 percent of the total number of U.S. shrimp boats. The Gulf vessels are comparatively new: in 1975, 23 percent of the vessels had been constructed within the 1970–1975 period and 52 percent in the 1965–1975 decade.

Investment in vessels and gear is only available for limited portion of the vessel component of the fleet (Table 3.5–9, from Warren and Griffin, 1978). As indicated, the cost of a vessel has jumped sharply during the 1970's. Inflation, the trend to larger vessels, and additional equipment are the principal causes of the increase; and obviously a larger income is now required to justify investment in the vessels.

The 15-year trend in vessel sizes shows a decline in the relative share of the fleet in the 20 to 79 ton range, with, however, a statistically significant increase for craft larger that 79 tons. This statistic may reflect the larger vessel's ability to fish in inclement weather, its increased range, and its attractiveness to more competent crew members. There are no current studies over a sufficiently long period of time to investigate economic profitability by size of vessel. Nor have these studies attempted to examine the boat component of the fleet.

Investment in new vessels appears to be cyclical in nature: several consecutive good shrimping years induce a major increase in new craft construction and several consecutive bad years result in a pronounced reduction.

3.5.2.3 Consideration of Overcapitalization

Biological literature dealing with fishery management is replete with discussion of 'overfishing'. The economics profession has developed a similar body of literature which attributes the eventuality of this overfishing to the common property nature of fishery resources. Economic literature also identifies economic waste as an inherent aspect of harvesting common property fishery resources. Essentially, the scientific argument is that free access to fishery resources results in harvests larger that maximum economic yield (MEY) and almost centainly larger than MSY, and inefficiency employing resources for these harvests. Bromley (1969) has also pointed out the inappropriateness of applying the conventional fisheries' economic model (developed for demersal fishery) to all fishery resources.

Focusing on the economic impact of free access, then, involves deliberation over the quantities harvested and the effort and capital expended. Much debate normally occurs when proponents of MEY management argue that not only less effort but also lower harvests will be beneficial to fishermen, processors, and society at large. As Gulland (1972) indicates, shrimp fisheries exhibit flat-topped yield curves. The implication is that reductions in fishing effort are likely to result in proportionally smaller decrease in shrimp landings. Thus management of fishing effort at some point below MSY must be concerned with the benefits and costs of reducing fishing effort. Economists note that free access to fishery resources leads to overfishing, lower sustained yield, and higher costs. With overfishing and lower sustained yield previously cited as not a vaild concept in the Gulf shrimp fishery, the benefits to society from any benefit-cost measurement must come from reduction of harvest costs. Reducing the total harvest cost would involve reducing the number of firms (fishing effort) in the industry. There is evidence that other measures to reduce fishing effort, such as quotas, gear restrictions, shortened seasons, etc., actually increase capitalization and costs (Crutchfield and Zellner, 1962).

Although the annual nature of the shrimp crop provides some biological uniqueness, the Gulf shrimp fishery is subject to the sound scientific argument that all mature free access fisheries become overcapitalized (overcapitalization being the fishing effort or number of firms beyond that necessary to harvest the MEY). The extent of overcapitalization cannot be precisely stated at this time. Two investigations analyzed only vessel overcapitalization and utilized only one year's data. The results, even with these limitations, support the scientific arguments previously presented.

Very little analysis is required to show that the ideal world, perhaps MEY for the economist or MSY for the biologist, is better that the laissez-faire real world of free access to fishery resources (Coase, 1968). As pointed out above, however, methods to achieve MEY or even MSY may be more burdensome to the resource users, society, and government. Simply stated, the issue of overcapitalization and limited entry as a means of eliminating it really only require that a proposed shrimp harvest be judged better or worse than the existing harvest when all benefits and costs are considered. The problem of overcapitalization in the shrimp fishery, however, is not as simple as might first appear.

There are two issues, each dealing with the demand for shrimp, that also have an effect on the extent and importance of overcapitalization. The first is that Gates and Norton (1974) clearly demonstrate that the level of fishing effort (capital) yielding MEY is not necessarily the same as that representing maximum economic efficiency (MEE). MEE is realized at that level of fishing effort at which the value to society of the last unit of shrimp produced is equal to the cost to society of producing that unit. MEY is equal to MEE only when the price of shrimp is perfectly elastic, that is, when unlimited quantities can be purchased without the price rising. The demand for shrimp is quite different from this situation, and the result is that MEY and MEE are not identical. In this case MEE, not the rent maximization associated with MEY, is the appropriate economic goal. Futher, the MEE goal would induce a lower harvest than that of MEY, since the industry generates costs to society by using a common property resource. These cost involve the physical, human and monetary resources used in the fishery which could be better employed in other sectors of the economy. Their use in the fishery bids up their prices thereby creating inflationary pressures.

The second issue has to do with the impacat high levels of consumer demand have on the size of cost savings from decreasing the number of shrimping firms (capitalization). Bell (1972) and Cowers (1976) both recognize that, at high levels of consumer demand, maximization of yield (MEY) and

maximum economic efficiency (MEE) for all practical purposes are identical goals, even in view of the above argument. If such circumstances occur in the Gulf shrimp fishery, the overcapitalization may not be as serious as a cursory appraisal would suggest. Futhermore, while there is evidence of overcapitalization, the economic performance of harvesting firms, their owners, and employees, appears satisfactory. Also, the social ramifications of limited entry, such as alternative employment opportunities for those excluded, must be considered.

At present there is neither a suitable model nor adequate research to evaluate fully the socioeconomic issue of overcapitalization. The Council, therefore, has determined that, while capitalization (and effort) in the shrimp fishery may exceed MEE, the benefits of high levels of employment and the healthy economic condition of the shrimp industry outweigh any inflationary results.

3.5.2.4 Annual Participation in the Fishery

Table 3.5–10 lists the number of days fished per vessel and per boat, and the number of craft engaged in the subject fishery for each of the years from 1962 to 1974. It should be noted that days fished represent 24 hours of trawling time. Tables in Section 4.7 indicate the time spent trawling for each of the dominant species.

3.5.2.5 Total Man-Days Per Season

Annual estimates of the number of shrimpers on vessels and boats are given in Tables 3.5–11 and 3.5–12.

3.5.3 Domestic Commercial Processing Characteristics

3.5.3.1 Total Gross Income from the Shrimp and All Related Fisheries

Annual production for the Gulf region by product type of shrimp is shown in Table 3.5–13. Raw headless shrimp appear to generate the most revenue for Gulf processors: they constitute 45 percent of gross income in the 1967–1976 time period. Raw peeled shrimp make up 26 percent of the total, and breaded shrimp 17 percent. Although it involves a substantial amount of poundage processed, canning accounts for only ten percent of revenue, and the remaining two percent is split between dried shrimp and cooked and peeled shrimp.

3.5.3.2 Investment in Plant and Equipment

The number of seafood processing plants in the Gulf totaled 356 in 1976 (Table 3.5–14). No data are available for the capital assets or the yearly investment in shrimp processing either at national or at Gulf-wide levels. Data are available at the national level to construct an accurate capital series for all canned and cured seafood processing plants and for all fresh and frozen seafood processing plants. These data will be useful for comparative purposes if, at some future time, a shrimp processing capital series can be constructed.

3.5.3.3 Total Employment and Labor Income

Statistics for the Gulf shrimp processing industry cannot be isolated from the total fish processing data. Table 3.5–15 gives the pattern of employment and Table 3.5–16 shows the average hourly wage, for the nation and for the Gulf region. The annual rate of increase in fish processing employment has exceeded the national average for all manufacturing industries. Employment, reflected in both yearly average and seasonal high, declined for Louisiana and Texas in the 1970–1976 interval, while the other three states in the Gulf fishery all registered increases.

3.5.4 Recreational Fishing Characteristics

From 1955 to 1970, the number of marine recreational fishermen in the U.S. Gulf of Mexico more than doubled, from 1.1 million to 2.3 million, and expenditures by recreational fishermen more than quadrupled, from about $98 million to $405 million. A 1975 marine recreational survey conducted by the National Marine Fisheries Service suggested that the total poundage of shellfish, in terms of live weight, taken by recreational fishermen amounted to more than 56 million pounds, or about 25 percent of the finfish catch. The absence of accurate measures of total catch and effort allow only general inferences of their magnitude along the Gulf coast; therefore, precise delineation of the catch and effort may not be possible. There is no evidence to suggest, however, that recreational shrimping along the Gulf coast has failed to follow growth trends of other marine recreational fisheries.

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Table 3.5-11

Resident Vessel Shrimp Fishermen for the Gulf and Gulf States
(1958-1974)

Year	Total Gulf*	Florida West Coast	Alabama	Mississippi	Louisiana	Texas
1958	8,171	2,669	518	1,221	2,749	4,592
1959	8,225	2,520	577	1,261	3,235	4,222
1960	7,849	2,119	564	1,106	3,432	4,142
1961	7,186	2,091	462	1,152	2,613	4,268
1962	6,661	1,955	428	1,174	2,348	3,406
1963	7,252	2,601	659	1,157	3,380	3,824
1964	7,121	2,254	582	1,000	3,503	3,749
1965	7,223	2,105	706	1,010	3,341	3,657
1966	7,466	2,140	882	1,020	3,524	3,787
1967	8,219	2,161	961	972	3,782	4,723
1968	8,851	2,412	1,164	1,195	3,824	4,932
1969	9,266	2,350	1,283	1,166	3,987	4,975
1970	9,386	2,033	1,143	1,127	4,450	4,737
1971	9,042	1,897	1,160	851	4,063	5,247
1972	9,534	2,159	1,166	766	4,170	5,264
1973	10,573	2,710	1,438	904	4,948	6,312
1974	9,733	2,377	1,175	615	3,675	5,415
1975	9,507	2,425	1,179	573	3,552	4,751

Source: Fishery Statistics of the United States

* exclusive of duplication between states

Table 3.5-12

Resident Full-Time Boat Shrimp Fishermen for the
U.S. Gulf, by States (1958-1974)

Year	Total Gulf	Florida West Coast	Alabama	Mississippi	Louisiana	Texas
1958	4358	219	348	322	2824	645
1959	4280	149	340	270	2789	768
1960	4116	140	346	248	2836	570
1961	3903	147	315	208	2668	573
1962	4108	172	371	216	2815	565
1963	4443	203	395	220	3098	594
1964	4451	160	380	232	2974	705
1965	4457	178	335	235	2997	735
1966	4312	142	311	178	2919	772
1967	4195	110	279	168	2949	699
1968	3988	104	227	146	2910	601
1969	3771	88	188	150	2914	431
1970	3774	97	174	200	2791	512
1971	3879	93	171	254	2808	553
1972	3794	75	177	218	3188	475
1973	4078	94	158	200	3152	474
1974	3937	94	125	222	3130	366
1975	4159	75	147	216	3168	553

From Fishery Statistics of the United States.

Source: Processed Fishery Products, "Gulf Fisheries," various years.

Note: "Gross income" is the gross amount received by the producer at the production point; no deductions are made for commission or expenses.

Table 3.5-13

Production of Shrimp Products in the Gulf States, 1958-1977

Year	Breaded cooked and raw		Cooked and peeled	
	Gross Income (thousand $)	Pounds (thousand)	Gross Income (thousand $)	Pounds (thousand)
1958	$20,854	19,392	$2,265	2,368
1959	18,094	18,156	1,739	2,227
1960	25,608	25,530	2,379	2,851
1961	32,016	26,941	2,354	2,839
1962	33,399	25,870	1,925	1,965
1963	30,437	27,092	2,465	2,745
1964	35,459	31,661	2,243	2,745
1965	45,211	35,605	3,580	4,216
1966	52,001	36,349	3,707	3,705
1967	43,494	32,319	3,922	4,039
1968	53,257	35,687	4,327	3,569
1969	59,454	37,396	5,510	5,318
1970	55,990	35,462	4,586	5,751
1971	61,085	36,048	6,378	5,013
1972	76,451	38,763	4,004	4,038
1973	95,767	40,680	4,927	2,819
1974	75,173	32,888	4,788	3,032
1975	68,066	26,716	4,319	2,535
1976	92,835	28,935	3,549	1,832

Year	Raw Headless Shrimp		Raw Peeled	
	Gross Income (thousand $)	Pounds (thousand)	Gross Income (thousand $)	Pounds (thousand)
1958	$43,474	57,284	$4,402	5,309
1959	32,914	55,486	6,056	9,437
1960	45,263	74,730	10,519	13,702
1961	31,993	42,297	13,058	15,402
1962	43,743	47,646	14,360	14,825
1963	44,748	62,143	17,258	18,676
1964	44,271	55,295	19,155	21,957
1965	48,689	58,928	21,286	23,430
1966	54,207	56,242	26,443	25,664
1967	81,121	91,860	33,033	30,842
1968	76,448	74,205	37,715	31,068
1969	88,031	80,452	42,260	30,852
1970	91,342	88,061	45,540	40,228
1971	112,342	87,860	48,934	36,893
1972	125,159	86,824	47,380	31,917
1973	149,473	43,642	43,371	24,671
1974	114,077	65,537	33,937	24,145
1975	132,084	56,183	34,824	25,249
1976	255,877	85,459	67,685	32,437

Year	Canned		Dried	
	Gross Income (thousand $)	Pounds (thousand)	Gross Income (thousand $)	Pounds (thousand)
1958	$16,759	22,034	$493	1,688
1959	13,259	21,207	291	1,555
1960	14,853	24,428	796	3,430
1961	8,760	13,142	745	2,019
1962	16,502	21,584	598	1,796
1963	17,503	27,765	380	2,194
1964	11,929	17,812	461	1,092
1965	19,560	27,724	547	1,329
1966	20,383	26,057	685	1,640
1967	19,833	26,489	582	1,701
1968	22,079	27,527	1,066	2,707
1969	20,898	27,663	1,135	3,141
1970	26,730	34,664	n.a.	n.a.
1971	23,787	29,130	1,356	3,498
1972	29,160	29,937	1,439	2,876
1973	38,024	27,420	1,250	1,558
1974	31,137	26,131	1,401	2,482
1975	17,486	14,235	2,931	2,879
1976	32,606	22,511	1,748	2,217

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Most of the shrimp caught by recreational fishermen are taken with otter trawls ranging from 16 to 40 feet in width. Seines, cast nets, dip nets, butterfly nets, and push nets are also used in some areas. It is not possible from available data to determine what portion of the total recreational shrimp catch is used for home consumption and what may be sold commercially.

State-by-state summaries of the recreational shrimp fishery are:

Florida West Coast: No permit is required; total catch and effort are not quantified. The number of boats is estimated at 500 to 650 (Charles R. Futch, Florida Department of Natural Resources, personal communication).

Alabama: About a third of the owners of boats in the coastal counties less than 26 feet in length owned 16-foot trawls, for which no licenses are required (Swingle, et al., 1976). There are more than 6,000 such boats. Swingle, et al. (1976) estimate that recreational shrimpers harvested 15 to 25 percent of the total catch in the inland waters (Table 3.5–17). Because of catch limitations, some recreational shrimpers often purchase commercial licenses during open commercial seasons to avoid poundage restrictions imposed on sport shrimpers.

Mississippi: Weaver and Christmas (n.d.) estimate that recreational shrimpers constituted an average of 67 percent of the licensed shrimpers in 1974–1976 and took more than a half million pounds of shrimp or about one-eighth of the reported inshore commercial catch during the three-year period (Table 3.5–17).

There is no distinction between commercial and recreational shrimpers under the law. In their study, Weaver and Christmas classified recreational shrimpers as those who reportedly did not sell their catches.

Louisiana: More recreational shrimpers are located in Louisiana than in any other state. It is estimated that in 1973 sport shrimpers in Louisiana equipped some 30,000 boats with otter trawls and harvested some 23.6 million pounds (heads-on) of shrimp, Table 3.5–17 (U.S. Army Corps of Engineers n.d.). At the present time, both the number of boats equipped with trawls and the total catch are probably much higher. No license is required for recreational trawls up to 16 feet. Licenses are required for trawls in the 17- to 50-foot range. The smaller trawl operators may take up to 100 pounds of shrimp, heads-on, per day with no size limitations. A sport trawling license permits the shrimper to take as many shrimp each day as he can, provided the shrimp are not sold. Recreational shrimpers often purchase commercial licenses which permit them to shrimp on a part-time basis and sell all or part of the catch. Most of the shrimp sold go to outlets which are not statistically monitored, so the magnitude of this commercial catch cannot be defined.

Texas: King (1975) estimated that 1.1 percent of the Texas shrimp harvest was caught by recreational shrimpers in 1973. Recreational shrimpers harvested about 846,000 pounds from Texas' bays and about 55,000 pounds from the Gulf waters adjacent to Texas (Table 3.5–17). Licenses are required of Texas recreational fishermen. An additional license is required for trawls. Cast nets, dip nets, traps, and minnow seines do not require licenses. Catch limits are two quarts per person during any inland waters closed season. Up to 100 pounds may be taken in major bays during the open season, August 15 to December 15 and from Gulf waters under state jurisdiction during the July 16 to May 31 season. The limit is 15 pounds in major bays during the May 15 to July 15 season. Recreational shrimpers are prohibited from selling any portion of their catch and are subject to the same size restrictions as commercial fishermen.

Personal Communications from Fishery Managers

The following information on recreational shrimping was collected by means of personal communications with fishery management personnel from each of the five Gulf states.

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Table 3.5-14

Number of Processing Plants in the Gulf Coast States 1970-1976

	Total Gulf	Florida West Coast	Alabama	Mississippi	Louisiana	Texas
1970	435	138	44	43	122	88
1971	428	127	48	44	128	81
1972	417	118	51	42	124	82
1973	407	118	51	40	118	80
1974	360	103	44	37	112	64
1975	350	106	43	37	104	60
1976	356	113	43	36	109	55

From Fishery Statistics of the United States and Processed Fishery Products, Annual Summary.

Table 3.5-15
Yearly Average and Seasonal High Employment in Fish Processing

	Total Gulf		Florida West Coast		Alabama	
	Yearly Ave.	Sea. High	Yearly Ave.	Sea. High	Yearly Ave.	Sea. High
1970	11,527	15,659	3,507	4,137	875	1,383
1971	11,488	15,912	3,562	4,321	1,018	1,590
1972	11,477	15,372	3,409	3,971	1,158	1,732
1973	11,405	15,440	3,477	3,951	1,196	1,786
1974	9,316	13,245	2,953	3,473	1,040	1,496
1975	9.058	12,028	2,860	3,319	1,005	1,419
1976	10,399	13,590	3,393	4,014	1,297	1,839

	Mississippi		Louisiana		Texas	
	Yearly Ave.	Sea. High	Yearly Ave.	Sea. High	Yearly Ave.	Sea. High
1970	990	1,458	3,177	4,612	2,978	4,069
1971	1,025	1,604	3,122	4,699	2,771	3,698
1972	1,087	1,564	3,262	4,775	2,561	3,328
1973	1,016	1,466	3,233	4,807	2,483	3,430
1974	1.088	1,516	2,953	4,242	1,282	2,518
1975	1,035	1,468	2,733	3,780	1,425	2,042
1976	1,124	1,530	2,865	3,958	1,720	2,249

From Fishery Statistics of the United States and Current Fisheries Statistics.

Table 3.5-16

Hourly Wage Rates for Fish Processing 1958-1976

	Canned and Cured		Fresh and Frozen	
	Nation	Gulf	Nation	Gulf
1958	$1.57	$1.10	$1.17	$ .82
1959	1.68	1.18	1.19	.83
1960	1.79	1.25	1.20	.84
1961	1.79	1.25	1.28	.90
1962	1.88	1.32	1.41	.98
1963	1.91	1.34	1.41	.98
1964	1.94	1.36	1.46	1.02
1965	2.07	1.56	1.65	1.24
1966	2.12	1.59	1.71	1.28
1967	2.19	1.64	1.80	1.35
1968	2.28	1.72	1.90	1.42
1969	2.34	1.86	2.04	1.62
1970	2.74	2.19	2.00	1.60
1971	2.86	2.29	2.17	1.73
1972	3.09	2.81	2.59	2.36
1973	3.34	3.04	2.72	2.48
1974	3.60	3.27	3.07	2.79
1975	3.87	3.52	3.32	3.02
1976	4.50	4.10	3.65	3.31

From Census of Manufacturers and Annual Survey of Manufacturers, US Department of Commerce.

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Table 3.5-17.—*Gulf of Mexico Recreational Shrimp Fishery: The Survey Methods, Number of Sport Trawls, Estimated Total Effort (m.h. = Man Hours, a.d. = Angler-Days and m.d. = Man-Days), Estimated Total Catch and Data Source by State and Year*

State	Year	Survey method	Number of sport trawls [1]	Estimated total effort	Estimated total catch (lbs. heads-on)	Data source
Florida west coast			([2])	([2])	([2])	([2])
Alabama [3]	1972	Postal and telephone survey	[4]5,727	([5])	277,051	Swingle et al. 1976.
	1973	Personal interview	5,727	309,644 m.h	204,577	Swingle et al. 1976.
	1974	Personal interview	5,727	189,944 m.h	290,541	Swingle et al. 1976.
Mississippi	1974	Personal interview	1,535	19,958 a.d	166,667	Weaver and Christmas n.d.
	1975	Postal and telephone	1,770	15,410 a.d	176,353	Weaver and Christmas n.d.
	1976	Survey	1,874	16,571 a.d	182,111	Weaver and Christmas n.d.
Louisiana	1968	Telephone survey	14,000	378,000 m.d [6]	19,000,000	U.S. Fish and Wildlife Service 1972.
	1973	([7])	30,000	472,000 m.d	23,600,000	U.S. Army Corps of Engineers n.d.
Texas	1973	Postal and telephone survey	10,117	([5])	900,823 118,080	King 1975.

[1] The number of recreational trawls (>16 feet in length) in Baldwin and Mobile Counties, Alabama, was estimated for 1972 based on the assumptions that all recreational trawls were owned by boat owners and that all recreational shrimping was conducted from boats ≤ 26 feet in length. The estimated number of recreational trawls in Louisiana during 1973 was based on the assumption that 25 percent of the licensed sport boats were equipped with trawls to harvest shrimp. The total number of trawls in Mississippi was based on the results of a survey of licensed trawl holders who reported no sale of catch. In Texas, the total number of recreational trawls was determined from direct counts of the number of "Individual Bait-Shrimp Trawl" licenses sold during 1973.

[2] No data available.

[3] All estimates are for Baldwin and Mobile Counties only.

[4] Catch Estimates for 1973 and 1974 were based on the assumption that there was no change in the number of trawls owned since 1972.

[5] Not determined.

[6] Based on the assumption that 14,000 shrimpers fished an average of 27 man-days each in 1968.

[7] The estimated total catch and effort for 1973 were projections based upon the results of the 1968 survey.

Florida West Coast: Most of the interest in recreational shrimping appears to be centered in the Apalachicola Bay region. The boats used in the fishery range in size from about 15 feet to large cabin cruisers, and include a number of small (20–25 feet) fully-rigged shrimp boats. Most of the recreational effort is expended on weekends during summer and autumn by residents of the coastal counties and adjacent inland counties. Trawls range in size from 14 to 18 feet with an average size of 16 feet. Other gear types are seldom used to harvest shrimp for home consumption. The popularity of recreational shrimping in Florida appears to be related to the retail price of shrimp rather than to the availability of the resource. The number of participants in the recreational shrimp fishery may increase if shrimp prices continue to rise. (Charles R. Futch, Assistant Chief, Bureau of Marine Science and Technology, Florida Department of Natural Resources, Tallahassee, 9 May 1978).

Comparatively little recreational shrimping occurs on the Florida west coast. Some recreational effort may occur out of the Cedar Key area by inland county residents traveling to the coast for the weekend. There may have been a decline in the number of participants in the recreational shrimp fishery in the past few years because of the rising prices of fuel, nets, and equipment. Also, obtaining the necessary information on how to shrimp may be more difficult here than in other areas (Jeffrey A. Fisher, Marine Advisory Agent, Panama City, 10 may 1978).

Alabama: Enforcement officers have observed an apparent increase in the number of recreational shrimp boats in the past few years which is believed to be mainly due to the rising retail price of shrimp. The number of participants will probably increase if shrimp prices continue to rise. Most of the recreational effort is expended in the Mississippi Sound and lower Mobile Bay where the greatest concentrations of brown shrimp occur. Some recreational effort may occur in Wolf and Perdido Bays but is small by comparison. Recreational shrimpers reside primarily in Baldwin and Mobile counties, although some live in the inland counties and travel to the coast to shrimp. Residents of other states have been periodically observed trawling recreationally in Alabama. Most of the recreational effort occurs on the weekends, and to a lesser extent, after work on weekdays. The boats generally range from 14 to 30 feet in length, with the majority in the 14 to 20 foot class. Most of the recreational catch is harvested with 16-foot otter trawls. Owners of 16-foot trawls sometimes purchase commercial licenses to avoid the poundage limitations imposed on recreational shrimpers. (Steven R. Heath, Marine Biologist, Alabama Department of Conservation and Natural Resources, Dauphin Island, 11 May 1978.)

Mississippi: Recreational shrimping occurs primarily in Mississippi Sound between Biloxi and Pascagoula, with a comparatively small effort in the vicinity of Waveland. Most recreational shrimping is conducted using a small boat (30 feet long or less) outfitted with a single 16-foot trawl with one to two people aboard. The majority of the recreational shrimpers reside in Harrison and Jackson counties; relatively few live in Hancock county. The number of licensed trawls in Mississippi has increased sharply in the last three years. (Tom Van Devender, Fishery Biologist, Gulf Coast Research Lab, Ocean Springs, 8 May 1978.)

Louisiana: There are a large number of participants in the recreational shrimp fishery. About 25 percent of the estimated 200,000 recreational boats registered in Louisiana are equipped with otter trawls. Although the majority of the recreational catch is taken in otter trawls, some effort occurs with wing nets and cast nets. Wing nets may be attached to fixed platforms or boats; cast nets are used in the Rockefeller Refuge, lake Pontchartrain vicinity, and other accessible marsh areas. The boats used for recreational shrimping range in length from about 14 feet and up. Most of the residents of the coastal parishes who own boats 16 feet in length have otter trawls. Many recreational shrimpers are residents of larger cities and choose to shrimp in the wetland areas nearby. However, on a typical trip, recreational shrimpers travel 50 to 80 miles to shrimp in coastal areas Comparatively few people from the northern part of the state above Baton Rouge travel to the coast to shrimp. There is no known recreational shrimping by residents of other states. (Harry Schafer, Chief; William S. Perret, Federal Aid Coordinator; Judd Pollard, Biologist, Division of Oysters, Water Bottoms and Seafoods, Louisiana Wildlife and Fisheries Commission, New Orleans, 6 June 1978.)

Texas: The general increase in the number of "Individual Bait-Shrimp

Trawl" licenses sold in recent years suggests that the number of participants in the Texas recreational shrimp fishery has shown the same growth trends as the other Gulf states. The growth of the recreational shrimp fishery in Texas may be attributed to (1) population growth in the coastal areas, (2) an increase in leisure time, and (3) the rising retail price of shrimp. The boats used by recreational shrimpers average about 16 to 21 feet in length. Most of the shrimpers reside in coastal counties or adjacent inland counties. There is no known recreational shrimping effort by residents of other states. The majority of the recreational catch is taken with otter trawls. (Roy B. Johnson, Regional Director, Coastal Fisheries, Texas Parks and Wildlife Department, La Porte, 13 June 1978.)

3.5.5 Subsistence Shrimping

Accepting the definition of a subsistence shrimp fisherman as one who catches just enough shrimp to provide for immediate sustenance of his family, no individuals, communities, or sicieties fitting into this category could be identified as part of the Gulf of Mexico shrimp fishery. There are apparently some fishermen who partially subsist on shrimp. In a broader sense, there are substantial numbers of south Louisiana residents who alternate their subsistence activity from shrimping to crabbing, trapping, and hunting and who have little or no income other than that derived from these activities.

3.5.6 Indian Treaty Fishing Characteristics

No treaties with Indians (Native Americans) which would affect a Gulf of Mexico fishery management plan have been located. One lawsuit, pending in Federal District Court for the Eastern District of Louisiana, seeks to enjoin enforcement of all Louisiana wildlife and fishery laws "unsupported by legitimate conservation considerations" as applied to three tribes domiciled in Louisiana. It seeks to overturn Louisiana laws regulating gill nets and seines, defining the line of demarcation between inside and outside waters for shrimping, and regulating nets and gear used for taking shrimp, by having them delcared unconstitutional as applied to Houmas, Chittimacha, and Choctaw Indians on the grounds that treaties entered into between France and Spain and various Indian tribes were carried over in full force by the terms of the Louisiana Purchase.

3.5.7 Output of Domestic Commercial Bait-Shrimp Fishery

A bait-shrimp industry of considerable economic importance has arisen in some areas of the Gulf of Mexico due to the popularity of shrimp, live or dead, as bait for numerous varieties of saltwater game fish (Section 4.1, Predation). Each of the Gulf states has laws regulating the bait-shrimp industry. Generally there are no restrictions as to season, count size, or closed areas. The bait fishery is based primary on the juveniles of brown, pink, and white shrimp, with pink shrimp dominant for Florida and brown and white shrimp dominant in the other states.

Otter trawls, side-frame trawls, cast nets, seines, and baited traps are used to harvest bait. The catch is sorted rapidly, and shrimp are placed in aerated live-bait wells. Live-bait shrimping operations are conducted primarily at night.

A state-by-state summary:

Florida: An average of 74.75 million shrimp, valued at $1.42 million, was produced in the 1968–1975 period (Table 3.5–18). The number of permits issued increased from a 1968–1969 low of 182 to 761 in 1974 (Table 3.5–18). A decline in the total catch has accompanied the increase in permits (Table 3.5–18).

Alabama: Swingi (1972) reports that 24 bonafide bait dealers in Baldwin and Mobil counties sold 1,544,000 live shrimp with a retail value of $64,500 during. In addition to the live bait sales, a total of 22,200 pounds of dead shrimp was sold for bait with a retail value of $12,040. Bait-shrimping is a part-time occupation, primarily during the May–September period, for most of the bait dealers; 40 licenses were issued for 1977–1978 fiscal year (Steven R. Heath, Alabama Department of Conservation and Natural Resources, personal communication.)

Mississippi: Christmas, et al. (1976) estimate that bait-shrimpers in the coastal counties of Mississippi harvested a total of 60,317 pounds of live shrimp with a retail value of $96,804 during May to November, 1971. In addition, they estimate that 44,860 pounds of shrimp valued at $25,875 were used as dead bait during the same period.

Louisiana: Saltwater finfisherman in Louisiana used an estimated 1,529,000 pounds of bait-shrimp during 1973 (U.S. Fish and Wildlife Service data 1976, cited in U.S. Army Corps of Engineers n.d.). Live bait-shrimping in Louisiana comes under strict regulation, and a $1,000 property, cash, or performance bond must be posted by the dealer as surety for observance of regulations. The number of licenses issued during 1971–1978 varied between 11 and 28 per year; a recent high was 28 in 1974, and the 1978 total was 12 (W.S. Perret, LDWF personal communication).

Texas: Chin (1960) estimates that a total of 460,995 pounds of live bait-shrimp and 206,624 pounds of dead bait-shrimp were harvested from Galveston Bay from June 1957 to May 1959. The total retail value of the catches were $653,520 and $112,761 for live and dead bait-shrimp, respectively. Stokes (1974) estimates that a total of 53,181 quarts of live bait-shrimp with a retail value of $265,905 were harvested in the Lower Laguna Madre area from November 1970 through October 1972. NMFS estimates that a total of 2,340,000 pounds of live and dead bait shrimp valued at $6,790,000 were harvested on the Texas coast in 1978. There were approximately 1,500 commercial bait-shrimp boat licenses issued that year.

3.5.8 Area Community Characteristics

3.5.8.1 Total Population

A very substantial settlement of the coastal area has occurred during the twentieth century, resulting in substantial changes to the estuarine habitat of the Gulf populations (Lindall and Saloman, 1977).

The most recent population trends in the coastal area are presented in Figure 3.5–11. The coastal parishes/counties display no uniform pattern of recent population change. However, on a state-by-state comparison the coastal parishes/counties that have been experiencing the most rapid growth tend to be situated along the Florida coast. Several Louisiana, Alabama, Mississippi, and Texas counties that show moderately strong growth appear to do so in conjunction with the spread of population in and around metropolitan areas. Rapid growth of Florida counties has long been associated with retirement.

The shrimp industry makes its presence felt in virtually all ports that lie on or near the Gulf of Mexico. However, in only a handful of ports could it be considered the dominant industry. The ports tend also to be sites of shipbuilding, petrochemical manufacture, and marine transport.

3.5.8.2 Total Employment in Shrimp Fishery

Peak average employment associated with the Gulf shrimp fishery for 1974 was 28,295, with a seasonal peak of 32,850. Employment is delineated in the accompanying table, covering processing, wholesaling, and vessel and boat fisherman for the year. Data is from Fisheries Statistics of the U.S., 1974.

Table 3.5-18—*Total number of bait-shrimp permits issued, total live shrimp production, and value of the catch in Florida for the years 1968 through 1975 (after Christmas and Etzold 1977)*

Year	Permits	Live shrimp production ($\times 10^6$ individuals)	Value ($\times 10^6$ dollars)
1968	182	87.02	1.49
1969	182	88.55	1.76
1970	399	78.72	1.40
1971	401	67.04	1.23
1972	544	73.64	1.32
1973	361	70.31	1.34
1974	761	61.30	1.29
1975	699	71.43	1.55

Table 3.5-18—*Total number of bait-shrimp permits issued, total live shrimp production, and value of the catch in Florida for the years 1968 through 1975 (after Christmas and Etzold 1977)*—Continued

	Seasonal seafood processing employment	Yearly averages	Seasonal seafood wholesaling employment	Yearly averages	Full time	
					Fishermen vessels	Boats
Florida west coast	3,473	2,953	557	515	2,377	94
Alabama	1,496	1,040	145	91	1,175	125
Mississippi	1,516	1,088	127	80	615	222
Louisiana	4,242	2,953	443	358	3,675	3,130
Texas	2,518	1,282	1,139	741	5,415	366
Total gulf	13,245	9,316	2,411	1,785	13,257	3,937

3.5.8.3 Relationship of Shrimp Fisheries to Total Work Force

Census information about numbers of shrimp fishermen is unavailable as it is masked among counts of people employed in agriculture, forestry, and fisheries. A frequency distribution of Gulf counties, in terms of the percent of the labor force that was employed, is given in Figure 3.5.-12. It does not appear that shrimp fishing is a major contributor to overall employment in most of Gulf counties. The highest proportion employed in agriculture, forestry, and fisheries combined was 30 percent.

Table 3.5-19 compares, by county, the number of people identified as employed in the fisheries, mining, contract construction, and petrochemical manufacturing industries (county business patterns) for Texas and Louisiana counties identified as major centers of shrimp industry activity. The data indicate that the shrimp industry is overshadowed in all these units by other marine-oriented industries alone. The data suggest that the shrimp industry could not contribute, even at its peak, much more than 25 percent to the employment profile of any of these Gulf counties. In most cases, the peak contribution very likely is far less than 25 percent.

The presence of other industries in the shrimp ports is a mixed blessing to the shrimpers. Offshore oil, in particular, can provide off-season employment. However, in a number of ports shrimpers have had to relinquish berthing space to offshore oil or oceanic transshipment, both of which provide more revenue to port authorities.

3.6 Interaction Between and Among User Groups

3.6.1 Shrimpers Interactions

Inland shrimp operations most likely involve family members or close friends as crew. Where the relationship is close, the income may not specifically be divided but shared.

If the offshore vessel is operated by its owner, the usual arrangement is for the vessel to get a portion of the value of the catch and for the owner/captain and crew to divide the remainder. The vessel share goes toward maintenance and repair of the vessel, fuel, and ice.

If the operator is not the owner, a different relationship exists. The captain and crew share from 42 to 33 percent of the "take"—the net value of the shrimp minus a share of such operating expenses as fuel, ice, processing charges, and gear repair.

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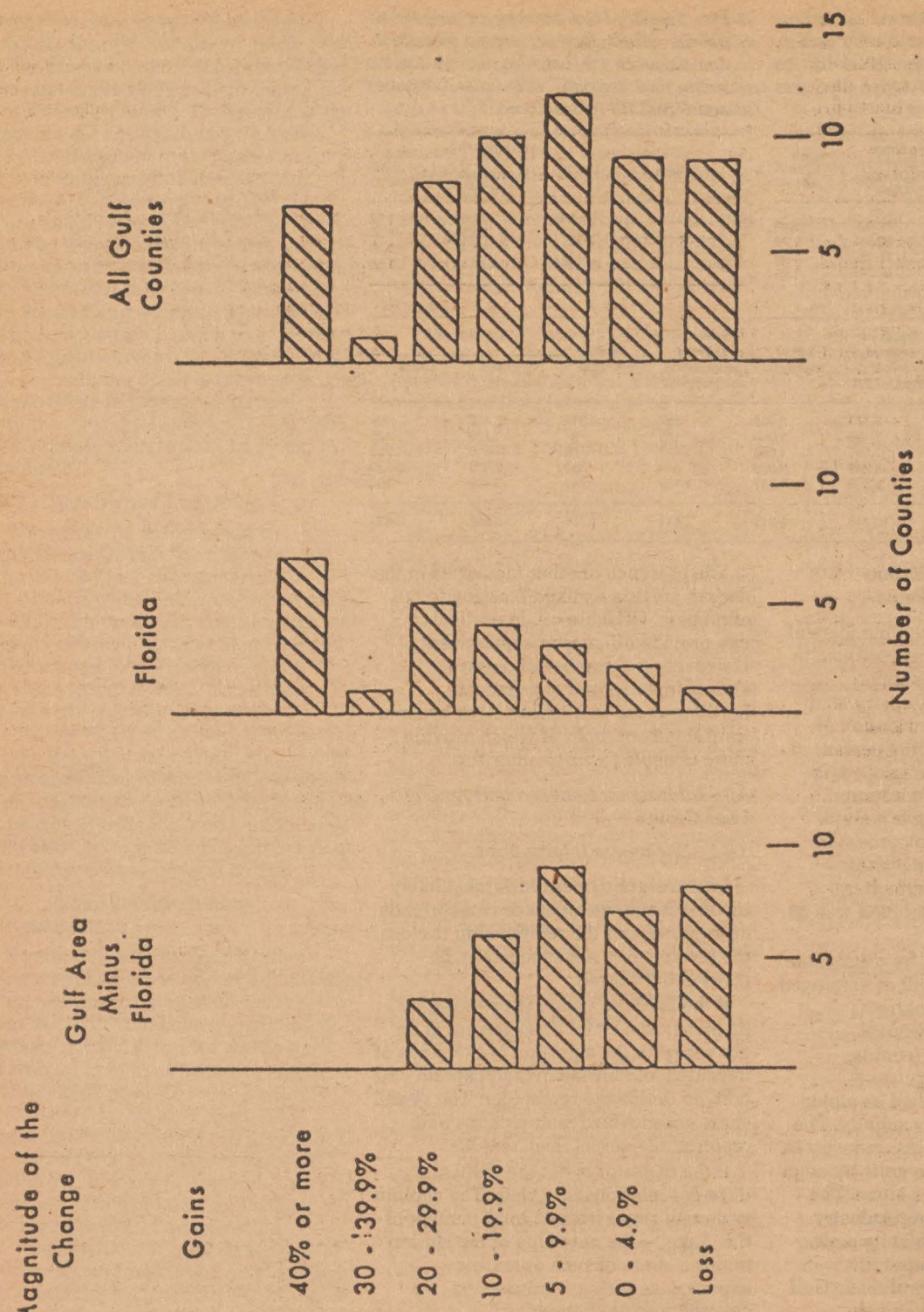
Figure 3.5-11. Estimated Change in Population, 1970-75



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There is another complex set of relationships—between the owner and the dealer where the shrimp are unloaded. In some areas there is no apparent bond; in others, with such fluctuations as periodic ice shortages or marked shrimp supply-demand fluctuations, a fairly permanent relationship may develop. The relationship seems to work to the benefit of both dealer and owner in some cases, for example, when ice or shrimp supplies are scarce. This kind of relationship, in which both parties are mutually interdependent, appears to be an amicable one with few signs of antagonism or conflict. In other areas, where it is customary for a dealer rather than a banker to advance operating capital to the shrimper, the lack of independence in business transactions apparently can lead to antagonism.

3.6.2 Prevalent Conflicts With Shrimpers and Other National Interests

Gulf shrimp are harvested by one of the largest and most diverse group of fishermen in the nation. Harvest occurs from the shallow-water estuarine areas out to open Gulf waters of 300 fathoms. The reported commercial fleet averaged 8,300 boats and vessels trawling an average of some 5.2 million hours annually during the 1970–1974 period. All information indicates a general increase in these figures. In addition there is a large, growing, relatively uncounted recreational fleet as well as a substantial number of commercial bait shrimpers. Conflicts of this large group with other national interests may involve:

- Capture of finfish and shellfish, which are harvested and then discarded;
- Incidental capture of sea turtles;
- Loss of estuarine habitat necessary for growth and survival of brown, white and pink shrimp;
- Gear conflicts with stone crab fishermen in southern Florida;
- Construction (accidental or intentional) of underwater obstructions to shrimp trawling.

Measures are suggested in Section 8.3 to alleviate these conflicts through consideration of the needs both of shrimpers and of other national interests. Two of these conflicts (those over sea turtles and finfish) and treated in more detail in this section.

3.6.2.1 Incidental Catch of Finfish by Shrimpers and of Shrimp by Groundfish Fishermen

The discard of the incidental catch of finfish during commercial shrimping operations in the Gulf of Mexico is a matter of concern to fishery managers. During the process of sorting shrimp from the remainder of the catch brought in by a trawl, most of the incidental catch die from trawling, handling, and exposure before they are discarded. In recent years this problem has become accentuated by the movement of shrimp trawlers into offshore areas traditionally used by the groundfish fleet.

Seidel (1975) estimated that four to 12 pounds of finfish are taken for each pound of shrimp harvested. The annual finfish discard was approximated in Table 3.6–1 by multiplying the low and high estimates (four and 12 pounds, respectively), by the total yearly shrimp catch in the Gulf of Mexico. The analysis of experimental tows taken in the north central Gulf by the National Marine Fisheries Service, Pascagoula Laboratory, indicates that the fish-to-shrimp ratios vary widely by season, locality, year, and fishing strategy. The fish-to-shrimp ratios presented in Table 3.6–2 are composite figures computed from many tows taken in the inshore and offshore areas of the north central Gulf. Up to 70 percent (by weight) of the discard are species usable by the groundfish industry.

During the period of concentrated shrimping effort in estuarine nursery areas, shrimp trawls capture and kill large numbers of juvenile groundfish and other species. At present it is not known if current levels of trawl-induced mortality of juvenile fishes in estuaries have a detrimental effect on offshore groundfish populations.

The income from marketable incidental catch taken in shrimp trawls and reported to NMFS in 1974 was (by states): Florida, 1.7 percent of the value of the shrimp landings; Alabama, 13 percent; Mississippi, 7 percent; Louisiana, 0.8 percent; and Texas, 0.5 percent (Figures 3.6–1 through 3.6–5).

There is no information currently available on the magnitude of the incidental catch discarded by recreational shrimpers in the Gulf of Mexico. Most of the recreational catch and effort occurs in estuarine areas. The total amount of finfish discards, based on the estimated number of participants in the recreational shrimp fishery, may be substantial in some states. Louisiana has by far the largest number of participants in the recreational shrimp fishery, followed by Texas, Alabama, Mississippi, and Florida.

No quantitative data are available on the mortality of the incidental catch taken during live bait-shrimping operations. Bait shrimpers operate primarily at night in the inshore areas of the Gulf of Mexico. The mortality of the incidental catch is probably minimized by: (1) the short duration of the tows; (2) the speed at which the catch is sorted; and (3) cooler, humid conditions at night.

Juhl (1974) estimates that the average incidental catch of shrimp was eight pounds and seven and a half pounds (heads-on) per hour of fishing effort by industrial and foodfish trawlers, respectively. Although substantial quantities of shrimp are caught and marketed by the industrial and foodfish fleet (Gutherz, et al., 1975), these catches are not specifically listed in the annual summaries of landing statistics published by the National Marine Fisheries Service.

3.6.2.2 Habits, Distribution, and Incidental Capture of Sea Turtles in the Gulf of Mexico

(See Appendix FEIS for detail information)

Six of the seven species of sea turtles in existence are found in the U.S. Gulf of Mexico. These sea turtles are sometimes accidentally caught during trawling operations for shrimp and groundfish. The listing of the Kemp's ridley, hawksbill, leatherback, and Florida populations of the green turtle as endangered species, and of the green, loggerhead, and olive ridley turtles as threatened species, necessitated a careful consideration of the effect of shrimping on these species. A considerable effort was made to document what was known about the life history and factors affecting the decline in their numbers, and shrimping operation measures which would alleviate these problems. (See Appendix FEIS.)

Exploitation and habitat loss are two major causes of the drastic decline in sea turtle numbers. Incidental capture by shrimp and groundfish fishing operations is increasingly important as populations decline. Preservation measures are aimed at reducing adult and subadult mortality and increasing juvenile recruitment.

The accidental capture of sea turtles during shrimp and groundfish fishing activities is a major problem along the southern Atlantic and Gulf coasts (Ogren, et al., 1977). An estimated 800 to 1,000 sea turtles are caught each year off the south Atlantic coast (based on Hillestad, et al., 1977; Ulrich, 1978). Similar estimates for incidental turtle catch in the Gulf of Mexico are not available.

All of the Gulf states have laws aimed at conservation of sea turtles. At the federal level, designation of critical habitat areas is under consideration. Headstarting—protection during incubation and the first year of life—still is in the experimental stage. Predator control, primarily for raccoons, can protect nests from destruction.

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Figure 3.5-12. The percent of all county residents employed who were active in Agriculture, Forestry, and Fisheries.

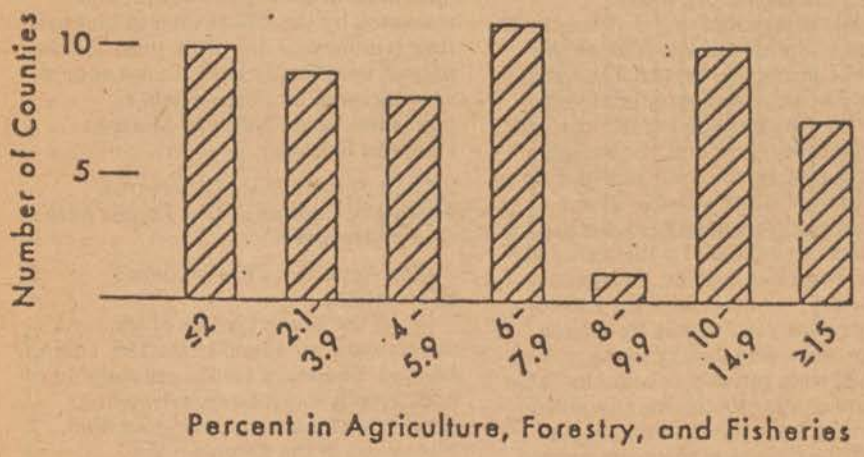

Table 3.5-19

Employment Patterns in Major Shrimp Counties of Texas and Louisiana, 1976

Number of employees	Seafood				Other		
	Fishing Hunting Trapping	Whole-salers	Canned Cured Seafood	Fresh or Frozen Shrimp	Contract Construction	Mining	Petrochemical Manufacturing
Louisiana							
Calcasieu					3531	612	1816
Jefferson	86	157	160	289	13288	7052	509
LaFourche	316				981	956	
Terrebonne	191	93	113	(100-249)	1886	7312	(100-249)
Texas							
Brazoria	128	60			6432	675	(5000-9999) +(2500-4999)
Cameron	1075	59		(500-999)	7770	89	(100-249)
Galveston	108	50			3125	505	6532
San Patricio [1]	300				457	1048	(500-999)

[1] Note that no establishments are reported in any of the seafood trade or processing categories. This is despite the fact the Aransas Pass, in San Patricio County, touts itself the world's shrimp capital. Aransas Pass does have a sizeable shrimp wholesaling and processing industry. Again, this time for county business patterns, the data are not very adequate even for our modest purposes.

Table 3.6-1. Annual Gulf of Mexico shrimp catch and estimated finfish discards using fish:shrimp ratios of 4:1 and 12:1, 1959-1975. Shrimp catches were converted to heads-on poundages from headless data furnished by the U.S. Department of Commerce, 1959-1975. Discard ratios encompass the range reported by Seidel (1975) and are presumably based on round (live) weight.

Year	Shrimp catch (heads-on)[1] (million pounds)	Estimated discard 4:1 ratio (million pounds)	Estimated discard 12:1 ratio (million pounds)
1959	143.4	573.6	1,720.8
1960	166.1	664.4	1,993.2
1961	90.7	362.8	1,088.4
1962	106.6	426.4	1,279.2
1963	176.5	706.0	2,118.0
1964	150.1	600.4	1,801.2
1965	167.7	670.8	2,012.4
1966	163.4	653.6	1,960.8
1967	207.7	830.8	2,492.4
1968	180.4	721.6	2,164.8
1969	187.8	751.2	2,253.6
1970	215.6	862.4	2,587.2
1971	211.4	845.6	2,536.8
1972	208.2	832.8	2,498.4
1973	165.3	661.2	1,983.6
1974	169.1	676.4	2,029.2
1975	157.9	631.6	1,894.8

1/ Heads-on poundages were estimated from headless data using conversion factors for each species and average percent species composition of Gulf catches from 1959-1975: brown shrimp -- 1.61, 55%; white shrimp -- 1.54, 32%; pink shrimp -- 1.60, 11%; sea bobs -- 1.53, 1%; royal red shrimp -- 1.80, 0.8%; rock shrimp -- 1.67, 0.2%. The conversion factors for all species except rock shrimp are from the U.S. Department of Commerce (1959-1975). The conversion factor for rock shrimp was computed from data published by Cobb et. al. (1973).

Table 3.6-2. Comparison of fish discard ratios derived from trawl data collected in the inshore and offshore areas of the Gulf of Mexico between 87° 30' and 91° 31', 1973-1977 (data collected and summarized by the National Marine Fisheries Service, Pascagoula, Mississippi).

Year	Inshore		Offshore	
	Sample size	Ratio	Sample size	Ratio
1973	52	4.9	(1)	(1)
1974	19	1.0	15	4.3
1975	47	5.9	52	20.3
1976	27	3.6	53	12.6
1977	24	2.7	19	6.0

(1) No data.

Table 3.6-3. Estimated annual discard (metric tons) of the six major species of finfishes taken during inshore and offshore shrimping operations in the Gulf of Mexico from 87° 30' to 90° 30', 1969-1976. Percentages in parentheses refer to the percent composition of the total catch for each species and are composite figures derived from data collected during 1973-1977 (data collected and summarized by the National Marine Fisheries Service, Pascagoula, Mississippi).

Year	Inshore						Offshore					
	Atlantic Croaker (32.8%)	Sand Seatrout (10.6%)	Spot (10.6%)	Sea Catfish (7.5%)	Atlantic Cutlassfish (6.0%)	Silver Seatrout (1.7%)	Atlantic Croaker (55.1%)	Sand Seatrout (6.1%)	Atlantic Cutlassfish (5.0%)	Spot (3.3%)	Silver Seatrout (2.0%)	Sea Catfish (1.7%)
1969	28,854	9,325	9,325	6,598	5,278	1,495	133,298	14,759	12,096	7,983	4,838	4,113
1970	29,890	9,659	9,659	6,834	5,468	1,549	140,576	15,563	12,756	8,419	5,102	4,337
1971	33,196	10,728	10,728	7,590	6,072	1,720	153,543	16,998	13,933	9,196	5,573	4,737
1972	26,274	8,491	8,491	6,008	4,806	1,362	142,417	15,767	12,924	8,530	5,169	4,394
1973	18,369	5,936	5,936	4,200	3,360	952	89,939	9,957	8,161	5,386	3,264	2,775
1974	19,504	6,303	6,303	4,460	3,568	1,011	92,583	10,250	8,401	5,545	3,360	2,856
1975	16,183	5,230	5,230	3,700	2,960	839	96,713	10,707	8,776	5,792	3,510	2,984
1976	29,430	9,511	9,511	6,730	5,384	1,525	134,188	14,856	12,177	8,037	4,871	4,140

Table 3.6-4. Estimated percent species composition of the total catch of finfishes taken in shrimp trawls for each of the six major species discarded in the inshore and offshore waters of the Gulf of Mexico between 87° 30' and 91° 30', 1973-1977 (data collected and summarized by the National Marine Fisheries Service, Pascagoula, Mississippi).

Year	Inshore						Offshore					
	Atlantic Croaker	Sand Seatrout	Spot	Sea Catfish	Atlantic Cutlassfish	Silver Seatrout	Atlantic Croaker	Sand Seatrout	Atlantic Cutlassfish	Spot	Silver Seatrout	Sea Catfish
1973	17.3	4.6	21.4	8.5	7.6	0.6	(2)	(2)	(2)	(2)	(2)	(2)
1974	46.2	2.6[1]	19.7	13.2	7.0	---	80.9	1.1	(3)	(3)	2.2	6.0
1975	36.2	12.9	7.7	7.0	6.3	2.1	56.2	6.3	6.2	1.9	1.6	0.8
1976	24.1	4.6	15.4	8.2	2.5	0.3	45.1	6.9	2.0	9.6	3.8	3.2
1977	16.9	9.8	16.7	5.0	5.1	0.3	23.5	6.1	5.1	14.1	(3)	6.3

[1]Includes Silver Seatrout.

[2]No data coverage.

[3]No records of having been captured.

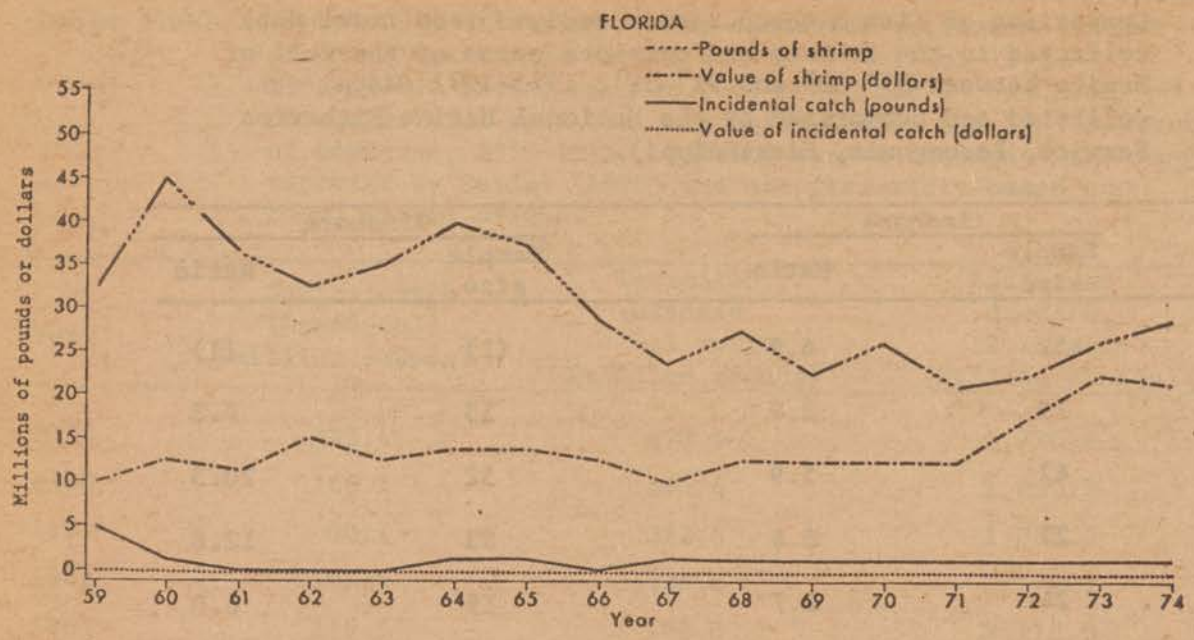

Figure 3.6-1. Annual Florida landings and value of shrimp and marketable incidental catch, 1959-1974. Poundages are in round (live) weight. Source: Fishery Statistics of the United States, 1959-1974.

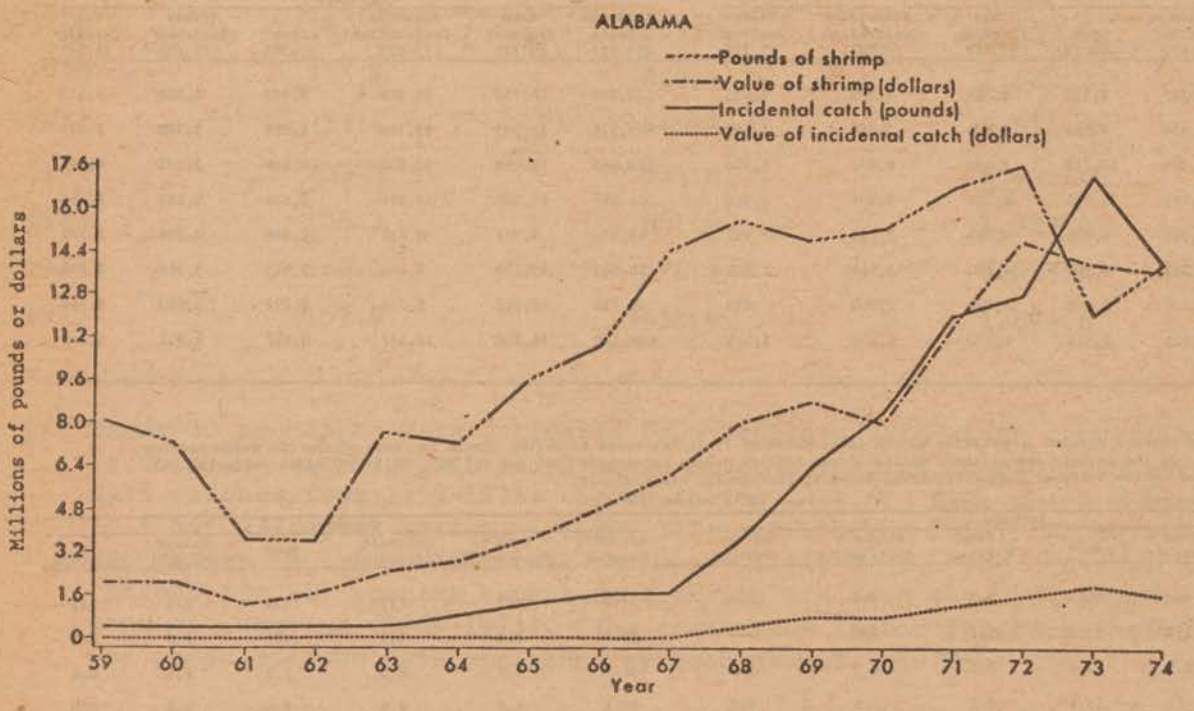

Figure 3.6-2. Annual Alabama landings and value of shrimp and marketable incidental catch, 1959-1974. Poundages are in round (live) weight. Source: Fishery Statistics of the United States, 1959-1974.

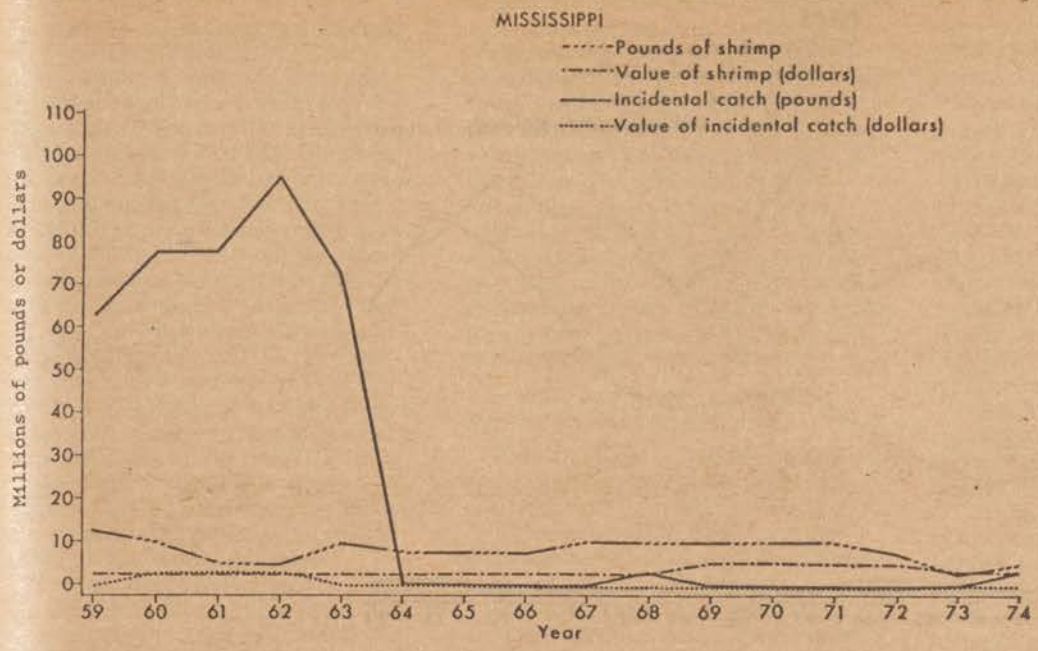

Figure 3.6-3. Annual Mississippi landings and value of shrimp and marketable incidental catch, 1959-1974. Poundages are in round (live) weight. Source: Fishery Statistics of the United States, 1959-1974.

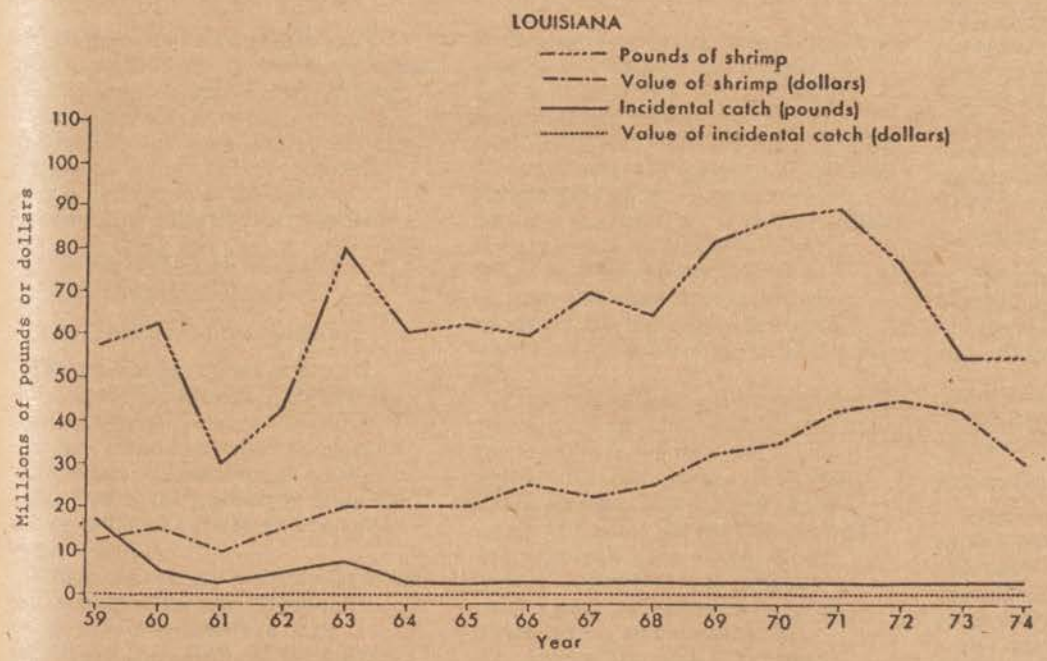

Figure 3.6-4. Annual Louisiana landings and value of shrimp and marketable incidental catch, 1959-1974. Poundages are in round (live) weight. Source: Fishery Statistics of the United States, 1959-1974.

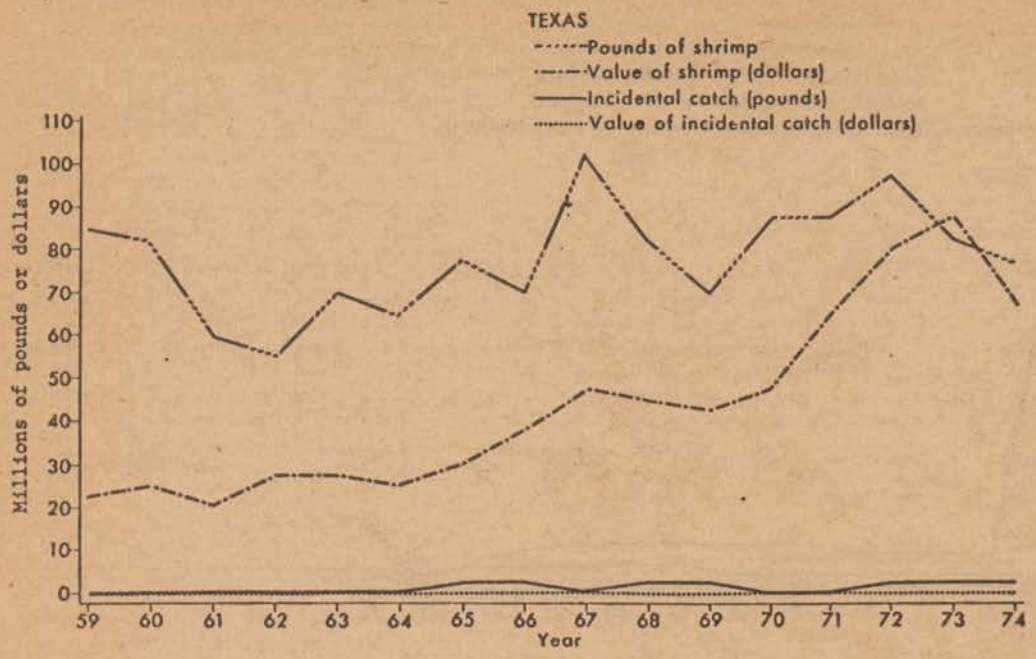

Figure 3.6-5. Annual Texas landings and value of shrimp and marketable incidental catch, 1959-1974. Poundages are in round (live) weight. Source: Fishery Statistics of the United States, 1959-1974.

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Of the sea turtles in the Gulf, the Kemp's ridley is in the greatest danger of extinction. Almost all of Kemp's ridley nesting is restricted to a small stretch of beach near Rancho Nuevo, Tamaulipas, Mexico, although nestings are also recorded for Padre Island on the Texas coast. Seventeen recaptures of tagged nesting females show that these ridleys are distributed throughout most of the Gulf. Eight—all taken by shrimp trawlers—occurred in 1969 between Brownsville, Texas, and the mouth of the Mississippi. Captures of Kemp's ridleys through the years are recorded from Brownsville to the Dry Tortugas off Florida: it is believed that these turtles migrate along the shores back to Mexico for nesting. One of the smallest sea turtles with a primary range in the Gulf of Mexico, the ridley is a turtle of coastal areas—primarily a carnivore and a bottom feeder.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service are currently involved in research and public workshops whose goal is to restore those sea turtle populations in a manner consistent with the requirements of the Endangered Species Act. Three approaches to reducing the incidental catch are most prominent: first, delineation of critical habitats and restriction of trawling in these areas; second, an education program to inform shrimpers and goundfish fishermen of the methods of, and reasons for, adequatley handling incidentally captured sea turtles in order to reduce mortality; and third, development of gear such as the excluder panel, which reduces the capture of sea turtles during trawling operations. Currently work is underway on all three approaches.

3.7 State and Federal Revenues Derived From Shrimp Fishery

State and federal revenue figures from the shrimp fishery are not isolated by data processing systems of the state agencies in the Gulf; these data are included, however, at the federal level with non-related activities.

The only available documentation applies to licenses and severance taxes imposed by the states. Revenues by states are listed below:

State	1977	1976	1975	1974	1973
Texas	$881,084	$845,556	$887,768	$969,899	$644,781
Louisiana	645,867	517,877	405,651	405,152	405,507
Mississippi	54,696	43,889	37,912	42,483	37,842
Alabama	46,285	25,846	19,017	17,099	16,218
Florida west coast	470,109	450,431	439,439	431,078	398,062

Such items as taxes paid for fuels, income, social security, and employment security by participants in the shrimp fishing effort do not appear in any statistical breakdown, nor is there any pinpointed material on government income derived from the onshore processing and distributing segment.

4.0 Biology Descriptors

4.1 Life History Features

General Features of the Speices

The general life cycles of brown, white, and pink species of shrimp are similar. Adults spawn in the Gulf. Fertile eggs hatch into free-swimming larvae, and the larvae pass through a series of molts. During the postlarvae stage, the shrimp enter an estuary and become bottom feeders.

Within the estuary the juvenile shrimp feed mainly at the marshwater or mangrove-water interface or in submerged grass beds. These areas apparently offer both a concentrated food supply of detritus, algae and microfauna and some protection from predators. Growth and survival in the estuary are largely dependent upon local salinity and temperature regimes. As they grow larger the shrimp shift to deeper waters and become more predacious. At a variable size 2.75–4.7 in (70 to 120mm) they emigrate to the Gulf. This emigration is a function of size, tide, and temperature. Growth continues at a rapid rate in the Gulf under optimum temperatures, though it declines as shrimp approach their maximum size. Spawning probably occurs before the shrimp are 12 months old.

Major differences in the life cycles of the brown, white, and pink shrimp are due to shifts in the time and space at which various life stages reach their maximum abundance. These shifts apparently allow the species to avoid direct competition even when one species predominates in the same general geographical area. In areas where shrimp stocks co-occur, management has built its harvest strategies around these shifts. For example, the Louisiana estuaries are closed in winter and early spring in order to protect juvenile brown shrimp. The inshore brown season is closed when appreciable numbers of juvenile whites appear in trawls for brown shrimp.

There are five overriding biological factors which seem to account for the resiliency of the shrimp resources:

(1) The migration of the life stages through several environments.

(2) The food habits of juveniles and subadults in the estuary provide access to rich, widely-based food supply.

(3) The apparent rapid growth rate of shrimp under favorable conditions results in a harvestable size shrimp within a short time.

(4) High fecundity and extended spawning seasons help to prevent recruitment overfishing in spite of intense fishing pressure.

(5) A large portion of the Gulf is inaccessible to harvesting, e.g., rocky bottom, loggerheads, etc.

The other three shrimp species exploited in the Gulf (royal red, seabob, and rock shrimp) are not estuarine-dependent and apparently spend their life cycles within the open waters of the Gulf. Royal red shrimp differ considerably from other species in that they: (1) Are harvested from depths of 100 to 300 fathoms, (2) have an estimated five year classes occupying the same fishing grounds, (3) exist in a relatively stable environment, and (4) do not reach sexual maturity as a zero-year class shrimp. Seabob shrimp are harvested, along with white shrimp, October through December when they migrate towards the Gulf beaches from deeper water, in response to advancing cold fronts. Rock shrimp are harvested mainly from Florida's sandy bottoms. They are taken primarily as bycatch.

Sexual Maturity

The minimum size at which shrimp become sexually mature (males—fully developed spermatophores; females—ripe ovaries) are listed in Table 4.1–1.

Spawning, Larval Development, Recruitment of Postlarvae to Either Estuaries or Fishing Grounds

Brown Shrimp

Renfro and Brusher (1965) found brown shrimp spawned in Gulf waters of greater than ten fathoms from spring to early summer and continuously at 25 to 60 fathoms. Two peaks were noted, a major one in September to November and a minor one April to June (Renfro and Brusher, 1965). A February to March spawning peak has been proposed (Gunter, 1950; Kutkuhn, 1962), based on

juvenile abundance in estuaries; however, no direct evidence was presented. Temple and Fisher (1967) note that off the Texas coast planktonic stages of Penaeus species were greatest at 14.8 fathoms from August to November and in 25.2 fathoms and 44.8 fathoms from September to November. They suggest that as these peaks corresponded to peaks in the occurrence of adult brown shrimp at these depths, the larvae were those of brown shrimp. The reported commercial catch peaks in July on the zero-year class; and spawning reaches its height after this July peak and occurs during the intense fall offshore fishing season for brown shrimp.

Baxter and Renfro (1967) found that postlarval brown shrimp recruitment to Galveston Bay peaks in March and mid-April. Second and third peaks are sometimes noted June through September. Estuarine recruitment may occur slightly earlier in Louisiana. White and Boudreaux (1977) and Gaidry and White (1973) report that postlarval brown shrimp recruitment normally peaks in Louisiana in February to March. Thus peak recruitment of postlarval brown shrimp to the estuaries occurs months after the peak in spawning.

Basing their claim on a comparison of their work with Baxter and Renfro (1967), Temple and Fisher (1967) proposed an overwintering of postlarval brown shrimp in the Gulf. They suggest that the postlarvae burrow in the offshore bottom and await the advent of warmer temperatures before entering the estuaries. In support of this theory they note the laboratory work of Aldrich, et al. (1967) which showed that postlarval brown shrimp burrowed at low temperatures.

White Shrimp

A single female white shrimp releases between 500,000 and 1,000,000 eggs in a spawn (Burkenroad 1934, Anderson, et al., 1949). Spawning occurs in Gulf waters at four to seventeen fathoms, spring through fall (Lindner and Anderson, 1956; Renfro and Brusher, 1964; Joyce, 1965; Bryan and Cody, 1975). The spring spawn is believed to be accomplished by females which have overwintered, while the fall spawn is largely attributed to females spawned in the early spring (Lindner and Anderson, 1956).

Multiple spawning of white shrimp in a single season is believed to occur (King, 1948; Lindner and Anderson, 1956; and Renfro and Temple, personal communication in Perez Farfante, 1969).

Off the Texas coast the greatest abundance of planktonic stage Penaeus species occurred from May to August at 7.6 fathoms (14 m) (Temple and Fisher, 1967). They suggest that this peak was composed of white shrimp and note that the time corresponded to the reported spawning peak for white shrimp.

Larval development requires between ten to twelve days (Johnson and Fielding, 1956) and two to three weeks (Anderson, et al., 1949). By the time the postlarval stage is reached, the shrimp have normally entered the estuarine nursery areas (Anderson, et al., 1949). However, Anderson, et al. (1949) reported that "schools of adult white shrimp have been known to approach the coast and spawn close to inlets. When such a spawning occurs, the eggs may be swept through the passes on incoming currents, and larvae (nauplii) may reach the nursery grounds within a few hours."

Table 4.1.1.—*Estimate of the minimum sizes at which shrimp reach sexual maturity (fully developed spermatophores for males and ripe ovaries for females)*

Species/sex	Size (total length, mm)	Source
Brown shrimp:		
Males	[1] 140	Renfro (1964).
Females	140	Renfro (1964).
White shrimp:		
Males	155	(Perez Farfante's [1969] conversion of Burkenroad's [1934] estimate).
Females	135	(Perez Farfante's [1969] conversion of Burkenroad's [1934] estimate).
Pink shrimp:		
Males	34	(Perez Farfante (1969).
Females	92	Eldred et al. (1961).
Royal red:		
Males	125	Anderson and Lindner (1971).
Females	155	Anderson and Lindner (1971).
Rock shrimp:		
Males	34	Cobb et al. (1973).
	42	Kennedy et al. (1977).
Females	49	Cobb et al. (1973).
	64	Kennedy et al. (1977).
Seabob:		
Males	([2])	
Females	63	Anderson (1970).
.....		

[1] Assumed
[2] Not available.

Postlarval white shrimp recruitment to the estuaries of the northern Gulf occurs over a fairly uniform time period. In Mississippi it extends from May through October (Christmas, et al., 1966). In Louisiana, postlarvae are primarily recruited to the estuaries from July to August though recruitment begins in June (Gaidry and White, 1973; White and Boudreaux, 1977). In Texas, postlarval white shrimp recruitment to the estuary extends from May through October (Baxter and Renfro, 1967).

Pink Shrimp

Pink shrimp in the Dry Tortugas area spawn year round at 12 to 26 fathoms, with a more intense spawn in spring through fall (Ingle, et al., 1959; Cummings, 1961; Tabb, et al., 1962; Jones, et al., 1964, in Perez Farfante, 1969). In the Tampa and Apalachicola areas, spawning occurs in summer, and juveniles overwinter in the bays (Christmas and Etzold, 1977). Matosubrato (1974) estimates fecundity at about 500,000 eggs per female.

Minimal larval development time is 15 days (Ewald, 1965; Jones, et al., (1964). In the Dry Tortugas, estuarine recruitment is continuous, with peaks in abundance reported for April to June (Tabb, et al., 1962) and July through October (Jones, et al., 1964). A May through December recruitment of pink shrimp in Mississippi is reported (Christmas, et al., 1966). In Texas, Copeland and Truitt (1966) report an August to September peak in recruitment.

With the three major species, copulation is not directly associated with spawning. Indeed, Perez Farfante (1969) suggests multiple copulation for white and pink shrimp, since female white shrimp often lost the attached spermatophore and female pink shrimp shed the spermatophore upon molting.

Royal Red Shrimp

Anderson and Lindner (1971) observe that the St. Augustine population of royal red shrimp have a major spawning peak during the winter and spring, with some spawning occurring throughout the year. Their analysis of length-frequency distributions by sex for all sample periods combined suggests that recruitment to the fishery begins at one year of age but is not complete until the shrimp reach maturity at about three years of age. They note that the majority of shrimp taken in their samples were fully mature. Even though this population is outside of the management area, this information is thought to be true of the Gulf of Mexico stock.

Rock Shrimp

Spawning of rock shrimp in Gulf waters off Tampa to Fort Myers, Florida, is continuous, with a peak in October through January (Cobb, et al., 1973). Development time to postlarvae requires 29 days in the laboratory at 70° to 76° F (21° to 24.5° C) and 24 to 27 ppt (Cook and Murphy, 1965).

Cobb, et al., (1973) note that rock shrimp less than 1.2 in. (30 mm) total length appeared in their samples in March, May to July, and November, whereas slightly larger individuals occurred in all other months except

December. They therefore suggest recruitment to the fishing grounds occurs year round.

Rock shrimp are not believed to be estuarine dependent (Eldred, 1959; Joyce, 1965; Cobb, et al., 1973). Cobb, et al., (1973) suggest that the shrimp found by Rouse (1969) in Chatham River, Florida, were other species of Sicyonia and not rock shrimp. The life cycle of rock shrimp is apparently passed in offshore waters and mainly at depths of 10 to 45 f (18 to 82 m) (Cobb, et al., 1973).

Seabob Shrimp

Juneau (1977) reports gravid seabob females were taken in peak numbers along the Louisiana beaches in July and August, while smaller non-gravid females were taken in large numbers between December and March. He concludes that spawning most likely occurs in the Gulf between July and December.

Renfro and Cook (1963) observe that early larval development from spawning to first protozoeal stage requires 58 hours in the laboratory at 73–75° F (23° to 24° C) and 27 ppt.

Juneau (1977) reviews current information available on seabob shrimp and concludes with Renfro and Cook (1963) that the species is probably not estuarine dependent and is found most commonly from the beach line to Gulf waters of five fathoms (9 m) and are primarily caught in one to two fathoms (1.8 to 3.6 m) along the Louisiana coast (within the Territorial Sea).

Emigration of Brown, White, and Pink Shrimp From Estuaries

The time, size, and causes of emigration have important management implications for brown, white, and pink shrimp. The specific reasons for their importance may vary from area to area. In Louisiana, with its large inshore harvester group, the setting of opening dates must include a recognition that a portion of the catch may be lost for smaller boats if the shrimp emigrate before the inshore season is opened. Conversely, in Texas and southern Florida where estuarine and near-shore Gulf harvest is restricted, the expected emigration time is needed in order to close offshore waters to protect the emigrating crop.

In general, emigration is keyed to environmental conditions such as tides, temperature, or salinity. Fishermen take advantage of this knowledge and fish the surface waters of channels and passes with a butterfly, or wing net used at night, although efforts during the day are sometimes rewarded.

Brown Shrimp

Copeland (1965) sampled ebb tide March to December in Aransas Pass, Texas. He found that brown shrimp emigration peaked in association with full moons in May through August, the high tides and faster currents of full moons being a stimulus to emigration.

Trent (1967) sampled the main tidal pass to Galveston Bay, day and night on the ebbing tides (May to August) with a bottom trawl as well as from June to August with a surface trawl. Catch per unit effort was greater on the bottom during the day and at the top during the night, though the difference was not significant.

Trent (1967) found two peaks in abundance of emigrating shrimp: one in mid-May and another in mid-June. The mean size of emigrating shrimp increased linearly from 400 tail count (58 mm) on May 18 to 40 tail count (108 mm) on July 28 or 0.14 in. (3.6 mm) per week. (See Table 4.1.5 for length-weight conversions).

Gaidry and White (1973) observed that emigration of brown shrimp from the Louisiana nursery grounds occurs in two stages. The first movement normally begins at a size of 264 to 415 tail count (60 to 70 mm) when juveniles leave the shallow marsh areas for the open bays. These bays serve as a "staging area" where the shrimp continue to grow and feed until they begin a second movement—the migration to offshore waters—at a size of 3.5 to 4.3 in (90 to 110 mm). This offshore movement begins in middle to late May, increases in intensity in June and July, and continues in diminished magnitude until November when essentially all the shrimp have left the bays.

Blackmon (1974) sampled a small tidal pass in Caminada Bay, Louisiana, from May to November on the full and new moons. He found that the mean length of emigrating shrimp generally increased from 3 in. (79 mm) in May to 3.8 in. (98 mm) in September and then declined to 3.3 in. (84 mm) in November. Mean lengths of emigrating shrimp were always greater than those in the bay: during the May to September period, the average emigrating shrimp was at least 0.39 in. (10 mm) larger than its average counterpart in the bay.

The highest percentage of emigrating brown shrimp occurred during or just after twilight. No correlation was found between the percentage of emigrating shrimp and current speed, temperature, or salinity. Distribution of emigrating shrimp in the three-meter water column changed with time of day. During the day, peak density of emigrating shrimp was greatest on the bottom; at twilight, the peak occurred in the middle; and at night, the peak occurred in the top meter (Blackmon, 1974).

White Shrimp

White shrimp that enter the Louisiana estuaries as postlarvae in the spring and early summer emigrate to the Gulf in September through November (Gaidry and White, 1973). Those white shrimp postlarvae recruited to the estuary later in the summer and early fall may be forced offshore by advancing cold fronts in October to December at a size much smaller than that of shrimp emigrating in the summer. These "later-recruited" white shrimp overwinter in the nearshore Gulf and reenter the estuaries at an average size of 100 mm during the spring warming. After a second period of growth, they emigrate to the Gulf to spawn in the spring and early summer (Lindner and Anderson, 1956; Gaidry and White, 1973).

Pink Shrimp

In the Everglades nursery areas, Yokel, et al., (1969) observed that juvenile pink shrimp emigrate almost exclusively at night, and on night ebb rather than night flood tides. Catch per unit effort of emigrating was 37 shrimp per minute as during new and full moons opposed to 20 shrimp per minute during the first and third lunar quarter. The effect of moon phase was directly dependent upon the relative abundance.

They observed that the size of emigrating shrimp ranges from 2 to 45 mm (carapace length), and averaged 14 mm (carapace length). Using Kutkuhn's (1966, Fig. 7) carapace length vs. weight plot for pink shrimp, the size range equates to a weight range of up to 80 g for male shrimp and an average of 2.0 to 2.5 g for male and female shrimp. The average shrimp leaving the Everglades is in the 300 to 200 tails to the pound range.

Migration Patterns in Offshore Waters

Brown Shrimp

Brown shrimp released off the Mississippi coast in June (Klima and Benigno, 1965) traveled less than an average of one mile per day from the release site. An offshore movement was not apparent since less than one percent of returns came from waters deeper than 16 fathoms. The longest distance traveled was 85 miles—from the release site off Horn Island to the Mississippi River's Southwest Pass. This information indicates that the Mississippi River may not be an absolute barrier to brown shrimp migration.

Most of the brown shrimp released off Grand Isle, Louisiana, in July (Klima,

1964) were recaptured near the release site. A slight seaward and westward movement was noted.

Movement of brown shrimp released off Galveston, Texas, in July led Klima (1964) to suggest that brown shrimp from the Galveston estuary were recruited to the fishery all along the Texas coast.

Brown shrimp released off the central Texas coast at 21 to 24 fathoms in April (Klima, 1964) showed little coastwide movement. No major offshore movement was apparent from April to June because 99 percent of the returns were within 25 fathoms and none were beyond 30 fathoms.

From an examination of commercial catch trends, Gunter (1962) suggested a southward drift of brown shrimp off the Texas coast in the fall.

The commercial catch statistics indicate that brown shrimp migrate out to the deeper waters of the Gulf. The inshore catch peaks in May to July on shrimp smaller than those measuring 67 tails to the pound. After Texas opens its Territorial Sea, offshore brown shrimp catch in the Gulf as a whole peaks in July and August at depths of 11 to 20 fathoms, with most of the landed shrimp being 31 to 40 tails to the pound. By December, the largest catch comes from 26 to 30 fathoms, and the 15 to 20 tails to the pound shrimp perdominate. Generally, the data indicate a four to five fathom per month depth migration of the catch. However, the relationship of the shift in the catch to the actual depth migration of the shrimp is somewhat obscured by the Texas closure in June and mid-July and by the multiple waves of shrimp emigrating from the estuaries.

White Shrimp

White shrimp east of the Mississippi River to Mobile Bay tend to migrate from the estuaries to deeper waters along the barrier islands and towards the Mississippi River Delta during the summer to fall (Lindner and Anderson, 1956). The Mississippi River may act as a barrier to east-west movement (Lindner and Anderson, 1956; Perez Farfante, 1969).

Other than the offshore-onshore migrations and a tendency to concentrate between Ship and Trinity Shoals, Lindner and Anderson (1956) observed no definite migration patterns of white shrimp along the Louisiana coast west of the Mississippi River during the fall and winter.

Klima (1964) noted a coastwide movement or dispersion of tagged white shrimp along the Louisiana coast between Cameron and Vermillion bay. Perret, et al., (1978) observed that movement along the western portion of the Louisiana coast was mainly westerly, though the majority of the tagged shrimp were returned within 60 nautical miles of the release area.

Lindner and anderson (1956) observed a migration of white shrimp from off the coast of Mexico to Aransas Pass, Texas, during the spring. There also appears to be a reciprocal southward movement from central and southern Texas into northern Mexico during the fall and winter. From an analysis of reported commercial catch patterns, Gunter (1962) suggested a similar southward movement of white shrimp.

Pink Shrimp

Juvenile pink shrimp emigrate from the estuaries of southern Florida into the deeper waters of the Gulf. Costello and Allen (1965) found that the nursery grounds of pink shrimp on the Tortugas grounds were estuaries from the Florida Bay and from at least as far north as Indian Key, whereas the nursery grounds of shrimp on the Sanibel grounds were estuaries from at least Indian Key north to Pine Island Sound. They observed little movement of shrimp between the Tortugas and Sanibel grounds. Iverson, et al., (1960) observed that larger pink shrimp tended to occur at deeper depths on the Tortugas grounds.

Royal Red and Rock Shrimp

Apparently nothing is recorded about migration patterns of royal red or rock shrimp.

Seabob Shrimp

Immediately following passage of a cold front, seabob shrimp along the Louisiana coast migrate toward the beach from offshore areas. In July and August, gravid females also move close to shore (C. J. Juneau, personal communication in Christmas and Etzold, 1977).

Substrate

The substrate preferences of shrimp appear to be important to their distribution patterns along the Gulf coast. In general, pink and rock shrimp prefer calcareous sediments and are found mainly along the Florida coast. Brown, white, and seabob shrimp prefer soft mud or peat bottoms and are found mainly along the coast from Texas to Alabama.

The juvenile brown and white shrimp prefer a soft mud or peat bottom with large quantities of decaying organic matter or vegetation (Williams, 1955, 1959; Mock, 1967; Jones, 1973). Sand or clay substrates are sometimes satisfactory for young brown shrimp, unless these substrates are bare clay, sand, or shell (Williams, 1959). Adult brown shrimp are found on mud or silt and also on mud, sand, and shell (Perez Farfante, 1969). In the Gulf, white shrimp are also found on muddy or sility bottoms and on clay or sand with fragments of shell (Springer and Bullis, 1954; Hildebrand, 1954, 1955).

Pink shrimp apparently prefer firm mud or silt bottoms with coral sand containing a mixture of millusk shells (Springer and Bullis, 1954; Hildebrand, 1954, 1955; Williams, 1958) and firm sand bottoms (Farfante, 1969).

Royal red shrimp show not apparent preference for a particular sediment type; they occur on sand, silty sand, terrigenous, and calcareous sediments (Roe, 1969).

Rock shrimp occur most frequently on sandy bottoms (either terrigenous or biogenic) and only sporadically on mud bottoms (Hildebrand, 1954, 1955; Cobb, et al., 1973). Hildebrand (1955) suggests bottoms were "strays" from areas of hard sand. In South Carolina, the rock shrimp is called the coral shrimp because it is occasionally taken from coral banks (Lunz, 1957).

Seabob shrimp are taken from bottoms and mud, silt, or silt mixed with sand (Neiva, 1967; Christmas and Etzold, 1977).

Food

Larval Stages

Larval stages are planktonic and eat algae and zooplankton (Pearson, 1939; Ewald, 1965). Nutrient levels of Gulf waters may be a necessary environment for larval stages because a high density of food causes poor survival due to entanglement.

The postlarval stage is not strictly planktonic but is capable of deposit feeding (Pearson, 1939). Zien-Elden and Griffith (1969) have fed this stage on algae, *Artemia salina* nauplii, and groundfish or shrimp in the laboratory.

Juveniles to Adults

Juvenile and adult brown, white, and pink shrimp ingest whatever is available, including decaying organic matter, animals, and plants (Vicosa, 1920; Weymouth, et al., 1955; Flint, 1956; Darnell, 1958; Broad, 1965; Perez Farfante, 1969; Odum, 1971; Jones, 1973).

Jones (1973) intensively studied the food habitats and absorption efficiency of brown shrimp 1 to 4 in. (25 to 104 mm) in a Louisiana marsh. He observed a shift in diet and habitat as shrimp grew larger. Juveniles 1 to 1.75 in. (25 to 44 mm) were concentrated in the nearshore environment. Here they indiscriminately ingest the top layer of sediment containing detritus and microorganisms.

Jones classified this stage as omnivores or encounter-feeders. At 1.8 to 2.5 in. (45 to 64 mm) they selected the organic fraction of the sediment and were classified as opportunistic omnivores. At 2.6 to 4 in. (65 to 104 mm) shrimp had dispersed from the nearshore environment to the deeper waters of the marsh and became active predators feeding intensively on polychaetes, amphipods, nematodes, and chironomid larvae. However, they continued to ingest detritus and algae and were classified as omnivore predators (Jones, 1973).

Darnell (1958) found the foreguts of white shrimp 3.6 to 5.6 in. (91 to 142 mm) contained sand, detritus and ground organic matter, and fragments of mollusks, ostracods, copepods, insect larvae, and forams.

Eldred, et al., (1961) found pink shrimp in the Tampa Bay contained both animals and plant remains. These include aquatic macrophytes, red and blue-green algae, diatoms, dinoflagellates, polychaetes, nematodes, shrimp, mysids, copepods, isopods, amphipods, mollusks, forams, and fish.

Rock shrimp are apparently nocturnal, generalized carnivores (Cobb, et al., 1973). Small bivalve mollusks, decopod crustaceans, gastropods, and other crustaceans are an important part of the diet which also includes formaminfera, nematodes, polychaetes, ectoprocts, echinoderms, and finfish (Cobb, et al., 1973; Kennedy, et al. 1977).

Nothing is apparently recorded on the food habits of seabob or royal red shrimp.

Predation

Penaeid shrimp, in general , are ingested by many carnivorous fish (Gunter, 1945; Darnell, 1958; Farfante, 1969). Table 4.1–2 list some fish known to ingest brown, white, or pink shrimp. Included in this list are speckled trout, black drum, redfish, Atlantic croaker, southern flounder, bass, and several varieties of catfish. Many of these prey species are an important component of the bycatch discarded by shrimpers.

Growth Rates

General Considerations

As in most fisheries, growth rates are estimated from changes in the length of the species with time. Growth in weight is estimated by converting growth in length estimates to weight. Table 4.1–3 lists length-weight estimates for shrimp.

The method of measuring growth varies with the size of shrimp. Growth (in length) of "smaller" shrimp 1 to 3.5 in. (25 to 90 mm) is normally estimated from length frequency measurements of trawl samples taken in estuarine nursery areas over a period of time. Growth is expressed as the increase either in the mean size of the trawl sample or in each of the peaks in the polymodal length-frequency data with increasing time. Growth estimates range from 0.003 to 0.13 mm) per day. Variability has been attributed to temperature, salinity, recruitment, density, and emigration.

Growth of "large" shrimp greater than 2.75 in. (70 mm) has normally been estimated from mark and recapture experiments. A simple linear relationship of length (or weight) to time is not applicable. The shrimp enter a self-limiting period of growth.

Table 4. 1–2.—*Fish identified by Gunter (1945) or Darnell (1958) as feeding on penaeid shrimp*

Species	Common names
Carcharhinus leucas (Miller and Henle).	Bull shark.
Dasyatis sabina (LeSueur)[1]	Stingaree.
Lepisosteus spatula (Lacepede).	Alligator Gar.
Elops saurus (Linnaeus)	Bonefish, Shipjack, Bigeye Herring, Ten-pounder.
Ictalurus furcatus (LeSueur)	Blue catfish.
Bagre marina (Mitchell)	Gafftopsail catfish.
Galeichthys felis (Linnaeus)	Hardhead or sea cat.
Morone interrupta (Gill)	Yellow bass.
Micropterus s. salmoides (lacepede)[1].	Northern largemouth bass.
Sciaenops ocellate (Linnaeus).	Redfish, channel drum.
Micropogon undulatus (Linnaeus).	Atlantic croaker.
Pogonias Cromis (Linnaeus)[2]	Black drum.
Cynoscion neulosus (Culver and Valenciennes)[3 4].	Speckled trout.
Parlichthys lethostigma (Jordan and Gilbert).	Southern flounder.

[1] Assumed to ingest shrimp by Darnell (1958).
[2] Darnell (1958) states that when black drum are in the marine waters Gulf penaeid shrimp are a significant portion of its diet.
[3] Gunter (1945) states that in Texas shrimp are the predominant food of speckled trout during the summer. However, when shrimp are scarce, as in January speckled trout shift to fish (*Mugil* species).
[4] Darnell (1958) states that pink shrimp are the stable diet of speckled trout in Florida.

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Table 4.1-3. Length-weight relationships for brown, white, pink, royal red, and rock shrimp (after Christmas and Etzold 1977).

Species/Sex	Total Length to Total Weight $W=a\,L^b$ a	b	Size Range (mm)	No. measured	Carapace Length to Total Weight $W=a'\,c^b$ a'	b	Size Range (mm)	No. measured	Carapace Length to Total Length $L=a''\,c^b$ a''	b	Size Range (mm)	No. measured	Source
Brown shrimp	$\times 10^{-6}$												
Combined	12.3	3.02	65-165	2104									McCoy (1968)[1]
Male	11.61	2.911	45-204	1396									Fontaine and Neal (1971)
Female	9.53	2.966	58-240	2016									Fontaine and Neal (1971)
Combined	10.52	2.938	45-240	3412									Fontaine and Neal (1971)
Male					0.000819	2.94	10-42	259	(2)				McCoy (1972)[1]
Female					0.00113	2.84	10-42	243	(2)				McCoy (1972)[1]
White shrimp													
Combined	7.69	2.976	55-160	100									Ferret (1966)
Male	2.02	3.261	70-200	970									Fontaine and Neal (1971)
Female	2.32	3.234	70-214	1120									Fontaine and Neal (1971)
Combined	2.16	3.247	70-214	2090									Fontaine and Neal (1971)
Pink shrimp[3]													
Male	4.49	3.13	35-175	729	0.001*	3.04	8-40	729	5.27	0.96	35-175	729	Kutkuhn (1966)
Female	5.06	3.12	35-215	888	0.002*	2.79	8-55	888	6.14	0.90	35-215	888	Kutkuhn (1966)
Combined	9.79	2.98	65-165	2641									McCoy (1968)[1]
Male	10.02	2.967	70-175	1173									Fontaine and Neal (1971)
Female	5.93	3.92	60-114	2125									Fontaine and Neal (1971)
Combined	7.71	3.029	60-175	3298									Fontaine and Neal (1971)
Combined					0.0062	3.03443	6-22						Tabb, et al. (1962a)
Male					0.00148	2.77	10-42	297	(2)				McCoy (1972)[1]
Female					0.00209	2.66	10-42	503	(2)				McCoy (1972)[1]
Royal red shrimp: Dry Tortugas Area													
Male	2.129	3.22	113-154	109									Klima (1969)
Female	16.134	2.82	95-209	118									Klima (1969)
Combined	7.860	2.96	95-209	227									Klima (1969)
Mississippi River Delta Area													
Male	4.325	3.06	125-174	90									Klima (1969)
Female	13.306	2.83	135-229	114									Klima (1969)
Combined	5.853	3.00	125-229	204									Klima (1969)
Rock shrimp[4]													
Male					0.000601	3.122	n.a.	n.a.					Cobb et al. (1973)
Female					0.000589	3.144	n.a.	n.a.					Cobb et al. (1973)
Combined					0.000604	3.128	3-37	973					Cobb et al. (1973)

[1]For shrimp from North Carolina.

[2]McCoy (1972) derived the following equations for converting carapace length (CL) to total length (TL) in mm for North Carolina populations of:

Brown shrimp	Male	TL = 3.50 + 4.16 CL
	Female	TL = 10.50 + 3.83 CL
Pink shrimp	Male	TL = 12.37 + 3.81 CL
	Female	TL = 21.90 + 3.40 CL

[3]Iverson and Idyll (1960) provide converaton tables for pink shrimp in terms of total length, carapace length, and tails to the pound.

[4]Kennedy, et al. (1977) give the following relations for rock shrimp off the east coast of Florida:

Carapace length versus weight:

	<23 mm CL	>23 mm CL
Males:	$W = 4.104 \times 10^{-4} CL^{3.303}$	W = 1.886 CL - 30.922
Females:	$W = 3.398 \times 10^{-4} CL^{3.364}$	W = 1.818 CL - 30.475

Carapace length versus total length:

	<20 mm CL	≥20 mm CL
Males:	TL = 3.803 CL + 0.249	TL = 3.448 CL + 7.523
Females:	TL = 3.786 CL + 0.118	TL = 2.881 CL + 18.498

where CL and TL are carapace and total length in mm and W is weight in gms.

*Kutkuhn's carapace-weight equations do not fit his published data, evidently due to rounding error. It is suggested that figures published in Kutkuhn (1966) be used instead of these equations to convert carapace length to weight.

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Brown Shrimp

Growth in length is slow 0.019 in. (0.5 mm per day) during January and February, increases in March, and reaches a maximum .02–.13 mm per day) in April and June (Loesh, 1965; Ringo, 1965; St. Amant, et al., 1966; Broom, 1968; Ford and St. Amant, 1971; Jacob, 1971; Swingle, 1971). This monthly variation in growth rate has been associated with the spring warming of the estuaries (St. Amant, et al., 1962; Ford and St. Amant, 1971).

Parrack (1978) estimates growth rate of brown shrimp from mark and recapture experiments conducted in the northern Gulf of Mexico in 1967, 1968, and 1969 (Clark, Emiliani, and Neal, 1974). His discussion indicates that females grow more rapidly than males, weigh more than males of the same age, and attain a larger final length and weight than males.

White Shrimp

Growth rates of white shrimp estimated from trawl samples range from .02–.08 in. (0.6 to 2.2 mm) per day in the summer (Williams, 1955; Gunter, 1955; Loesch, 1965).

Growth rates of white shrimp have been estimated by a number of workers from mark and recapture experiments. Lindner and Anderson (1956) marked white shrimp 200 to 18 tail count (5 to 180 mm) in the South Atlantic and northern Gulf and calculated formulae for growth in length and weight. The results indicated that growth in length was a function of size and month, growth being faster for the smaller than the larger shrimp, and faster in April to June and September to December than from December to March. Klima (1964, 1974) calculated formulae for growth in length and weight. In comparing growth rates for two time periods, he notes that growth was faster in August to October than in September to November. He suggests that the difference is due to differences in water temperature.

Pink Shrimp

Higman, et al. (n.d.) determined the growth of postlarval-juvenile pink shrimp held in enclosures in the estuarine area of Everglades National Park. Multivariant regression analysis was used to determine significant relationships between weekly growth rate estimates and weekly estimates of bottom salinity, temperature, and dissolved oxygen. Salinity appeared to be the most important factor. Since the salinity regime of this area is dependent upon drainage through southern Florida into the Everglades, pink shrimp success in the Dry Tortugas may be related to local rainfall in the Everglades drainage basin as well as to man-made alterations which block the normal waterflow patterns.

Several growth estimates from tagging experiments are available. Iverson and Idyll (1960) tagged pink shrimp in the Dry Tortugas in December, 1957, and recovered them through April, 1958. Females increased in weight from 39 to 31 tails per pound in 45 days, whereas males increased from 60 to 50 tails per pound in the same time. This approximates a growth rate of .07 oz. (0.75 g) per week for female shrimp and of .013 oz. (0.38 g) per week for male shrimp. The authors caution that these estimates were made in the "unusually cold winter of 1957–1958 and may be slower than the growth in a more normal winter." Kutkuhn (1966, table 4) estimates that pink shrimp tagged in the Dry Tortugas area September to December 1961 grew from 5.9 g to 19.5 g in 12 weeks. Lindner (1966) also derived growth curves for pink shrimp in the Dry Tortugas.

Royal Red and Seabobs

Apparently nothing is recorded about the growth rates of seabobs and royal red shrimp.

Mortality Rates

The death of fish in a population is due either to natural causes or to harvest by man. Coefficients of fishing (F), natural (M), and total (Z) mortality are defined as instantaneous death rates for a cohort of N individual fish over a short time, noted as dt. The rate of decline of the population numbers over time is presented as a function of these observed values.

The reported estimates of natural (M), fishing (F), and total (Z) mortality of shrimp are compared in Table 4.1–4. Values of the weekly natural mortality coefficient range from .01 to .55 or a loss of from 1 to 42 percent of the population from the beginning to the end of the week. Estimates of fishing mortality range from .02 to .96. The variations in mortality estimates make it difficult to construct yield per recruit models.

Yield Per Recruit

The pounds of brown, white, or pink shrimp which can be harvested from a given number of post-larval shrimp reaching an estuarine system is a function of the population's rates of growth and mortality, age at which harvest begins, and the rate of fishing mortality once the shrimp are subject to harvest. The age at which yield will be maximized will be dependent on the trade-off between growth and natural and fishing mortality.

Brown Shrimp

There are no published yield per recruit estimates available on brown shrimp. M. Parrack (NMFS, Galveston Lab) prepared a preliminary yield per recruit analysis using his sex specific growth rate equations for brown shrimp (Parrack, 1978) and two levels of monthly instantaneous natural mortality rate, M=.05 and M=.10 (Annon, 1978). (These levels of M on a monthly basis compare to estimate of M=.011 and .023 on a weekly basis.) If M=0.5, yield was maximized when harvesting began on shrimp six months of age, or 21 tails to the pound (assuming a sex ration of 50:50). If M=.10, yield was maximized when harvesting began on shrimp five months of age, or 24 tails to the pound (assuming a sex ratio of 50:50).

He points out that these sizes are much larger than size limits currently imposed in the U.S. Gulf. His analyses indicate that if the above estimates of M approximate reality and if F is at the level estimated by Berry (1971), then current harvesting strategies employed in the Gulf result in a harvest considerably below the theoretical maximum. Klima and Parrack (1978) review the question of the size of shrimp at harvest which will maximize yield and state that "data on hand indicates that these two rates (growth and natural mortality) balance at 6–9 months of age or at a size of 20–30 shrimp tails per pound." If their analyses are correct, then a reduction in the size at first harvest of brown shrimp in the U.S. Gulf of Mexico would result in a decrease in protein yield. Further, an increase in yield is expected if the size at first harvest of brown shrimp is increased in any of the areas of the U.S. Gulf.

White shrimp

Data are insufficient at this time to estimate the expected yield per recruit for white shrimp in the U.S. Gulf.

Pink Shrimp

The most extensive published yield per recruit estimates of Gulf shrimp are for pink shrimp off southeastern Florida (Kutkuhn, 1966; Lindner, 1966; Berry, 1971). Although there is some disagreement between authors, the data indicate that a reduction in yield will be expected if pink shrimp are harvested before they reach a size of 70 tails to the pound.

Table 4.1-4.—*Comparison of instantaneous rates of mortality (in weekly values) for shrimp in the U.S. Gulf of Mexico (modified from Berry 1970)*

Species	Natural mortality M	Fish mortality F	Total mortality	
Brown shrimp.	0.21	0.06	0.27	Klima (1964).
White shrimp.	.08	.06-.19	.14-.27	Klima and Benigno (1965).
	.04-.12	.10-.13	.16-.22	Klima (1974).
	.27	.09	.36	Iverson (1962).

Table 4.1-4.—*Comparison of instantaneous rates of mortality (in weekly values) for shrimp in the U.S. Gulf of Mexico (modified from Berry 1970)*

Species	Natural mortality M	Fish mortality F	Total mortality	
Pink shrimp	.55	.96	.76-1.51	Kutkuhn (1966).
	.06-.12	.12-.18	.25	Lindner (1966).
	.02-.06	.16-.23	.22-.27	Berry (1967).
	.08-.11	.03-.07	.11-.18	Costello and Allen (1968).
	.01-.03	.02-.16	.07-.16	Berry (1970).

Table 4.1-5.—*Length-Weight Conversion Table for Brown, White, Pink, and Royal Red Shrimp (Sexes Combined). (Equations are listed in Table 4.1-3)*

Total length	Count (per pound)							
	Brown shrimp [1]		White shrimp [2]		Pink shrimp [1]		Royal red shrimp [3]	
	Shrimp	Tails	Shrimp	Tails	Shrimp	Tails	Shrimp	Tails
Millimeters:								
50	440	708	[4]519	[4]799	[4]420	[4]673	([4])	([4])
60	258	415	301	464	242	387	([4])	([4])
70	164	264	227	349	152	243	([4])	([4])
80	111	178	147	227	101	162	137	247
90	78	126	100	155	71	113	97	174
100	57	92	72	110	52	82	71	128
110	43	70	52	81	39	62	53	96
120	34	54	40	61	30	47	41	74
130	26	43	31	47	23	37	32	58
140	21	34	24	37	18	30	26	47
150	17	28	19	30	15	24	21	38
160	14	23	16	24	12	20	18	32
170	12	19	13	20	10	16	15	26
180	10	16	11	16	[4]9	[4]14	12	22
190	9	14	9	14	([4])	([4])	10	19
200	7	12	8	12	([4])	([4])	9	16
210	6	10	6	10	([4])	([4])	8	14

[1] From Fontaine and Neal (1971).
[2] 50-60 mm estimates from Perret (1966) and 70-210 mm estimates from Fontaine and Neal (1971).
[3] Klima (1969).
[4] Outside of data range.

Temperature and Salinity

Temperature and salinity are important driving forces in the life cycles of brown, white, and pink shrimp, affecting growth, mortality, migration, and spawning. These factors can be incorporated in models used to predict annual yield (see Section 4.7.1.2).

The major influx of postlarval brown shrimp to the estuaries of the northern Gulf occurs February to March (Baxter, 1963; Baxter and Renfro, 1967; Gaidry and White, 1973; Christmas and Etzold, 1977). Little growth is expected until water temperature exceeds 20° C (St. Amant, et al., 1963; Ford and St. Amant, 1971).

Postlarval white shrimp normally enter the major bays of the Gulf when temperature are above 25° C (Baxter and Renfro, 1967) and are apparently optimum for growth and survival. As the temperatures decline in the fall with advancing cold fronts, growth apparently also declines (Lindner and Anderson, 1956; Klima, 1974). Annual production in the northern Gulf has been associated with estuarine salinity regimes. A similar salinity effect, caused by different weather patterns seems to operate in Texas and Louisiana. Gunter and Edwards (1969) observed a positive correlation between the annual successes (1922–1964) of white shrimp in Texas with the rainfall in the State for that year and the two previous years. They suggest that the lag effect of rainfall was a result of the arid conditions of the State. In Louisiana, an inverse relationship between annual white shrimp catch and the annual discharge of the Mississippi and Atchafalaya Rivers has been noted (Barrett and Gillespie, 1973). White and Boudreaux (1977) obtained statistically significant linear regressions of catch against river discharge by dividing the data into two periods, 1958–1968 and 1969–1974.

Gunter and Edwards (1969) suggest that high rainfall is necessary in Texas to dilute the estuaries for optimum white shrimp production, while lower than normal river discharge is necessary in Louisiana for optimum white shrimp production, since these estuaries were less saline than those in Texas.

Growth of postlarval and juvenile pink shrimp in Florida appears to decline as salinity increases from 10 to 28 ppt and may increase as temperature increases from 15° to 32° C (Higman, et al., n.d.). This apparent relationship between growth and salinity is in contrast to the observation that juvenile pink shrimp normally occupy a higher salinity area on nursery grounds than do brown or white shrimp (Gunter, et al., 1964).

Highest densities of royal red shrimp are found at 9° to 10° C and most occur within 8° to 12° C (Roe, 1969).

Migration and Spawning

Spawning of white shrimp has been associated with the sudden warming in the spring of the offshore waters of the northern Gulf (Lindner and Anderson, 1956).

Both white and pink shrimp apparently seek deeper water as water temperatures fall in the fall and winter and will reenter shallow water if temperature rise (Lindner and Anderson, 1956; Tabb, et al., 1962).

Bioeconomic Models

Grant and Griffin (in press) and Biomo, et al., (1978) have developed a bioeconomic simulation model of the brown shrimp fishery of Galveston Bay, Texas, and its associated offshore waters. The model is designed to assess the change in yield and revenue recruited to the fishery if various restrictions are imposed on either area of catch or fishery effort. Work is currently underway to adapt this model to the Dry Tortugas pink shrimp fishery (Griffin, personal communication, 1979).

4.2 Stock Unit

A stock is defined as a group of fish manageable as a unit. This definition differs from the biological concept of a stock as a more or less freely interbreeding population of a species.

The effects that strategies for increasing the yield for one of these species may have on other species of national interest as well as other multipurpose uses of the area involved must be considered (Section 3.6). Management and conservation of Gulf shrimp has been carried out mainly by the several Gulf States. Management policies employed by these States differ (Section 3.3.1); these differences largely reflect differences in the history of exploitation (Section 3.2).

Given this apparent genetic continuity, the need for a multipurpose approach to management, and the partial lack of data necessary to

evaluate potential benefits derived by modifying current management practices, the GMFMC, realizing that management must consider other mutipurpose uses for national resources and may have to consider area differences in harvesting strategies, has adopted the FMP group of species as the management unit for the Gulf shrimp fishery.

4.3 Catch-Effort Data

The National Marine Fisheries Service has collected data on shrimp landed by commercial fishermen. Griffin (1978) has prepared estimates for the 1963–1975 period on unit fishery effort for brown, white, and pink shrimp. (See Appendix B for review of his technique.)

Published accounts of recreational and bait-shrimp catch and effort are comparatively sparce. The few published estimates of discarded catch are summarized in Section 4.7.

4.4 Survey and Sampling Data

Christmas and Etzold (1977) reviewed the major survey and sampling programs which exist in order to monitor the shrimp resource and predict yields.

Texas: Texas has sampled its key bay areas from March to May for brown shrimp and from June to September for white shrimp. In addition Texas Parks and Wildlife Department also monitors the size, distribution, and abundance of shrimp in the open Gulf.

Louisiana: Louisiana has an ongoing shrimp monitoring program in the estuaries March through October. The program provides the data needed to set the opening date and predict the success of the brown shrimp season.

Mississippi: There is a year-round monitoring of all Mississippi's marine resources. In addition, an intensive sampling of juvenile shrimp occurs from mid-April through summer to provide growth and size data for opening of the inshore brown shrimp season.

Alabama: An ongoing shrimp monitoring program extends from April through September of each year to provide background data as well as to set seasons.

Florida: Florida surveys for age information, and for the life cycle and population dynamics of rock and pink shrimp in offshore waters.

NMFS: NMFS surveys provide the number, weight, and species composition.

4.5 Habitat

Brown, white, and pink shrimp use a variety of habitats as they grow from planktonic larvae to spawning adults. In part, this migration tends to separate the various life stages so that they are not in direct competition for the same resources. As planktonic larvae the shrimp feed on phytoplankton and zooplankton and exist mainly in the open Gulf. As postlarvae they enter the estuaries and adopt a benthic existence at the marsh-water, mangrove-water interface, or with grassbeds. The estuarine phase is considered a critical stage because local fluctuations in temperature and salinity have a dramatic affect on both the acres of marsh available for growth and the actual growth rate of the shrimp. As the shrimp grow, they move away from the marsh-water or mangrove-water interface into deeper, more open waters. At some point they begin an offshore migration to the Gulf. The major species tend to be partly separated in the Gulf. Brown and white shrimp predominate on the mud and sandy mud bottoms of the northwestern and northern Gulf; pink shrimp predominate on the coral sand bottoms of the southeastern Gulf. Adult brown shrimp tend to migrate to deeper waters (30 to 50 fathoms) than adult white shrimp (10 to 20 fathoms).

The weakest link in the life cycle chain is the estuarine phase of growth. Man's alteration of the fragile environment has removed much of the area that would be considered suitable shrimp habitat. Some of these alterations are easily assessed. These include:

- Impoundments that prevent influx of shrimp.
- Bulkheading that removes the critical marsh-water or mangrove-water interface.
- Alterations in freshwater discharge that create an unfavorable salinity regime.

The immediate effects of other alterations are not as easily assessed. These include:

- Stimulation of saltwater intrusion.
- The continuing encroachment of polluted waters on the estuarine waters.

Despite any uncertainty about the effects of these alterations, we do have indications of the kind of environment necessary for shrimp survival. Turner (1977) observed that the yield of shrimp in Louisiana's estuaries is directly related to the acreage of marsh, while that from the northeastern Gulf of Mexico is directly related to the acreage of marsh and submerged grassbeds. He found no relationship between yields and estuarine water surface, average water depth, or volume. His findings concur with the observations of Barrett and Gillespie (1973) that annual brown shrimp production in Louisiana is correlated with the acreage of marsh with waters above 10 ppt salinity, but not with acres of estuarine water above 10 ppt salinity. These findings suggest that the brown, white, and pink shrimp yields in the U.S. Gulf of Mexico depend on the survival of the estuarine marshes, mangrove areas, and grassbeds in their natural state. These areas not only provide postlarval, juvenile, and subadult shrimp with food and protection from predation, but they help to maintain an essential gradient between fresh and salt water.

4.5.1 Physical Description of the Habitats

The following parameters are used in characterizing shrimp habitats around the Gulf Coast:

1. Bottom types
   a. Offshore
   b. Inshore
2. Surface water discharge into estuaries
3. Estuarine salinities
4. Areal extent of estuaries
5. Estuarine availability (access from open Gulf)
6. Water quality (with emphasis on low salinity)

All of these factors vary over space and time.

Habitats can change from one type to another, and the changes can be either culturally induced (i.e., filling or dredging of wetlands) or naturally induced (i.e., subsidence of wetlands resulting in its conversion to open water). These changes are critically important to the Gulf's estuarine-dependent species. Documented evidence of the effect of permanent changes in essential habitats is severly limited, except for the change in wetland area.

An important component in the habitat of the estuarine dependent shrimp is the wetland zone along the Gulf coast. Salinity regimes critically needed for shrimp occur in these areas, and their primary production (vegetation) is the basis for the shrimp's detritus food web.

The wetlands along the Gulf coast have formed during approximately the past 5,000 years, when alluvial sediment supplied to the coast exceeded that removed through erosion and subsidence. The general physiography of the Gulf coast has favored extensive wetland formation. Some 60 percent of the coastal wetland area of the conterminous United States occurs along the Gulf coast. Tidal marsh, mangroves, and submerged aquatics that comprise this area amount to some 6.2 million acres. An additional 8.4 million acres are classified as unvegetated estuarine open water (Crance, 1971; Chabreck, 1972; McNulty,

Lindall, and Sykes, 1972; Christmas, 1973; Diener, 1975).

Wetlands are not evenly distributed along the Gulf coast. Some 73 percent of the emergent wetlands along the Gulf are found in Louisiana as the result of an abundant sediment supply transported by the Mississippi River. Some 395,00 acres of mangrove are found almost exclusively along the Florida coast. While substrate and currents (to carry germinated seeds) are generally favorable along the entire Gulf coast, mangrove distribution is limited to areas where hard freezes do not occur. Submerged vegetation is found along most of the Gulf coast but is particularly abundant and diverse along the shores of central and southern Florida. Information on submerged vegetation is generally lacking for other states.

The relative abundance and type of submerged vegetation depends mainly on bottom type, turbidity, salinity, water temperature, bottom slope, and tidal range (McNulty, Lindall, and Sykes, 1972). Along the Gulf coast of southern Florida nearly 50 percent of the estuarine bottoms are covered by submerged vegetation. Cover density generally decreases as one moves northward, with bays along the panhandle having only five percent of their bottoms vegetated. Reports for isolated study sites indicate that the five percent figure would hold for the remainder of the Gulf coast, except for portions of Louisiana where the percentage would be less, and the lower Texas coast where abundance is greater. Lindall and Saloman (1977) report 796,806 acres of submerged vegetation in estuaries along the Gulf, of which 63 percent are found in Florida and 31 percent are found in the Laguna Madre and Copano-Aransas Bays in Texas.

4.5.1 Bottom Types

4.5.1.1.1 Offshore Bottom Types

There are three general offshore bottom type regions extending to the 200 m isobath in the Gulf of Mexico. One occurs from the Texas-Mexico border to just west of the Texas-Louisiana border. Here the offshore zone consists mainly of sand and finer grain sediments. Occasional pockets of sand and shell are found from the 11 to 109 fms (20 m to 200 m) isobath. The second zone extends eastward to a point approximately even with Pascagoula Bay, Mississippi, and is mainly a complex of fine grain sediments with occasional surface deposits of sand and shell. The dominance of muddy bottoms in this zone is attributed to the deposition by the Mississippi River. The third region encompasses the remaining area offshore Alabama and Florida, which is almost exclusively comprised of sand, shell, and coral. Coral becomes more prevalent along the central and southern Florida coast.

The first two zones are primarily associated with brown and white shrimp, while the third zone is primarily associated with pink shrimp.

4.5.1.1.2 Estuarine Bottom Types

Many of the estuaries found along the Gulf of Mexico represent drowned river valleys, which have subsequently undergone some degree of fill. Generally those estuaries that still have considerable freshwater flow coming in at the head contain bottom sediments that reflect the stream load. Those with little or no stream flow are generally dominated by marine sediments and are usually coarser. Estuaries formed by deltaic progradation and subsequent deterioration are dominated by muddy bottoms.

4.5.1.2 Surface Water Discharge

Freshwater flow into the estuaries of the northern Gulf of Mexico is variable in space and time (Fig. 4.5–1) largely because of differences in drainage basin area, lithology, climate, and land use.

Two aspects of surface water flow are considered in terms of their effect on shrimp habitat: 1) the volume entering the estuaries and 2) the seasonal variability of the hydrography. Four regions of surface water flow are identified:

1. Lower Texas coast
2. Upper Texas coast through the Panhandle of Florida, except for the Deltaic plain of Louisiana
3. Deltaic plain of Lousiana
4. Central and lower Florida coast

Lower Texas Coast

Rivers of the lower Texas coast have relatively low discharges, with peaks occurring in the spring and fall. Low discharge is due to the semi-arid conditions and relatively small drainage areas of the rivers. More to the south, the fall peak is first noticeable on the hydrographs of streams entering the Matagorda Bay system. In the San Antonio Bay system, the fall peak is very pronounced, and, from Aransas Bay through Laguna Madre, the fall peak exceeds the spring peak. In Laguna Madre, however, the total volume of discharge is extremely low, 9 to 200 cfs (1950–1977).

Occasional heavy rains (often associated with tropical disturbances) can have a substantial short term effect on the estuaries and may affect shrimp yields if the resulting flood waters enter the estuaries during critical growth periods of shrimp.

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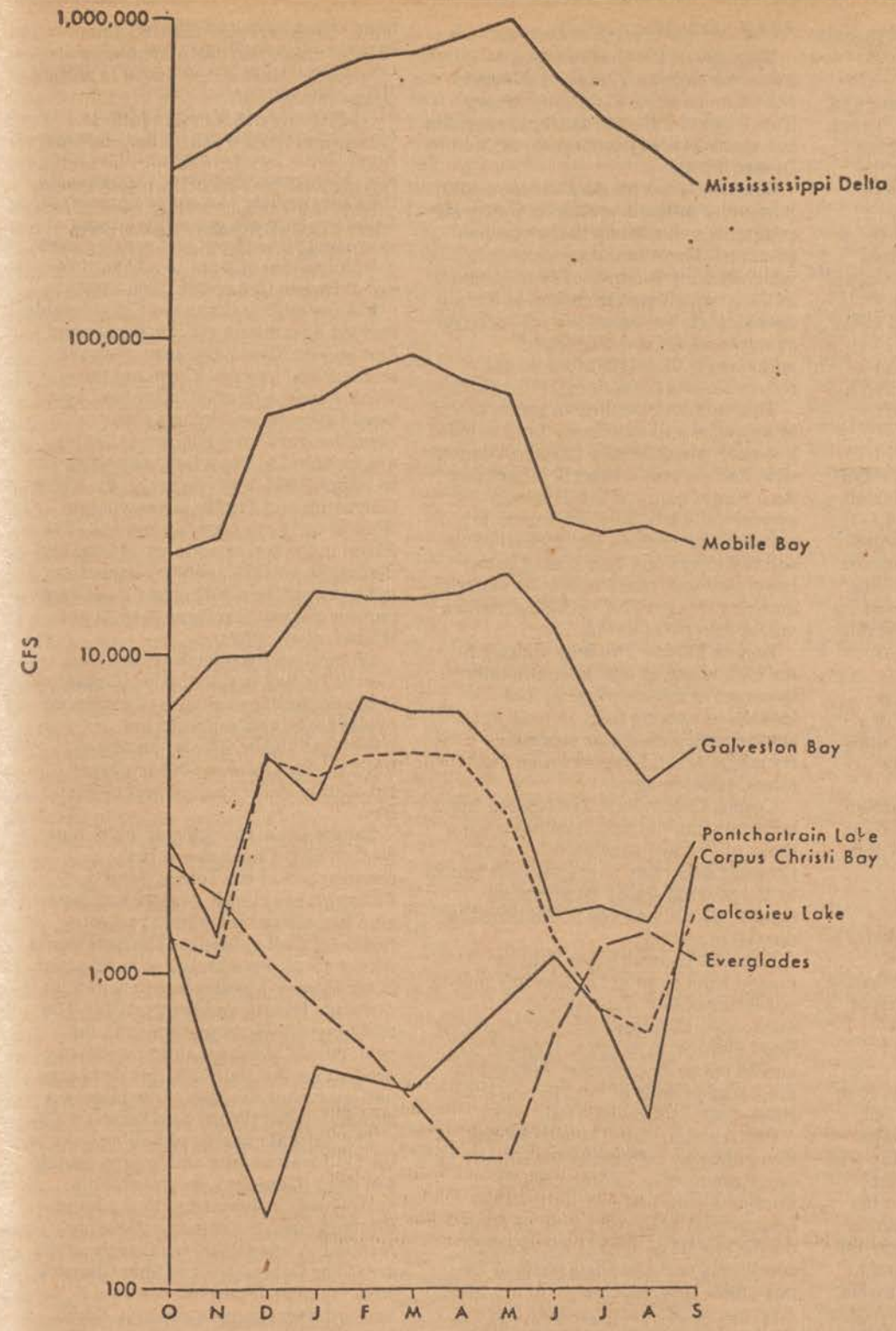

Figure 4.5-1 Ten Year Mean Freshwater Discharge Into Selected Gulf Coast Estuaries (U.S. ACOE and USGS Water Resource Data).

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Upper Texas Coast Through the Panhandle of Florida, Except for the Deltaic Plain of Louisiana

Most of the rivers from the panhandle of Florida west to Galveston Bay, Texas, have a peak discharge in early spring, followed by low discharge during the summer and early fall months. Mean monthly precipitation is generally similar throughout the year; however, a high degree of variability exists from year to year. The differences in seasonal distributions of precipitation and discharge are primarily attributed to the seasonal differences in evapotranspiration rates and to the spring release of precipitation stored in winter as soil moisture and snow.

Deltaic Plain of Louisiana

The Mississippi and the Atchafalaya are by far the largest suppliers of fresh water to the Gulf of Mexico (Fig. 4.5–1). Peak discharge usually occurs in April through May; low flow typically occurs in September through October. During periods of flood, fresh water, carried by the Gulf into the mouths of neighboring estuaries, results in lower salinities.

Though extremely variable in magnitude, the monthly flow of the Mississippi River is less variable in relation to average flow than any other gauged rivers entering the Gulf. Its variance in flow, however, has a noticeable effect on the yield of brown shrimp in the Gulf (Section 4.1) and on white shrimp in Louisiana (White and Boudreaux, 1977).

Central and Lower Florida Coast

Stream flow entering the Everglades is lower than most areas of the Gulf, largely because of the small contributing drainage area. The additional input of groundwater is recognized, but its significance cannot be determined.

The seasonal flood cycle is asymmetrical. The peak rises rapidly in early summer, continues into the fall, and then drops slowly to a low stage during the months of April and May (Fig. 4.5–1). The summer maximum differs from most other Gulf rivers in that the latter are typically at low stage during the summer. This difference reflects the greater influence of tropical climate in the Everglades where summer showers are typically intense and result in higher stream flow despite evapotranspiration rates. From Charlotte Harbor north to Suwannee Sound, the seasonal hydrograph is in transition between the summer fall peak of the south and the late winter-spring peak common along the northern Gulf coast. South of Suwannee Sound the total volume of stream flow is small.

4.5.1.3 Estuarine Salinity

Throughout the Gulf of Mexico estuarine salinity is highly variable in both time and space. Salinity ranges from 0 ppt to a high of 113.9 ppt recorded in Laguna Madre (Hedgepeth, 1953, in Diener, 1975).

Because of severe data inadequacies, it is rather difficult to make a Gulf-wide comparison of salinity in the various estuaries. There are few estuaries in which salinity is continually monitored. In those which are monitored by public agencies, station locations are such (for example, along major dredged waterways) that data often do not reflect general conditions of the estuary.

This section is limited to presentation of averages and extremes; these values, however, are generally based on limited data and present a superficial picture. As a result, many of the estuaries appear quite similar with respect to salinity. The ensuing description of salinity in various estuaries is based largely on secondary reference material, and all values are for surface salinities unless otherwise noted.

Laguna Madre: The only estuary in the Gulf which is almost continually hypersaline had average annual isohalines ranging from 35 to 55 ppt (1963–1966), with lower salinities occurring at tidal passes rather than inland (Diener, 1975).

Corpus Christi Bay: The Nueces River helps to maintain salinities lower than those of average seawater. Most of Corpus Christi Bay averaged between 30 to 35 ppt (1963–1966). Hypersaline conditions can be expected during low discharge periods.

Copano-Aransas Bays: Salinity ranged from 6 ppt in Copano Bay and 12 ppt Aransas Bay near the Gulf Intracoastal Waterway (GIWW) during flood periods, to 32 ppt in Copano Bay and 35 ppt in Aransas Bay during low discharge periods of the Mission River (1965–1967, McGowen, et al., 1976).

San Antonio Bay: The Guadalupe River strongly influences the salinity in San Antonio Bay. During periods of flood, the entire bay above the Gulf Intercoastal Waterway may be fresh; during low flow, slightly hypersaline conditions occur in some parts of the bay (1965–1967, McGowen, et al., 1976). Average salinities range from 6 ppt at the head to 20 to 25 ppt at the GIWW and decrease slightly on the lee side of Matagorda Island.

Matagorda Bay Complex: The Lavaca River and several streams affect salinity. Salinities range from 0 ppt at the head of Lavaca and Tres Palacios Bays and 20 ppt near Port O'Connor during flood periods, to 30 ppt at the head of the bays and slightly hypersaline conditions near Port O'Connor during low discharge (1965–1967, McGowen, et al., 1976). East Matagorda Bay is separated from Matagorda Bay proper by the Colorado River Delta. Several streams flow into East Matagorda Bay, and its opening to the Gulf consists of a single narrow cut. Salinities here are generally lower, averaging 10 to 15 ppt and ranging from a reported low of 8 ppt to a high of 24 ppt at Brown Cedar Cut (1965–1967).

Galveston Bay Complex: Considerable surface flow enters via the Trinity and San Jacinto Rivers and several small streams and bayous. These are the westernmost estuaries influenced by a humid climate, and hypersaline conditions are rare. Highest salinities are recorded in West Bay, averaging 25 to 30 ppt (1965–1967, Fisher, et al., 1972). Galveston and Trinity Bays average from 10 to 15 ppt near the head to 20 to 25 ppt in the lower portions. During high discharge, surface salinity ranges from 2 ppt to 14 ppt, and during low discharge periods the range is from 20 to 32 ppt (Fisher, et al., 1972).

Circulation between East Bay and Galveston Bay is rather poor (Gooselink, in press) perhaps because of numerous oyster reefs, and salinities are somewhat higher. The reopening of Rollover Fish Pass in 1955 improved circulation in the eastern half of East Bay.

Sabine Lake: Dredging of the Sabine-Neches Ship Channel and the construction of the Toledo Bend Reservoir are classic examples of how man has altered the natural salinity regime of Gulf estuaries. The dam stores winter surplus water, which is released in mid-May for hydroelectric generator demands (White and Perret, 1973). The mid-May release corresponds to the peak period of brown shrimp estuarine production. Alteration in this discharge pattern means the loss of the lake as a shrimp habitat (White and Perrett, 1973).

The natural opening of Sabine Lake to the Gulf was narrow and approximately 4 m deep (Gosselink, in press). This narrowness, combined with the large discharge into the estuary, probably resulted in low salinities throughout the area. The Sabine-Neches Ship Channel 46 ft. (14 m in depth) has resulted in unusual hydrographic changes. Spoil from the channel is continuous until the mouth of the Neches River, at which point an increase in lake salinity is noted. The ship channel acts as a corridor facilitating saltwater intrusion during low discharge periods and allows for more rapid runoff of high discharge.

Combined effects of the natural physiography and of these perturbations

have resulted in relatively low and monotonous annual salinity regimes. Salinities at the estuary's head range from 2 to 10 ppt (wet and dry years) and from 16 to 20 ppt (wet and dry years) at the south end of Sabine Lake (Fisher, et al., 1973).

Calcasieu Lake: This estuary is similar to Sabine Lake in its size, its orientation, and in that its constricted opening to the Gulf has been dredged. Salinity in the ship channel has increased since its construction (Gosselink, in press). Historic changes in oyster distribution and in marsh acreage and vegetation indicate that salinity has increased in the lake. Means and extremes are not known for the lake, but it seems that salinity here is somewhat higher than in Sabine Lake (Barrett, 1971).

Atchafalaya-Vermilion Bays Complex: Salinities are generally low due to the Atchafalaya River as well as to the other lesser sources of fresh water. A significant decrease in salinity has occurred in the Vermilion Bay area since 1950, for the expected continued growth of the Atchafalaya Delta will result in continued high turbidity levels and lower salinities. If the Delta grows out to the present coastline it may act as a barrier decreasing water exchange with the Gulf. The immediate estuarine area will probably deteriorate in terms of shrimp habitat over the foreseeable future. Over the long term, if the normal sequence of deltaic processes is not inhibited, the result will be a significant increase in estuarine habitat area (Gosselink, in press).

Terrebonne and Barataria Estuaries: Since artificial levies block the normal flow of the Mississippi River, these estuaries are no longer greatly influenced by freshwater runoff. During flood periods, Mississippi waters can enter into the mouths of these estuaries via the Gulf of Mexico and create a reversal in the salinity gradient (Barrett, 1971). While salinity data is extremely sparse, the extensive salt and brackish marshes indicate favorable conditions for shrimp habitat.

Mississippi Delta: The Delta marshes are generally too fresh to be significant shrimp habitats. Surface salinities are usually near zero ppt; however, a well-developed salt wedge moves upriver at low stage.

Pontchartrain-Breton Sound: Marshes in Breton Sound have salinities similar to those of the lower portions of the Barataria and Terrebonne estuaries (20 to 25 ppt, 1967–1968, Barrett, 1971).

Mississippi Sound Complex: Salinities in Mississippi Sound, despite its numerous wide passes, are considerably less than those of the Gulf. Freshwater discharge is considerable both directly (via the Pascagoula system and weirs entering into St. Louis and Biloxi Bays) and indirectly (via Mobile Bay to the east and the Pearl River and Pontchartrain-Borgne system to the west). At the western end, surface salinity ranged from 6 to 20 ppt, while at the east end it ranged from 14 to 30 ppt (1962–1964, 1966–1969, Christmas, 1973). The east-west gradient reflects differences in surface water inputs.

In the landward estuaries, such as Biloxi and St. Louis Bays, surface salinities range from less than eight ppt to 20 ppt. A fairly strong salinity gradient is present from the mouths of the estuaries seaward to the offshore barrier islands. This gradient is most evident from Biloxi Bay to Dog Keys Pass where surface salinities differ by about 12 ppt, with a range of 10 to 20 ppt over the 131 m distance.

Mobile Bay: Mobile Bay is another example of a shallow-water estuary modified by a deep-water channel that allows for saltwater intrusion. Mobile Bay receives more freshwater flow than any other U.S. Gulf estuary except for the Mississippi River and its tributary, the Atchafalaya. Consequently, salinity has a strong inverse relationship to stream flow.

Florida Estuaries: In the panhandle area and south to Suwannee Sound, salinity patterns are similar to those of the estuaries to the west. Salinities are highly variable and are related to stream flow, which is substantial for these areas. Choctawhatchee Bay is a glaring exception because of a well-defined persistent salt wedge (McNulty, et al., 1972).

Despite the lack of major freshwater surface flow, the coastline south of Waccassa Bay and north of Tampa Bay has salinities similar to those of the large-discharge panhandle estuaries. These lower-than-normal Gulf salinities have been a factor in the presence of offshore oyster reefs and submerged aquatics, suggesting the strong possibility of springs emerging in the offshore zone (McNulty, et al., 1972).

Relatively high salinities from Tampa Bay south through Florida Bay are due to the absence of major stream flow and high evapotranspiration rates. The frequency and degree of hypersalinity generally increases in a southerly direction, except for the Charlotte Harbor area where stream flow is normally sufficient to mitigate hypersalinity. Hypersalinity, a normal and frequent occurrence in Florida Bay, is brought about by natural drought periods and is intensified by man's diversion of normal freshwater flow (McNulty, et al., 1972). Higman (n.d.) discusses the possible inverse relationship between growth rate of postlarval and juvenile pink shrimp and salinity in Florida Bay estuaries.

4.5.1.4 Estuarine Access

The area becomes closed as a nursery ground if wetlands are impounded. Indirect effects may be considerable and may cause changes in water flow patterns. Control gates can close off nursery grounds landward of the structures.

Weirs constructed along the Sabine Navigation Channel and the Gulf Intracoastal Waterway in the Keith Lake area of southeast Texas to protect the neighboring marshes from saltwater instrusion were removed in 1977 reopening the Keith Lake area as a shrimp nursery ground (R. Fish, personal communication).

4.5.1.5 Non-Salinity Water Quality

The effects of pollutants on Gulf shrimp is still relatively unknown. Pollutants can reduce the available estuarine habitat area and result in high concentrations of substances harmful for human consumption.

4.5.1.6 Currents

The most important process in producing currents in the Gulf of Mexico is the stress of the wind upon the water surface. While the loop current in the eastern Gulf has been documented for some time, a major current in the western Gulf has only recently been firmly established (Sturges and Blaha, 1976). The loop current may serve as an eastern boundary to the Mexican current (Sturges and Blaha, 1976), especially during summer months.

Tidal currents are of particular importance in the nearshore area and affect movement into and out of estuaries. Despite the small tidal range throughout the Gulf, tidal current velocities are relatively high. In the estuaries high velocity is due to constricted outlets that characterize many of the lagoons and bays. In the nearshore area, water level changes occur over a shallow Continental Shelf. Wind can have a pronounced effect on the overall water level change. Two of the most dramatic examples are cold fronts that push water out of the northern Gulf estuaries and tropical disturbances that raise water levels in these same estuaries. Shrimp migration, from these estuarine areas is associated in part with the relative magnitude of the tidal exchange (Section 4.1).

4.5.2 Habitat Concerns

See introduction to Section 4.5, Habitat, and Section 4.8, Estimates of Future Stock Conditions.

4.6 Quality of Data

Despite the importance of the Gulf shrimp fishery, there are some significant data deficiencies which limit the selection of mangement measures. Some of these deficiencies include:

- Lack of a clear understanding of natural mortality rates, of temperature and salinity effects on growth rates, and of migration patterns.
- Lack of data on utilization of the shrimp resouces.
- Lack of cost-earnings and catch-effort data.

4.7 Current Status of the Stocks

4.7.1 Maximum Sustainable Yield

4.7.1.1 Explanation and Specification of MSY

The biological characteristics which affect sustainable yields for penaeid shrimp are unusual. They are an annual crop. Very few individuals live a year and the majority harvested are less than six months old. There is no demonstrable stock-recruitment relation and recruitment overfishing, given present technology, is essentially impossible. That is, it is not economically or technically feasible to take so many shrimp that there are too few survivors to provide an adequate supply for the following year. Because of these characteristics, fishing mortality and yield in one year do not affect yield in the following year. The maximum yield in number for a given year is essentially all the shrimp available to harvest, using current technology.

Growth overfishing is caused by taking the available recruits at too small a size. If growth overfishing is occurring, allowing additional time for growth will result in a greater total yield in weight, although the total number of individuals will be less. The rapid growth rate of penaeid shrimp makes them resistant to growth overfishing until high levels of effort are reached. Effort in the fishery has been increasing rapidly, and it is probable that the total yield of penaeid shrimp could be increased if the average size taken were larger. However, the poor quality and small amount of available data makes it difficult to precisely estimate the magnitude of any increase (see Section 4.1).

The abundance (number of recruits) and therefore yield and catch per unit effort, vary greatly from year to year depending on the temperature and salinity in the estuarine nursery areas. This is evident when regression coefficients for the different models are compared. For example, linear regressions of catch on effort showed that effort alone explained only 38 percent of the variation in catch of Louisiana white shrimp and 57 percent of the variation in Gulf brown shrimp catch. Multiple regressions including environmental parameters explained 89 percent and 88 percent respectively. For brown shrimp, the environmental model predicts that at a fishing effort of 100,000 units (essentially the record until 1976), annual catch would vary from 57 to 88 million pounds provided temperature and salinity ranged within 1963–1975 levels. If environmental conditions were more favorable, a greater yield would be expected. Given environmental conditions slightly better than previously observed and high levels of effort, the maximum probable catch is estimated at 116.4 million pounds tails, 37.6 percent greater than the point estimate of MSY from a Schaefer surplus production model.

Surplus production models utilize trends in catch and fishing effort over a series of years. They were designed for, and are usually applied to, species with multiple year classes, (i.e., individual animals live longer than one year). They do not consider fluctuations in recruitment controlled by environment, but assume that environmental effects are constant. The predictive ability of these models, particularly in the range of fishing effort which might produce overfishing, is at its best for long-lived species and/or those which are not subject to large, environmentally produced fluctuations in recruitment. Because penaeid shrimp meet neither of these criteria, application of surplus production models must be made with caution and with an understanding of what is being preducted by the model. Estimates of MSY produced should be considered as long-term averages which are greatly affected by environmental conditions. They should not be considered a maximum allowable catch for a given year.

The Schaefer version of the surplus production model was chosen to estimate MSY in all three species because: sufficient data were available; it fit the date as well as other models which gave similar estimates of MSY, and was mathematically easier to use. The estimate was calculated using only reported catch and effort from the commercial fishery. Estimates of the recreational catch, bait catch, and discarded undersized shrimp are added.

	Schaefer commercial [1]	Recreational	Bait	Discard	Total
Brown shrimp	85	8	2	5	100
White shrimp	38	8	1	3	50
Pink shrimp	14	.....	1	.....	15

[1] All weights are in millions of pounds, tail weight for a total MSY of 165 million pounds of tails annually for the three species.

For royal red shrimp, MSY was estimated as 392,000 lbs. of tails using a Schaefer model.

For rock shrimp, MSY was estimated as 1.1 million pounds of tails using a Schaefer model. This estimate is a very poor one because most landings are incidental catch, making effort estimates unreliable.

For seabob shrimp, no accurate MSY could be calculated due to lack of effort data. Seabobs are treated as an incidental catch, to the white shrimp fishery where they account for an average of 4.3 percent of the total catch or 1.4 million pounds (tails) for the years 1959–1975. This must serve as the best available MSY. The catch of seabobs is almost entirely within the Territorial Sea (Sec. 4.1).

For the three penaeid species, surplus production models indicate only a long term average yield, and not an allowable maximum. The catch in any given year can only be estimated using environmental factors and expected effort for that particular year.

A reasonable estimate of the maximum probable catch of white and pink shrimp can be estimated by applying the percentage by which the maximum probable catch of brown shrimp exceeds the Schaefer MSY estimate to all species. Estimates of bait catch, recreational catch and discards are then added to give a total maximum probable catch (see Sec. 4.7.1.2). These estimated are:

[In millions of pounds]

	Schaefer commercial estimate	Maximum commercial yield considering environmental factors (137.6 pct)	Recreational	Bait	Discard	Total
Brown shrimp	85	117	8	2	5	132
White shrimp	38	52	8	1	3	64
Pink shrimp	14	19	.....	1	.....	20
Total	137	188	16	4	8	216

4.7.1.2 Technical Description of MSY Calculations

Yield Models Incorporating Environmental Driving Forces

To achieve reasonable accuracy, the calculation of specific yields for penaeid shrimp must be made for specific points in time and must include environmental driving forces, since yield is dependent on those forces and not on abundance in previous years. Such models are much more appropriate and useful for penaeid shrimps because of the overriding impact of the environment on yield.

The environmental models presented below do not estimate MSY in the classical sense, rather they provide a yield estimate for any year under given conditions. They fit empirical relationships to observed data but are not directly tied to biological parameters of the species such as growth rate or mortality rates. The estimates from these models become invalid if extreme and unrealistic values are used for fishing effort and/or environmental parameters. At average levels of river discharge and effort, these models produce yield estimates which approximate MSY estimates from surplus production models.

Griffin and Beattie (1978) attempted to do this using freshwater discharge from the Mississippi River as a proxy for estuarine salinity conditions. Their formula, a modified Spillman production equation (Heady and Dillon, 1961) estimates yield for that portion of Gulf shrimp resources of all species caught by vessels (i.e., five gross tons or larger). It predicts maximum yield will be attained only at infinite fishing pressure, although the rate of increase in yield decreases rapidly with increasing effort.

To estimate average yield, equivalent to MSY, Mississippi River discharge was used as an index of environmental driving forces, and the predictive equation derived is

$$Y=6593D^{-0.6013}(1-0.995701^{E}) \quad \text{Eq. 4.7-1}$$

where Y is yield in million pounds of tails, D is Mississippi River discharge in thousand cubic feet per second, and E is fishing effort in thousand units. For a year with an average river discharge pattern, their equation predicts an average yield for Gulf shrimp vessels of 128.7 million pounds of tails. Within rounding error, 90 percent of this catch would be achieved at an expenditure of 314,300 effort units. The current range is 100,000 to 300,000 units.

For the purposes of this plan, it was necessary to consider each species individually. For white shrimp, the data was available only for Louisiana (Fig. 4.7-1).

The association of Louisiana's reported commercial catch of white shrimp (on a year-class basis) to unit fishing effort and Mississippi River discharge was investigated. It was found that the log of average river discharge for the May through August period (LMJJA) could be used as a forecaster for the success of the coming year's harvest (Y) if an estimate of commercial fishing effort (E) could be made (Figure 4.7-4).

$$Y=127.8+.6411E-49.4LMJJA(R^2=.84) \quad \text{Eq. 4.7-2}$$

where Y is in million pounds tails of white shrimp, LMJJA is the log of river discharge in 1,000 cfs and E is in 1,000 units. This time period encompasses the early phase of estuarine growth. It was also noted that the relationship in Eq. 2 was improved (increased R^2) if the time period over which river discharge was averaged was increased from the May through August period to May through December.

$$Y=129.1+.6411E-51.48LMD(R^2=.89) \quad \text{Eq. 4.7-3}$$

where LMD is the log of the average river discharge in 1,000 cfs for the May through December period. This longer time period essentially encompasses the first growing season for white shrimp.

These models could not be applied to the entire Gulf white shrimp catch because shrimp production from estuarine areas not connected to the Mississippi River are substantial and do not always correlate well with Louisiana production.

For pink shrimp no data was available to fit these types of models.

For brown shrimp in Louisiana, a correlation has been drawn between the annual success of the brown shrimp harvest and the temperature of both the estuarine water during mid-April and the acres of marsh above 10 ppt. (Barrett and Gillespie, 1973, 1975, 1976; Barrett and Ralph, 1977). In general, good production is expected if the spring is dry and warm, whereas poor production is expected for a wet, cold spring. A similar phenomenon has been observed in Texas (T. Leary, GMFMC, personal communication, 1978).

After the success of the Louisiana Department of Wildlife & Fisheries in predicting its brown shrimp harvest with these environmental variables, and given the fact that the successes of many of the major brown shrimp fishery areas in the Gulf are correlated with the Louisiana catch, "Barrett's" indicators were then tested for their ability to predict the annual Gulf brown shrimp catch. Results of the multiple regression equation generated are shown in Figure 4.7-2. The equation,

$$\text{Catch}=-51.73+3.664(\text{Temp})-0.01496(\text{River})+0.5061(\text{Effort}) \quad \text{Eq. 4.1-4}$$

predicts 88 percent of the annual variance in catch, where "Catch" is annual brown shrimp catch in million pounds, "Temp" is average water temperature in degrees Centigrade at Grande Terre, Louisiana, April 16 to 22, "River" is Mississippi River discharge in 1,000 cfs March to May, and "Effort" is unit fishing effort in 1,000 units (Griffin, 1978).

In general, low freshwater discharge and high temperatures mean large yields (temperature is the most important factor). The estimated yield for the most favorable recorded combination of temperature (26.3° C in 1967), river discharge (480,000 in 1963) and effort (113,569 in 1972) is 94.9 million pounds. This compares with the best reported catch of 91.5 million pounds in 1967. To calculate a maximum probable yield, it is reasonable to assume slightly better environmental conditions and higher levels of effort. Using 27° C, 480,000 cfs and 150,000 effort units, the yield estimate is 116.4 million pounds of tails. This estimate is 37.6 percent greater than the estimate of MSY from the Schaefer surplus production model and more nearly resembles true conditions.

This model is an adequate predictor of reported annual Gulf brown shrimp harvest, although there is considerable room for refinement and improvement. When the necessary data becomes available, this type of model should be used for all penaeid shrimp.

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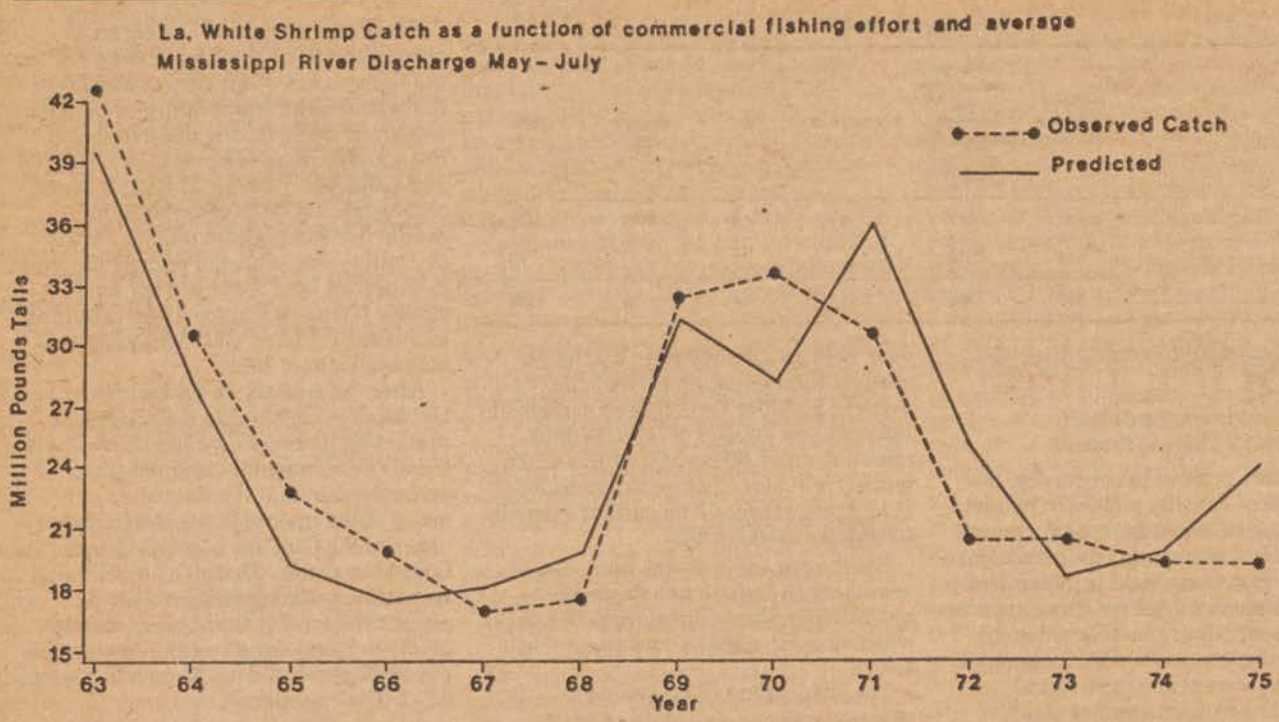

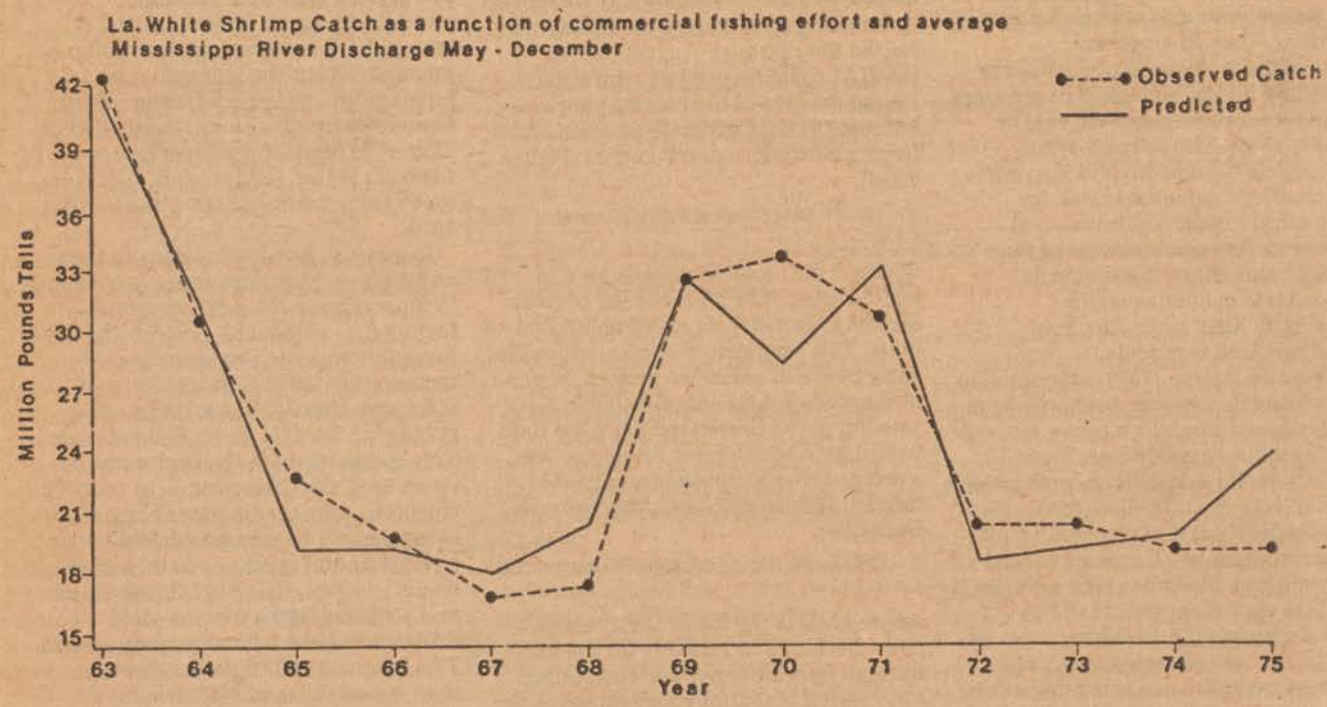

4.9-1 Louisiana white shrimp commercial reported catch as a function of commercial fishing effort and average Mississippi River discharge. (See Appendix E for derivation of equations.)

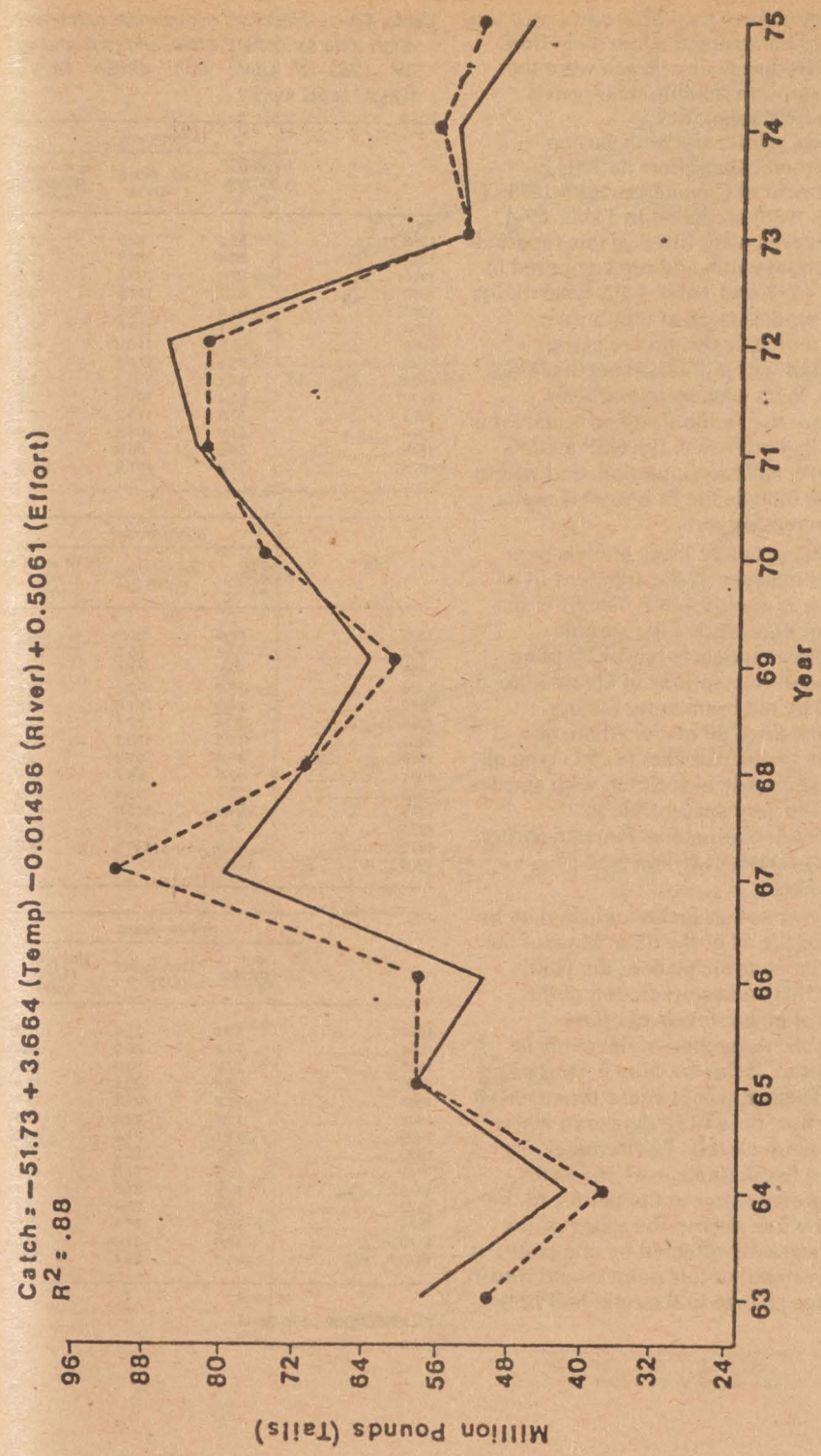

Figure 4.7-2. Predicting the annual US Gulf of Mexico harvest of brown shrimp by the commercial fleet. TEMP is the temperature at Grand Terre, Louisiana, April 16-22 in °C, RIVER is the average Mississippi River Discharge in 1000 cfs for March through May, and EFFORT is 1000 units of unit fishing effort. The solid line represents the solution to the predictive equation and the points represent the actual reported commercial harvest. (See Appendix D for derivation of equation.)

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As shown by the calculations above, surplus production models which do not incorporate environmental forces are inappropriate for these species. They are only used because of a lack of the required environmental data.

Surplus Production Models

Klima and Parrack (1978) used the Schaefer form of the Generalized Stock Production (GSP) model to predict a MSY for the shallow-water catch of Gulf shrimp (brown, white, pink, seabob, and rock shrimp). They used estimates of reported commercial catch and days fished for the period 1956–1975, excluding 1957, 1961, and 1962 as years of major hurricane activities and therefore not indicative of normal fishing activity. Their equation,

$$Y = E\,[.45528 - 9.3870396 \times 10^{-7} E] \qquad \text{Eq. 4.7-4}$$

(where Y = yield in metric tons and E is effort in days fished) predicts an annual MSY for these shallow-water shrimp of 55 thousand metric tons (121 million pounds) of tails harvested by 225,000 days fished. They noted that annual catch has fluctuated around this maximum since 1970 and conclude that the shallow-water shrimp "have been fully exploited in recent years."

In developing this plan an attempt was made to find the most predictive model relating catch to fishing effort for each of the shrimp species harvested in the U.S. Gulf. Models used were the Spillman production equation (Dillion and Heady, 1966) (for brown, white, and pink shrimp) and the Generalized Stock Production model (GSP) (Pella and Tomlinson, 1969; Fox, 1975). Four levels of m were used in fitting the GSP model: m = 0.5, 1.5, 2.0, 3.0. The parameter m is a measure of how a stock reacts to increasing fishing effort and overfishing.

The available catch data include the reported commercial catch-effort data published in the Gulf Coast Shrimp Data (U.S. Department of Commerce, 1963–1975) as well as point estimates of recreational, bait, and discarded catch and (in some cases) effort. To test the fit of the models to available data, only the reported commercial catch and effort data were used, since these were the only data with reliable time-series, catch-effort estimates.

Brown, white, and pink shrimp commercial catch-effort data (U.S. Department of Commerce, 1963–1975; Griffin, 1978) are listed in Table 4.7-1. Yield curves were fitted to this reported commercial catch and are compared in Figure 4.7-3 and Table 4.7.2. Essentially, all the models suggest that brown, white, and pink shrimp are being harvested within their respective MSY ranges. With each species, the fit (compare the residual sum of squares) is generally better with the GSP models than with spillman equation, and within the GSP models the fit becomes better with increasing m.

Choosing one of these models over another because of the apparent fit of the data is questionable. The fit of the data points to any of the surplus production models is relatively poor because of fluctuations in abundance caused by environmental factors. Although the GSP model where m = 3 appears to give the best fit, this type of model is usually associated with species which are very susceptible to recruitment overfishing. Penaeid shrimp are very resistant to this type of overfishing.

There are other factors which may be affecting the fit of the data. Most of the points lie near the peak of the yield curve. This makes prediction of the effects of higher levels of effort unreliable. A fraction of the catch is unreported. If this fraction is increasing and is large, it would cause the reported catch effort data to fit the curve where m = 3 more closely. Environmentally induced fluctuations in abundance cause great scatter in the points. In the case of white shrimp the shape of the curve is greatly affected by one point, 1975. Removal of this point would result in a large change in the right half of the curve.

Table 4.7-1—*Reported commercial catch and effort data for brown, white, and pink shrimp for 1963-76 (data from Griffin 1978). Weight is tail weight.*

Year	Brown shrimp		
	Catch (1,000,000 lb)	Days fished (1,000 d)	Unit effort (1,000 units)
1963	50.2	82.0	51.3
1964	36.4	74.1	48.0
1965	57.0	102.4	61.6
1966	57.7	111.9	73.6
1967	91.5	116.6	84.2
1968	71.1	117.8	84.9
1969	61.5	114.6	90.6
1970	75.3	117.4	86.7
1971	81.1	126.2	102.6
1972	81.4	144.0	113.6
1973	52.8	115.3	90.0
1974	55.8	103.8	74.9
1975	50.6	86.6	67.8
1976	77.8	181.9	130.3

Year	White shrimp		
	Catch (1,000,000 lb)	Days fished (1,000 d)	Unit effort (1,000 units)
1963	46.6	80.0	55.7
1964	43.6	95.3	63.3
1965	33.2	74.5	51.2
1966	29.8	72.1	43.6
1967	24.2	61.6	40.9
1968	30.3	77.4	52.0
1969	44.5	115.1	78.4
1970	45.8	91.3	72.6
1971	42.0	88.7	68.2
1972	37.7	91.8	76.3
1973	34.0	115.6	86.5
1974	31.3	96.1	67.5
1975	27.6	121.8	92.3
1976	36.5	111[4	87.7

Year	Pink shrimp		
	Catch (1,000,000 lb)	Days fished (1,000 d)	Unit effort (1,000 units)
1963	12.4	21.9	15.3
1964	14.2	25.0	18.5
1965	14.6	23.3	17.4
1966	13.9	23.1	17.5
1967	10.2	21.7	16.7
1968	11.4	22.4	17.5
1969	11.1	21.5	17.8
1970	12.7	20.2	16.8
1971	10.3	17.8	15.1
1972	10.9	21.5	18.7
1973	14.5	25.4	22.4
1974	15.1	27.1	23.9
1975	14.6	31.3	28.6
1976	13.0	29.4	26.2

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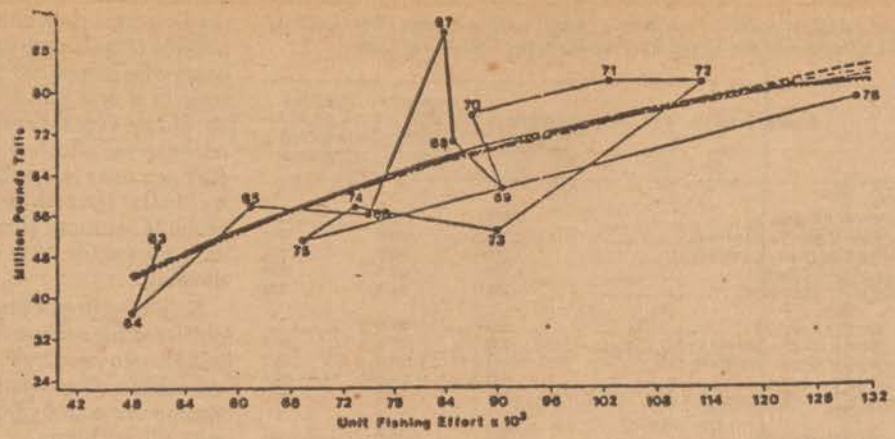
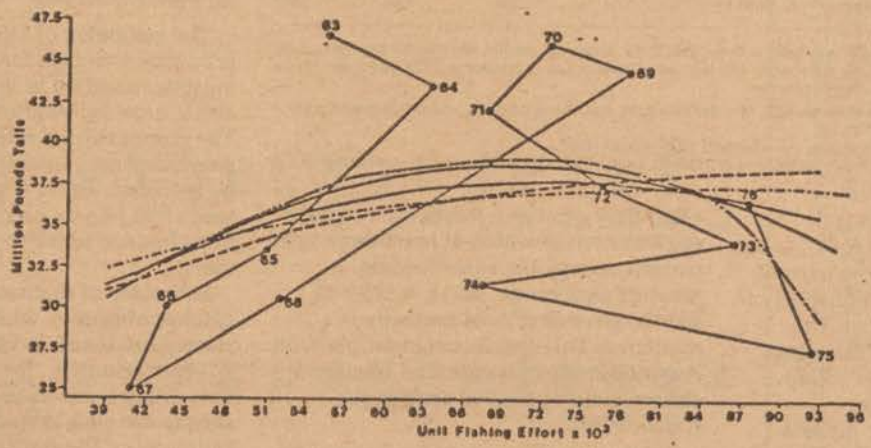
BROWN



WHITE



PINK

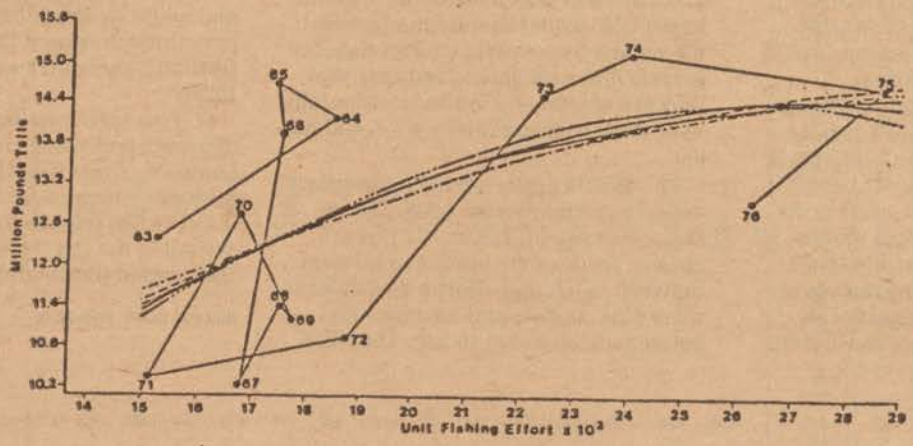


Fig. 4.7- 3. Comparison of the fit of various surplus yield modes to the reported commercial catch of brown, white, and pink shrimp in the US Gulf of Mexico. Equations and estimates of MSY and f opt are listed in Table 4.7-2. Spillman — — — — ; GSP, m = 0.5 -·—·—·; GSP, m = 1.5 ····· ; GSP, m = 2.0 ———— ; GSP, m = 3.0 ——-----—;

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Table 4.7-2.—*Comparison of Point Estimates of MSY Generated by Fitting[1] Various Surplus Yield Models to the Reported Commercial Catch Data for Brown, White, and Pink Shrimp as Reported in Table 4.7-1*

Species and model	Equation predicted	Residual sum of squares ***	Predicted MSY (1,000,000 lbs tails)	Predicted f_{opt} (unit fishing effort—1,000 units)
Brown Shrimp:				
Spillman*	$Y=113.5\ (1-.9896^{E})$	1,315	113.5	.....
CSP **, m=0.5	$Y=.5268\ E\ (.6513+.001970\ E)^{-2}$	1,320	102.6	331
CSP **, m=1.5	$Y=.5431\ E\ (1.448-.002846\ E)^{2}$	1,296	85.8	170
CSP **, m=2.0	$Y=1.087\ E-.003491\ E^{2}$	1,283	84.6	156
CSP **, m=3.0	$Y=.3\ E\ (12-.059\ E)^{3}$	1,265	81.4	136
White Shrimp:				
Spillman	$Y=39.92\ (1-.9272^{E})$	582	39.9	.....
CSP, m=0.5	$Y=.9626\ E\ (.7821+.008144\ E)^{-2}$	573	37.8	96.0
CSP, m=1.5	$Y=.7073\ E\ (1.299-.006041\ E)^{2}$	487	38.0	71.7
CSP, m=2.0	$Y=1.102\ E-.007885\ E^{2}$	447	38.5	69.9
CSP, m=3.0	$Y=.6039\ E\ (2.702-.02604\ E)^{3}$	377	39.6	69.2
Pink Shrimp:				
Spillman	$Y=16.23\ (1-.9211^{E})$	25.7	16.2	.....
CSP, m=0.5	$Y=.9102\ E\ (.8224+.01782\ E)^{-2}$	25.7	15.5	46.1
CSP, m=1.5	$Y=.8851\ E\ (1.115-.01255\ E)^{2}$	25.3		29.6
CSP, m=2.0	$Y=1.036\ E-.01866\ E^{2}$	25.1	14.4	27.8
CSP, m=3.0	$Y=.3043\ E\ (9.794-.2494\ E)^{3}$	25.0	14.4	26.2

[1] The NLIN procedure in Barr et al. (1976) was used to fit the data to the curvilinear models. All three iterative procedures provided in the NLIN program were used. Only the solution with the lowest residual sum of squares is presented in the "Equation Predicted" column for each species-model combination.

*$Y=M\ (1-A^{E})$ where Y is yield in million pounds tails, M is the maximum yield, A is a constant, and E is thousand units of fishing effort.

**Equation 4.7-1 where catch in million pounds and effort is in 1000 units of effort.

***Corrected total sum of squares for brown shrimp data is 3138, for white shrimp data is 692, and for pink shrimp data is 39.3.

The Schaefer model, which is equivalent to the GSP where m = 2, was chosen as representative of the current commercial catch-effort relationships of brown, white, and pink shrimp. The Schaefer model appears to fit the data well, is mathematically easier to use, and generates MSY estimates comparable to those of other models giving similarly good fits. The MSY estimates excluding unreported bait, recreational, and discards, were 85 million pounds of brown shrimp, 38 million pounds of white shrimp, and 14 million pounds of pink shrimp.

Catch and effort data for royal red shrimp are shown in Table 4.7-3; the data are compared to the Generalized Stock Production model in Table 4.7-4, for m equal to 0.5, 1.5, 2.0, and 3.0. As with brown, white, and pink shrimp, all models have fairly similar fits to the data. Despite the similarity, however, the Schaefer model is suggested as representative of the royal red shrimp since they exist in a relatively constant environment in which at least three year classes occupy the same feeding grounds (Anderson, 1971). A MSY of 392,000 pounds of tails annually is predicted. This result is compatible with Roe's estimate of a potential royal red shrimp yield of 425,000 pounds (in Klima, 1976).

Catch and effort estimates for seabob and rock shrimp are shown in Table 4.7-3. An attempt was made to fit the data to the GSP model despite the fact that the reported commercial catch data for seabob and rock shrimp indicate that they are caught and landed incidentally with other shrimp (Tables 4.7-5 and 4.7-6).

The MSY's predicted for rock shrimp are compared in Table 4.7-4. The Schaefer model (GSP, m = 2) was chosen because the predicted relation between catch and effort was similar to other GSP models and because it is mathematically easy to use. The MSY predicted for rock shrimp is 1.1 million pounds of tails annually. This figure cannot be compared to published reports of rock shrimp density; rather it should be viewed with skepticism because the effort estimates for 1971 to 1976 are poor (since the species is an incidental bycatch) and new fishing grounds for these shrimp may be found, as a market for them continues to develop.

Solutions predicting a MSY were not obtained for seabob shrimp. This inability to predict a MSY is due to unreliable effort estimates since seabob shrimp are usually landed incidentally with other shrimp.

Modification of Surplus Yield Estimates for Penaeid Shrimp

The estimates of MSY from surplus production models for penaeid shrimp must be modified to include unreported catch, bait, recreational, and discards. The demonstrated influence of environmental driving forces must also be included. These considerations have much less impact on other species in this plan and need not be considered for them.

Estimates of recreational and bait catches of brown, white, and pink shrimp are listed in Tables 4.7-7 and 4.7-8. In addition, there are important harvesting areas in the gulf where shrimp are caught and discarded. Some estimates of these discarded catches on an average annual basis are:

○ Five million pounds (tails) of brown and white shrimp along the Texas coast, June through August (Terry Leary, GMFMC, personal communication, 1978).

○ Two to four million pounds (tails) of brown and white shrimp along the Louisiana coast (Charles White, LDWF, personal communication, 1978).

○ 316,000 pounds (tails) of pink shrimp in the Dry Tortugas for the 1963-1966 period (Berry and Benton, 1969).

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Table 4.7-3. Reported commercial catch and effort[1] for royal red, sea bob, and rock shrimp in the U.S. Gulf of Mexico (U.S. Dept. of Commerce, 1963-1976).

Year	Royal Red Shrimp		Sea Bob Shrimp		Rock Shrimp	
	CATCH	EFFORT	CATCH	EFFORT	CATCH	EFFORT
	thousand pounds tails	days fished	million pounds tails	days fished	thousand pounds tails	days fished
1963	5.0	8.4	1.14	709	--	--
1964	4.6	6.1	.33	778	--	--
1965	17.0	27.3	.71	790	--	--
1966	23.5	36.5	.48	737	--	--
1967	37.7	88.4	.21	575	--	--
1968	73.5	88.7	.69	2,420	--	--
1969	271.3	506.2	.52	817	--	--
1970	40.9	65.8	2.13	1,905	--	--
1971	64.1	90.7	.32	344	.1	.4
1972	36.6	34.8	1.43	1,635	198.5	167.4
1973	230.8	410.3	2.97	3,548	177.6	299.2
1974	226.9	503.8	4.36	4,350	60.9	58.4
1975	112.6	229.7	4.58	4,580	673.9	463.1
1976	164.2	382.1	.74	1,641	880.0	981.5

[1] Days fished for sea bob and rock shrimp (1963-1975) was calculated by assuming that the fishing effort for a given trip was proportioned directly as the weight of the various species caught and landed. Interviewed days fished estimates were converted to total days fished estimates by using the ratio of interviewed days fished to interviewed trips on an annual basis for royal red, sea bob, and rock shrimp, 1963-1975. Estimates of 1976 days fished for each species were taken directly from NMFS estimates on the Gulf Coast Shrimp Data tapes.

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Table 4.7-4.—*Comparison of Point Estimates of MSY Generated by fitting[1] Various Forms of the GSP Model[2] to the Reported Commercial Catch Date for Royal Red, Sea Bob, and Rock Shrimp as Reported in Table*

Species and model	Equation predicted	Residual sum of squares[3]	Predicted MSY[4] (1,000 lbs tails)	Predicted f_{opt} (days fished)
Royal Red Shrimp:				
CSP, m=0.5	$Y=.7048\ E\ (1.0723+.0002529\ E)^{.5}$	3547	650	4,240
CSP, m=1.5	$Y=.6063\ E\ (.9974-.0001960\ E)^{1.5}$	3,577	455	1,696
CSP, m=2.0	$Y=.6068\ E-.0002347\ E^{2}$	3,588	392	1,290
CSP, m=3.0	$Y=.1976\ E\ (9.150-.00598\ E)^{3}$	3,613	352	1,020
Sea Bob Shrimp:				
CSP, m=0.5	$Y=1.182\ E\ (.2604+.000969\ E)^{-.5}$	*	*	*
CSP, m=1.5	$Y=0.002538\ E\ (5.086-.01600\ E)^{2}$	*	*	*
CSP, m=2.0	$Y=.5077\ E+.0001039\ E^{2}$	**	**	**
CSP, m=3.0	No points produced a valid sum of squares			
Rock Shrimp:				
CSP, m=0.5	$Y=.6465\ E\ (.6909+.0001528\ E)^{-.5}$	57,621	1,531	4,522
CSP, m=1.5	$Y=.2054\ E\ (2.525-.0004214\ E)^{1.5}$	56,446	1,162	1,997
CSP, m=2.0	$Y=1.297\ E-.0003889\ E^{2}$	55,970	1,081	1,668
CSP, m=3.0	$Y=.2087\ E\ (37.24-.01853\ E)^{3}$	55,131	985	1,339

[1] The NLIN procedure in Barr et al. (1976) was used to fit the data to the curvilinear models. All three iterative procedures provided in the NLIN program were used. Only the solution with the lowest residual sum of squares is presented in the "Equation Predicted" column for each species-model combination.

[2] Equation 4.7-1 where catch in thousand pounds and effort is in days fished.

[3] Corrected total sum of squares for royal red shrimp data is 110,949 and for rock shrimp data is 642,499.

[4] Equations predicted for sea bob shrimp data are not theoretically expected and do not predict a MSY.

* Although equations yield solutions, the estimates appear meaningless and plots of residuals indicate that the equations are biased.

** Equation generated is not theoretically expected.

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Table 4.7-5. Comparison of sea bob shrimp caught with and without other shrimp in the U.S. Gulf of Mexico (GCSD, 1970-1975).

Year	Sea bob shrimp catch reported as not occurring with other shrimp (million pounds)	Sea bob shrimp catch reported as occurring with other shrimp (million pounds)	Percent total sea bob shrimp catch occurring without other shrimp (%)	Catch of other shrimp reported with sea bob shrimp catch (million pounds)	Ratio sea bob shrimp catch to other shrimp caught
1970	.073	2.06	3.4	11.8	1:5.7
1971	.003	0.25	1.3	11.0	1:43.7
1972	.073	1.36	5.1	17.6	1:12.3
1973	.782	2.19	26.3	8.8	1:4.0
1974	.740	3.62	17.0	13.8	1:3.8
1975	.344	4.24	7.5	19.2	1:4.5

Table 4.7-9. Comparison of the catch of rock shrimp caught with and without other species of shrimp in the U.S. Gulf of Mexico (GCSD, 1971-1975).

Year	Rock shrimp catch reported as not occurring with other shrimp (pounds)	Rock shrimp catch reported as occurring with other shrimp (pounds)	Percent total rock shrimp catch occurring without other shrimp (%)	Catch of other shrimp reported with rock shrimp catch (pounds)	Ratio rock shrimp catch to other shrimp caught
1971	0	113	0	253	1:2.2
1972	3,039	195,461	1.5	349,305	1:1.8
1973	2,915	174,734	1.6	651,469	1:3.7
1974	7,813	53,064	12.8	270,293	1:4.4
1975	11,199	662,723	1.7	828,149	1:1.2

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Table 4.7-6.—*Estimates of Annual Recreational Shrimp Catch by Waters Associated With the Five Gulf States*

State	Reported estimate of annual commercial recreational shrimp (1,000 lbs of tails—heads-on)	Assumptions made to convert reported estimates to species catch in tail weight	Estimated annual brown shrimp (1,000 lbs of tails)	Estimated annual white shrimp (1,000 lbs of tails)	Estimated annual pink shrimp (1,000 lbs of tails)
Florida	(2)				(5)
Alabama [1]	257 ± 46	Assume catch is 78% brown shrimp and 22% white shrimp [6]	125	37	
Mississippi [3]	175 ± 9	Assume catch is 86% brown shrimp and 14% white shrimp [6]	94	16	
Louisiana [5]	23,600	Assume catch is 50% brown shrimp and 50% white shrimp [6]	7,329	7,662	
Texas [4]	901 ± 118	Assume catch is 77% brown shrimp and 23% white shrimp [6]	431	134	

[1] Average 1972-1974 (Swingle et al. 1976).
[2] Average 1973-1975 (Weaver and Christmas n.d.).
[3] 1973 estimate (U.S. Army Corps of Engineers n.d.).
[4] 1973 estimate (King 1975).
[5] No data available.
[6] Computed from ratio of annual average reported commercial catch of brown shrimp to white shrimp from the area.

Table 4.7-7.—*Estimates of Annual Commercial Bait Shrimp Catch by Waters Associated With the Five Gulf States*

State	Reported estimate of annual commercial bait shrimp catch	Assumptions made to convert reported estimates to species catch in tail weight	Estimated annual brown shrimp catch (1,000 lbs of tails)	Estimated annual white shrimp catch (1,000 lbs of tails)	Estimated annual pink shrimp catch (1,000 lbs of tails)
Florida	74.75 ± 9.5 million shrimp [1]	Assume all shrimp are pink shrimp and 68 tails per pound.			1,099
Alabama	1,544,000 shrimp [2] plus 22,000 pounds shrimp	Assume all shrimp are 68 tails per pound. Assume catch is 78% brown shrimp and 22% white shrimp [6].	28	8	
Mississippi	43,407 pounds shrimp [3]	Assume catch is 86% brown shrimp and 14% white shrimp [6].	23	4	
Louisiana	1,529,000 pounds shrimp [4]	Assume catch is 50% brown shrimp and 50% is white shimp [6].	475	496	
Texas	2,340,000 pounds shrimp [5]	Assume catch is 77% brown shrimp and 23% white shrimp [6].	1,119	349	
Estimated total			1,645	857	1,099

[1] Average 1969-1975, Christmas and Etzold (1977).
[2] Estimate for the 1968 period, from Swingle (1972).
[3] Estimate for 1971, from Christmas et al. (1976).
[4] Estimate for 1973, from U.S. Army Corps of Engineers (n.d.) citing a manuscript from the U.S. Fish and Wildlife Service.
[5] Estimate for 1978 from O. H. Farley (NMFS, personal communication 1979).
[6] Computed from ratio of annual average reported commercial catch of brown to white shrimp from the area.

The lack of sufficient data series prevented the development of MSY figures for the recreational, bait, and discard catch. Because estimates of these catches are low in comparison with the commercial MSY figure, they have been rounded off and added to it in the case of each of these three species. This "add-on" is a reasonable approach when as in this case, the amount to be added is a small fraction of the total. An alternate approach would assume trends in annual CPUE for recreational, bait, and discarded catch to be similar to observed commercial CPUE, adjust the point estimates of the catches accordingly, and add them to the commercial catch and effort in each year. While this might be more technically correct, the estimated MSY would be unchanged. The "add-on" approach was only necessary with brown, white, and pink shrimp because estimates for royal red shrimp are not believed to be significant.

The impact of environmental factors on the Gulf brown shrimp catch has been demonstrated. Although the available data for whites and pinks does not allow individual calculation, it is reasonable to expect a very similar impact. This is supported by visual inspection of the figures for Gulf brown shrimp catch and for Louisiana white shrimp catch. Both show a very similar amount of variation in yield, slightly greater than 100 percent between the lowest and highest yields.

In order to estimate a maximum probable yield for all three species, the percentage by which the maximum probable yield estimate for brown shrimp exceeded the surplus production model estimate (137.6 percent) was applied to all three penaeid species. The point estimates for bait, recreational, and discards were then added on. The estimates for the "add-on" do not consider environmental factors and are probably conservative for that reason. The maximum probable catches in millions of pounds of tails for the three penaeid species are:

	Schaefer estimate	Maximum yield considering environmental factors (137.6%)	Recreational	Bait	Discard	Total
Brown Shrimp	85	117	8	2	5	132
White Shrimp	38	52	8	1	3	64
Pink Shrimp	14	19		1		20
Total	137	188	16	4	8	216

These estimates of probable maximum catch, particularly for white and pink shrimp are subject to considerable uncertainty, and are only achievable under optimum environmental conditions with high levels of effort.

The Council will monitor data points throughout the life of the plan in order to obtain data which will allow the derivation of specific formula for species other than brown shrimp.

4.8 *Estimates of Future Stock Conditions*

Although effort is expected to increase, there is no reason to believe that recruitment overfishing will occur. Growth overfishing could occur and decrease the total yield if effort in inshore areas continues to increase. Management measures in the plan should prevent this from occurring and increase yield beyond present levels.

5.0 Catch and Capacity Descriptors

5.1 *Domestic Annual Capacity (DAC)*

Domestic Annual Capacity is considered to be the total physical capacity of the fleet and the processing sector. The basic physical indicators of the U.S. commercial Gulf fleet and its estimated annual capacity to Harvest Gulf shrimp are given in Table 5.2–1 for the 1962–1975 period. The number of commercial boats increased from 1962 to 1968, declining in the early 1970's then increased to 1968 levels in 1975. The number of commercial vessels, average gross tons, average effort index, and total days fished by vessels and boats increased generally over the 1962–1975 period. The increases in days fished by boats and by vessels were similar over this period (Christmas and Etzold, 1977, Fig. 17.)

In 1967 commercial catch and catch per day fished were near record levels. Therefore, 1967 was used to represent the ability of the commercial fishery to land shrimp on an annual and daily basis. The commercial domestic annual capacity in the following years was computed by using 718 pounds per day as an estimate of M_c in Eq. 5.2–2. the actual reported days fished in each year through 1975 were used to estimate the nation's capacity to fish commercially for shrimp in the U.S. Gulf during that year. These estimates are given in Table 5.1–1.

In general, the annual U.S. capacity to harvest shrimp commercially increased over the 1968 to 1975 period from an estimated 138 to 191 million pounds of tails annually. This increase in Domestic Annual Capacity reflects a general increase in the desire and physical facilities to harvest Gulf shrimp. In addition, recreational and bait shrimp catches are expected to remain at least at current levels. These levels have been estimated as 16 and four million pounds of tails, respectively.

The estimated total Domestic Annual Capacity to harvest U.S. Gulf brown, white and pink shrimp is 211 million pounds of tails annually, as of 1975. *Estimated capacity for 1980 and 1981 is 233 million pounds and 240 million pounds, respectively. The DAC for royal red shrimp is estimated to be 270,000 pounds.*

5.2 *Data and Analytical Approach*

Catch (Y) can be viewed as

Eq. 5.2–1

$$Y = f(P) . E$$

where f is the catchability coefficient; P, the population density and E, the fishing effort. The population density will depend in large part upon prevalent environmental conditions. The expected fishing effort will be the summation of physical and economic parameters limiting fishing effort, as well as physical and economic parameters limiting the landing, storage, and consumption of shrimp.

Domestic annual capcity (DAC) can be defined as

Eq. 5.2–2

$$DAC = E \times M_c$$

where E is annual days fished and M_c is the average maximum catch per day fished that could be harvested, landed, processed, and later consumed, for that annual period of fishing effort.

In estimating the DAC of the Gulf shrimp fishery, the largest annual catch per day (during a peak year) for the 1963 to 1975 period and the actual number of days fished in each year was used.

After 1975 the annual number of days fished (E) was estimated by a linear regression of days fished on year for 1968–1975.

Table 5.1.1.—*Basic Catch and Capacity Indicators of the Reported Commercial U.S. Gulf Fleet and Estimates of Domestic Annual Capacity[3] to Harvest Shrimp*

Year	Number of reported commercial boats [1]	Number of reported commercial vessels [1]	Average vessel gross tons [1] (tons)	Average effort index of vessels [2]	Reported commercial catch [2] (million pounds)	Reported days fished [2] (thousand days)	Reported catch per days fished [2] (pounds per day)	Domestic annual capacity (DAC) [3] (million pounds)	Difference between DAC and observed harvest (million pounds)	Percent DAC not attained (percent)
1962	3,927	2,600	41.9	1.63	69.9	146.5	477.1			
1963	4,481	2,697	41[5	1.61	110.7	121.4	731.1			
1964	4,360	2,782	42.0	1.63	95.9	169.8	546.7			
1965	4,785	2,849	42.7	1.65	107.1	170.4	628.5			
1966	4,797	2,942	44.9	1.67	103.7	175.9	589.5			
1967	4,983	3,146	48.9	1.74	130.7	182.1	717.7			
1968	5,109	3,430	52.5	1.80	113.9	191.5	594.7	137.4	23.5	17
1969	4,817	3,569	53.7	1.85	118.3	200.4	550.3	143.8	25.5	18
1970	4,495	3,579	53.8	1.85	136.3	200.0	681.5	143.5	7.2	5
1971	4,828	3,487	57.8	1.89	134.1	204.9	654.4	147.0	13.1	9
1972	4,500	3,683	59.2	1.93	132.1	228.9	577.1	164.3	32.2	20
1973	4,723	4,091	59.9	1.93	104.7	238.0	539.9	170.8	66.1	39
1974	4,589	4,785	61.5	1.84	106.9	222.7	480.0	159.8	52.9	33
1975	5,054	3,780	64.0		99.5	266.5	466.0	191.3	91.8	48

[1] Griffin (1978).
[2] Christmas and Etzold 1977.
[3] Computed as DAC—$E \times M_c$ where DAC equals domestic annual capacity, E is the observed days fished, and M_c is the maximum observed catch per day fished for a peak catch year during the period of observation.

$$RE = (-17958.6) + 9.22\ (year) r^2 = .81$$

The shrimp catch of the Gulf vessel fleet in any year can be expressed by the following identity:

$$Yv = V\ (Dv/V)\ (E/Dv)\ (Yv/E) \qquad \text{Eq. 5.2.3}$$

where Yv indicates the pounds caught by vessels, V represents the number of vessels, Dv is the total number of days fished by the vessel fleet, and E is total fishing effort of the vessel fleet.

Similarly, the shrimp catch by Gulf boats in any year can be expressed as

$$Yb = B\ (Db/B)\ (Yb/Db) \qquad \text{Eq. 5.2–4}$$

where Yb represents the pounds landed by boats, B the number of boats, and Db the number of days fished by all shrimp boats.

5.3 Expected Domestic Annual Harvest (DAH)

The Domestic Annual Harvest is the record and projections of atual shrimp harvest.

5.3.1 Expected DAH for the Combined Species

DAH was estimated from trends in the reported commercial harvest and from point estimates derived for recreational, bait, and discarded catches. Trends in commerical harvest and effort were examined by boat data and vessel data separately.

Catch and effort statistics for commercial vessels are listed in Table 5.3–1. The commercial vessels fleet has had no statistically significant linear trend in days fished per vessel (Dv/V) or catch per unit of fishing effort (Yv/E). Rather these seemed to have exhibited averages of

38.1 days fished per vessel, and
367.1 pounds (tails) per unit effort.

The number of commerical vessels (V) and the unit effort per day fished (E/Dv) of these vessels have had statistically significant linear increases from 1962 to 1974 that are represented by the relationships

$V = 2461 + 117\ YR\ (R^2 = .93)$ Eq. 5.3–1
$E/Dv = 1.57 + .029\ YR\ (R^2 = .86)$ Eq. 5.3–2

where YR is the calendar year minus 1961

The expected commercial vessel catch in 1980 and 1981 are estimated (by substituting the estimated values for Dv/Y, Yv/E, V, and E/Dv into Eq. 5.1–3) to be 139 and 144 million pounds of tails.

Catch and days fished statistics for commercial boats are listed in Table 5.3–1. The commercial boat fleet has not exhibited statistically significant linear trends in number of boats (B) or catch per day fished (Yb/Db). The averages over the 1962–1974 period have been 4,645 boats and 503 pounds per day fished. The number of days fished per boat (Db/B) has increased significantly (1962–1974),

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Table 5.3-1. Parameters used to estimate expected domestic annual harvest for the reported commercial shrimp fishery.

YEAR	VESSEL CHARACTERISTICS				BOATS		
	number[1] of vessels	days fished[2] per vessel	ratio unit[3] effort to days fished	pounds[3] per unit effort	number[1] of boats	days fished[2] per boat	pounds per[3] days fished
62	2600	34.0	1.63	315	3927	14.8	434
63	2697	41.9	1.61	423	4481	8.6	865
64	2782	41.1	1.63	381	4360	12.7	424
65	2849	39.9	1.65	427	4785	11.8	450
66	2942	38.6	1.67	411	4797	13.0	395
67	3146	36.9	1.74	494	4983	13.3	463
68	3430	35.4	1.80	383	5109	13.7	427
69	3569	41.8	1.85	301	4817	10.9	675
70	3579	37.6	1.85	386	4495	14.5	613
71	3487	39.3	1.89	352	4828	14.1	626
72	3683	39.9	1.93	333	4500	18.2	459
73	4091	34.2	1.93	263	4723	20.7	343
74	3785	35.0	1.84	303	4589	19.7	363

[1] From Table 3.5-8.

[2] Data on days fished from Table 3.5-7.

[3] From Christmas and Etzold (1977).

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$Db/B = 9.72 + .66\ (\text{Time})\ (R^{2=.59})$ Eq. 5.3–3

The expected commecial boat catch in 1980 and 1981 are estimated (by substituting the estimated values for B, Yb/Db, and Db/B into Eq. 5.1–4) to be 52 and 54 million pounds of tails.

The expected reported commercial catches for 1980 and 1981 are 191 and 198 million pounds. Bait and recreational catches are not expected to decline from 1963–1967 levels. A conservative estimate of expected recreational catch is 16 million pounds (tails) and four million pounds (tails) for the expected bait shrimp. *The total expected domestic catches for 1980 and 1981 are 211 million pounds and 218 million pounds.*

These estimates of expected harvest must be viewed with considerable caution because of limitations inherent in the formulas or model being used. The periods for which catch is estimated are six or more years beyond the limits of the available data series. Such a large time extension goes far beyond the predictive ability of the model. The model assumes constant CPUE and increases in catch with increasing effort. Catch per unit effort was assumed constant because the trend between 1962 and 1974 was not statistically significant. However, the data does indicate a downward trend as effort has increased. Because the catch is approaching the maximum available in a given year, further increases in effort must, inherently, decrease CPUE. When the data becomes available, the estimate of expected harvest may be reduced if CPUE is declining. The Council will closely monitor the fishery to establish the reliability of these estimates.

5.3.2 Expected DAH of Royal Red Shrimp

Royal red shrimp deserve special attention because these deep-water shrimp were subject to a directed fishery. Available data indicated they were underexploited.

In this case annual catch was regressed against year by simple linear regression. The relationship implies that as time progresses, catch will increase. This has some validity in that

- Catch has tended to increase with time (1963–1976);
- The major shrimp resources of the Gulf are being harvested at levels approximating MSY; and
- There has been a general increase in effort in the U.S. Gulf shrimp fishery despite the fact that the major stocks are being harvested at levels approximating MSY.

A simple linear increase is not expected to continue as catch of this limited resource approaches its MSY. The relationship derived is

$\text{DAH of royal red shrimp} = -890 + 14.2\ (\text{year})$ Eq. 5.3–4 $(R^{2=.41,\ N=8})$

where year is in the form 63, 64, etc. *The expected domestic annual harvest of royal red shrimp in 1980 and 1981 is 246,000 pounds and 260,000 pounds, respectively.* Eq. 5.3–4 is considered a crude estimator and should be reevaluated as new data are available.

5.4 Domestic Annual Processing Capacity (DAP)

Cato (1975) reported that 1970 shrimp landings in Louisiana, Texas, Alabama, Mississippi, and Florida represented 97, 84, 76, 57, and 35 percent respectively of the raw shrimp processed in each state. There have been no subsequent studies to identify more recent conditions. If similar figures apply after 1970, then the capacity to process domestic landings exceeds domestic landings. The deficit is overcome with shrimp imported from other states and foreign nations.

A 1972 (Alvarez) survey of fifteen Florida shrimp processors who accounted for 85 percent of the state's production revealed that the industry was utilizing only 55 percent of total plant capacity. This poor utilization of plant capacity occurred despite the use of significant imports from other states and countries. On the average, firms in the "small" class used more of their capacity than did firms in the "medium" and "large" classes. The same relationship held true between the "medium" class and the "large" class. A shortage of raw shrimp for processing was responsible for the excess capacity.

Prochaska and Andrew (1974) point out that the entire southeast is deficient in raw shrimp supplies in comparison with processing capacity. A detailed analysis of the situation in Florida reveals that shortages of raw shrimp result in an increasing share of processed shrimp being produced by a few firms.

While excess capacity is frequently found in an industry, the available information here clearly leads to the conclusion that *Gulf shrimp processing capacity is far in excess of the region's domestic landings.*

The Florida studies adequately addressed shrimp processing functions similar to those in most Gulf states. However, the absence of information on shrimp canning operations means that the results cannot completely describe the major Gulf shrimp canning industry. Capacity measures for the canning industry located in Louisiana and Mississippi were developed from key machinery capacities and a specified number of operating days per year; the production year was based on 147 operating days during the approximate 180 days of the inshore seasons. Average daily plant capacity was estimated to be 4,400 standard cases containing 24 cans, each four and one-half ounces. When these figures are applied to the 14 shrimp canners reporting production in 1978, a maximum capacity of 9,055,200 standard cases is derived. In the three most recent years Gulf shrimp canners produced 1,618,322 (1976), 2,104,625 (1977), and 1,464,722 (1978) standard cases (U.S. Department of Commerce 1979). Excess capacity in shrimp canning operations exists for a number of reasons, among which are the necessity of designing plants to handle peak volumes of fresh shrimp, recent high ex-vessel prices, and cash-flow problems related to the difficulty of financing inventories.

5.4.1 Data Which Shrimp Processors Must Submit to the Secretary of Commerce to Calculate DAP

Shrimp processors in the Gulf of Mexico participate in data collection programs of varied natures. Most states have some reporting requirements of processors; these requirements must be recognized prior to the development of mandatory data systems for the Gulf Shrimp Management Plan. The comparability of the requirements among the states and the information collected through the voluntary programs of the National Marine Fisheries Service must also be considered.

Reporting requirements of the Gulf states are identified in section 3.3.1, Management Institutions, Policies, and Jurisdictions. A brief summary for each state follows:

Alabama—Seafood dealers are required to make monthly reports of the names and addresses of persons from or to whom fish, seafood, or other saltwater products of the state are purchased or sold, the quantity purchased from or sold to each vendor or buyer, and the date of each transaction. The data reporting requirements are not well accepted.

Florida—Individuals harvesting or buying shrimp for canning, drying, or shipping must state the number of barrels of shrimp caught or sold each month and any other information FDNR may require. Wholesale dealers make quarterly reports on the number of pounds purchased from commercial

fishermen but this is not applied or enforced as to purchases of shrimp.

Mississippi—Processing or landing firms are the points at which data on harvesting activities are reported.

Louisiana—All shrimp processing plants and dealers must keep records of the date, quantity, and point of origin of each lot of shrimp received. Retailers must complete a quarterly report on the amount of shrimp purchased and the name and license number of the seller.

Texas—No reporting on processing activities is required. Anyone who purchases shrimp from the fisherman for resale must report monthly.

Shrimp processors, ranging from dealers to canners, frequently provide information to the National Marine Fisheries Service on a variety of topics. The amount of product handled, its value, frozen shrimp holdings, and the number of seasonal and full-time employees are all reported to the public through the NMFS Current Fisheries Statistics publication series and Market News Reports. The information collection procedure involves voluntary contribution of statistics. Although there may be previously unmeasured problems with the representativeness of the statistics, they do identify poundage, locations, disposition, and prices. In the majority of instances species identification is not maintained beyond the dealer level.

The NMFS information collection effort, other U.S. government surveys on economic activities of businesses, and the reporting requirements of some states do not make for a climate conducive to the successful addition of another information system. Thus, the management objectives concerning the processing sector that are proposed here require no additional information collecting programs. Then too, many shrimp processors are involved in the processing of other species, and, until a systematic program of information collection on processing activities is developed, a species approach to data collection could create a chaotic situation. Instead, emphasis should be placed on improving the coverage, frequency, and currency of the existing voluntary system. When developed, comprehensive information systems on processing activities should show their consideration of the statistics that reflect processing capacity.

5.5 Additions to DAH to Account for Joint Ventures

The domestic market for shrimp and shrimp products has been sufficiently strong historically to attract significant quantities of imported shrimp. The economic climate has been such that no incentive exists for the transfer at sea of U.S. shrimp caught in the FCZ to flag vessels of other nations. In fact, domestically based shrimpers have sought harvesting arrangements in foreign waters to secure increased supplies of shrimp. The catch by U.S. flag vessels off Central and South America was reported to be 14 million pounds annually worth about $18 million (G.A.O., 1976). However, there is information available which indicates that the practice as relates to Mexican waters decreased significantly between 1962 and 1974 (Griffin, 1976).

The shrimping activities of foreign nations in the FCZ have been quite limited. From 1971 to 1975 harvest by Cuba and Mexico in the FCZ averaged slightly more than one million pounds (G.A.O., 1976). Thus, there has been little spatial interaction in the FCZ between major shrimp harvesting nations on which a transfer business could be based.

The lack of historical occurrence of the transfer of shrimp to foreign vessels and a domestic market strong enough to attract approximately 50 percent (Sec. 3.5.1.3) of domestic needs from imported shrimp lead to the conclusion that transfer are unlikely to occur. The market conditions ar such that this conclusion should have merit over the next five years. While this conclusion relates to shrimp it is possible that the transfer of incidental catch could be arranged. The domestic market condition for the bulk of the incidental catch is essentially the antithesis of that for shrimp. Transfer of some or all of the incidental catch of cooperating vessels to foreign vessels may become an avenue to improve the utilization of incidental catch.

6.0 Optimum Yield

A program of improved management as specified in this plan is expected to increase the yield from the fishery which is not operating at optimum harvest levels. Basic factors limiting the attainment of optimum harvest include:

(1) Conflict between user groups as to area and size of shrimp to be harvested.

(2) Discarding of shrimp through the wasteful process of culling.

(3) Continuing decline in quality and quantity of estuarine habitat.

(4) Lack of comprehensive, coordinated, and easily ascertainable management authorities over shrimp resources throughout their ranges.

(5) Conflicts with other fisheries such as the stone crab fishery in southern Florida, groundfish fishery in the north central Gulf, and the Gulf's reef fish fishery.

(6) Incidental capture of sea turtles.

(7) Loss of gear and trawling grounds due to man-made underwater obstructions.

(8) Partial lack of the basic data needed for management.

Specific objectives and measures to alleviate these problems and to attain OY levels are suggested in Section 8.0. None of these measures are likely to result in a reduction in present catch levels; some are likely to increase yield in a manner consistent with the National Standards for Fishery Conservation and Management.

6.1 Determination of Optimum Yield (OY)

Optimum yield is defined as "the amount of fish

(A) which will provide the greatest overall benefit to the nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor."

It is the intent of this plan in conformance with the first of the national standards to prevent overfishing while achieving, on a continuing basis, the optimum yield. The shrimp fishery, however, is unique for several reasons. Most shrimp harvested are about six months old, and few survive beyond a year. Because they are prolific spawners, the quantity of one year's brood stock is not related to the abundance of the next year's population.

Natural environmental forces have a dramatic and overriding effect on the annual yields of brown, white, and pink shrimp (Section 4.1). Because of their great fluctuation and the high spawning-ability of shrimp, a predetermined classical MSY is not a good indicator to use in determining if overfishing will occur. For example, the classical MSY levels were exceeded in four years from 1966 to 1975, years of favorable environmental conditions.

For these species of shrimp the optimum yield essentially is all of the shrimp that can be harvested from the stock given certain management conditions. *Recruitment* overfishing has not will not occur with the use of present technology and fishing gear. Management measures proposed in Section 8 are intended to prevent *growth* overfishing where it may presently occur, thus achieving a higher yield from a same level of recruitment.

For the purpose of this plan OY should be regarded as a goal to be achieved and exceed under favorable environmental conditions without fear

of damage to future stocks. It should not be considered to be a celling above which recruitment overfishing occurs.

6.2 Specification of Optimum Yield

In deriving OY from MSY as adjusted by environmental conditions, the Council paid close attention to the following criteria:

1. Provide each associated processing industry with the count size of the shrimp resource most suited to the several needs.
2. Prevent discrimination among fishermen based on boat/vessel size.
3. Eliminate conditions wherein boat/vessels would shrimp in the FCZ and claim the landings came from the territorial sea or inland waters and vice versa, depending on location of open and/or closed waters.
4. Protect the resource during specific periods to improve yield.

6.2.1 Shrimp Other Than Royal Red Shrimp

OY is determined to be: All the shrimp that can be taken during open seasons in permissible areas in a given fishing year with existing gear and technology. The Council has determined that, because of the annual nature of the resource, a numerical value for OY cannot be calculated for any given year until the environmental factors can be determined and evaluated. However, under optimum environmental conditions and maximum effort, the maximum probable catch for brown, white and pink shrimp is estimated to be 216 million pounds of tails. Fishing, however, will not be stopped when this numerical estimate is reached.

The Council has also determined that adjustments to OY need not be made yearly as economic, bilogical, and technological factors prevent the taking of sufficient shrimp during a single year to harm the next year's resource size. The Council will monitor closely the appropriate factors of the management regime established by the plan and, in particular, the environmental factors surrounding the determination of MSY. Should conditions warrant, the Council will provide the information to the Secretary of Commerce and a new MSY/OY relationship will be established through rule making.

6.2.2 Royal Red Shrimp

Royal red shrimp differ from brown, white, and pink shrimp in that they are not estuarine dependent but exist in a relatively constant environment in the deeper waters of the Gulf (100 to 300 fathoms). They are not an annual crop but are harvested from grounds believed to contain at least five year classes. Thus, they conform more closely to a classical Schaefer-type fishery. For this reason, the optimum yield of royal red shrimp should be the total pounds of royal red shrimp which can be harvested without biologically overfishing this resource. An estimate of the allowable catch is 392,000 pounds (tails). These figures should be reassessed as new annual catch-effort data become available. OY is set at this figure and fishing will stop when it is reached.

6.3 Alternatives to Optimum Yield Considered and Rejected

6.3.1 Optimum Yield for Brown, White, and Pink Shrimp to be Set at MSY

Setting OY for these three species at MSY or 165 million pounds of tails annually would have reduced the 1977 catch by 27 million pounds. Because this fishery can support a yield of all that can be harvested with present gear and technology, setting a lower level of harvest would result in a wasted resource in an annual crop. The loss of 27 million pounds of shrimp at 1976 wholesale prices would have resulted in a loss $75.3 million to the industry. No benefit from stockpiled shrimp nor an increased number of recruits the following season would result from taking less than is available.

6.3.2 Fishing to Stop When Optimum Yield is Reached for Brown, White, and Pink Shrimp

The intent of the first National Standard is to achieve OY while preventing overfishing the stocks. If the stocks cannot be overfished, any reduction of catch from the available, harvestable stock is a direct loss to the fishing industry.

6.3.3 Optimum Yield for Royal Red Shrimp to be Set Above MSY

The fishery for royal red shrimp differs substantially from that for brown, white and pink shrimp. It is composed of a slower growing species with up to five year classes in the catch. Little is known about the population dynamics of royal red shrimp, and recruitment overfishing may be possible. The establishment of OY above MSY could result in overfishing and stock damage.

6.3.4 Optimum Yield for Royal Red Shrimp to be Set at MSY With Fishing to be Permitted to Exceed OY

Exceeding the catch of OY equal to MSY (as in alternative 6.3.3) could result in biological overfishing. This alternative was rejected for a more conservative approach in an area of limited data.

6.3.5 Optimum Yield for Royal Red Shrimp to be Set Below MSY

This alternative for a multiyear class fishery would have the result of rebuilding the stock. Royal red shrimp have, however, been fished well below MSY and may be considered to be an underutilized resource. No rebuilding is necessary at this time.

6.3.6 Optimum Yield Set at Higher Estimate of ABC

An expected range of the seasonally determined estimates for Acceptable Biological Catch when the upper range of variation in catch data was considered as an ABC for each fishery; the following ranges were proposed:

brown shrimp—51 to 107 million pounds of tails annually.
white shrimp—37 to 59 million pounds of tails annually.
pink shrimp—11 to 16 million pounds of tails annually.

The Council considered determining that OY for these species should be at the upper level of the expected ABC ranges:

brown shrimp—107 million pounds of tails annually.
white shrimp—59 million pounds of tails annually.
pink shrimp—16 million pounds of tails annually.

for a total of 182 million pounds of tails annually. This option was rejected for two reasons. It was based only on past recorded landings with little basis in the biology of the stocks. This OY can be and has been (1977, 1978) exceeded when environmental conditions are favorable and effort is high. There is no evidence that exceeding this OY option had an adverse impact on recruitment in subsequent years.

7.0 Total Allowable Level of Foreign Fishing (TALFF)

7.1 Brown, White, and Pink Shrimp

There is no surplus available for a TALFF in the fisheries for brown, white, and pink shrimp. Domestic Annual Harvesting Capacity for brown, white and pink shrimp is estimated to be 234 million pounds in 1980 and 240 million pounds in 1981. Expected Domestic Annual Harvest for 1980 and 1981 is estimated at 211 and 218 million pounds of tails; OY is designated to be all the shrimp that can be harvested in allowable times and areas under present conditions. Major stocks are currently being harvested at optimum yield levels by the U.S. shrimp fleet.

7.2 Royal Red Shrimp

It is generally believed that royal red shrimp are not being harvested at their

OY level of 392,000 pounds of tails annually. Annually reported commercial catch has never exceeded 270,000 pounds of tails (1963–1975); expected domestic harvest for 1980 and 1981 are 246,000 and 260,000 pounds of tails. A foreign TALFF of some 146,000 pounds in 1980 and 132,000 pounds in 1981 is, therefore, estimated to be available. Catch trends should be reinvestigated, however, as new data become available.

Further domestic development of this fishery is hampered by the great depth at which the resource exists and the specialized gear required to fish it, high production costs, and shrinkage of the product during processing.

7.3 Seabob and Rock Shrimp

Data available on seabob and rock shrimp indicate that

- They are caught incidentally to other shrimp—seabob shrimp mainly with white shrimp and rock shrimp with pink shrimp;
- They are not being harvested at MSY levels (1963–1976);
- The catch has increased markedly in recent years (1971–1976).

Seabobs and rock shrimp are caught incidentally with white and pink shrimp respectively. There is no surplus of white and pink shrimp from the domestic fishery available for foreign fishing. Therefore, in order to prevent foreign harvest of nonsurplus species, no TALFF for seabobs or rock shrimp is provided.

8.0 Management Regime

8.1 Areas and Stocks Involved

The fishery being addressed is comprised of the species listed below and occurs in the area of jurisdiction of the Gulf of Mexico Fishery Management Council as well as in the territorial seas adjacent thereto and the associated bays, inlets, wetlands, and upland areas as appropriate:

Brown shrimp (*Penaeus aztecus* Ives)
White shrimp (*Penaeus setiferus Linnaeus*)
Pink shrimp (*Penaeus duorarum* Burkenroad)
Royal red shrimp (*Hymenopenaeus robustus* Smith)
Seabobs (*Xiphopeneus kroyeri* Heller) incidental bycatch
Rock shrimp (*Sicyonia brevirostris* Stimpton) incidental bycatch

The Council recognizes that the stock and the fishery extend across political and international boundaries. While it is the intent to manage the stock as a unit, the authority of the Council is restricted to the development of plans and proposal of management measures in the United States' FCZ in the Gulf of Mexico.

An arrangement for joint management of common stocks with Mexico would require a bilateral agreement. Negotiations with Mexico to renew the U.S./Mexico bilateral are underway; however, a mechanism for joint management does not seem likely for the near future. With the present lack of such an international management mechanism this plan addresses only the stock in U.S. waters and makes the assumption that shrimp movement across the border flows equally in both directions.

8.2 Management Unit and Period

8.2.1 Management Unit

This management unit is comprised of brown, white, pink, royal red, seabobs and rock shrimps in the area of jurisdiction of the Gulf of Mexico Fishery Management Council as well as the territorial seas adjacent thereto and the associated bays, inlets, wetlands and upland areas as appropriate. Federal implementation of regulations will occur only in the FCZ. On the east coast of the United States a natural biological break in fauna is found on the southeast coast of Florida. On the western edge the international boundary between Mexico and the U.S. serves as a political break.

8.2.2 Management Period

The Council has specified that the management year for all species except royal red should begin May 1 and extend through April 30 annually. The beginning of the period coincides with a time of low harvest in all of the major species of the management unit. The fishery year for royal red shrimp will be the calendar year because of the TALFF associated with the fishery.

8.3 Problems in the Fishery

The Council has identified the following problems associated with the fishery and the present management regime and has prepared the plan objectives to address and alleviate them. In a free access fishery a management regime to maximize protein yield and economic return of the fisherman is of importance.

(1) Conflict among user groups as to area and size at which shrimp are to be harvested.

(2) Discard of shrimp through the wasteful practice of culling.

(3) The continuing decline in the quality and quantity of estuarine and associated inland habitats.

(4) Lack of comprehensive, coordinated and easily ascertainable management authorities over shrimp resources throughout their ranges.

(5) Conflicts with other fisheries such as the stone crab fishery in southern Florida, the groundfish fishery of the north central Gulf, and the Gulf's reef fish fishery.

(6) Incidental capture of sea turtles.

(7) Loss of gear and trawling grounds due to man-made underwater obstructions.

(8) Partial lack of basic data needed for management.

8.4 Objectives

8.4.1 Specific Management Objectives

The following are the specific management objectives of this plan and are proposed to the appropriate authorities in charge of Gulf of Mexico shrimp resources. These objectives are to:

(1) Optimize the yield from shrimp recruited to the fishery.

(2) Encourage habitat protection measures to prevent undue loss of shrimp habitat.

(3) Coordinate the development of shrimp management measures by the Gulf of Mexico Fishery Management Council with the shrimp management programs of the several States, where feasible.

(4) Promote consistency with the Endangered Species Act and Marine Mammal Protection Act.

(5) Minimize the incidental capture of finfish by shrimpers, when appropriate.

(6) Minimize conflicts between shrimp and stone crab fishermen.

(7) Minimize adverse effects of underwater obstructions to shrimp trawling.

(8) Provide for a statistical reporting system.

8.4.2 Alternative Objectives

Alternative management objectives were considered by the Council and rejected for the reasons indicated:

Alternative 1.

Establish the preferred size at which shrimp will be harvested. In establishing this size provide a reasonable accommodation for the conflicting interests of the various groups which concurrently compete for the shrimp resources in order to prevent the economic dislocation of particular groups as a result of measures adopted.

Rationale: The Council did not establish one preferred size for harvest because, based on economic and sociological factors, this size varies regionally. The variation is due to the local vessel size composition of the fleet and prevailing methods of processing shrimp. The establishment of one preferred size throughout the Gulf and the regulation of catch to that size would have severely disrupted the economy and work force of those areas where the fishery is directed to a different size.

Alternative 2.

Define and restrict shrimping in areas where preferred size shrimp are not normally taken on a seasonal or yearly basis.

Rationale: This alternative was rejected as a specific management objective because its scope was narrow. Its goal is included under the selected objective number 1.

Alternative 3.

Minimize the incidental catch and the adverse effects of the incidental catch of sea turtles by shrimpers.

Rationale: The wording of this alternative was revised to become objective number 4.

Alternative 4.

Establish a preferred level of capitalization.

Rationale: There is no economic evidence to suggest that the shrimp fishery differs from the classic example of a fishery near open access equilibrium. (Open access equilibrium refers to firms having free access to the fishery, generating just enough revenue to cover total costs over a long period of time, and entering or exiting the fishery in the short run with prevailing economic conditions.) Reductions in fishing effort are unlikely to result in anything other than small decreases in shrimp landings and a loss of jobs to fishermen and shore support personnel.

Alternative 5.

Insure continuance of the resource.

Rationale: Objective number 1 includes this option. Recruitment overfishing is not a problem in this fishery.

8.5 Management Measures and Rationale

8.5.1 Management Measures Considered and Adopted

Management measures considered by the Gulf of Mexico Fishery Management Council and suggested for incorporation into a shirmp management plan are discussed below. Some of these management measures are recommended for federal implementation by the U.S. Department of Commerce. Other measures are either administrative policies adopted by the GMFMC or are recommended for consideration by the various States and other agencies. Other measures considered, but not recommended, are documented in Section 8.5.2 and in the notes of the various meetings conducted to develop and evaluate the draft plan. The recommended measures are grouped with the objective addressed.

8.5.1.1 Objective 1: Optimize the Yield of Shrimp Recruited to the Fishery

Measure 1: Establish a cooperative permanent closure with the State of Florida and the U.S. Department of Commerce of the area delineated in Table 8.3-1 to protect small pink shrimp until they have generally reached a size range larger than 69 tails to the pound. The area to be closed is to be denoted as the "Tortugas Shrimp Sanctuary" and is generally represented by the line drawn in Figure 8.3-1.

The historic Tortugas Shrimp Sanctuary as established by the State of Florida has been modified slightly as the result of public hearings to reduce its size. This modification will allow shrimping in some deeper areas containing larger shrimp north of Smith and New Ground Shoals in the vicinity of Key West.

The U.S. Department of Commerce will close that portion of the FCZ within the area defined as the Tortugas Shrimp Sanctuary to all shrimping. All shrimp which are caught in open waters of the FCZ may be retained.

The State of Florida is encouraged to continue its present restrictions on shrimping in the area and to consider the retention of all shrimp which are caught in open waters, as well as establishing a sampling program to evaluate the effectiveness of the closed area.

Rationale: This measure would essentially re-establish most of the old Tortugas shrimp nursery area which until recently has served as a sanctuary for pink shrimp recruited to the Tortugas and Sanibel shrimping grounds. (The area within the FCZ can currently be shrimped by non-Floridians because Florida does not have jurisdiction.) Currently, the minimum legal size in Florida is 70 tails to the pound. No more than five percent of the catch can be of smaller-sized shrimp.

This measure would largely recreate the old Tortugas Shrimp Sanctuary; its proposal is based on available biological data and on the fact that a mature fishery appears to be dependent on it. Lindner (1966) and Berry (1970) report growth and mortality data which indicate that pink shrimp yield will be maximized if harvest begins only when shrimp are larger than the minimum legal size for harvest in Florida.

Costello and Allen (1965) summarized extensive sampling and mark and recapture data which indicate that estuaries within the Tortugas Shrimp Sanctuary are important nursery areas for post-larval and juvenile pink shrimp eventually recruited to the Tortugas and Sanibel beds. Yokel, et al. (1969) observed that the average shrimp leaving the Everglades nursery area is in the 300 to 200 tails to the pound range. Iverson, et al. (1960), sampling extensively in the southern portion of the Tortugas Shrimp Sanctuary area and in the southern portion of the Tortugas shrimping grounds, observed a relationship between size of shrimp and depth of water.

Table 8.3-2 was constructed using these observed relationships and McCoy's (1972) carapace length-weight relationships. The table indicates that at 10 fathoms shrimp will average 68 tails to the pound, and at 13 fathoms they will average 54 tails to the pound. Essentially, none of the proposed sanctuary area is deeper than 13 fathoms, and most of it is shallower than ten fathoms. Thus it should protect shrimp until they have reached an average count of around 70 tails to the pound. However, given the variation in size of shrimp according to depth reported in Iverson, etal. (1960), it does not seem likely that the sanctuary will protect shrimp until they have reached the current legal mix in Florida of no more than five percent of the catch consisting of shrimp 70 or more tails to the pound. For example, Table 8.3-2 indicates that at 13 fathoms the catch will average around 54 tails to the pound. A spot check of the reported commercial catch (U.S. Department of Commerce, Gulf Coast Shrimp Data, Annual Summaries for 1972 and 1974) shows that catch in the 11 to 15 fathom interval of the Dry Tortugas does have a peak in the 51 to 57 tails to the pound range. However, although considerable pounds of shrimp larger than this count were reported, only minor quantities of smaller shrimp were reported as landed. This apparent discrepancy in size distribution may relate to a possible discard of large quantities of undersized pink shrimp.

Table 8.3-1. Delineation of suggested Tortugas Shrimp Sanctuary

The Tortugas Shrimp Sanctuary is described as follows:

(1) Begin at Coon Key Light in Collier County (N);

(2) Thence proceed on a straight line to a point (F) located at 24° 50.7' north latitude and 81° 51.3' west latitude;

(3) Thence proceed on a straight line to New Grounds Shoal Light (G);

(4) Thence proceed on a straight line to Rebecca Shoals Light (H);

(5) Thence proceed on a straight line to R. B. Bell Buoy (I);

(6) Thence proceed on a straight line to Cosgrove Shoal Light (J);

(7) Thence proceed on a straight line to Sand Key Light (K); thence proceed northerly to the abandoned lighthouse located in the southwest portion of Key West (L);

(8) Thence along the south and east meandered shoreline of the Florida Keys and the connecting viaducts between said Keys to 80° 30.00′ west longitude; thence north until a point on the mainland is reached;

(9) Thence proceed west and north along the coast of the mainland of Florida until a point is reached which is located due north of the aforementioned Coon Key Light located in Collier County;

(10) Thence due south to Coon Key Light, the point of beginning.

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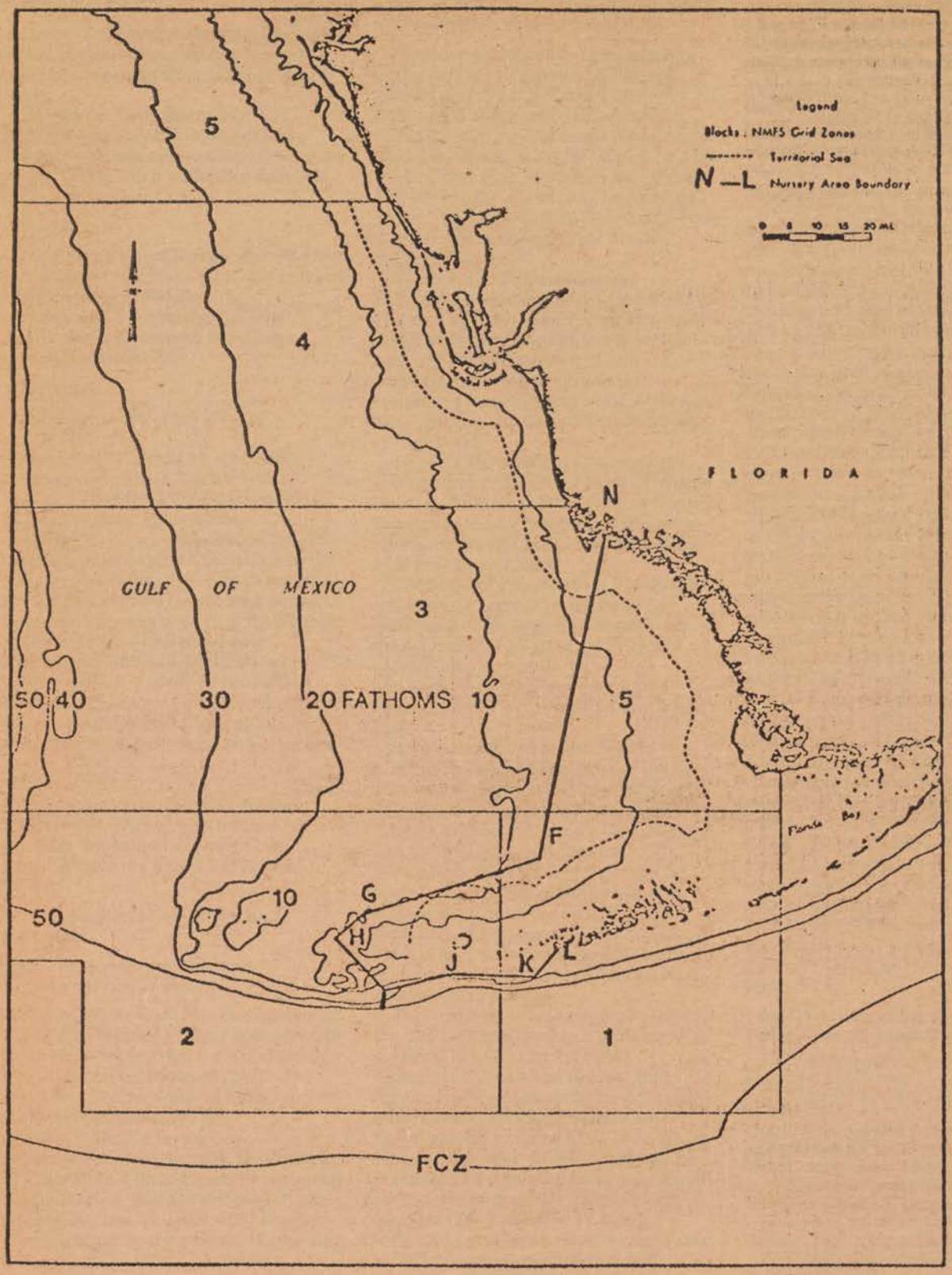

Figure 8.3-1. Location of proposed Tortugas Shrimp Sanctuary. See Table 8.3-2 for definition of line N -L.

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Table 8.3-2.—*Expected Average Weight of Male and Female Pink Shrimp in the Dry Tortugas Area as a Function of Depth*[1]

Depth	Males (heads-on)	Females (heads-on)	Count[2] of a 1:1 mixture males to females
fm	g	g	tails per pound
7	6.6	9.8	89
8	7.1	10.8	81
9	7.7	11.8	74
10	8.3	12.9	68
11	9.0	14.0	63
12	9.6	15.2	58
13	10.3	16.5	54
14	11.1	17.8	50
15	11.9	19.3	47

[1] Expected average weight was calculated from carapace length-depth relationships derived by Iverson et al. (1960) (See Eq. 4.1-1, 4.1-2) and the carapace length-weight relationships of McCoy (1972) (See Table 4.1-3). The formulas used are: Males: $W=0.00148\ (16.394+0.618\ D)\ 2.77$; Females: $W=0.00209\ (17.914+0.868\ D)\ 2.66$. Where W is weight of shrimp in grams and D is depth in fathoms.

[2] Currently the minimum legal size in Florida is 70 tails to the pound which cannot exceed five percent of the catch. The Table estimates that at a given depth the entire catch will average a given count. It does not denote the depth at which the minimum legal size mix currently in effect in Florida will occur.

Florida law presently prohibits all shrimping (except for live bait fishing under permit) in its nine-mile territorial sea within the sanctuary (Figure 8.3–1). Florida also prohibits Florida vessels from shrimping in the sanctuary beyond its territorial sea. Thus, the vessels which would be displaced by this measure would be non-Florida vessels now fishing the sanctuary beyond the territorial sea and Florida vessels that may be fishing in the area contrary to state law. No estimates on the number of these vessels is available.

A 40 to 50 percent increase in value (Blomo, 1979) and a greater yield of shrimp taken at a larger size will offset any increase in operating expenses for the additional distance that non-Florida vessels may be required to travel from the outer limit of the territorial sea to the sanctuary boundary. Because no minimum size limit is proposed, the elimination of forced discarding will further increase the fishermen's shrimp landings.

No special provision is made for live bait shrimping in the sanctuary in the FCZ because none is presently conducted there. It is limited to the nearshore waters of the territorial sea.

No allocation or redistribution among user groups is expected to result from this action.

Although the Dry Totugas shrimp nursery area has been defined by the best available data, at times pink shrimp smaller than the size preferred for local harvest may be taken beyond the closed area. Similarly, large shrimp may also be found within the nursery area. The present delineation provides for the best conservation and use of the resource according to known information, but the Council recognizes the need for better data and recommends a program of sampling in order to identify more precisely the actual range of small shrimp in this area. When the area can be better defined, it can be adjusted accordingly.

The best available data indicate that as a result of this measure, total shrimp landings would increase by one million pounds. In addition, the average size of shrimp landed would increase, thus increasing the per unit value of the increase in landings as well as the protein yield of the managed fishery. The total exvessel value of the increased landings would increase by $2.29 million, using a price of $2.29 per pound (June, 1978, Eastern Gulf ports). With approximately 900 vessels fishing in this area in 1975, the average increase in revenue per vessel would be $2,544. Employment in the processing sector would increase slightly.

Measure 2: Establish a cooperative closure of the Territorial Sea of Texas and the adjacent U.S. FCZ with the State of Texas and the U.S. Department of Commerce during the time when a substantial portion of the brown shrimp in these waters weigh less than a count of 65 tails to the pound (39) heads-on shrimp to the pound). The U.S. Department of Commerce will close the FCZ, and the time of closing should correspond to the closure by Texas of its territorial sea. Closure normally occurs June 1 to July 15; however, the effects of climatic variation on shrimp growth may necessitate a 15–day flexibility in the closing and opening dates to provide for a closure of no more than 60 days. Provision is to be made to allow taking of royal red shrimp beyond 100 fathoms under permit.

The State of Texas is encouraged to continue the present seasonal closure of its Territorial Sea, to eliminate its count restriction on catch in open water, and to evaluate the effect of its allowing fishing in white shrimp fishery during the closure on brown shrimp.

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Table 8.3-3. Possible change in the average weight of the brown and white shrimp if the waters off of Texas are closed to shrimping June and July.

	Yield under present management	Expected weight if fishing is prevented until Aug. 1 and natural mortality is .01	.05	.10	.20
	- - - - - - - - Million pounds (tails) - - - - - - - -				
BROWN SHRIMP					
caught and landed	8.3	10.1	8.8	7.5	5.6
Discarded by the brown shrimp fishery	0.0	1.8	1.6	1.3	1.0
Discarded by the white shrimp fishery at 0-5 fathoms off Central Texas	0.0	1.0	0.8	0.6	0.4
TOTAL	8.3	12.9	11.2	9.4	7.0
WHITE SHRIMP					
caught and landed (no growth is assumed)	0.8	0.7	0.6	0.5	0.4
TOTAL WEIGHT	9.1	13.6	11.8	9.9	7.4
NET CHANGE OVER PRESENT HARVEST STRATEGY		+4.5	+2.7	+0.8	-1.7

Table 8.3-4 Possible change in average ex-vessel value of brown and white shrimp if waters off of Texas are closed to shrimping June and July.

	Value under present management	Expected ex-vessel value if fishing is prevented until Aug. 1 and natural mortality is .01	.05	.10	.20
	- - - - - - - - - - - - Million dollars - - - - - - - - -				
BROWN SHRIMP					
caught and landed	17.1	25.6	22.3	18.9	13.9
Discarded by the brown shrimp fishery	0.0	3.4	2.9	2.4	1.8
Discarded by the white shrimp fishery at 0-5 fathoms off Central Texas	0.0	2.1	1.7	1.3	0.7
TOTAL	17.1	31.1	26.9	23.0	16.4
WHITE SHRIMP					
caught and landed (no growth is assumed)	3.0	2.9	2.4	2.0	1.4
TOTAL VALUE	20.1	34.0	29.3	25.0	17.8
NET CHANGE OVER PRESENT HARVEST STRATEGY		+13.9	+9.2	+4.9	-2.3

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Rationale: In general, the measure is recommended to increase the yield of shrimp and to eliminate waste by discard of undersized brown shrimp in the FCZ. Data indicate that closure would protect the shrimp until they have generally reached a more valuable size. Elimination of the count restriction would allow all the shrimp that are caught to be landed. A Texas study of the benefits of its white shrimp fishery in the territorial sea seems necessary because of the apparent discard of considerable numbers of small brown shrimp associated with this catch.

The brown shrimp discard off the Texas coast is estimated to average 33 percent by number of the May-through-August catch (Berry and Benton, 1969; Baxter, 1973). The discard apparently occurs not only because of the legal count restriction in Texas but also because price and market favor larger sizes in the Texas area (Baxter, 1973). In Texas there are relatively less landings of smaller-sized shrimp than in Louisiana. There are no shrimp canneries in Texas, and most of the shrimp are processed by freezing. The economy of the industry in the western Gulf is tied to the harvest of shrimp larger than 65 tails to the pound.

Bryan, et al. (1978) found along the central Texas coast that relatively large numbers of small brown shrimp were taken and discarded in waters beyond the state's Territorial Sea out to 20 fathoms during June and July and in the open area inside 4 fathoms during June. They recommended that a seasonal closure of these waters based on biological sampling would protect the brown shrimp until they had reached a useful size for the area's fishery and would eliminate the need for a forced discard of undersized shrimp.

Unpublished data from the Texas Parks and Wildlife Department indicate that shrimp beyond 20 fathoms off the central Texas coast generally are larger than 65 tail count. Because of the variability of distance of the 20 fathom isobath from shore, a zone 30 miles from shore was considered for protection of small brown shrimp. However, only seven percent of the shrimp landed from Gulf waters off Texas in June and July came from beyond 30 miles offshore.

The Council, with support from its Advisory Panel, has made the determination that the entire FCZ off Texas should be closed to increase yield (weight and value), catch per unit of effort, and to facilitate effective law enforcement.

This measure is presently limited to the FCZ off Texas as a *trial measure* which would enhance an existing management regime in the Territorial Sea. It is expected to be immediately beneficial to the majority of present users in the area. The Council, however, recognizes that the seasonal closure could result in displacement and shift of effort in an already highly migratory shrimp fleet. It is the intent of the Council that the biological, ecological, social and economic impact of this measure be monitored so that revisions of the management measure may be made when warranted.

The best available data indicate that shrimp landings would increase 2.1 million pounds after implementation of this measure. This increase includes 0.5 million pounds due to increased shrimp growth and 1.6 million pounds due to utilization of previously discarded shrimp (Table 8.3–3). The ex-vessel value of these increased landings would be $7.1 million, using a price of $2.33 per pound which is an adjusted price due to increased landings of large shrimp. With approximately 1,500 vessels fishing in the area during 1975, the average increase in revenue per vessel would amount to $4,733.

An extension of the closure to offshore Louisiana could have a major impact on the fishery in that area. The measure would not be compatible with present territorial sea management and may have a negative impact on the industry presently geared to the processing of smaller shrimp.

An attempt has been made to assess the possible change in yield associated with this measure. The analysis was based on (1) the reported catch statistics from the area (U.S. Department of Commerce 1970–75); (2) a 25 percent discard rate of brown shrimp by weight (associated with the brown shrimp catch); (3) an expected brown to white shrimp catch ratio of 40:1 in June and 70:1 in July; (4) Parrack's (1978) monomolecular growth rate equations; (5) the July 1978 price structure of shrimp; and (6) four levels of natural mortality. No growth of white shrimp was assumed. Only the brown shrimp discarded in association with the zero-to-four-fathom fishery in central Texas were estimated. Results are summarized in Tables 8.3–3 and 8.3–4 in terms of the average pounds and value of shrimp which could be expected on August 1 if there is no shrimping in the area from June to July and no migration of shrimp out of the area. Both natural and fishing mortality throughout the life cycle of shrimp has been used in estimating mortality. The crude analysis indicates an increase in yield and value when weekly instantaneous natural mortality is in the range of .01 to .10; if natural mortality is in the range of .20, then net losses can be expected.

According to Klima and Parrack (1978), current data on growth and mortality of shrimp populations in the Gulf indicate that maximum weight of unfished populations would occur at "six to nine months of age or at a size of 20–30 shrimp tails per pound." This measure is designed to protect shrimp until they are around 65 tails to the pound. It should increase both yield and value. The Council will monitor the effects of the management regime and reevaluate the need for area closure periodically.

Mark and recapture data available indicate that shrimp exhibit depth migration. It is possible that once the season opens shrimp may generally be about five fathoms deeper and further south along the Texas coast than previously. However, nothing definitive can be suggested (see Section 4.1, Migration).

The measure is expected to have little or no impact on smaller vessels, those 47 feet or less in length. Vessels less than 42 feet fish primarily in the inshore waters which are included in Texas' present closure of the Territorial Sea. Those vessels 42 to 47 feet in length would still find good concentrations of shrimp shoreward of 20 fathoms, their outer range, when the season opens in July according to Bryan, et al. (1978).

The closure will affect other areas by causing a dislocation of effort. Some vessels will tie up, but others will likely fish off other states such as Louisiana, as many do now.

The Gulf shrimp fleet is presently migratory. In 1978, Louisiana sold over 2,300 non-resident shrimp trawl/vessel licenses even though many of the larger Texas vessels will not fish within Louisiana's Territorial Sea or land in Louisiana.

In 1976, about 20 percent of the volume and 25 percent of the value of Louisiana's Gulf shrimp catch was landed in Texas. (Gulf Coast Shrimp Data).

The Texas-based fleet capable of fishing in the FCZ consists of approximately 1,000 vessels. Another 500 vessels from other states, including Louisiana, fish off Texas during a portion of the year. (Texas Parks and Wildlife Department license records.)

In determining that the closure should extend through the entire FCZ off the Texas coast the Council made the following determinations in conformance with the National Standards:

1. Management Objectives 1 and 3 will be met by increasing the opportunity for greater yield in product

and value and by enhancing the existing management regime of the adjacent state. In this trial measure the brown shrimp stock will be managed in its range from the estuary and territorial sea through the FCZ.

2. There will be no discrimination against any group by this measure. All vessels will have the same opportunity to catch the larger, more valuable shrimp during open season. Small boats restricted to near-shore operation are already excluded from fishing during this period by the nine-mile Texas territorial sea closure and may resume fishing when the season reopens for all boats and vessels. No allocation is made among fishermen.

3. The low yield of large shrimp offshore and beyond 20 fathoms during this period does not provide for an efficient fishery according to the advisory panel and landing statistics.

4. Enforcement difficulties presently encountered by the state with vessels moving from the FCZ to the closed territorial sea would be greatly reduced. Closure of the FCZ to 200 miles would prevent a similar enforcement problem in the FCZ.

5. The measure takes into account the variation in the brown shrimp fishery in Texas directed toward a larger size product.

6. The measure would minimize costs by enhancing an existing management regime.

7. The measure conforms to best data available from state and other researchers concerning this fishery.

8. Most importantly, this measure is directed toward achieving optimum yield in the fishery while preventing growth overfishing.

9. This measure is parallel with the establishment of the Tortugas Shrimp Sanctuary for pink shrimp. Pink shrimp emigrate from inshore nursery grounds over a long period while brown shrimp move in a major migration in late May or early June.

Measure 3: Recommend that all states consider establishing shrimp management sanctuaries in important segments of nursery grounds under their sole jurisdiction. Within these areas shrimp would be protected from harvest until they have reached an optimum size for harvest by the user groups dependent upon them. In all open areas shrimpers would be allowed to keep all shrimp they harvest—that is, there should be no laws which would force the culling of shrimp caught.

All states are encouraged to continue their monitoring of these areas in order to provide basic data for management—especially data on habitat quality, yield predictions, and variations in the area distribution of shrimp.

Rationale: There are diverse user groups dependent on shrimp of differing sizes in the Gulf area. In fact, the conflict between interest groups is often acute in the states' internal waters. Currently, the Gulf states are attempting to provide accommodation for the various groups dependent upon these resources while protecting shrimp smaller than useful size. This problem will not be easy to solve since the number of recreational and commercial shrimpers is apparently increasing.

The most vulnerable area appears to be shallow water estuaries. These areas, critical for growth and development of brown, white, and pink shrimp, are also fragile ecosystems which are being affected by man (Lindall and Saloman, 1977).

It is conceivable that shrimp within these areas could be harvested and used at an extremely small size, say 300 tails to the pound, particularly by recreationists. In the other hand, basic biological data reviewed in the development of this plan indicate that yield would be maximized if shrimp were harvested at sizes larger than minimum count laws currently enforced in the Gulf area. These viewpoints provide the Gulf states biological flexibility in deciding which size ranges of shrimp would give the best yields.

The respective Gulf states can protect critical habitat areas, reduce the waste of shrimp from culling, and probably increase the yield of shrimp by identifying the areas where shrimp smaller than useful size exist and closing those areas to shrimping on a seasonal or permanent basis. Without such closures it is likely that these areas will be subject to increased fishing effort as competition for the resource intensifies. Increased effort will likely reduce the overall yield of shrimp. This measure is consistent with the groundfish plan and would afford protection to juvenile recreational and commercial fisheries which utilize the same nursery areas as shrimp.

Where feasible, area closures based on biological sampling are preferred to count laws which force discarding of undersized shrimp and directly waste the resources. The effect of such closures might be to shift fishing areas several miles or more to the larger lakes and bays. The Council will work toward a common management regime throughout the area on a state-by-state basis.

8.5.1.2 *Objective 2: Encourage Adequate Habitat Protection Measures*

Measure 4: The Gulf of Mexico Fishery Management Council has established an internal committee to review and assess the status of Gulf fishery habitats, with particular attention to those factors which might further stimulate "the downward trends in quality and quantity of fish habitats." (Atlantic States Marine Fisheries Commission, et al., 1977). The committee interacts where appropriate, with federal and state agencies to insure that adequate consideration is given to possible impacts of the agencies' actions on these renewable resources. The agencies include, but are not limited to, the states' wildlife management agencies, the U.S. Corps of Engineers, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Environmental Protection Agency, and coastal zone management agencies (in those states which have them).

The Council will adopt the policies set forth in the National Plan for Marine Fisheries and the Eastland Fisheries Survey (Atlantic States Marine Fisheries Commission, et al., 1977) regarding habitat protection and pollution control to:

(1) "Reverse the downward trends in quantity and quality of fish habitats by minimizing further losses and degradation of these habitats, restoring and enhancing them where possible, and establishing protected areas where necessary, while recognizing other compatible essential uses of fish habitat areas.

(a) Improve the consideration given to fish habitats in key decision-making processes.

(b) Where possible, mitigate losses of habitats, restore habitats lost or degraded, and develop economically feasible enhancement opportunities.

(c) Establish sanctuaries, reources, or other systems when necessary to protect critical fish habitats and maintain fish production.

(d) Improve the quality and increase the dissemination of information required for effective fish habitat conservation.

(2) Prevent rapid development of coastal and marine areas including those of the Continental Shelf, where development is based on hastily gathered and often critically incomplete data.

(3) Take stronger action to insure abatement and control of pollution that contaminates fish or adversely influences fish environment and prevent development of new environmental degradation or fish contamination."

Rationale: Man's alteration of the Gulf estuarine and offshore fish habitats appear to pose the greatest threat to viability of fish resources. This is especially true for estuarine areas, since about 90 percent of the commercial and 70 percent of the recreational catches are estuarine-dependent (Lindall and Saloman, 1971). The shrimp fishery depends on acreage of suitable marsh or estuarine habitat not merely on acreage of inland waters. The Council encourages the Secretary of Commerce to aid in achieving wetland conservation. Quantitative studies are needed both to assess potential impacts on fishery habitats by man-made alterations and to support recommendations for workable alternatives. Some direct action is needed now; a Council committee working with the appropriate state and federal agencies appears to be not only a logical extension of the review and advice role of the Council but also a mechanism to insure adequate consideration of the habitat needs of fishery resources addressed in its fishery management plans. This committee is concerned with fishery habitats in general, because of the similarities in species requirements, and because it is necessary to approach these impacts with a multispecies understanding and to carry out the mandate of FCMA (reducing, where possible, duplication of effort). The committee makes recommendations to the Council as needed.

This measure particularly addresses National Standard Number 3 which requires management of the stock throughout its range. Because authority in the estuaries and marshes lies with the various states, the Council recommends coordinated efforts for habitat protection for the shrimp resource.

8.5.1.3 Objective 3: Coordinate, Where Feasible, the Gulf Shrimp Management Programs

Measure 5: The Gulf states are encouraged to adopt flexible management procedures which would provide regulation by administrative agencies of the shrimp resources in inland waters and territorial seas. These agencies would operate within legislative parameters but would have sufficient flexibility to perform such essential tasks as setting the seasons, based on environmental monitoring.

- The State of Florida is encouraged to consider setting its regulations by general law rather than by special laws of local application and to codify all such laws.
- The State of Louisiana is encouraged to enact laws which would authorize LDWF to regulate shrimping activities in its territorial sea.

Rationale: The yield of the dominant shrimp stocks is related to prevalent environmental conditions during the estuarine phase of growth. This dependency results in yearly variations in the times at which shrimp reach a minimum useful size and begin their offshore emigrations.

In order to increase the yield of shrimp, various minimum useful sizes have been established in the Gulf region. Appropriate state agencies are responsible for monitoring the resource and opening and closing seasons based on evaluations of their monitoring. To accomplish this essential task, the agencies must have sufficient flexibility to be able to establish seasons based on interpretations of current, relevant data. Without this flexibility, shrimp are wasted through culling because statutory seasons open on shrimp smaller than a useful size.

If the Gulf states adopt such flexible management where it does not already occur, wasteful culling of shrimp should be reduced; the opening and closing of seasons will then be based on interpretation of current data on the shrimp populations. This management should not drastically affect present seasons because the flexibility required would not normally adjust the seasons more than a few weeks. Also, programs can be devised to provide shrimpers with suitable lead time. Nor will this management result in a drastic increase in the monitoring responsibilities of the various states, since programs are currently in effect to assess the majority of needed parameters.

Measure 6: The Gulf states are encouraged to adopt reciprocal internal management decisions flexible enough to allow joint management of shrimp with other states and with the Department of Commerce.

Rationale: Shrimp and shrimpers in the Gulf states are not limited by state or federal jurisdictional boundaries. Migrations of these populations from one area to another require coordinated flexible management to better protect the biological basis of the resource, to reduce conflicts among shrimpers and the waste of resources, and to ease enforcement problems.

The usefulness of such interaction was evidenced in the preparation of this management plan. The measures recommended herein are, in large part, results of the interaction of state and federal personnel who suggested and assessed measures to reduce the waste of resources and to enhance the industry's vitality. As is appropriate, the final plan will reflect the open public review of these measures to insure that they are sound, acceptable, and designed to promote conservation of our resources. The continued interaction of the appropriate state agencies with the GMFMC is essential if the shrimp resources in the area are to be harvested at optimum levels.

If management measures were coordinated wherever feasible, the likely result would:

(1) provide a stronger base for protecting the environmental basis of the resource;

(2) reduce waste of shrimp resources through the cooperative protection of shrimp smaller than a minimum size for an area;

(3) reduce conflicts between fishermen by coordinating, where feasible, such regulation measures as opening and closing dates;

(4) ease enforcement problems; and

(5) reduce the cost of management by coordinating the monitoring, enforcement, and environmental assessment programs.

8.5.1.4 Objective 4: Promote Consistency with the Endangered Species Act and Marine Mammals Protection Act

Measure 7: Develop and implement an educational program to inform shrimpers of the current status of sea turtle populations and of proper methods of resuscitation and return to sea of incidentally-captured sea turtles.

Rationale: All of the sea turtles that inhabit the U.S. Gulf of Mexico are listed either as threatened or endangered and must be protected. The shrimp fishermen, therefore, need to be informed of the necessity of following good conservation practices in relation to this species.

Informed shrimpers would be prepared both to take adequate measures in releasing turtles in a viable state and to give reliable information on incidental seas turtle capture.

8.5.1.5 Objective 5: When Appropriate, Minimize the Incidental Capture of Finfish by Shrimpers

Measure 8: Encourage research on and development of shrimping gear in order to reduce the incidental catch without decreasing the overall efficiency of shrimping or excessively increasing the cost of gear. This program would include current efforts on an excluder panel to prevent accidental catch of sea turtles; examination of the feasibility of a net mesh size and configuration that

reduces the harvest of shrimp smaller than a given size; and development of a trawl to reduce incidental capture of finfishes (includes efforts on excluder panel, beam trawl, separator trawl).

Rationale: This option would generally reduce the waste not only of marine resources but also of labor efforts, gear damage, and conflicts with other users. Development and use of an excluder panel would greatly reduce the incidental capture of sea turtles and facilitate compliance with the Endangered Species Act.

A shrimp trawl that is size selective for shrimp would allow protection of undersized shrimp without area closures. Reduction in incidental catch of finfish would reduce waste of these resources and conflicts with the groundfish and reef fish fisheries.

The indirect impact of this option includes the possibility of (1) a reduction in finfish bycatch (usually discarded), (2) increases in predation on shrimp by escaping finfish predators, (3) increased competition for food and shelter between shrimp and escaping finfish which occupy ecological niches similar to those of shrimp, (4) a reduction in the amount of food available to scavengers, (5) a reduction in finfish growth rate through stocks not being thinned out, (6) shrimpers might be able to shrimp in areas not previously used, (7) stimulate the development of fisheries utilizing excaping finfish, and (8) the effect of discarding the bycatch on the fertility of the area may be ascertained. The ecosystems should be monitored to determine the best mix of benefits.

8.5.1.6 Objective 6: Minimize Conflicts between Shrimp and Stone Crab Fishermen

Stone crab traps are placed on the bottom where they are inadvertently destroyed by shrimp trawlers. Trawling for pink shrimp is done at night when buoys are not visible. The loss to the stone crab fishery is estimated to be $80,000 per year (Table 1, Stone Crab EIS).

Measure 9: Consistent with the Stone Crab Management Plan, establish a seasonal closure of a portion of the Dry Tortugas shrimp grounds in order to avoid gear conflicts with stone crab fishermen. The area to be closed is outlined in Table 8.3–5 and is generally shown in Fig. 8.3–2 and 8.3–3. The seasonal opening of this area will not affect the "Tortugas Shrimp Sanctuary."

As a result of adopting this line from the Stone Crab FMP, the seasonal exclusion of shrimp vessels from this inshore area would allow for a longer growth period for these generally smaller shrimp. The increase in pounds of shrimp landed has been estimated at 60 thousand. The increase in value due to growth from delay in harvest has been estimated to be $46.2 thousand.

Rationale: The Stone Crab Fishery Management Plan contained a measure to avoid gear conflicts between shrimpers and stone crab fishermen. The seasonal closure developed in that plan is a reasonable compromise between the requirements of these two groups and is incorporated into the plan in order to provide consistency. However, the seasonal opening of the area outlined in the Stone Crab Management Plan will not affect that area closed as the "Tortugas Shrimp Sanctuary"; this area is closed to provide for conservation of shrimp recruited to the Tortugas and Sanibel shrimping grounds.

8.5.1.7 Objective 7: Minimize Adverse Effects of Underwater Obstructions to Shrimp Trawling

Measure 10: The Gulf of Mexico Fishery Management Council will attemp to reduce, where feasible, the loss of offshore trawlable bottom by establishing within GMFMC, a committee to monitor and review construction of offshore reefs, with attention to the needs of the reef fish and shrimp user groups.

Rationale: In the Gulf shrimp fishery, there is a considerable loss of gear and time associated with trawls becoming entangled on artificial underwater obstructions. The adverse effect of these obstructions must be minimized in a way consistent with other national interests.

Table 8.3–5.—Line denoting area to be seasonally closed to prevent gear conflicts between shrimpers and stone crab fishermen. Start in the Florida Keys at Snipe Point (Point F defined on Chart 11420 as 24°41.9′ N and 81°40.5′ W) proceeding northwesterly to Point E (defined as 24°54.5′ N and 81°50.5′ W) thence northeasterly along a line on a compass bearing of approximately 010° magnetic to Point D (25°09.0′ N and 81°47.6′ W) thence northwesternly along the 8 fathom line on a compass bearing of approximately 344.5° magnetic to Point C (described as 26°0.0′ N and 82°04.0′ W) and thence northeasterly to 6 fathoms along a line on a bearing of approximately 016° magnetic to Point B (26°16.0′ N and 81°58.5′ W) and thence northwesterly along a line on a compass bearing of approximately 311° magnetic to Point A (26°36.4′ N and 82°24.3′ W) and thence east to Captiva Pass (Figure 8.3–2). The specific location of Points A through F are as follows:

Table 8.3–5

Point	Location
A	Lat. 26°36.4′ N, long. 82°24.3′ W
B	Lat. 26°16.0′ N, long. 81°58.5′ W
C	Lat. 26°00.0′ N, long. 82°04.0′ W
D	Lat. 25°09.0′ N, long. 81°47.6′ W
E	Lat. 24°54.5′ N, long. 81°50.5′ W
M	Lat. 24°41.9′ N, long. 81°40.5′ W

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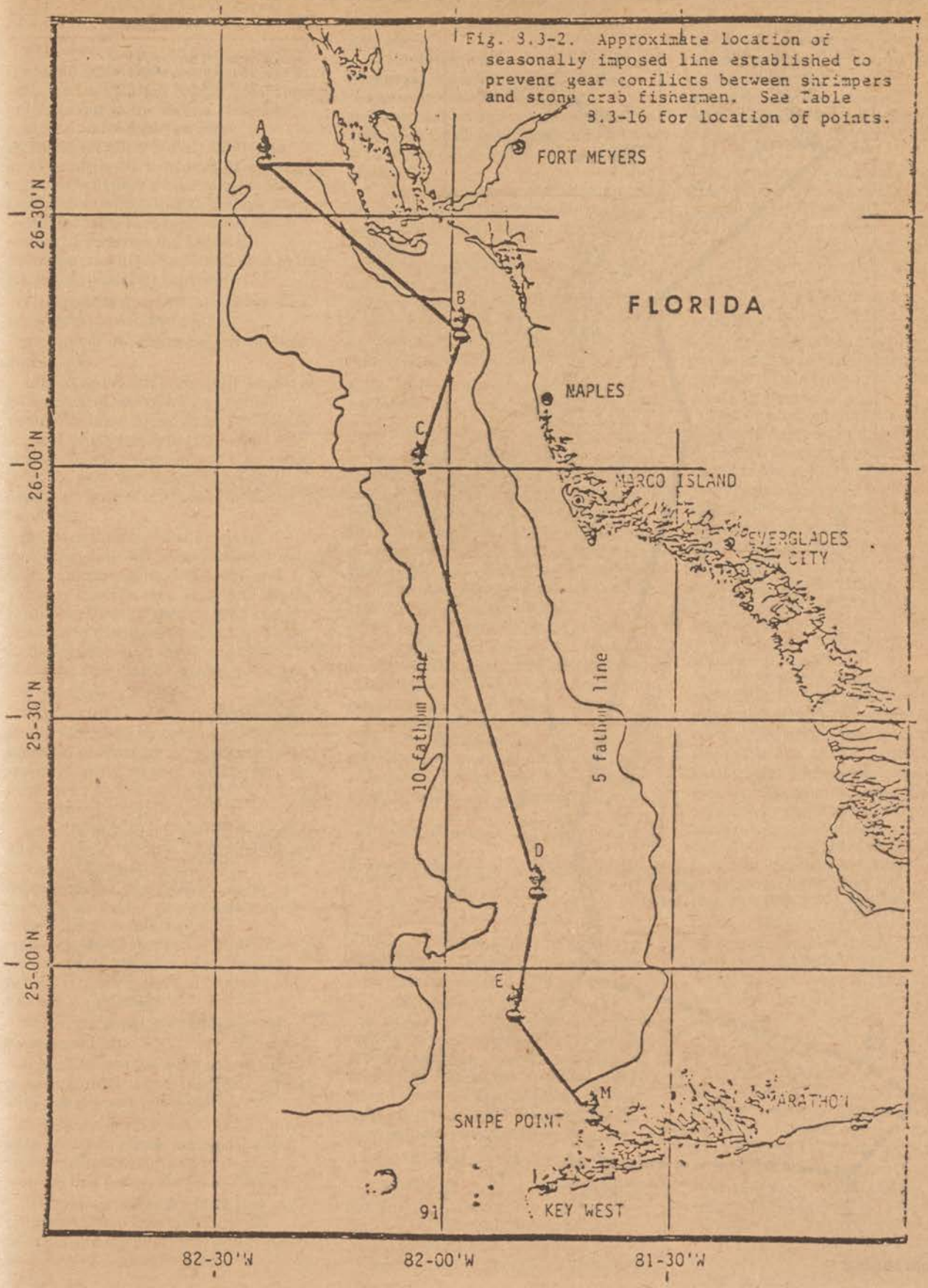

Fig. 3.3-2. Approximate location of seasonally imposed line established to prevent gear conflicts between shrimpers and stone crab fishermen. See Table 3.3-16 for location of points.

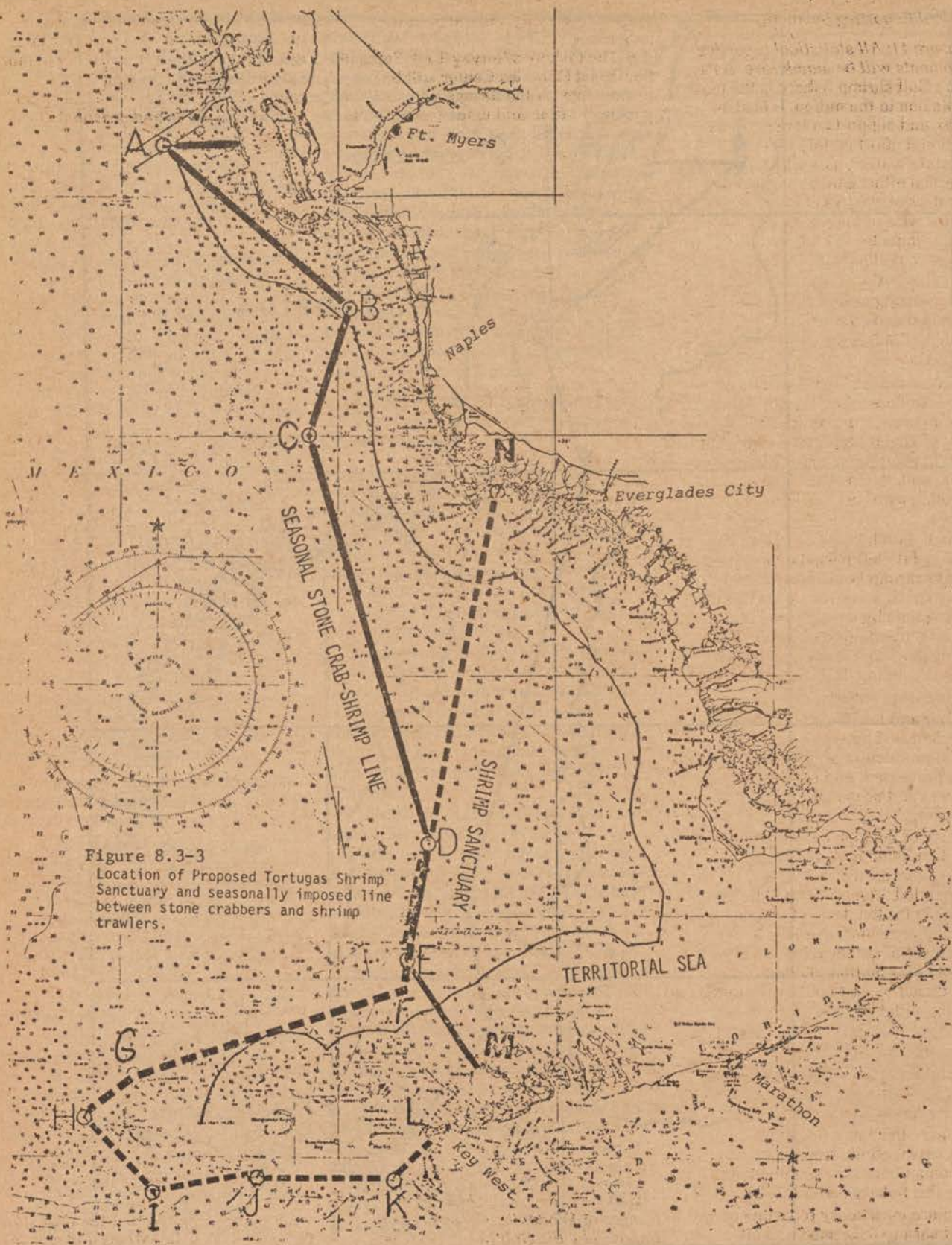

Figure 8.3-3
Location of Proposed Tortugas Shrimp Sanctuary and seasonally imposed line between stone crabbers and shrimp trawlers.

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8.5.1.8 Objective 8: Provide for a Statistical Reporting System

Measure 11: All statistical reporting requirements will be mandatory. As a unit, the Gulf shrimp fishery is the most valuable one in the nation. It is also complex and supports a large recreational effort mainly limited to inside state waters, as well as a diverse commercial effort which ranges out to Gulf waters of 200 to 300 fathoms. Data useful for wise management of these resources includes the following (however, not all is to be included in the statistical reporting program):

A. Harvesting sector—all harvestors, recreational and commercial

1. Number of fishermen and mailing addresses.

2. Boat or vessel: home port, length of hull, construction of hull, year built, number in crew, type, make and model number of engine, type, size, and number of gear, presence or absence of salt box, and, when developed and deployed, type of excluder panel used (if required).

3. Catch data by boat or vessel including: date left port; date returned to port; date shrimp landed; catch and value by species, size, area, and depth; shrimping time by species area and depth; size distribution of catch including discards; species composition of catch (including discards).

B. Processing sector

Number and locations of processing plants identified by type of product, seasonal production of types and species processed, and number of employees and seasonality of employment.

Because of the high cost of gathering all the data listed in A and B above, the following alternative system is recommended. The NMFS will be responsible for the design for Council review, implementation and management of surveys to obtain the necessary information to manage the fishery including, but not limited to the following guidelines:

Statistical reporting requirements recommended:

1. Maintain at least the existing commercial statistical reporting system with more timely publication.

2. Require the collection of minimum data on catch, effort, biological and socioeconomic information needed to manage this fishery under FCMA.

3. Require mandatory reporting of *all* selected shrimp fishermen and all selected shrimp dealers and processors. Selection of respondents to be made by NMFS.

4. Utilize the vessel enumeration system to identify saltwater shrimp fishermen.

5. The Fisheries Survey Task Force of Southeast Fisheries Center will be responsible for the design, implementation and management of this survey and will spell out details on what is to be collected based on resources provided.

6. Consideration should be given to improvement of the data base on boat catch and the bait harvest in state waters.

Rationale: Basic statistical data are needed in monitoring the fishery in order to insure the viability of the stocks, to evaluate reasonable solutions to conflicts, and to provide for the management of the fishery.

8.5.2 Alternative Management Measures Considered But Not Adopted

8.5.2.1 No Action

The Council has determined in the plan that management of shrimp stocks in the FCZ can provide a higher yield of shrimp in both weight and value. Management measures therefore were developed to provide this optimum yield from the fishery. Taking no action would result in continuing waste from culling and discard of small shrimp, degradation of shrimp habitat, conflicts among users, and inadequate statistics to monitor the fishery. Implementation of management will serve to address and meet the objectives of the plan.

The anticipated benefits and costs from management measures in this plan provide a comparsion with a "no action" alternative. With this FMP, monetary benefits and costs are projected to be:

Management measure	Benefits	Costs
Torugas nursery area	$2,290,000	$385,900
Texas FCZ closed June-July	7,100,000	75,300
Total	9,390,000	461,200

The enforcement costs of the stone crab-shrimp separation line primarily provides a space and time separation between fishermen to prevent unquantifiable conflicts. Without these measures, either the status quo would prevail, as in the case of shrimping in the Texas FCZ, or the Tortugas area would continue to experience a lower total yield than when the traditional nursery area was closed by Florida.

8.5.2.2 Size and/or Season Regulations

1. *Modify Any of the Minimum Size Ranges of White Shrimp Seasonally Imposed by the Gulf States and/or Establish Minimum Size Ranges for White Shrimp in the FCZ.*—Minimum size limits require culling and discarding of small shrimp, a wasteful and self-defeating practice. The purpose, to direct fishing effort toward larger, more valuable shrimp, can more constructively be attained. This plan uses closed areas and seasonal closures on small shrimp to accomplish the objective.

No size restrictions are proposed in the FCZ but the management regime selected should encourage harvesting in the FCZ of the optimum weight and value, and the plan encourages states to permit the landing of any size shrimp from open areas.

Because the fishery for white shrimp is inshore, the plan suggests that states identify and close to trawling those areas in their internal waters and territorial seas where shrimp are too small for best local use.

The existing minimum size patterns as currently outlined by the states do not appear to threaten the biological basis of the resource. As the size of shrimp is frequently associated with the area and depth of harvest, the ability of the fleet to harvest the resource would be affected if the minimum size were changed; boats could be dislocated or excluded from the fishery. Additionally, as most states currently impose size regulations based on local industry demands, local processors in the Gulf could be disrupted.

2. *No Size Regulation.*—No size regulation with no area closures to protect undersized shrimp would likely result in a harvest with a wider range of sizes. The mix would consist of more smaller size shrimp and consequently less large shrimp. Because there are few sufficiently developed markets for the smaller ranges of shrimp except in Louisiana, discard could be expected to increase, resulting in greater biological waste. It could also be expected to result in a greater concentration of fishing effort in nearshore and inland waters on juvenile shrimp. This could result in a decreased harvest for deep-water vessels. More shrimp would be harvested, but with less total poundage and lower total value.

3. *Determine Preferred Minimum Size and Regulate Area and Season for That Size. Allow Retention of All Catch Regardless of Size.*—This approach has been proposed in those measures which establish seasonal closures for areas off of Texas and Florida as an extension of present state management schemes, as well as in Option 3, Section 8.3.1.1, where it is suggested that the Gulf states consider such delineations and closures.

The shrimp fishery has a number of processing entities (e.g., fresh, frozen, canned, etc.), each of which contributes

to the economy of the nation, and each of which has preferred sizes. If this alternative were implemented, it would provide protection for the resource until the preferred minimum size for the area were attained thus delaying the harvest. Some processors might be disrupted temporarily due to the loss of fresh shrimp during the time of closure. The congestion of boats and vessels within open waters could increase, intensifying conflicts over trawlable space. The elimination of forced discard would reduce biological and economic waste.

Those shrimpers who have traditionally fished in an area of closure would be displaced. Boats smaller than 47 feet in length would not be entirely displaced as a closure of an area in the FCZ would still permit shrimping within a state's inland and territorial waters. Those using deepwater vessels would move to further fishing grounds that were not within the area of closure with an attendant increase in fuel consumption. The extent of the disclocation would depend on the area closed.

4. *Establish a Minimum Shrimp Count Size in the FCZ, Under Which White Shrimp May Not Be Retained.*—White shrimp which reach the FCZ are large enough to comply with the landing laws of the adjacent area. There is no need to protect undersized white shrimp in the FCZ because recruitment or growth overfishing is not evident there.

The imposition of a minimum size count with a forced discard is unnecesary and would result in increased biological waste due to the culling of shrimp smaller than permitted, if and when they should occur there.

5. *Establish a Cooperative Seasonal Closure to Shrimping in the FCZ off Texas within 20 fathoms in June and July to Protect Undersized Brown Shrimp.*—Currently, the Texas Territorial Sea is usually closed from June 1 through July 15. There is a variable, but often substantial discard of small brown shrimp in the Territorial Sea and FCZ associated with Texas during the May–August period. This closure reduces the biological waste that presently occurs when large quantities of undersized shrimp are discarded.

The extension of the closed season to 20 fathoms in the FCZ was considered because Texas researchers found that small shrimp usually do not extend beyond 20 fathoms. Shrimp of the preferred size do occur beyond that depth off the central Texas coast with infrequent mixing of smaller sizes. The 20 fathom isobath is about 20 miles from shore in the study area but is much closer on the lower Texas coast and more than 50 miles offshore near Louisiana. Size distribution offshore is as much a function of distance as depth. Shrimp fishermen document occasions when small shrimp are taken beyond this depth.

Becaue a meandering depth contour was not practical as a line of closure, various distances from shore were suggested as alternatives.

Closure of only a portion of the FCZ would cause substantial enforcement problems in monitoring the area of limited closure. Because the line of closure is based on a depth delineation, there may result some hardship to fishermen attempting to stay just beyond the 20 fathom range. Texas' present Territorial Sea closure is difficult to enforce because vessels move inshore under cover of darkness when shrimping occurs. The enforcement costs requiring full at-sea patrols were estimated by NMFS to be $202,400.

6. *Establish a Cooperative Seasonal Closure of the Territorial Sea off of Texas and the Associated FCZ within 30 Nautical Miles to Protect Undersized Brown Shrimp.*—This alternative is similar to the previous measure. It is an extension of present Texas management policies. Currently, the Texas Territorial Sea is usually closed from June 1 through July 15. There is a variable, but often substantial discard of brown shrimp in the Territorial Sea and FCZ associated with Texas during the May–August period. This closure would reduce the biological waste that presently occurs when large quantities of undersized shrimp move beyond the state's closure of the Territorial Sea. The 30-mile line was considered to provide a zone beyond which most shrimp would provide an optimum yield in weight and value.

With support from its advisory panel, the Council has determined that a partial closure of the FCZ in this instance would be ineffective. Shrimping is done at night and vessels can move into the closed area to fish. Small shrimp do move far offshore on occasion. Only seven percent of shrimp landed from Gulf waters off Texas during this period came from beyond 30 miles. The alternative of expanding the closure to encompass the entire FCZ associated with Texas was adopted. The enforcement costs requiring full at-sea patrols were estimated by NMFS to be $136,000.

8.5.2.3 Spawning Area Closures

1. *Protect Spawning White Shrimp From Harvest in April Through July.*—Although white shrimp have the shallowest depth range of the three major species and are fished extensively throughout their range, catch-effort data do not indicate a decline as a result of recruitment overfishing. Data also indicate multiple spawning of white shrimp in a season with wide ranging spawning areas which are difficult to delineate.

No scientific data exist to show an advantage from protecting spawning shrimp. There is no relationship between the number of spawners and recruits.

2. *Establish a Trial Sanctuary in April and May in the FCZ South of Mississippi to Protect Spawning White Shrimp and Assess Spawner Recruit Relationship.*—In recent years there has been a decline in the white shrimp fishery off Mississippi and Alabama. Because white shrimp live in the bays, sounds, and inshore Gulf, they are heavily fished throughout their range. Some fishermen have suggested that heavy fishing on spawning adults off Mississippi may be a factor in the decline of stocks in that area. Best available scientific data, however, show no relationship between the number of spawners and subsequent number of recruits to the fishery.

Establishment of a seasonal sanctuary for the spawners would result in the loss of the spring catch in that area with no evidence of justification.

3. *Close the Offshore Waters of the Northern Gulf CFCZ and Territorial Sea to All Shrimping from Approximately April 15 to Approximately June 15 Each Year (At Least East of the Mississippi River).*

4. *Area Closures to Protect Spawning Populations of Brown Shrimp.*

5. *Area Closures to Protect Spawning Populations of Pink Shrimp.*

The same rationale for rejection was established for measures 3, 4, and 5 as for all other proposals for protection of spawning shrimp. There are no scientific data to support a measure to protect spawning shrimp because no relationship between number of spawners and subsequent number of recruits to the fishery has been found.

6. *Area Closures to Protect Spawning Populations of Royal Red, Rock and Seabob.*

Royal reds (off St. Augustine, Florida) are believed to spawn during the winter. Unlike other species of shrimp, they are harvested over several year classes.

The area of spawning for rock shrimp has not been determined as they are not believed to be estuarine dependent.

Seabobs spawn in the Gulf off of Louisiana during July–December. They are not estuarine dependent.

Present data on all three species is incomplete. Rock and seabob shrimp have been harvested mainly as an

incidental bycatch. Spawning area closures would be difficult to identify and might conflict with peak harvesting for the major species, thus restricting shrimpers in those areas so closed, and disrupting local processors. This could be an unnecessary disruption as there is no apparent spawner-recruit relationship.

8.5.2.4 Licensing and Data Collection

1. *A No-Cost Permit Be Issued to "Recreational" Shrimpers (Trawlers Only).*

This measure would permit identification and determination of the effort by recreational shrimpers in the FCZ. Substantial costs would occur in the governmental sector. These costs appear unjustified because most recreational shrimping occurs within inland and nearshore waters. Recreational shrimpers will be identified by a vessel enumeration system through state boat registration.

2. *Numerous Recommendations Were Considered Dealing With the Licensing of Different Types of Trawls.*

Costs of implementing this type of regulation would be substantial to fishermen with no benefits to be derived from such regulation. Identification of users is to be obtained through a vessel enumeration program.

8.5.2.5 Limited Entry and Gear Restrictions

1. *Impose Limited Entry in the FCZ*

Provided there was no increase in effort in the states' waters, the imposition of limited entry in the FCZ would have substantial economic impact. The catch per unit of effort could be expected to increase and provide stable incomes for those permitted to participate in the fishery. There would be reduction in the amount of disturbance to the benthic habitat as well as possible reduction in the incidental capture of associated fisheries. There would be an overall decrease in consumption of fuel within the industry as well as reduced conflicts over space for trawling in the FCZ. Incidental factors such as lack of ice supplies could be expected to improve.

Without a limit on entry in the states' waters, this measure could also be expected to result in intensified effort in waters within state jurisdiction. The increased pressure on juvenile shrimp in these areas may decrease the poundage of yield harvested by deepwater vessels. Additionally, it would be most difficult for people not presently in the fishery in the FCZ to participate, particularly young people. Excessive economic rent may accrue to industry members unless taxed away or controlled by government.

The measure was not recommended because there is insufficient data on who is using the resource, on what the benefits (if any) to society at large would be, and on how methods to limit entry would be made consistent with the mandates of FCMA. A discussion of overcapitalization is presented in Section 3.5.2.3.

2. *Various Limitations on the Width, Mesh, and Type of Trawl*

Regulation of the width, mesh, and type of trawls might reduce disturbance of the benthic habitat, reduce conflicts over trawling space, and reduce the incidental catch of associated fisheries.

As the industry is presently using the most efficient gear economically available, changes rendering current gear useless could result in increased costs to the fishermen as well as the consumer. Additionally, such restrictions could reduce the catch per unit of effort and possibly result in lay-offs in the processing industry. There is evidence that gear restrictions actually increase capitalization and costs (Johnson and Toevs, 1979).

8.5.2.6 Recommend Consideration to Change Endangered Species Act to Permit Incidental Catch and Release of Sea Turtles

Sea turtles protected by the Endangered Species Act may be captured unwittingly. Even though shrimpers may release the turtles unharmed, they are in tehcnical violation of the Act when they capture an endangered turtle. The suggestion was made to recommend that the Act be changed to provide for incidental capture and release of endangered and threatened turtles.

This proposal was rejected as being beyond the authority of the Council's planning responsibility.

8.5.3 Management Measures for Foreign Fishing

Currently there is no foreign fishing for shrimp in the U.S. Gulf of Mexico, nor are there applications for the only stock (royal red shrimp) which has an estimated surplus in 1980 and 1981 for total allowable level of foreign fishing (TALFF). Measures to provide catch data and area/depth restrictions to eliminate nonsurplus bycatch will be specified in the permits or in the regulations as may be appropriate. In addition, the Secretary is requested to place the following three restrictions on any foreign nation fishing for royal red shrimp which were adopted by the Council.

1. Foreign fishing for royal red shrimp is to be accomplished by trawl; however, gear other than standard shrimp trawl may be used after approval by the Secretary after consultation with the Council.

2. Foreign fishing for royal red shrimp is to be permitted only in depths beyond 100 fathoms.

3. Bycatch of foreign vessels fishing for royal red shrimp is to be monitored and the Secretary, after consultation with the Council, may require appropriate conservation measures.

8.5.4 Relationship of Recommended Measures to Existing Laws and Policies

8.5.4.1 Other Fishery Management Plans Prepared by a Council or the Secretary

The plan is consistent with the Stone Crab Management Plan, the Draft Reef Fish Management Plan, and the current status of the Groundfish Plan now being drafted.

8.5.4.2 Federal Laws and Policies

The plan attempts to be consistent with the Endangered Species Act and Marine Mammals Protection Act. Section 7 consultations have been requested from appropriate federal agencies to assure conformance (EIS Appendix B, Exhibits 1 and 2).

8.5.4.3 State Laws and Policies

The following section contains a discussion of the relationship between the shrimp plan and the existing state laws and policies. Where discrepancies are apparent, they are pointed out for consideration by the appropriate state.

Texas Laws and Policies:

Relationship to 8.5.1.1, Measure 2:

The Texas Territorial Sea is closed from June 1 to July 15 to protect small brown shrimp during the major emigration period. Based on sound biological data, the season may be extended to no more than 60 days by the Texas Parks and Wildlife Commission changing the opening or closing dates. Currently, white shrimp within four fathoms may be harvested during the closed season.

If Texas adopted this option it would eliminate its minimum size limit and resulting forced discard of small brown shrimp.

Relationship to 8.5.1.1, Measure 3:

The Texas Parks and Wildlife Department currently has the flexibility to determine opening and closing of the summer season in outside waters. However, the department has no flexibility in determining the time of the

winter closed season. Texas statutes presently impose a size limitation of 65 tails, or 39 heads-on, shrimp to the pound on shrimp caught. Possession of shrimp smaller than the minimum size violates the law.

If Texas decides to manage by closed area or area without size restriction, its statutory scheme might be amended. For example, Sec. 77:062 might be amended to provide the Commission the authority to change the opening and closing of both the summer and winter season (or areas), the decision to be based on sound biological data acquired through sampling. Conceivably the seasons (or areas) could then be opened when shrimp have reached the minimum size desired. Further, Texas might amend both Sec. 77:013, which contains size limitations, and Sec. 77:014, which provides the procedures for enforcing size limits.

A 1979 amendment to the Texas Shrimp Conservation Act provides for some bays to serve as shrimp sanctuaries in which no shrimp trawling is permitted.

Relationship to 8.5.1.3, Measure 5:

The Parks and Wildlife Commission is vested with control of the Texas shrimp fishery and is authorized to establish rules and regulations for the conservation and management of shrimp. At present, the Commission has only minimal flexibility in determining the seasons. Texas might amend the statutes and clearly establish that the Commission has full flexibility to set seasons based on their environmental monitoring.

Relationship to 8.5.1.3, Measure 6:

The Texas statutory scheme provides the Department the authority to negotiate reciprocal agreements with other states. However, agreements are limited to the application in Texas' contiguous zone of another state's shrimping regulations to citizens of that state. The Department also has limited authority to cooperate with the Gulf Council in developing a fishery management program.

Texas might broaden the Department's authority to allow it to enter into any reciprocal agreements necessary to insure coordinated management with other interested states. Additionally, the limitation on the Department's authority to cooperate with the Gulf Council puts the state in a difficult position. Texas might make cooperative management easier by repealing Sec. 79:002, which limits the authority granted in Sec. 79:001.

Relationship to 8.5.1.5, Measure 8:

There is a Special Game and Fish Fund (Sec. 11:031–11:033) available for varied uses approved by the Legislature. Since the Department is authorized to conduct research on the use of trawls, nets, and other devices for taking shrimp, there are funds to carry out this measure if required by the state agency and appropriated by the Legislature.

Relationship to 8.5.1.8, Measure 11:

The Department of Parks and Wildlife is authorized to acquire certain data from all licenses, and dealers purchasing seafood from fishermen for resale are required to report quantity and value of products.

Other measures would have little or no effect on existing Texas law and policies.

Louisiana Laws and Policies:

Relationship to 8.5.1.1, Measure 3:

Louisiana has designated certain areas as "sanctuaries," closed to most forms of shrimping (R.S. 56:801); these areas, however, are limited in scope. If Louisiana adopts the sanctuary concept (Management Measure No. 3), legislative action would be needed to implement this provision: the Louisiana legislature might amend R.S. 56:493, authorizing the Department of Wildlife and Fisheries to designate areas as needed, or it could create sanctuary areas by special provision. (It is noteworthy that, during 1975, a series of public hearings on the feasibility of establishing additional sanctuaries was held throughout the state. A renewal of these efforts appears justified.)

Louisiana's present management procedures divide the waters in which shrimp are found into inside and outside waters. Because of the indefinite nature of Louisiana's water/land interface, the definitions are quite precise, and the statute draws the line delineating these waters. If a sanctuary area is designated, Louisiana might create these divisions: the sanctuary waters, inside waters (which would refer to open bays), and outside waters as already defined. The exact delineation of the sanctuary areas may be difficult and perhaps likely to result in legal challenges and enforcement problems. The state might grant this authority to the LDWF by amending R.S. 56:495 to provide for the designation of the protected areas in the same manner that inside and outside waters are determined; however, it may be more feasible to permit LDWF to open and close areas as appropriate (R.S. 56:497).

Relationship to 8.5.1.3, Measure 5:

The Wildlife and Fisheries Commission does not have exclusive control of the shrimp fishery or shrimp industry. Although the Commission is authorized to open or close seasons occasionally at times other than the regular seasons and may set special seasons for all or part of the inside waters, the two major seasons are set by statute. These seasons apply only to inside waters and are determined by sampling data; the Commission has only minimal flexibility in setting the spring season and none in setting the fall season.

To provide the flexibility necessary for the best yield, Louisiana might amend R.S. 56:497, giving the Commission the authority to establish open and closed seasons within both inside and outside waters. These seasons should be determined on the basis of biological data acquired through sampling, such as are currently used to determine the opening of the spring season.

Relationship to 8.5.1.3, Measure 6:

The Department of Wildlife and Fisheries is authorized to enter into reciprocal agreements with Mississippi and Texas for the protection of aquatic life found within common waters. While this provides part of the framework for reciprocal agreements, Louisiana might consider legislation authorizing the Department of Wildlife and Fisheries to enter into appropriate agreements with Alabama, Florida, and the Gulf Council, as well as with Texas and Mississippi.

Relationship to 8.5.1.5, Measure 8:

Louisiana currently has sufficient authority to implement this measure and does in fact conduct such research.

Relationship to 8.5.1.8, Measure 11:

The Department of Wildlife and Fisheries is authorized to acquire certain data from commercial shrimpers and processors, but enforcement is limited. Louisiana has no provisions for collecting data from recreational shrimpers.

Other measures would have little or no effect on Louisiana's existing laws and policies.

Mississippi Laws and Policies:

Relationship to 8.5.1.1, Measure 3:

The Mississippi Marine Conservation Commission is authorized to enact all regulations necessary for the "protection, conservation, or propagation of all shrimp. . ." (Sec. 49–15–15 3 k). The Commission has previously enacted ordinances closing

certain areas to shrimping in order to protect juvenile stage shrimp. For example, the Commission has closed to all but bait shrimpers that portion of the state's waters lying one-half mile from the coastline from July 15 to August 15 (Sec. 8100).

If Mississippi adopts the policy, it may have to denote and close other areas or eliminate its count restriction on catch.

Relationship to 8.5.1.3, Measure 5:

Supervision of matters concerning marine aquatic life is vested in the Mississippi Marine Conservation Commission. The Commission has broad authority to adopt and supervise appropriate management plans for marine fisheries. If it adopts the suggestions of the Shrimp Management Plan, the Commission has the mechanism to carry them out.

Relationship to 8.5.1.3, Measure 6:

Mississippi is a member of the Gulf States Marine Fisheries Commission, which was developed to foster cooperation between the states in matters of fish management. The Commission is authorized (49–15–15 j) to enter into agreements with officials of other states for the protection, propagation, and conservation of seafood.

Relationship to 8.5.1.5, Measure 8:

Mississippi has no specific authorization to conduct research on shrimping gear but is authorized to contract the services and facilities of the Gulf Coast Research Laboratory, or of state higher education facilities, for research it deems necessary to foster the seafood industry.

Relationship to 8.5.1.8, Measure 11:

The Commission is authorized to collect limited data from various sources.

Other measures would have little or no effect on Mississippi's existing laws and policies.

Alabama Laws and Policies:

Relationship to 8.5.1.1, Measure 3:

Alabama closes its season on about April 30 and does not open it again until sampling shows an average shrimp count of 68 or less per pound. Undersized shrimp are supposed to be discarded. If Alabama adopts this measure, current laws might be amended to allow possession of all shrimp caught in open areas.

Alabama already designates certain sanctuary areas as closed to shrimping for any purpose (Sec. 9–12–48). Supplemental legislation might be needed to the extent that Alabama finds the sanctuaries inadequate for producing the best yield.

Relationship to 8.5.1.3, Measure 5:

The Division of Marine Resources, under the Department of Conservation and Natural Resources, has been established to develop and administer management schemes for conservation and use of seafoods. It presently has fairly wide latitude in carrying out its programs and could adapt these programs to suggested guidelines if the Division so desired.

Relationship to 8.5.1.3, Measure 6:

Alabama is member of the Gulf States Marine Fisheries Commission which was designed to promote this type of cooperation. The Commissioner of Conservation and Natural Resources is authorized by Sec. 9–12–160 to enter into agreement of reciprocity with other states for the taking of seafood.

Relationship to 8.5.1.5, Measure 8:

Alabama has no specific authorization for the study and development of improved shrimping gear. However, the state has established a Seafoods Fund (9–2–87), which can be used by the Commissioner of Conservation and Natural Resources (9–2–89) in any way deemed appropriate for the benefit of the seafood industry. The governor's approval is necessary for such expenditures.

Relationship to 8.5.1.8, Measure 11:

The Department of Conservation and Natural Resources is authorized to acquire certain data within the realm of commercial seafood production, but enforcement is limited. Alabama has no provisions for collecting data from recreational shrimpers.

Other measures would have little or no effect on Alabama's existing laws and policies.

Florida Laws and Policies:

Relationship to 8.5.1.1, Measure 1:

Closure of the portion of the Tortugas Shrimp Sanctuary in the FCZ will, in large part, reimplement what Florida has done in the past. As noted previously, part of the Tortugas area was reopened to shrimping as a result of a U.S. Supreme Court decision delimiting Florida's Submerged Lands Act jurisdiction. While under Skiriortes, Florida law was still applicable in those waters beyond state waters but had no jurisdiction in the area over out-of-state fishermen.

The Supreme Court decision led to a heated controversy between shrimp fishermen and stone crabbers, because shrimpers began moving into areas of the Tortugas from which they had been excluded under previous law. Enactment of this recommendation by the Council would decrease conflicts between the shrimpers and crabbers.

However, the elimination of a size limit and resulting forced discard of shrimp in the FCZ may cause problems at Florida ports. Problems would be avoided if Florida eliminates its size limit law.

Relationship to 8.5.1.1, Measure 3:

In Florida, it is unlawful to possess a catch with more than five percent "small shrimp"—that is, those smaller than 47 with heads or 70 without heads. Florida's law implicitly requires fishermen to discard small shrimp in excess of the five percent allowed by law. In this respect it differs from the proposal.

If Florida adopts the objective, its legislature might amend the shrimp count law so that count is only used to determine when the season (or area) is opened. Once the season (or area) is opened, Florida might then allow a shrimper to keep his entire catch rather than having to cull out the small ones. To protect undersized shrimp, Florida may find it necessary to delineate sanctuary areas.

Relationship to 8.5.1.3, Measure 5:

There is presently some flexibility in the administration of fisheries in Florida. The Division of Marine Resources within the Department of Natural Resources apparently has authority to open and close areas (based on biological data), but the authority has not been exercised to the fullest extent. The Florida legislature might consider the enactment of a clearly written statute authorizing the Division of Marine Resources to use biological data in opening and closing areas to shrimping during the year.

Relationship to 8.5.1.3, Measure 6:

Florida has a reciprocal agreement with Alabama concerning access to shrimping waters. However, there have been no agreements adopted that would provide for joint management, and it is questionable whether the Department of Natural Resources has statutory authority to make such an agreement. If Florida adopts the option, its legislature might provide the Department with this authority.

Relationship to 8.5.1.5, Measure 8:

Florida's Department of Natural Resources presently has authority to regulate "the method, manner, and equipment used in the taking of shrimp," but there is no indication that ongoing

research to develop gear is being conducted.

Relationship to 8.5.1.6, Measure 9:

If Florida adopts seasonal closure of a portion of the Dry Tortugas Shrimp Grounds, it will require legislative action. Presently, Sec. 370.151 closes an area designated as the Tortugas Shrimp Bed. Florida might find it useful to amend this law so that it also differentiates the seasonal closure of a delineated portion of the Dry Tortugas Shrimp Ground. Alternatively, the Division of Marine Resources is authorized by Sec. 370.15 to control the method, manner, and equipment used in the taking of shrimp, as well as limiting and defining the areas where shrimp can be taken. There appears to be sufficient authority to regulate a seasonal closure of the Tortugas Shrimp Grounds, which could be accomplished with a specific subsection for this area.

Relationship to 8.5.1.8, Measure 11:

Florida has legislation authorizing the acquisition of the various data listed in the recommendation, but the provision is not enforced.

Other measures would have little or no effect on Florida's existing laws and policies.

8.6 Enforcement Requirements

Enforcement agents of NMFS will be required.

Coast Guard aircraft and patrol vessels are needed for patrol.

8.7 Cooperative Research Requirements

Data needs in the fishery have been identified by the interdisciplinary team which prepared Christmas and Etzold (1977).

These data are also needed under FCMA and are therefore adopted here. However, priorities may differ; for example, adequate socioeconomic data are critically needed.

8.8 Permit Requirements

No permits are required except as may be required of foreign vessels.

8.9 Financing Requirements

8.9.1 Management and Enforcement Costs

8.9.1.1 Tortugas Closure (year round) Measure No. 1:

Estimated vessel population = 1,000
50 percent at-sea enforcement mode
Patrol days required = 83
Cost of patrol days = $232,400
Aircraft hours required = 83
Cost of aircraft hours = $83,000
Enforcement officers required = 1.4
Cost of officers = $35,000
Subtotal—Tortugas closure = $350,400

8.9.1.2 Texas Closure (45 days) Measure No. 2:

Estimated vessel population = 1,500
50 percent at-sea enforcement mode
Patrol days required = 125 (annual)
Forty-five day patrol requirement = 16
Cost of patrol days = $44,800
Aircraft hours required = 16
Cost of aircraft hours = $16,000
Enforcement officers required = 0.3
Cost of officers = $7,500
Subtotal—Texas closure = $68,300

8.9.1.3 Shore-side enforcement for inspections relative to mandatory reporting, etc., Measure No. 11:

Estimated vessel population = 4,000
50 percent shore-side enforcement
Inspection days required = 667
Inspectors required = 3.0
Cost of Inspectors = $75,000

8.9.1.4 Investigations to support sea and shore enforcement:

Total sea and shore staff required = 4.7
Investigators figured at 30 percent of (a) above
Agents required = 1.4
Cost of agents = $35,000

8.9.1.5 Support for all enforcement efforts:

Total sea, shore and investigative = 6.1
Support figured at 10 percent of (a) above
Support staff required = 0.6
Cost of support = $15,000

8.9.1.6 Total staff years of effort required and total cost of vessel and aircraft patrols, inspections, investigations and support:

Staff years required = 6.7
Total cost = $543,700

8.9.2 Expected State and Federal Revenues, Taxes, and Fees

No changes in existing revenues are expected other than those which would be required to obtain basic catch-effort data to manage the stocks.

9.0 Statement of Council Intention to Review The Plan After Approval by The Secretary

It is the intention of the Gulf of Mexico Fishery Management Council to monitor and review the plan and implementing regulations on a continuing basis, after its approval by the Secretary. The Council intends that the Secretary of Commerce, after consultation with the Council, develop annual estimates of MSY, DAH, DAP, OY and TALFF using the methodology developed by the Council and specified in Section 4.7. The Secretary will develop the data necessary to derive the specifications according to the equations(s) in the plan. The Secretary will publish the yearly figures as a notice for public review. The Council will monitor the management regime closely to assure that it attains the desired objectives of the management plan.

10.0 Selected Bibliography

The bibliography consists of 268 selected references. A copy is available from the Gulf of Mexico Fishery Management Council.

[FR Doc. 80-34241 Filed 11-6-80; 8:45 am]

BILLING CODE 3510-22-M

federal register

Friday
November 7, 1980

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Florida: FL80–1118, FL80–1119

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alaska: AK80-5130	Sept. 26, 1980.
Arkansas:	
AR80-4080	Oct. 31, 1980.
AR80-4083	Oct. 31, 1980.
Colorado:	
CO80-5137	Oct. 24, 1980.
CO80-5138	Oct. 24, 1980.
CO80-5139	Oct. 24, 1980.
CO80-5140	Oct. 24, 1980.
Florida:	
FL79-1040	Feb. 16, 1979.
FL79-1109	July 20, 1979.
FL79-1118	Aug. 17, 1979.
FL80-1064	Apr. 25, 1980.
FL77-1060	May 20, 1977.
FL80-1072	May 16, 1980.
FL80-1075	June 20, 1980.
Louisiana: LA80-4072	Oct. 3,1980.
Nevada: NV80-5100	Feb. 1, 1980.
New York:	
NY80-3009	Feb. 29, 1980.
NY80-3041	July 7, 1980.
Ohio:	
OH80-2024	July 11, 1980.
OH80-2028	Aug. 1, 1980.
OH80-2044	July 7, 1980.
OH80-2048	July 11, 1980.
OH80-2052	July 7, 1980.
Oklahoma:	
OK80-4064	July 18, 1980.
OK80-4065	July 25, 1980.
OK80-4066	July 25, 1980.
OK80-4068	Aug. 1, 1980.
Pennsylvania:	
PA80-3001	Feb. 2, 1979.
PA80-3025	Apr. 11, 1980.
PA80-3027	Apr. 18, 1980.
PA80-3029	Apr. 25, 1980.
PA80-3031	Aug. 29, 1980.
PA80-3032	May 30, 1980.
PA80-3037	May 2, 1980.
PA80-3038	May 23, 1980.
Texas:	
TX80-4031	June 6, 1980.
TX80-4033	May 16, 1980.
TX80-4073	Oct. 10, 1980.
TX80-4076	Oct. 10, 1980.
TX80-4078	Oct. 10, 1980.
Washington:	
WA80-5125	Aug. 22, 1980.
WA80-5136	Oct. 17, 1980.
Wisconsin: WI80-2078	Sept. 12, 1980.
Wyoming: WY80-5129	Se-t. 19, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of

publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Arkansas:	
AR79-4054(AR80-4081)	Mar. 30, 1979.
AR79-4056(AR80-4079)	Mar. 30, 1979.
AR79-4057(AR80-4082)	Aug. 3, 1979.
Indiana: IN77-2011(IN80-2087)	Feb. 11, 1977.
Louisiana:	
LA80-4026(LA80-4084)	June 13, 1980.
LA80-4039(LA80-4089)	May 23, 1980.
Texas:	
TX79-4032(TX80-4088)	Mar. 16, 1979.
TX79-4035(TX80-4087)	Sept. 28, 1979.
TX80-4001(TX80-4085)	Jan. 4, 1980.
TX80-4035(TX80-4086)	June 20, 1980.
Virginia: VA76-3254(VA80-3068)	Oct. 8, 1976.

Cancellation of General Wage Determination Decisions

The general wage decision listed below is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting Form SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, 1.7(b)(2), the incorporation of the cancelled decision in contract specifications, the opening of bids is within 10 (10) days of this notice, need not be affected.

AL79-1120—Bibb, Choctaw, Fayette, Greene, Hale, Lamar, Marengo, Perry, Pickens, Sumter and Tuscaloosa Counties, Alabama dated March 23, 1979 (44 FR 17881)—Residential Construction

Signed at Washington, D.C., this 31st day of October 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

NEW DECISION

STATE: FLORIDA
COUNTIES: DIXIE, HAMILTON, LAFAYETTE, MADISON, SUWANEE, & TAYLOR COUNTIES, FLORIDA
DECISION NUMBER: FL80-1118 DATE: Date of Publication
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	5.95				
BRICKLAYERS	6.85				
CARPENTERS	5.56				
CEMENT MASONS	6.00				
DRYWALL HANGERS	6.00				
ELECTRICIANS	5.00				
INSULATION INSTALLERS	6.00				
LABORERS	3.10				
PAINTERS	5.21				
PLUMBERS	6.00				
ROOFERS	5.51				
SHEET METAL WORKERS	7.00				
SOFT FLOOR LAYERS	6.00				
P.E.O					
BULLDOZER	5.38				
BACKHOE	5.54				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))					

NEW DECISION

STATE: FLORIDA
COUNTIES: ALACHUA, BAKER, BRADFORD, COLUMBIA, GILCHRIST, LEVY, MARION, & UNION COUNTIES, FLORIDA
DECISION NUMBER: FL80-1119 DATE: Date of Publication
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	4.00				
BRICKLAYERS	8.25				
CARPENTERS	6.00				
CEMENT MASONS	6.62				
DRYWALL HANGERS	6.63				
ELECTRICIANS	6.62				
INSULATION INSTALLERS	4.45				
LABORERS					
LABORERS	3.25				
MASON TENDERS	3.50				
PAINTERS	6.00				
PLASTERERS	7.61				
PLUMBERS & PIPEFITTERS	5.95				
ROOFERS	4.00				
SHEET METAL WORKERS	5.50				
SOFT FLOOR LAYERS	5.00				
TILE SETTERS	6.45				
TRUCK DRIVERS	4.89				
P.E.O.					
DOZER	5.49				
LOADER OPERATOR	5.19				
BACKHOE OPERATOR	4.80				
TRACTOR	5.37				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))					

Modification Page 1

DECISION # AK80-5130 Mod. # 1
(45 FR 64040 September 26, 1980)

STATEWIDE, ALASKA	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Asbestos Workers	$22.67	.78	1.45		.10
Carpenters					
Areas 2 and 3					
Piledriverman	17.99	.90	3.00		.20
Electricians:					
Electricians, Technicians	21.15	1.65	3%+3.00		.25
Cable Splicers	22.90	1.65	3%+3.00		.25
Residential Electricians	11.25	1.30			.10
Elevator Constructors	22.445	1.195		a	.35
Ironworkers	20.25	1.35	3.00		.30
Lathers	21.14	1.10			.04
Line Construction:					
Groundman, Powderman	19.15	1.65	3%+3.00		.25
Equipment Operators, Lineman, and Technicians	21.15	1.65	3%+3.00		.25
Cable Splicers	22.90	1.65	3%+3.00		.25
Material Handlers	14.55	1.65	3%+3.00		.25
Power Equipment Operators:					
Group 1	18.30	1.20	3.00		.15
Group 1A	19.43	1.20	3.00		.15
Group 2	17.81	1.20	3.00		.15
Group 3	17.35	1.20	3.00		.15
Group 4	16.33	1.20	3.00		.15
Power Equipment Operators-Dredging:					
Group 1	16.33	1.20	3.00		
Group 2	17.35	1.20	3.00		
Group 3	17.81	1.20	3.00		
Group 4	18.30	1.20	3.00		
Group 5	19.43	1.20	3.00		
Survey Crews:					
Instrumentman	16.35	1.99	3.00		.20
Head Chainman	[illegible]	[illegible]	[illegible]		[illegible]
Stakeman	[illegible]	[illegible]			[illegible]
Rear Chainman	[illegible]	[illegible]	[illegible]		.20

Modification Page 2

DECISION #AR80-4080-Mod.#1 45 FR October 31, 1980 Jefferson County, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Bricklayers-Stonemasons	$11.00	.85	.55		.04
Ironworkers	11.55	.60	1.05		.06
LABORERS:					
Group I	7.60	.38	.62		
Group II	7.85	.38	.62		
Group III	8.00	.38	.62		
Group IV	8.10	.38	.62		
Group V	8.20	.38	.62		
Group VI	8.50	.38	.62		
Group VII	8.40	.38	.62		
Plumbers-Pipefitters	13.25	.90	.60		.10
Roofers	10.71		.30		
POWER EQUIPMENT OPERATORS:					
Group I	12.20	.45	.45		.05
Group II	11.07	.45	.45		.05
Group III	10.54	.45	.45		.05
Group IV	8.70	.45	.45		.05

DECISION #AR80-4083-Mod.#1 45 FR Oct. 31, 1980 Pulaski County, Arkansas					
CHANGE:					
Bricklayers-Stonemasons	$11.00	.85	.55		.04
Ironworkers	11.55	.60	1.05		.06
LABORERS:					
Group I	7.60	.38	.62		
Group II	7.85	.38	.62		
Group III	8.00	.38	.62		
Group IV	8.10	.38	.62		
Group V	8.20	.38	.62		
Group VI	8.50	.38	.62		
Group VII	8.40	.38	.62		
PLUMBERS-PIPEFITTERS:					
Within 10 mile radius of Pulaski Co. Courthouse	13.20	.85	.85		.08
Over 10 miles of Pulaski County Courthouse	13.50	.85	.85		.08
POWER EQUIPMENT OPERATORS					
Group I	12.20	.45	.45		.05
Group II	11.07	.45	.45		.05
Group III	10.54	[illegible]	.45		.05
Group IV	8.70	[illegible]	[illegible]		.05
Roofers	[illegible]		.30		

DECISION NO. CO80-5137 - Mod. #1
(45 FR 70677 - Oct. 24, 1980)
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Bricklayers, Stonemasons:					
Boulder and Grand Counties	$ 12.15	.85	1.10		.06
Lathers	13.44				.01
Millwrights	12.66	1.00	.85		.14
Plasterers	13.44				
Plumbers, Steamfitters:					
Southern portions of Douglas, Elbert and Park Counties	12.90	.85	1.15	1.60	.10
Roofers:					
Remaining Counties, including northern portions of Lake, Park, Jefferson, Douglas and Elbert Counties	12.57	.80	.25		.08
Soft floor layers	12.39	.80	1.05	.75	.10
Tile, Marble and Terrazzo Finishers:					
Finishers	9.55	1.10	1.15	.50	
Floor Grinders	9.70	1.10	1.15	.50	
Base Grinders	10.25	1.10	1.15	.50	

DECISION NO. CO80-5138 - Mod. #1
(45 FR 70682 - Oct. 24, 1980)
El Paso County, Colorado

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Cement Masons:					
Cement masons	$12.04	.59	1.15		.13
Working with composition materials and color	12.54	.59	1.15		.13
Working on temporary platform over 25'	12.29	.59	1.15		.13
Electricians	13.90	.75	3% + .65		.015
Millwrights	12.66	1.00	.85		.14
Plasterers	13.44				.01
Soft floor layers	12.39	.80	1.05		.10

DECISION NO. CO80-5139 - Mod. #1
(45 FR 70686 - Oct. 24, 1980)
Delta, Garfield, Gunnison, Mesa, Montrose and Pitkin Counties, Colorado

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Bricklayers and Stonemasons:					
Remaining Counties	$11.90	.85	.85		.05
Cement Masons:					
Cement masons	12.04	.59	1.15		.13
Working with composition material and color	12.54	.59	1.15		.13
Working on scaffold, swing stage or temporary platform over 25'	12.29	.59	1.15		.13
Lathers:					
Garfield, Mesa and Pitkin Counties	13.44				
Millwrights	12.66	1.00	.85		.14
Plasterers	13.44				.01

DECISION NO. CO80-5140 - Mod. #1
(45 FR 70691 - October 24, 1980)
Las Animas, Otero and Pueblo Counties, Colorado

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Millwrights	$12.66	1.00	.85		.14
Plasterers	13.44				
Soft Floor Layers:					
Las Animas & Otero Counties	12.39	.80	1.05	.75	.10

Modification Page 5

DECISION # FL79-1040 MOD #5 (44FR 10230 - February 16, 1979) Hillsborough County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Electricians	$ 7.87				
DECISION NO. FL79-1109 - MOD. #5 (44FR 42856 - July 20, 1979) Martin & Palm Beach Counties, Florida					
Change:					
Electricians					
Wiremen	12.62	4.5%	9%	6%	1.5%
Cable Splicers	13.88	4.5%	9%	6%	1.5%
Elevator Constructors					
Mechanic	12.84	1.195	.95		.035
Helper	8.99	1.195	.95		.035
Millwrights	12.17	.70	.70		.10
Sheet Metal Workers	11.25	.70	.72		.04
Sprinkler Fitters	12.40	.85	1.20		.10
DECISION NO. FL79-1118 - MOD. # 5 (44FR 48564 - August 17, 1979) Pinellas County, Florida					
Change:					
Bricklayers & Blockmasons	11.55	.60	.50		.10
Sprinkler Fitters	12.40	.85	1.20		.10

Modification Page 6

DECISION NO. FL80-1064 - MOD. # 3 (45FR 20860 - April 25, 1980) Broward County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Delete:					
Plumbers; Pipefitters;					
Small Commercial	9.75	.60	.50		.15
Large Commercial	12.45	.60	.80		.15
Add:					
Plumbers; Pipefitters:					
Commercial	12.95	.85	.80		.15
Industrial	13.95	.85	.80		.15
Change:					
Elevator Constructors					
Mechanic	12.84	1.195	.95		.035
Helper	8.99	1.195	.95		.035
Millwrights	12.17	.70	.70		.10
Sprinkler Fitters	12.40	.85	1.20		.10
DECISION NO. FL77-1060 - Mod. #4 (42 FR 26093 - May 20, 1977) Polk County, Florida					
Change:					
Decision No. FL77-1160 listed on Page 70669 of Federal Register dated Oct. 24, 1980 should read "Decision No. FL77-1060"					

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DECISION NO. FL80-1072 - MOD. #3
(45FR 32535 May 16, 1980)
Cape Canaveral Air Force Station, Patrick Air Force Base, Kennedy Space Flight Center & Melabar Radar Site
Florida

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Delete:					
Groundmen - under 1 year	4.29	.45	3%		3/4of1%
Change:					
Boilermakers	11.75	1.275	1.10		.04
Bricklayers; Bricklayers, Manhole Bricklayers, Plasterers, Terrazo workers, Tile Setters, & Cement Masons	10.25	.50	.40		.10
Elevator Constructors					
Mechanic	10.36	1.195	.95		.035
Helper	7.25	1.195	.95		.035
Linemen:					
Wiremen	11.72	.50	3%		3/4of1%
Cable Splicers	11.87	.50	3%		3/4of1%
Class A Operators - (Hole Boring Machines; Cranes; Tracked Equipment; Fifth Wheel Tractors; Tension & Wire Pulling Machines; Mobile Cranes & Backhoes)	11.72	.50	3%		3/4of1%
Class B Operators - (Flat Bed Material Trucks; Line Trucks when either are mounted with Winch and/or 'A' Frame; Trucks mounted with digging units; Power Wagons; The driving of Mobile Cranes and Bucket Trucks)	8.19	.50	3%		3/4of1%
Groundman	6.03	.50	3%		3/4of1%
Millwrights	12.17	.70	.70		.10

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DECISION NO. FL80-1072 - Cont'd.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Roofers:					
Roofers	8.90	.35	.25		
Kettlemen	7.45	.35	.25		
Sheet Metal Workers	12.55	.70	.72		.04
Sprinkler Fitters	12.40	.85	1.20		.10

DECISION NO. FL80-1075 - MOD. #3
(45FR 41831 - June 20,1980)
Duval County, Florida

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons	10.82	.45	.50		.06
Painter	9.45	.60	.60		
Roofers					
Roofers	10.71	.50	.25		.025
Kettlemen	8.03	.50	.25		.025
Sprinkler Fitters	12.40	.85	1.20		.10

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DECISION NO. LA80-4072 - MOD. #1
(45 FR 65886 - October 3, 1980)
Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles Parishes, Louisiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
Bricklayers & stonemasons:					
Zone 1	$13.50	.63	.85		.05
Zone 2	12.70	.75	.485		.10
Zone 3	11.30	.55	.65		
Electricians:					
Zone 2 - Electricians	13.65	.45	3%+.40		.05
Cable splicers	13.65	.45	3%+.40		.05
Line construction:					
Zone 1 - Group 1	13.65	.45	3%+.40		.05
Group 2	75%JR	.45	3%+.40		.05
Group 3	65%JR	.45	3%+.40		.05
Group 4	45%JR	.45	3%+.40		.05
Group 5	50%JR	.45	3%+.40		.05
Plumbers & pipefitters:					
Zone 1	13.10	.75	1.00		.10
Zone 3	14.01	.67	.72		.08

Modification Page 10

DECISION NO. NV80-5100 - Mod. #4
(45 FR 7451-February 1, 1980)
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway construction in Douglas County), Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Omit:					
All Power Equipment Operators Schedules - for the Remaining Counties - ONLY					
Add:					
All Power Equipment Operators Schedules - for the Remaining Counties - See attached Schedules					

DECISION NO. NV80-5100 (Cont'd)

	AREA 1	AREA 2	AREA 3	AREA 4	
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
(Except Piledriving and Steel Erection):					
Group 1-A	$11.64	$12.89	$13.39	$14.14	
Group 2	12.08	13.33	13.83	14.58	
Group 3	12.31	13.56	14.06	14.81	
Group 4	12.93	14.18	14.68	15.43	
Group 5	13.18	14.43	14.93	15.68	
Group 6	13.32	14.57	15.07	15.82	
Group 7	13.53	14.78	15.28	16.03	
Group 8	14.02	15.27	15.77	16.52	
Group 9	14.29	15.54	16.04	16.79	
Group 10	14.59	15.84	16.34	17.09	
Group 10-A	14.74	15.99	16.49	17.24	
Group 11	14.95	16.20	16.70	17.45	
Group 11-A	16.31	17.56	18.06	18.81	

FRINGE BENEFITS:

Health and Welfare	$2.14
Pensions	2.75
Vacation	1.87
Apprenticeship Tr.	0.08

AREA DEFINITIONS:

Area 1: Area within 50 road miles of either the Carson City Courthouse or the Washoe County Courthouse
Area 2: Area between 50 and 100 road miles of the Washoe County Courthouse
Area 3: Area between 150 and 300 road miles of the Washoe County Courthouse
Area 4: Area over 300 road miles of the Washoe County Courthouse

DECISION NO. NV80-5100 (Cont'd)

Group 1-A: Brakeman; Deckhand; Fireman; Oiler; Switchman; Tar Pot Fireman

Group 2: Compressor; Material Loader and/or Conveyor (handling building materials); Pumps; Tar Pot Fireman (power agitated)

Grup 3: Box Operator (bunker); Concrete Curing Machine (streets, highways, airports, canals); Conveyor Belt (tunnel); Engineer Generating Plant (500 K.W.); Fireman Hot Plant; Hydraulic Monitor; Mixer Box Operator (concrete plant); Motorman; Oiler (truck crane); Rotomist; Screedman (except asphalt or concrete paving); Bobcat or similar Loader, 1/4 cu. yd. or less

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper (multi-purpose); Boxman (asphalt plant); Concrete Mixer, skip type; Dinky; Fork Lift (construction jobsite); Line Master; Ross Carrier; Skip Loader (under 1 cu. yd.); Tie Spacer

Group 5: Concrete Mixer (over 1 cu. yd.); Concrete Pumps or Pumpcrete Guns; Elevator and Material Hoist (1 drum); Shuttle Car; Signalman; Screedman (Barber-Greene and similar) (asphalt or concrete paving)

Group 6: Boom Truck or Dual Purpose "A" Frame Truck; B.L.H. Lima Road Pactor or similar; Chip Box Spreader (Flaherty type or similar); Concrete Batch Plant (wet or dry); Concrete Saws (highways, streets, airports, canals); Highline Cableway Signalman; Locomotive (over 30 tons); Lubrication and Service Engineer (mobile and grease rack); Maginnis International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical Burn, Curb and/or Curb and Gutter Machine (concrete or asphalt); Pavement Breaker, truck mounted, with compressor combination; Pavement Breaker or Tamper (with or without compressor combination); Power Jumbo (setting slip-forms, etc., in tunnels); Roller (except asphalt); Self-propelled Tape Machine; Self-propelled Compactor (single engine); Slip Form Pump (power-driven by hydraulic, electric, air, gas, etc., lifting device for concrete forms); Small rubber-tired tractors; Snooper Crane, Paxton-Mitchell or similar; Stationary Pipe wrapping, cleaning and bending Machine; Auger-type drilling equipment up to and including 30 ft. depth drilling capacity M.R.C.

DECISION NO. NV80-5100 (Cont'd)

Group 7: Bit Sharpener; Compressor (over 2); Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Deck Engineer; Drilling and Boring Machinery, vertical and horizontal (not to apply to waterliners, wagon drills or jackhammers); Crusher Plant Engineer; Generators; Kolman Loader; Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (Asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Pipe Bending Machines (pipelines only); Pipe cleaning Machines (tractor propelled and supported); Pipe wrapping machines (tractor (propelled and supported); Portable Crushing and Screening Plants; Pumps (over 2); Refrigeration Plants; Roller Operator (asphalt); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less); Slusher; Soil Tester (certified); Surface Heater and Planer; Trenching Machine (maximum digging capacity 3 ft. depth); Post Driller and/or Driver; Auger-type drilling equipment over 30 ft. depth digging capacity M.R.C.

Group 8: Asphalt Milling Machine; Asphalt Plant Engineer; Car Passer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor; Concrete Batch Plant (multiple units); Dozer; Drill Doctor; Elevating Grader; Gradesetter, Grade Checker; Grooving and Grinding Machine (highways); Heavy-duty Repairman and/or Welder; Ken-seal; Loader (up to and including 2½ cu. yds.); Mechanical Trench Shield; Mixermobile; Push Cats; Road Oil Mixing Machine (Wood-mixer and other similar Pugmill equipment); Rubber-tired earth-moving equipment (up to and including 35 cu. yds. "struck" M.R.C., Euclid, T-pulls, DW's 10, 20, 21 and similar); Self-propelled Compactor with Dozer; Hyster 450 or Cat 825 or similar; Sheepfoot; Small Tractor (with boom); Soil Stabilizer (P & H or equal); Timber Skidder (rubber-tired or similar equipment); Tractor-drawn scraper; Tractor; Tractor-mounted compressor drill combination; Trenching Machine (over 3 ft. depth); Tri-batch Paver; Tunnel Badger or Tunnel Boring Machine; Tunnel Mole Boring Machine; Vermeer T-600B Rock Cutter

Group 9: Chicago Boom; Combination Backhoe and Loader (up to and including 3/8 yds.); Combination Mixer and Compressor (Gunite); Lull Hi-lift (20 ft. or over); Mucking Machine; Subgrader (Gurries or other types); Tractor (with boom) (D6 or larger); Track-laying-type earthmoving machine (single engine with tandem scrapers)

DECISION NO. NV80-5100 (Cont'd)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift or similar; Chemical Grouting Machine; Derricks; Derrick Barges (except excavation work); Euclid Loader and similar types; Heavy-duty Rotary Drill Rigs; Lift-slab (Vagtborg and similar types); Loader (over 2½ cu. yds. up to and including 4 cu. yds.); Locomotive (over 100 tons) (single or multiple units); Multiple engine Earth-moving Machines (Euclid, Dozers, etc); Pre-stress Wire-wrapping Machines; Rubber-tired Scraper, self-loading; Single-engine Scraper (over 35 cu. yds.); Self-propelled reservoir-debris equipment floating (200 H.P. and over); Shuttle Car (reclaim station); Train Loading Station; Trenching Machine, multi-engine with sloping attachments (Jefco or similar); Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (up to and including 1 cu. yd. hydraulic); Backhoe (up to and including 1 cu. yd. cable); Cranes (not over 25 tons) (Hammerhead and Gantry); Grade-alls (up to and including 1 cu. yd.); Motor Patrol; Power Shovels, Clamshells, Draglines, Cranes (up to and including 1 cu. yd.); Rubber-tired Scraper, self-loading (twin-engine); Self-propelled boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); CMI Dual-lane, Auto-grades SP300 and similar

Group 11: Automatic Asphalt or Concrete Slip-form Paver; Automatic Railroad Car Dumper: Canal Trimmer; Cary Lift, Campbell or similar; Cranes (over 25 tons); Highline Cableway Operator; Loader (over 4 cu. yds. up to and including 12 cu. yds.); Multiple-engine Scraper (when used to push pull); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C.); Self-propelled Compactor (with multiple-propulsion power units); Self-propelled boom-type lifting device (over 25 tons M.R.C.); Single-engine Rubber-tired earthmoving machine (with tandem Scraper); Slip Form Paver (concrete or asphalt); Tandem Cats and Scrapers; Tower Crane Mobile (including rail-mounted); Universal Liebher and Tower Cranes(and similar types); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Cranes (over 25 tons); Euclid Loader when controlled from the Pullcat

Group 11-A: Bank Wagons (in conjunction with wheel excavators); Loader (over 12 cu. yds.); Multi-engine earthmoving equipment (over 75 cu. yds. "struck" M.R.C.); Operator of Helicopter (when used in construction work); Power Shovels, Clamshells, Draglines, Backhoes, and Gradealls (over 7 cu. yds. M.R.C.); Remote-controlled earthmoving equipment; Wheel Excavator (over 750 cu. yds. per hour)

DECISION NO. NV80-5100 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Piledriving:					
Remaining Counties:					
Group 1	$11.63	$2.14	$2.75	$1.87	.08
Group 1-A	12.04	2.14	2.75	1.87	.08
Group 1-B	12.29	2.14	2.75	1.87	.08
Group 2-A	12.29	2.14	2.75	1.87	.08
Group 2-B	12.98	2.14	2.75	1.87	.08
Group 2-C	13.37	2.14	2.75	1.87	.08
Group 2-D	13.19	2.14	2.75	1.87	.08
Group 3	13.55	2.14	2.75	1.87	.08
Group 3-A	14.07	2.14	2.75	1.87	.08
Group 4	14.73	2.14	2.75	1.87	.08
Group 5	14.94	2.14	2.75	1.87	.08
Group 6	16.31	2.14	2.75	1.87	.08
Steel Erection:					
Remaining Counties:					
Group 1	12.20	2.14	2.75	1.87	.08
Group 2	12.65	2.14	2.75	1.87	.08
Group 3	13.88	2.14	2.75	1.87	.08
Group 4	14.05	2.14	2.75	1.87	.08
Group 4-A	14.42	2.14	2.75	1.87	.08
Group 5	15.02	2.14	2.75	1.87	.08
Group 6	15.54	2.14	2.75	1.87	.08
Group 7	15.90	2.14	2.75	1.87	.08
Group 8	16.25	2.14	2.75	1.87	.08
Group 9	17.51	2.14	2.75	1.87	.08

DECISION NO. NV80-5100 (Cont'd)

Piledriving

Group 1: Fireman; Oilman; Deckhand

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Fork Lift Operator

Group 2-C: A-Frames

Group 2-D: Compressor Operator (over 2); Generator Operator; Pump Operator (over 2); Welding Machine Operator (powered other than by electricity)

Group 3: Deck Engineer; Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3-A: Heavy-duty Repairman/Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending Boiler or Compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) (up to and including 1 cu. yd. rating); Self-propelled boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons (hoisting material only)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) (over 1 cu. yd. rating); Operator of Crane (with steam, Flash boiler, pump or compressor attached); Operator of steam-powered Crawler, or Universal-type driver (Raymond or similar type); Truck Crane Operator (over 25 tons)(hoisting material or performing piledriving work); Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 6: Cranes (over 125 tons)

DECISION NO. NV80-5100 (Cont'd)

Steel Erection

Group 1: Oiler

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 K.W. or over) (Structural steel or tank erection only); Truck Crane Oiler

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (structural steel or tank erection only); Deck Engineer; Signalman (using mechanical equipment); Forklift

Group 4: Heavy-duty Repairman; Tractor Operator

Group 4-A: Combination Heavy-duty Repairman/welder

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons m.r.c. or less); Self-propelled boom-type lifting device (center mount) (10 ton capacity or less m.r.c.); Single drum hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons m.r.c.); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile; Universal Liebher and Tower Cranes (and similar types); Two or more drum Hoist

Group 7: Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 8: Cranes (over 125 tons)

Group 9: Operator or Helicopter

DECISION NO. NY80-3009 - Mod #3
(45 FR 13604 - February 29, 1980)
Cattaraugus, Chautauqua, & Erie Counties, New York

Change:

Erie County:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	12.61	1.30	1.50	n	.16
CLASS 2	12.47	1.30	1.50	n	.16
CLASS 3	9.83	1.30	1.50	n	.16
CLASS 4	12.03	1.30	1.50	n	.16
CLASS 5-A	11.58	1.30	1.50	n	.16
CLASS 5-B	10.08	1.30	1.50	n	.16
CLASS 5-C	9.63	1.30	1.50	n	.16
CLASS 6	12.18	1.30	1.50	n	.16
CLASS 7	9.23	1.30	1.50	n	.16
CLASS 8	13.70	1.30	1.50	n	.16
CLASS 9	12.99	1.30	1.50	n	.16
CLASS 10	13.36	1.30	1.50	n	.16
CLASS 11	13.61	1.30	1.50	n	.16
CLASS 12	14.11	1.30	1.50	n	.16

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY

CLASS 1

All boom type equipment all pan and carry-all operators, archer hoist (finish course), asphalt roller (finish course), asphalt spreader or paver, automatic fine grade machine (C.M.I. and similar type), back filling machine operators, back and pull hoe operator, black top plants, blast or rotary drill (track or cat mounted), boiler (when used for power, boom trucks, boring machine operator, bulldozers (all sizes), cableway operator, caisson auger, cableway operator, central mix plant (and all concrete batching plants), cherry picker, concrete paver machine, concrete pump, crane operator, derrick operator, dragline operator, dredge, elevating grader (self-propelled), excavator (all purposed hydraulically operated), forklift, front end loader, gradall, grader, head tower operator, hydro crane, hydraulic booms, lubrication unit on truck, maintenance engineer, mucking machine operator, multiple drum hoist (more than 1 drum in use), overhead crane, peine crane or similar type, piledriving machine operator, pump crete, push or snatch cats, quarry master or equivalent, ready mix concrete plant, road widener, rock bit sharpener (all types), scoopmobile, shovel, side boom, skimmer operator, slip form paver (C.M.I. and similar type), test core drill machine, tractor shovel operator, truck crane, tunnel shovel machine, well drilling machine, winch, winch truck with A Frame , Tire truck and repair, tractor drawn belt type graders, trenching machine

DECISION NO. NY80-3009 - Mod. #3 Cont'd

CLASS 2
Airhoist operator, automatic fine grade machine (C.M.I. and similar type), belt placer (C.M.I. and similar type), bending machine, bituminous spreader and mixer, cage hoist operator, concrete finishing machine, concrete mixer operator 1/2 cu. yd. or more, concrete saw - self-propelled, concrete spreader, conveyor operator, conveyor systems (belt or crete or similar), hoisting engine operator, house elevator (when used for hoisting), Hydraulic pipe jack machine or similar type machines, hydro hammer or similar types, industrial tractor, kolman loader or similar type machine, locomotive operator, mixer for stablized base self-propelled, monorail, plant engineer, push button hoist operators, roller machine operator, slip form paver (C.M.I. and similar type), snorkel, stone crushers, tractors (with towed accessories), tube finisher (C.M.I. and similar type), strato-tower, towed or self-propelled rollers, tractors (when used winch power)

CLASS 3
Air compressors (under 160 cu. ft.), air compressors (over 160 cu. ft.), mechanical heaters (when 3 are in a battery), generator, pump operator (2 or 3 in battery), pump operator (4" or over), welding machine operator (1 machine over 300 amps, or 2 or 3 machines regardless of amps)

CLASS 4
Firemen, jeep trencher, motorized hydraulic seeders, mulching machine, power broom and rakes

CLASS 5-A
Aggregate bid operator, C.M.I. and similar type concrete spreads, cement bid operators, concrete mixer operator (under 1/2 cu. ft.), mechanical heaters (when one or two are used), pump operator (one inch), pump operator (two inch), pump operator (three inch), revinius widener, steam cleaner tractor machines

CLASS 5-B
Oiler-Driver

CLASS 5-C
Oiler

DECISION NO. NY80-3009 - Mod. #3 Cont'd

CLASS 6
Asphalt curb and gutter machines, blower for burning brush, chipping machine, chip spreader, concrete curb and concrete curing machines, concrete gutter machines, grout or gunite machines, heating boiler operator (used for temporary heat), hydraulic rock expander or similar type machines, hydraulic system pumps, motorized hydraulic pin puller, pneumatic mixer operator, post hole digger, post driver, power plant in excess of 10 K.W. well point systems (electric, diesel, or gas driven)

CLASS 7
Mechanical heaters (when one or two are used), pump operator (one inch, two inch, or three inch)

CLASS 8
Master mechanic

CLASS 9
Assistant master mechanic

CLASS 10
Crane with boom over 100 feet

CLASS 11
Crane with boom over 200 feet

CLASS 12
Crane with boom over 300 feet

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE:
n. Paid Holidays: A through F, provided employee works the day before and after the holiday.

DECISION NO. NY80-3009 - Mod #3 Cont'd

Chautauqua and Cattaraugus Counties:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CLASS I	12.46	1.30	1.50	m	.16
CLASS II	12.23	1.30	1.50	m	.16
CLASS III	11.85	1.30	1.50	m	.16
CLASS IV	11.12	1.30	1.50	m	.16
CLASS V	9.78	1.30	1.50	m	.16
CLASS VI	9.40	1.30	1.50	m	.16
CLASS VII	8.67	1.30	1.50	m	.16
CLASS VIII	9.07	1.30	1.50	m	.16
CLASS IX	9.19	1.30	1.50	m	.16

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

CLASS I: Asphalt roller (except rubber tired), Automatic fine grade machine, backhoe (except tractor mounted, rubber tired), Black top plant (automated) blast or rotary drill (truck or cat mounted), cableway, caisson auger, central mix plant (automated), cherry picker - over 5 tons capacity, crane, derrick, dragline, dredge, dual drum paver, elevation grader (self-propelled or towed), excavator (all purpose - hydraulically operator), front end loader (4/c.y. and over), gradall, grader, head tower, hoist, 2 or 3 drum locomotive (irrespective of size or power), maintenance engineer, mine hoist, mucking machine, overhead crane, peins crane or similar type, piledriver, quarry master or equivalent, shovel, skimmer, slip form paver, tractor drawn belt-type loader, truck crane, tunnel shovel

CLASS II: Asphalt roller (rubber tired), asphalt spreader, automatic fine grade machine, backhoe (tractor mounted, rubber tired), back filling machine, belt placer, bending machine (pipe), bituminous spreader and mixer, blacktop plant (non automated), boom truck boring machine, cage hoist, central mix plant (non-automated), and all concrete batching plants, cherry picker 5 tons and under, concrete paver over 16S, concrete pump, crusher, dozer or push cat, drill rigs tractor mounted, elevator, front end loader (under 4 c.y.), hi-pressure boiler (15 lbs. and over), hoist (one drum, hydraulic pipe jack machine or similar type machine, jersey spreader, kolman plant loader and similar type loaders (if employer requires another man to clean the screen or to maintain the equipment, he shall be an oiler), maintenance grease man, mixer for stabilized base self-propel[illegible] plant engineer, pump crete, ready mix concr[illegible], rock bit sharpener (all types), roller (all above subgrade), scraper, side boom, slip from paver, snorkel, stump chipping machine, trencher, tube finisher, winch truck with A-frame

DECISION NO. NY80-3009 - Mod #3 Cont'd

CLASS III: Asphalt curb and gutter machine, blower for burning brush, chipping machine and chip spreader, concrete pavement spreaders and finishers, concrete curb and gutter machine, concrete curing machines, conveyor, drill core, drill well, electric pump used in conjuction with well point systems farm tractor with accessories, fine lift, hammers-hydraulic-self-propelled, hydraulic rock expander or similar type machine, hydraulic pump, motorized hydraulic pin puller and seeders, post hole digger and post driver, roller (grade and fill), tractor with towed accessories, vibratory compactor, vibro tamp, well point, grout or gunite machine.

CLASS IV: Aggregate plant, boiler, (used in conjunction with production), C.M.I. and similar type concrete spreaders, cement bin operator, concrete mixer (16s and under), concrete saw self-propelled, fireman, form tamper, fuel truck, mulching machine, power broom, revinius widener, steam cleaner, tractor.

CLASS V: Compressors (4 or less) exceeding 2000 C.F.M. combined capacity.

CLASS VI: Compressors: 4 not to exceed 2000 C.F.M. combined capacity, or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M., Compressors (any size but subject to other provisions for compressors), Dust Collectors, Generators, Pumps, Welding Machines (4 of any type or combination).

CLASS VII: Compressors: 3 or less not to exceed 1200 C.F.M. combined capacity: Compressos: (any size but subject to other provisions for compressors), Dust Collectors, Generators, Pumps, Welding Machines (3 or less of any type or combination), Power Heaterman.

CLASS VIII: Oilers.

CLASS IX: Oiler-Driver.

FOOTNOTE:

m. Paid Holidays; New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day providing the employee works the day before and after the holiday.

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DECISION NO. NY80-3041 - Mod. #1
(45 FR 45801 - July 7, 1980)
Nassau & Suffolk Counties, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	14.70	1.21	2.31		
Boilermakers	16.34	5%	5%		
Cement Masons	12.10	2.04	1.67		.09
Ironworkers, Structural	12.70	1.86	4.15	1.75+g	.11
Marble Carvers	12.05	1.21	1.71	j	
Marble Cutters & Setters	11.90	1.21	1.71	j	
Marble Polishers	11.58	1.21	1.71	j	
Marble Finishers, Crane Operators & Derrickmen	9.90	1.21	1.71	j	
Painters:					
Suffolk County:					
Brush & Drywall Finishers	11.65	3.15	.85		.21
Scaffold work and Rolling Scaffolds 18' and over, Spraying	12.85	3.15	.85		.21
Nassau County:					
Inwood, Lawrence, Cedarhurst, Woodmere, Hewlett, Hewlett Bay, Hewlett Neck, Hewlett Park, East Rockaway, part of Oceanside, part of Lynbrook, part of Rockville Center, Atlantic Beach, Long Beach, Lido Beach, Point Lookout, Gibson and part of Valley Stream:					
Painters	12.00	1.14	1.20	3%	
Spray & Scaffold	14.57	1.14	1.20	3%	
Fire Escapes	13.71	1.14	1.20	3%	
Plumbers:					
Nassau County:					
Building, Heavy & Highway	12.45	1.10	1.44	1.10	.25
Suffolk County:					
Building, Heavy & Highway	13.15	1.57	2.05	1.30	.37
Roofers:					
Composition & Damp Waterproofers	11.23	1.52	2.74	2.00	.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. OH80-2024 - MOD. #2 (45 FR 47047 - July 11, 1980) Mahoning and Trumbull Counties, Ohio					
Change:					
Electricians:					
Mahoning (Smith Twp.) Co.:					
Commercial Building	14.61	.79	3%+.80		.3%
Line Construction:					
Mahoning Co. (Smith Twp.):					
Linemen	14.61	.79	3%+.80		.3%
Cable Splicer	13.50	.79	3%+.80		.3%
Line Equipment Operators	12.35	.79	3%+.80		.3%
Groundman; Truck Driver	8.75	.79	3%+.80		.3%

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DECISION NO. OH80-2028 - MOD. #4 (45 FR 51416 - August 1, 1980) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, and Summit Cos., Ohio	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers:					
Remaining Counties	$ 14.56	.60	1.09		.02
Bricklayers; Stonemasons:					
Stark County	12.79	.95	1.05		.01
Carpenters:					
Stark County	12.63	.70	.80		.02
Electricians:					
Lorain (except Columbia Twp.):					
Residential Construction	9.03	.75	3%		1%
Stark County:					
Commercial Construction	14.61	.79	3%+.80		.3%
Ashtabula Co. (Rem. of Co.):					
Commercial Construction	15.30	1.00	3%+1.00		.5%
Ironworkers:					
Ashtabula (NE ¼ of Co.) Co.	14.00	1.86	1.01		.15
Line Construction:					
Stark County:					
Cable Splicers	13.50	.79	3%+.80		.3%
Linemen	14.61	.79	3%+.80		.3%
Truck Drivers; Groundmen	8.75	.79	3%+.80		.3%
Line Equipment Ops.	12.35	.79	3%+.80		.3%
Marble Setters; Terrazzo Workers; & Tile Setters:					
Stark county:					
Marble Setters	11.87	.95	1.05		
Terrazzo Workers	11.79	.95	1.05		
Tile Setters	11.70	.95	1.05		

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DECISION NO. OH80-2028 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Portage & Summit Cos. (up to & incl. Ohio Turnpike):					
Brush; Roller; & Paperhanger	13.15	1.07	.60		
Structural Steel; Drywall Finishers & Tapers	13.75	1.07	.60		
Spray	13.85	1.07	.60		
Terrazzo Workers' Finishers:					
Stark County	10.91	.95	1.05		
Tile Setters' Finishers:					
Stark County	10.79	.95	1.05		
Laborers:					
Lorain County:					
Building & Construction; Tool Crib; Carpenter Tender; Finishers Tender; Concrete Tenders; Concrete Handler; Guard Rail Erector; & Utility Construction	11.68	.75	1.10		.05
Bottom Men; Scaffold, Builder; Tunnel Laborers; Pipelayers; Air & Power Driven Tools; Burner on Demolition Work; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blasters; Creosote Workers; Mortar Mixers; Form Setters; Mason Tenders; Plasterers' Tenders; Hod Carriers; Laser Beam Set Up Man	11.88	.75	1.10		.05
Gunnite Operator	12.28	.75	1.10		.05

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DECISION NO. OH80-2028 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Stark County:					
Building and Construction; Tool Cribman; Carpenters' Tenders; Finishers Tenders; Concrete Handler; Utility Construction Laborer; Guard Rail Erector	10.66	.75	1.10		.05
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipe Layers; Air & Power Driven Tools; Burner on Demolition; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blaster; Creosote Workers; Mortar Mixers; Form Setter; Mason Tenders; Hod Carrier; Laser Beam Setup Men	10.86	.75	1.10		.05
Gunnite Operator	11.26	.75	1.10		.05

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DECISION NO. OH80-2044 - MOD. #4 (45 FR 45806 - July 7, 1980)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, Ashland, Auglaize, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Columbiana, Coshocton, Crawford, Darke, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Greene, Hamilton, Hancock, Hardin, Henry, Highland, Holmes, Huron, Knox, Lawrence, Licking, Logan, Madison, Marion, Medina, Meigs, Mercer, Miami, Montgomery, Morrow, Muskingum, Ottawa, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Warren, Wayne, Williams, Wood and Wyandot Counties, Ohio					
Change:					
Asbestos Workers:					
Ashland, Coshocton, Holmes, Medina, Richland, Tuscarawas & Wayne Cos.	$ 14.56	.60	1.09		.02
Erie (W½), Fulton, Hancock, Henry, Ottawa Putnam, Sandusky, Seneca, Wood & Wyandot Cos.	15.64	.60	1.55		.03
Gallia, Lawrence, Meigs Pike, & Scioto Cos.	15.60	.60	1.10		.03

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DECISION NO. OH80-2044
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers:					
Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Lawrence, Licking, Madison, Meigs, Miami, Montgomery, Muskingum, Perry, Pickaway, Pike, Preble, Ross, Scioto, & Warren Cos.	12.50	1.275	1.20	2.00	.04
Allen, Ashland, Auglaize, Crawford, Darke, Defiance, Delaware, Erie, Fulton, Hancock, Hardin, Henry, Huron, Knox, Logan, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Shelby, Union, Van Wert, Williams, Wood, & Wyandot Cos.	16.10	1.275	1.50		.28
Columbiana County	13.88	5%	7%+.95		.02
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:					
Carroll, Columbiana (Twps. of Knox, Butler, West, & Hanover) & Tuscarawas Cos.	12.79	.95	1.05		.01

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DECISION NO. OH80-2044
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Defiance, Fulton, (except Twps. of Fulton, Amboy & Swan Creek), Henry (except Twps. of Monroe, Barlow, Liberty, Washington, Richfield, Marion & Damascus & that part of Harrison outside city limits of City of Napolean), Paulding, Putnam, & Williams Cos.	$ 13.97	1.06	.75		
Carpenters:					
Carroll, Tuscarawas, & Wayne Cos.	12.63	.70	.80		.02
Columbiana County	12.73	1.04	1.25		.04
Cement Masons:					
Carroll & Tuscarawas Cos.	12.79	.95	1.05		.01
Electricians:					
Carroll (N½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.	14.61	.79	3%+.80		.3%
Champaign, Clark, & Madison (Twps. of Paint, Pike, Somerford, Union, & Stokes) Cos.	12.89	.75	3%+.95		.04
Defiance, Fulton, Hancock, Henry, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, & Wood Cos.	15.30	.85	3%+.95		.3%
Gallia Co.	14.52	.50	3%+1.00	1.00	.04
Lawrence County	14.02	.50	3%+1.00	1.00	.04

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DECISION NO. OH80-2044 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Elevator Constructors:					
Carroll County	11.80	1.045	.82	e&f	.035
Gallia, Lawrence, Meigs, Pike, Scioto Cos.	14.10	1.195	.82	e&f	.035
Ironworkers:					
Allen (N½), Defiance (except Portion S. of a line drawn from where Rte. 66 meets the N. line through Independence to the E. Co. border), Mercer (N½), Paulding, Putnam (except portion E. of a line drawn from the N. border down thru Miller City to where 696 meets the S. border), Van Wert & Williams (except portion E. of a line drawn from Pioneer thru Stryker to the S. border) Cos.	13.35	1.00	1.85		.02
Meigs County	13.10	1.00	1.60		.03
Marble Setters; Terrazzo Workers; & Tile Setters:					
Carroll & Tuscarawas Cos.:					
Marble Setters	11.87	.95	1.05		
Terrazzo Workers	11.79	.95	1.05		
Tile Setters	11.70	.95	1.05		
Defiance, Fulton (except Twps. of Fulton, Amboy & Swan Creek), Henry (except Twps. of Monroe, Barlow, Liberty, Washington, Richfield, Marion & Damascus & that part of Harrison outside city limits of city of Napolean), Paulding, Putnam, &					

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DECISION NO. OH80-2044 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Williams Cos.:					
Marble Setters	13.97	1.06	.75		
Fulton & Wood (except Twps. of Troy, Freedom, Montgomery, Webster, Center, Portage, Middleton, Plain, Liberty, Henry, Washington, Weston, Milton, Jackson & Grand Rapids) Cos.:					
Terrazzo Workers; Tile Setters	14.99	1.06	.30		
Marble Setters' Finishers; Terrazzo Workers' Finishers & Tile Setters' Finishers:					
Carroll & Tuscarawas Cos.:					
Terrazzo Workers' Finishers	10.91	.95	1.05		
Terrazzo Grinders	11.25	.95	1.05		
Tile Setters' Finishers	10.79	.95	1.05		
Piledrivermen:					
Columbiana County	14.05	6%	10%		½%
Pipefitters; Plumbers; Steamfitters:					
Butler (N½) & Warren (N. of Rte. 63 exclu. Lebanon & South Lebanon) Cos.	15.80	.90	1.00		.05
Butler (S½) & Warren (S. of Rte. 63 to Hamilton Co. line W. to Indiana State line E. to Rte. 42 including Lebanon, South Lebanon, & Mason) Cos.	15.63	.90	1.20		.02

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DECISION NO. OH80-2044
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plasterers:					
Carroll, & Tuscarawas Cos.	12.79	.95	1.05		.01
Roofers:					
Allen, Auglaize, Champaign, Delaware, Fairfield, Fayette, Franklin, Hardin, Knox, Licking, Logan, Madison, Marion, Mercer, Morrow, Perry, Pickaway, Putnam, Ross, Union, Van Wert & Wyandot Cos.	14.30	.92	.65		.01
Sheet Metal Workers:					
Adams, Delaware, Fairfield, Fayette, Franklin, Gallia, Knox, Lawrence, Licking, Madison, Marion, Meigs, Morrow, Muskingum, Perry, Pickaway, Pike, Ross, Scioto, & Union Cos.	13.45	.94	1.28		.16
Defiance, Fulton, Hancock, Henry, Ottawa, Paulding, Putnam, Seneca, Williams, & Wood Cos.	13.225	1.06	1.91		.075

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DECISION NO. OH80-2044
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Ashland, Crawford, Knox, Morrow, & Richland Cos.:					
Group A	10.86	.70	.90		.10
Group B	11.06	.70	.90		.10
Group C	11.46	.70	.90		.10
Carroll, Coshocton, Delaware, Hancock, Hardin, Holmes, Marion, Seneca, Tuscarawas, Wayne, & Wyandot Cos.:					
Group A	10.66	.75	1.10		.05
Group B	10.86	.75	1.10		.05
Group C	11.26	.75	1.10		.05
Brown, Clermont, Clinton & Hamilton Cos.:					
Group 1	12.35	.95	.90		.05
Group 2	12.45	.95	.90		.05
Group 3	12.50	.95	.90		.05
Group 4	12.55	.95	.90		.05
Group 5	12.70	.95	.90		.05
Group 6	12.85	.95	.90		.05
Group 7	13.10	.95	.90		.05
Group 8	10.62	.95	.90		.05
Group 9	10.77	.95	.90		.05

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DECISION NO. OH80-2044
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Butler & Warren Cos.:					
Common Laborers	$11.64	.75	1.10		.05
Asphalt Rakers; Hand Air Tamper Chisel; Smoothers Hand Air Pump; Tampers; Vibrator Power Tamper Op.	11.74	.75	1.10		.05
Mason Tenders; Mortar Mixers; & Scaffold Builders	11.97	.75	1.10		.05
Concrete Pumps & Hose Men; Gunnite Operators; & Sandblasters	11.99	.75	1.10		.05
Columbiana Co.:					
Carpenter Tenders; General Laborers	10.55	.75	1.10		.05
Brick Handlers; Men Mixing Cement for Cement Finishers; Mortar Mixer Machine Operator; Mortarmen for Masons & Plasterers; Scaffold Builders; Tenders for Brick Masons, Plasterers, Stone Masons, & Tile Setters	10.72	.75	1.10		.05
Acetylene Burners; Air Blow Pipe; Air Pump; Air Spades; Air Tampers; All Power Driven Tools; Chipping Hammers; Concrete Saw; Jackhammers; Laborers Operating Concrete Busters; Panel Cleaning Machine Operators; Pipelayer and Tenders Working in Ditches or Tunnels and Hand					

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DECISION NO. OH80-2044
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Spikers on Railroads, and Laborer Handling Concrete for Test or Working with Tar, Acid, & Creosote; Power Buggy; Power Saw; Sandblaster; Scuba Divers; Vibrators; & Welders	10.75	.75	1.10		.05
Erie, Huron, Ottawa, & Sandusky Cos.:					
Building and Construction Laborers; Carpenter Tenders; Concrete Handler; Finisher Tenders; Guard Rail Erectors; Tool Cribmen & Utility Construction Laborers	11.71	.75	1.10		.05
Air and Power Driven Tools; Bottom Men; Burner on Demolition Work; Caisson Workers; Cofferdam Workers; Creosote Workers; Form Setters; Hod Carrier; Laser Beam set up Men; Mason Tenders; Mortar Mixers; Mucker; Pipelayers; Plasterers' Tenders; Powder Men & Dynamite Blasters; Scaffold; Swinging Scaffold; & Tunnel Laborers	11.91	.75	1.10		.05
Gunnite Operator	12.31	.75	1.10		.05

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DECISION NO. OH80-2044 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Muskingum & Perry Cos.:					
Building & Construction Laborers; Carpenter Tenders; Planters (Landscape); Plumbers Tenders & Tree Trimmers	10.52	.75	1.10		.05
Air & Machine Driven Tools Operators; Asphalt Plant Aggremeter Operator; Asphalt Plant Mixer men; Brick Slingers; Car Pushers & Tunnel Laborers; Caulkers; Cement Handlers; Concrete Puddlers (behind mixers); Curb Cutters & Setters; Cutting with Burning Torches; Dumpmen (Batch Trucks); Hand Spikers Operators; Jackhammer Operator; Mason Tenders; Mortar Mixers; Muckers; Pipelayers; Plasterers' Tenders; Proportioning Plant Operator; Pump Men (Under 4"); Road Form Setters; Sewer Bottom Men; Sheeting & Shoring Men; Stone Mason Tenders; Vibrator Operator; & Yarners & Wrenchmen	10.62	.75	1.10		.05
Brick Dropper; Lock Tender; & Powdermen or Blasters	10.77	.75	1.10		.05

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DECISION NO. OH80-2044 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line Construction:					
Carroll (N½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox TwpJ, Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:					
Cable Splicers	13.50	.79	3%+.80		.3%
Line Equipment Ops.	12.35	.79	3%+.80		.3%
Groundmen; Truck Drivers	8.75	.79	3%+.80		.3%
Linemen	14.61	.79	3%+.80		.3%
Defiance, Fulton, Hancock, Henry, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, & Wood Cos.:					
Linemen	15.88	.70	3%	a	½%
Technicians	15.32	.70	3%	a	½%
Cable Splicers	16.13	.70	3%	a	½%
Operator Class I	12.65	.70	3%	a	½%
Operator Class II	11.15	.70	3%	a	½%
Groundmen	9.55	.70	3%	a	½%

DECISION NO. OH80-2048 - MOD. #3
(45 FR 47045 - July 11, 1980)
Lucas County, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$ 15.64	.60	1.55		.03
Boilermakers	16.10	1.275	1.50		.28
Line Construction:					
Linemen	15.88	.70	3%	c	½%
Cable Splicers	16.13	.70	3%	c	½%
Groundmen	9.55	.70	3%	c	½%
Sheet Metal Workers	13.225	1.06	1.91		.075
Terrazzo Workers; Tile Setters	14.99	1.06	.30		

DECISION NO. OH80-2052 - MOD. #4
(45 FR 45834 - July 7, 1980)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stone Masons:					
Athens County	$ 13.50	.80	1.00		.05
Carroll, Columbiana (Twps. of Butler, Hanover, Knox & West), Mahoning (Twp. of Smith), Stark, & Tuscarawas Cos.	12.79	.95	1.05		.01
Defiance, Fulton (except Twps. of Amboy, Fulton, & Swan Creek), Henry, (except Twps. of Barlow, Damascus, Liberty, Marion, Monroe, Richfield, Washington & that part of Harrison outside City limits of Napolean), Paulding, Putnam, & Williams Cos.	13.97	1.06	.75		
Carpenters & Piledrivermen:					
Adams, Fayette, Gallia, Highland, Jackson, Lawrence, Meigs, Pike, Ross, & Scioto Cos.					
Carpenters	12.83	.75	1.25		.05
Piledrivermen	13.12	.75	1.25		.05
Belmont and Monroe Cos.:					
Carpenters	12.73	1.04	1.25		.04
Columbiana & Jefferson Cos.:					
Carpenters	12.73	1.04	1.25		.04
Piledrivermen	14.05	6%	10%		.5%

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DECISION NO. OH80-2052
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Darke, Greene, Miami, Montgomery, Preble & Shelby Counties:					
Carpenters	12.80	1.00	1.40		.07
Piledrivermen	12.80	1.00	1.40		.07
Harrison County:					
Carpenters	12.73	1.04	1.25		.04
Electricians:					
Belmont County	13.20	.50	3%+1.00	1.25	.04
Carroll (Rem. of Co.), Columbiana (Knox Twp.), Holmes, Mahoning (Smith Twp.), Stark, Tuscarawas (N½ excl. Twps. of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, & Bucks), & Wayne (S. of Baughman, Chester, Green, & Wayne Twps.) Cos.	14.61	.79	3%+.80		.3%
Champaign & Clark Cos. & Madison Co. (Twps. of Paint, Pike, Somerford, Stokes & Union)	12.89	.75	3%+.95		.04
Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams & Wood Cos.	15.30	.85	3%+.95		.3%
Gallia County	14.52	.50	3%+1.00	1.00	.04
Lawrence County	14.02	.50	3%+1.00	1.00	.04

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DECISION NO. OH80-2052
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Ironworkers:					
Allen (N½), Defiance (except portion S. of a line drawn from where Rt. 66 meets the N. line through Independence to the E. Co. border), Mercer (N½), Paulding, Putnam (except portion E. of a line drawn from the N. border down thru Miller City to where 696 meets the S. border), Van Wert & Williams (except portion E. of a line drawn from Pioneer thru Stryker to the S. border) Cos.	13.35	1.00	1.85		.02
Ashtabula (NE ¼) Co.	14.00	1.86	1.01		.15
Athens, Meigs, Morgan, Noble & Washington Cos.	13.10	1.00	1.60		.03
Painters:					
Medina, Portage (Up to & incl. the Ohio Turnpike), & Summit (Up to & Incl. the Ohio Turnpike) Cos.:					
Brush; Paperhanger; & Roller	13.15	1.07	.60		
Structural Steel	13.75	1.07	.60		
Spray	13.85	1.07	.60		

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DECISION NO. OH80-2052
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers & Steamfitters:					
Belmont Co. & Monroe Co. South of Rt. 78	12.59	.75	9%	10%	.05
Butler (North Half) & Warren (N. of Rte. #63 Excluding Lebanon and S. Lebanon) Cos.	15.80	.90	1.00		.05
Butler (South Half) & Warren (S. of Rte. #63 including Lebanon and S. Lebanon) Cos.	15.63	.90	1.20		.02
Laborers:					
Zone 1:					
Group I	12.38	.75	1.10		.05
Group II	12.505	.75	1.10		.05
Group III	12.58	.75	1.10		.05
Group IV	12.73	.75	1.10		.05
Group V	13.03	.75	1.10		.05
Zone 2:					
Group I	11.20	.75	1.10		.05
Group II	11.325	.75	1.10		.05
Group III	11.40	.75	1.10		.05
Group IV	11.55	.75	1.10		.05
Group V	11.85	.75	1.10		.05
Zone 3:					
Group I	10.77	.75	1.10		.05
Group II	10.895	.75	1.10		.05
Group III	10.97	.75	1.10		.05
Group IV	11.12	.75	1.10		.05
Group V	11.42	.75	1.10		.05

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DECISION NO. OH80-2052
CONT'D

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line Construction:					
Belmont County:					
Equipment Operators; Linemen & Technicians	$13.20	.50	3%+1.00	1.25	½%
Cable Splicers and Welders	13.45	.50	3%+1.00	1.25	½%
Groundmen	10.56	.50	3%+1.00	1.25	½%
Carroll (N. ½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Mahoning (Smith Twp.), Stark, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:					
Cable Splicers	13.50	.79	3%+.80		.3%
Linemen	12.35	.79	3%+.80		.3%
Line Equipment Ops.	12.35	.79	3%+.80		.3%
Groundmen; Truck Drivers	8.75	.79	3%+.80		.3%
Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, & Wood Cos.:					
Linemen	15.88	.70	3%	a	½%
Technicians	15.32	.70	3%	a	½%
Cable Splicers	16.13	.70	3%	a	½%
Operator Class I	12.65	.70	3%	a	½%
Operator Class II	11.15	.70	3%	a	½%
Groundmen	9.55	.70	3%	a	½%

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DECISION #OK80-4064-Mod. #1
45 FR 48444-July 18, 1980
Oklahoma, Cleveland, Caddo, Canadian, Kingfisher, Lincoln, Logan, McClain, Grady, Seminole and Pottawatomie Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$13.38	.70	1.25		.04
BRICKLAYERS-STONEMASONS:					
Caddo and Grady Counties	10.90	.62	1.00		.10
CARPENTERS - ZONE I					
Carpenters	10.05	.55	.60		.05
Power saw operator	10.30	.55	.60		.05
ELECTRICIANS:					
Zone I	12.70	.70	8%+.10		1%
Zone II	12.95	.70	8%+.10		1%
Zone III	13.20	.70	8%+.10		1%
CABLE SPLICERS:					
Zone I	12.95	.70	8%+.10		1%
Zone II	13.20	.70	8%+.10		1%
Zone III	13.45	.70	8%+.10		1%
LATHERS	11.25	.55	.80		.09
Marble Masons	13.52		.80		
PAINTERS:					
Brush	10.40	.50	.50	.50	.03
Spray under 30 feet	10.90	.50	.50	.50	.03
Spray over 30 feet	11.40	.50	.50	.50	.03
Paperhanging	11.40	.50	.50	.50	.03
Tapers using machine tools	10.90	.50	.50	.50	.03
SOFT FLOOR LAYERS:					
Resilient floor layers and carpet layers	11.10	.60		.65	.03
TERRAZZO WORKERS	13.52		.80		
TILE SETTERS	13.52		.80		
OMIT- UNDER PAINTERS:					
Sandblasting under 30 feet	9.95	.50	.35	.35	.03
Sandblasting over 30 feet	10.45	.50	.35	.35	.03
UNDER CARPENTERS-ZONE V					
Carponters	7.25				

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DECISION #OK80-4065-Mod. #1
45 FR 49832-July 25, 1980
Wagoner County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.95	.55	.90		.03
ELECTRICIANS:					
ZONE I					
Electricians	12.55	.60	3%		1%
Cable splicers	12.95	.60	3%		1%
ZONE II					
Electricians	12.95	.60	3%		1%
Cable splicers	13.35	.60	3%		1%
ZONE III					
Electricians	13.25	.63	3%+.61		.10
Cable splicers	13.50	.63	3%+.61		.10
GLAZIERS	10.49	.70			.01
PAINTERS:					
Brush and roller	10.55		.40	.20	.10
Highwork and stage	11.15		.40	.20	.10
Sandblasting & spray	11.40		.40	.20	.10
Hot or bituminous	12.05		.40	.20	.10
POWER EQUIPMENT OPERATORS:					
Group I	13.20	.70	.75		.12
Group II	12.70	.70	.75		.12
Group III	12.20	.70	.75		.12
Group IV	11.95	.70	.75		.12
Group V	11.70	.70	.75		.12
Group VI	11.45	.70	.75		.12
Group VII	11.20	.70	.75		.12
Group VIII	10.20	.70	.75		.12

UNDER ELECTRICIANS-CABLE SPLICERS ZONE DEFINITIONS

ZONE I

A thirty (30) mile radius from the Post Office in Muskogee

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DECISION #OK80-4066-Mod. #1
45 FR 49837-July 25, 1980
McIntosh County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.95	.55	.90		.03
CARPENTERS (southern half of county)					
Carpenters	9.80	.55	.85		.05
Millwrights-Piledrivermen	11.15	.55	.85		.05
ELECTRICIANS:					
ZONE I					
Electricians	12.55	.60	3%		1%
Cable splicers	12.95	.60	3%		1%
ZONE II					
Electricians	12.95	.60	3%		1%
Cable splicers	13.35	.60	3%		1%
PAINTERS:					
Brush & roller	10.55		.40	.20	.10
High work & stage	11.15		.40	.20	.10
Sandblasting & spray	11.40		.40	.20	.10
Hot or bituminous	12.05		.40	.20	.10
Sheet rock power tools	11.15		.40	.20	.10
POWER EQUIPMENT OPERATORS					
Group I	13.20	.70	.75		.12
Group II	12.70	.70	.75		.12
Group III	12.20	.70	.75		.12
Group IV	11.95	.70	.75		.12
Group V	11.70	.70	.75		.12
Group VI	11.45	.70	.75		.12
Group VII	11.20	.70	.75		.12
Group VIII	10.20	.70	.75		.12
TILE LAYERS	12.74	.70	.50		

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DECISION #OK80-4068-Mod. #1
45 FR 51422-August 1, 1980
Comanche County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.38	.70	1.25		.04
BRICKLAYERS-Stonemasons	10.76	.62	1.00		.12
MARBLE SETTERS	13.52		.80		
PAINTERS:					
Brush and roller	9.40		.25	.70	.05
Brush & roller (structural steel)	9.65		.25	.70	.05
Spray	10.05		.25	.70	.05
Swing stage, bosun chair work	9.65		.25	.70	.05
Taping & bedding (hand tools)	9.70		.25	.70	.05
Sandblasting	9.75		.25	.70	.05
PLASTERERS	12.70				.01
SOFT FLOOR LAYERS:					
Resilient floor layers and carpet layers	11.10	.60		.65	.03
TERRAZZO WORKERS:					
Terrazzo workers	13.52		.80		
TILE LAYERS	13.52		.80		
ADD:					
POWER EQUIPMENT OPERATORS:					
GROUP VIII	10.20	.70	.75		.12

DECISION NO. PA79-3001
MOD. NO. 6
(44 FR 6868 - February 2, 1979)
Northampton County, Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lathers	$11.61	.65	.35		.01
Line Construction:					
Linemen	14.20	.60	3%		3/8%
Cable Splicer	14.20	.60	3%		3/8%
Groundman	8.47	.60	3%		3/8%
Winch truck operator	9.90	.60	3%		3/8%
POWER EQUIPMENT OPERATORS					
Group 1	13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%
Plumbers	13.23	.85	1.40		.14

DECISION NO. PA80-3025
MOD. NO. 6
(45 FR 25015 - April 11, 1980)
Adams & York Counties, Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen, cable splicers	$12.52	.60	3%		3/8%
Winch truck operator	8.73	.60	3%		3/8%
Groundman	7.45	.60	3%		3/8%
Marble, tile & terrazzo workers	9.80	.45	.45		
Painters:					
Brush	9.20	.45	.15		
Steel	9.95	.45	.15		
Spray	10.06	.45	.15		
POWER EQUIPMENT OPERATORS:					
Group 1	13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%

DECISION NO. PA80-3027
MOD. NO. 5
(45 FR 26654 - April 18, 1980)
Schuylkill County, Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group 1	$13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%

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DECISION NO. PA80-3029 MOD. NO. 5 (45 FR 28069 - April 25, 1980) Lebanon County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LINE CONSTRUCTION:					
Linemen & Cable Splicers	$12.52	.60	3%		3/8%
Groundman	7.45	.60	3%		3/8%
Winch truck operators	8.73	.60	3%		3/8%
POWER EQUIPMENT OPERATORS:					
Group 1	13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%
Plumber & Steamfitters:					
East of Rte. 501	13.23	.80	1.45		.11

DECISION NO. PA80-3031 MOD. NO. 2 (45 FR 59747 - August 29, 1980) Bradford, Tioga, Union Counties, Pennsylvania					
CHANGE:					
POWER EQUIPMENT OPERATORS:					
Group 1	$13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%

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DECISION NO. PA80-3032 MOD. NO. 5 (45 FR 36767 - May 30, 1980) Columbia, Montour & Snyder Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
POWER EQUIPMENT OPERATORS:					
Group 1	$13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%

DECISION NO. PA80-3037 MOD. NO. 5 (45 FR 29522 - May 2, 1980) Sullivan County, Pennsylvania					
CHANGE:					
POWER EQUIPMENT OPERATORS:					
Group 1	13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%

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DECISION NO. PA80-3038 MOD. NO. 4 (45 FR 35148 - May 23, 1980) Lancaster County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LINE CONSTRUCTION:					
Lineman	$12.52	.60	3%		3/8%
Cable splicers	12.52	.60	3%		3/8%
Groundman	7.45	.60	3%		3/8%
Winch truck operators	8.73	.60	3%		3/8%
Marble setters	9.80	.45	.45		
POWER EQUIPMENT OPERATORS:					
Group 1	13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%
Terrazzo Workers	9.80	.45	.45		
Tile Setters	9.80	.45	.45		

Modification Page 54

DECISION NO. TX80-4031 - MOD. #7 (45 FR 38250 - June 6, 1980) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Building Construction:					
Asbestos workers-Zone 2	$12.99	.70	1.00		.03
DECISION NO. TX80-4033 - MOD. #6 (45 FR 32544 - May 16,1980) Bowie County, Texas					
CHANGE:					
Asbestos workers	12.99	.70	1.00		.03
DECISION NO. TX80-4073 - MOD. #1 (45 FR 67532 - October 10, 1980) Jefferson & Orange Cos., Texas					
CHANGE:					
Line construction:					
Lineman	15.99	.60	3%		1/2%
Groundman	11.67	.60	3%		1/2%
DECISION NO. TX80-4076 - MOD. #1 (45 FR 67535 - October 10, 1980) Wichita County, Texas					
CHANGE:					
Asbestos workers	12.99	.70	1.00		.03
DECISION NO. TX80-4078 - MOD. #1 (45 FR 67537 - October 10, 1980) Travis County, Texas					
CHANGE:					
Plumbers & pipefitters	12.55	.45	.40		.05

DECISION NO. WA80-5125 - Mod.#2
(45 FR 56302 - August 22, 1980)
Clallam, King, Kitsap, Pierce, Snohomish, and Thurston Counties, Washington

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS	11.02				
PLUMBERS:					
Clallam and King Counties	12.70				

DECISION NO. WA80-5136 - Mod. #1
(45 FR 69151 - October 17, 1980)
Statewide Washington

CHANGE:
POWER EQUIPMENT OPERATORS (AREA 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, and the Southern portion of Pacific County.

GROUP	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$13.12	13.62	14.02	14.52	15.42	16.12
2	13.28	13.78	14.18	14.68	15.58	16.28
3	13.40	13.90	14.30	14.80	15.70	16.40
4	13.58	14.08	14.48	14.98	15.88	16.58
5	13.60	14.10	14.50	15.00	15.90	16.60
6	13.69	14.19	14.59	15.09	15.99	16.69
7	13.76	14.26	14.66	15.16	16.06	16.76
8	13.87	14.37	14.77	15.27	16.17	16.87
9	13.94	14.44	14.84	15.34	16.24	16.94
10	14.01	14.51	14.91	15.41	16.31	17.01
11	14.03	14.53	14.93	15.43	16.33	17.03
12	14.10	14.60	15.00	15.50	16.40	17.10
13	14.19	14.69	15.09	15.59	16.49	17.19
14	14.37	14.87	15.27	15.77	16.67	17.37
15	14.55	15.05	15.45	15.95	16.85	17.55
16	14.76	15.26	15.66	16.16	17.06	17.76
17	14.92	15.42	15.82	16.32	17.22	17.92
18	15.12	15.62	16.02	16.52	17.42	18.12
19	15.28	15.78	16.18	16.68	17.58	18.28

FRINGE BENEFITS:

Health & Welfare	$1.25
Pension	1.47
Vacation	.50
Apprenticeship Training	.05

DECISION NO. WA80-5136 (Cont'd)

CHANGE:

TRUCK DRIVERS (AREA 1)
All Counties and portions of Counties
East of the 120th Meridian

GROUP	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$13.14	14.19	14.59	15.24	15.99
2	13.18	14.23	14.63	15.29	16.03
3	13.24	14.29	14.69	15.34	16.09
4	13.33	14.38	14.78	15.43	16.18
5	13.54	14.59	14.99	15.64	16.39
6	13.58	14.63	15.03	15.68	16.43
7	13.64	14.69	15.09	15.74	16.49
8	13.68	14.73	15.13	15.78	16.53
9	13.79	14.84	15.24	15.89	16.64
10	13.83	14.88	15.28	15.93	16.68
11	14.14	15.19	15.59	16.24	16.99
12	14.28	15.33	15.73	16.38	17.13
13	14.44	15.49	15.89	16.54	17.29
14	14.58	15.63	16.03	16.68	17.43

FRINGE BENEFITS:

Health and Welfare	$1.24
Pension	1.33
Apprenticeship Training	.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. WI80-2078 Mod. #1 (45 FR-60751) Sept. 12, 1980) Juneau County, Wisconsin					
CHANGE:					
ASBESTOS WORKERS:	$13.30	1.05	1.15	1.50	.14
BOILERMAKERS:	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS:	11.35	.85	.70		
CEMENT MASONS:	10.98	.75	.40		
ELECTRICIANS:	12.54	.55	3%	8%	1/8%
LABORERS:					
General: Mason Tender, Plasterer Laborer	9.57	.55	.50		.03
Mortar Mixer, Air Hammer & JackHammer, Air Spade Oprts.	9.72	.55	.50		.03
PLUMBERS & STEAMFITTERS:	13.20	.90	.75		.05
ROOFERS:	11.00				
SHEETMETAL WORKERS:	11.53	.75	.60		.04
TILE SETTER	10.05	.85	.70		
DECISION NO. WY80-5129 - Mod. #2 (45 FR 62689 - September 19, 1980) Converse, Goshen, Laramie, Natrona, Niobrara and Platte Counties, Wyoming					
CHANGE:					
Asbestos workers	$ 13.49	.75	1.52		
Boilermakers	13.75	1.375	1.10		.05
Electricians:					
Area 1:					
Electricians	13.95	.75	3%+.50		3/4 of 1%
Cable Splicers	14.20	.75	3%+.50		3/4 of 1%
Millwrights	12.66	1.00	.85		.14
Roofers	11.03				

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: Sebastian, Crawford and Washington

DECISION NO. AR80-4081 DATE: Date of Publication

SUPERSEDES DECISION NO. AR79-4054 dated March 30, 1979 in 44FR19104

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEBASTIAN & CRAWFORD COUNTIES:					
ASBESTOS WORKERS	$12.60	.55	.85		.015
BOILERMAKERS	12.00	.80	1.00		.02
BRICKLAYERS-STONEMASONS	10.40	.70	.35		.14
CARPENTERS:					
Carpenters	9.54	.50	.60		.04
Millwrights-Piledrivermen	10.29	.50	.60		.04
CEMENT MASONS	10.45	.25			
ELECTRICIANS:					
Electricians	13.11	.50	3%+5.5%		1/4%
Cable splicers	13.36	.50	3%+5.5%		1/4%
ELEVATOR CONSTRUCTORS	10.18	1.195	.82	4%+a+b	.035
ELEVATOR CONSTRUCTORS HELPER	70%JR	1.195	.82	4%+a+b	.035
IRONWORKERS	12.10	.75	.95		.12
LABORERS:					
Group I	7.60	.38	.62		
Group II	7.85	.38	.62		
Group III	8.00	.38	.62		
Group IV	8.10	.38	.62		
Group V	8.20	.38	.62		
Group VI	8.50	.38	.62		
Group VII	8.40	.38	.62		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I

Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe and concrete pump hose placer

GROUP II

Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, and chuck tenders

GROUP III

Steel form setters, curb and gutters, grout and cement muckers

GROUP IV

Swinging scaffold, Barco, 90 lb. pavement breaker and burners

GROUP V

Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)

GROUP VI

Powderman and blasters

GROUP VII

Wagon drill

DECISION NO. AR80-4081 Page 2

SEBASTIAN AND CRAWFORD COS.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Lineman; operator	$10.76	.50	3%+.055		1/4%
Cable splicers	10.91	.50	3%+.055		1/4%
Powderman	90%JR	.50	3%+.055		1/4%
Truck driver	75%JR	.50	3%+.055		1/4%
Groundman	65%JR	.50	3%+.055		1/4%
PAINTERS:					
Brush	8.00				
Roller work, sheetwork, finishing by machinery	8.25				
Spray painting	9.00				
Swing stage work	8.25				
Sandblasting-steam cleaning	9.00				
All pipe and steel	8.75				
All mitten & glove painting	9.00				
PLASTERERS	11.35				.02
PLUMBERS & STEAMFITTERS	12.06	.55	.55		.04
POWER EQUIPMENT OPERATORS:					
Group I	12.20	.45	.45		.05
Group II	11.07	.45	.45		.05
Group III	10.54	.45	.45		.05
Group IV	8.70	.45	.45		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I

Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, and mechanics

GROUP II

Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swing boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III

HEAVY EQUIPMENT OPERATORS - all bulldozers, front end loaders, sidebooms, skytracks, push tractors, pull scrapers, motor graders, trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, boilers fireman, high or low pressure, all asphalt spreaders, hydro truck cranes multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless or size, regardless of motive power and dredge tender operator

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP IV

LIGHT EQUIPMENT OPERATORS - oiler driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, lad-a-vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system, de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckahand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	10.71		.30		
SHEET METAL WORKERS	11.57	.55	3%+.72		.04
SPRINKLER FITTERS	11.69	.75	1.05		.08

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a - 1st 6 mos. none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rates

b - Paid Holidays - A through G

PAID HOLIDAYS:

A - New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

WASHINGTON COUNTY, ARKANSAS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.97	.50	1.00		
Bricklayers	7.50				
Carpenters	6.79				
Cement masons	8.67	.25			
Electricians	11.86	.50	3%+5.5%		1/4%
Glaziers	6.60				
Ironworkers	8.95				
LABORERS:					
Unskilled	4.32				
Plaster tender	6.25				
Lathers	8.52				
Painters, brush	8.15				
Plasterers	9.70				.02
Plumbers & Pipefitters	10.26	.45	.55		.04
Roofers	7.39				
Sheet metal workers	11.57	.55	3%+.72		.04
Sprinkler fitters	11.69	.75	1.05		.08
Tile setters	6.50				
POWER EQUIPMENT OPERATORS:					
Bulldozers	4.64				
Backhoe	5.25				
Cranes	6.24				
Rollers	4.50				
Motor patrol	5.90				
Tractors	4.47				

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Arkansas COUNTY: Garland, Hot Springs and Clark

DECISION NO. AR80-4079 DATE: Date of Publication

SUPERSEDES DECISION #AR79-4056 dated March 30, 1979 in 44FR19108

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.05	.55	1.00		.02
BOILERMAKERS	12.00	.975	1.00		.03
BRICKLAYERS-STONEMASONS:					
Garland & Clark Cos.	11.25		.50		
Hot Springs	9.00	.40	.35		.04
CARPENTERS:					
Carpenters	10.35	.50	.50		.05
Millwrights & Piledrivermen	10.85	.50	.50		.05
CEMENT MASONS	10.45	.35			.03
ELECTRICIANS:					
Electricians	11.57		3%		1/4%
Cable splicers	11.695		3%		1/4%
ELEVATOR CONSTRUCTORS:					
Journeymen	10.18	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
IRONWORKERS	11.10	.55	.95		.06
LABORERS:					
Group I	7.60	.38	.62		
Group II	7.85	.38	.62		
Group III	8.00	.38	.62		
Group IV	8.10	.38	.62		
Group V	8.20	.38	.62		
Group VI	8.50	.38	.62		
Group VII	8.40	.38	.62		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I
Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe and concrete pump hose placer

GROUP II
Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, and chuck tenders

GROUP III
Steel form setters, curb and gutters, grout and cement muckers

GROUP IV
Swinging scaffold, Barco, 90 lb. pavement breaker and burners

GROUP V
Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)

GROUP VI
Powderman and blasters

GROUP VII
Wagon drill

DECISION NO. AR80-4079

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush and roller	$7.75				
Paperhanging	8.25				
Sheet rock (tape and float only); stage & steel	8.25				
Spray and sandblasting	10.75				
Painters operating any kind of taping or floating machine	11.25				
PLASTERERS	11.00		.35		.04
PLUMBERS-PIPEFITTERS:					
Zone A	11.60	.90	.60		.10
Zone B	12.70	.90	.60		.10

PLUMBERS AND PIPEFITTERS ZONE DEFINITIONS

ZONE A - within 10 miles of Garland County Courthouse
ZONE B - 10 miles and over from Garland County Courthouse

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group I	12.20	.45	.45		.05
Group II	11.07	.45	.45		.05
Group III	10.54	.45	.45		.05
Group IV	8.70	.45	.45		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I
Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, and mechanics

GROUP II
Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swing boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III
HEAVY EQUIPMENT OPERATORS - all bulldozers, front end loaders, sidebooms, skytracks, push tractors, pull scrapers, motor graders, trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, boilers fireman, high or low pressure, all asphalt spreaders, hydro truck cranes multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless or size, regardless of motive power and dredge tender operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS (CONT'D)

GROUP IV

LIGHT EQUIPMENT OPERATORS - oiler driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, lad-a-vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system, de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckahand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen	$12.57		3%		1/4%
Cable splicers	12.695		3%		1/4%
Groundman	64%JR		3%		1/4%
Truck drivers (with winch)	80%JR		3%		1/4%
Truck driver (flat bed)	64%JR		3%		1/4%
ROOFERS	10.71		.30		
SHEET METAL WORKERS	11.57	.55	3%+.72		.04
SPRINKLER FITTERS	11.69	.75	1.05		.08
TILE LAYERS:					
Garland & Clarke Cos.	11.25		.50		

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

FOORNOTES:

a. 1st 6 mos. - none; 6 mos. to 5 yrs. 6%; over 5 yrs. - 8% of basic hourly rate.

b. PAID HOLIDAYS - A through G

A-New years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Arkansas COUNTY: Union and Ouachita

DECISION NO. AR80-4082 DATE: Date of Publication

SUPERSEDES DECISION NO. AR79-4057 dated August 3, 1979 in 44 FR 45855

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.05	.55	1.00		.02
BOILERMAKERS	12.00	.975	1.00		.03
BRICKLAYERS	11.25		.55		
CARPENTERS:					
Carpenters	10.35	.50	.50		.04
Millwrights & Piledrivermen	10.85	.50	.50		.04
CEMENT MASONS	10.45	.35			
ELECTRICIANS:					
Electrical contracts $20,000 or less:					
Electricians	12.39		3%		1/4%
Cable splicers	12.69		3%		1/4%
Electrical contracts over $20,000.00:					
Electricians	13.08		3%		1/4%
Cable splicers	13.48		3%		1/4%
IRONWORKERS	12.40	.60	1.15		.06
LABORERS:					
Group I	7.60	.38	.62		
Group II	7.85	.38	.62		
Group III	8.00	.38	.62		
Group IV	8.10	.38	.62		
Group V	8.20	.38	.62		
Group VI	8.50	.38	.62		
Group VII	8.40	.38	.62		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I

Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe and concrete pump hose placer

GROUP II

Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, and chuck tenders

GROUP III

Steel form setters, curb and gutters, grout and cement muckers

GROUP IV

Swinging scaffold, Barco, 90 lb. pavement breaker and burners

GROUP V

Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)

GROUP VI

Powderman and blasters

GROUP VII

Wagon drill

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Electrical contracts $20,000 or less:					
Lineman	$12.39		3%		1/4%
Cable splicers	12.69		3%		1/4%
Electrical contracts over $20,000.00:					
Lineman	13.18		3%		1/4%
Cable splicers	13.48		3%		1/4%
Electrical contracts $20,000 or less and over $20,000.00:					
Groundman	65%JR		3%		1/4%
Truck drivers	70%JR		3%		1/4%
Winch operator	80%JR		3%		1/4%
Heavy Equipment operator (on track or tramsmission equipment)	100%JR		3%		1/4%
PAINTERS:					
Brush, roller, sheet rock work & paperhanging	9.00				
Spray and sandblasting	9.875				
PLASTERERS	11.00				.02
PLUMBERS & PIPEFITTERS	12.20	.75	.45		.05
POWER EQUIPMENT OPERATORS:					
Group I	12.20	.45	.45		.05
Group II	11.07	.45	.45		.05
Group III	10.54	.45	.45		.05
Group IV	8.70	.45	.45		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I

Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, and mechanics

GROUP II

Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swing boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP III

HEAVY EQUIPMENT OPERATORS - all bulldozers, front end loaders, sidebooms, skytracks, push tractors, pull scrapers, motor graders, trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, boilers fireman, high or low pressure, all asphalt spreaders, hydro truck cranes multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless or size, regardless of motive power and dredge tender operator

GROUP IV

LIGHT EQUIPMENT OPERATORS - oiler driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, lad-a-vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system, de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckahand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	10.71		.30		
SHEET METAL WORKERS	12.09	3%+.69	.50		.19
SPRINKLER FITTERS	11.69	.75	1.05		.08

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: INDIANA COUNTY: HAMILTON
DECISION NO.: IN80-2087 DATE: Date of Publication
Supersedes Decision No. IN77-2011, dated February 11, 1977 in 42 FR 8912
DESCRIPTION OF WORK: Residential Construction Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING AND HEATING MECHANICS	$6.34				
BRICKLAYERS	5.00				
CARPENTERS	6.43				
CEMENT MASONS	6.00				
ELECTRICIANS	6.68				
LABORERS	4.00				
PAINTERS	6.50				
PLUMBERS	5.50				
ROOFERS	4.50				
SHEET METAL WORKERS	4.75				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Louisiana PARISH: Statewide
DECISION NO.: LA80-4084 DATE: Date of Publication
Supersedes Decision No. LA80-4026, dated June 13, 1980, in 45 FR 40438.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories.

		Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS -	ZONE 1	$13.32	.775	1.18		.04
	ZONE 2	12.99	.70	1.00		.03
	ZONE 3	11.70	.65	1.30		.07
	ZONE 4	11.64	.45	.50		

ZONE 1 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis, Rapides, Vermilion & Vernon Parishes
ZONE 2 - Bienville, Bossier, Caddo, Caldwell, Claiborne, DeSoto, Grant, Jackson, Lincoln, Natchitoches, Ouachita, Red River, Sabine, Union, Webster & Winn Parishes

ZONE 3 Ascension, Assumption, Avoyelles, Catahoula, Concordia, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 4 - East Carroll, Franklin, Madison, Morehouse, Richland, Tensas & West Carroll Pars.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BOILERMAKERS	$12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS					
ZONE 1	13.05	.80	1.15		.31
ZONE 2	11.06	.53	.67		
ZONE 3	13.50	.63	.85		.05
ZONE 4	12.70	.75	.485		.10
ZONE 5	12.25				
ZONE 6	11.30	.55	.65		
ZONE 7	11.50		.30		
ZONE 8	12.70		.50		
ZONE 9	12.50				

ZONE 1 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, Tangipahoa, West Baton Rouge, & West Feliciana Parishes
ZONE 2 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Pointe Coupee, Rapides & St. Landry Parishes
ZONE 3 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 4 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany (extending northward to that part of St. Tammany Par. from the Tangipahoa Par. Line on the west along U.S. Hwy. 190 through the lower limits of Covington, along State Hwy. 58, through the lower limits of Abita Springs & Talisheek & on a line due east from Talisheek to the Mississippi State Line) & Terrebonne Parishes
ZONE 5 - St. Tammany (north half including Covington north of Hwy. 190) & Washington Parishes
ZONE 6 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 7 - Natchitoches & Sabine Parishes
Zone 8 _ Caldwell, East Carroll, Franklin, Jackson Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes
ZONE 9 - Iberia, Lafayette, St. Martin, St. Mary & Vermilion Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS					
ZONE 1 - Carpenters	$11.05	.50			.05
Millwrights	11.77	.50			.05
Piledrivermen	11.95	.50			.05
ZONE 2 - Carpenters, Piledrivermen & soft floor layers	12.51	.80	.33		.07
Millwrights	14.41				.07
ZONE 3 - Carpenters	10.90	.70	.55		
Millwrights	11.75	.70	.55		
Piledrivermen	11.20	.70	.55		
ZONE 4 Carpenters & Piledrivermen	12.95	.60	.60		.11
Millwrights	14.275				7/10%
ZONE 5 - Carpenters & Soft floor layers	12.30	.70	.70		.06
Millwrights	12.69	.70	.70		.06
Piledrivermen	12.40	.70	.70		.06
ZONE 6 - Carpenters & Soft floor layers	12.135	.70	.70		.06
Millwrights	12.69	.70	.70		.06
Piledrivermen	12.40	.70	.70		.06
ZONE 7 - Carpenters & Soft floor layers	11.10				
Millwrights	11.85				
Piledrivermen	11.60				
ZONE 8 - Carpenters & soft floor layers	11.10	.55	.50		.04
Millwrights	11.85	.55	.50		.04
Piledrivermen	11.35	.55	.50		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 9 - Carpenters & Soft floor layers	$11.10				
Millwrights	11.85				
Piledrivermen	11.60				
ZONE 10 - Carpenters & Soft floor layers	11.10	.70	.45		.10
Millwrights	12.00	.70	.45		.10
Piledrivermen.	11.60	.70	.45		.10

ZONE 1 - All of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars.; Parts of Iberia, St. Martin & St. Mary Pars. (west of the Atchafalaya River)
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Parts of St. Tammany & Tangipahoa (north of I-12 from The Mississippi State Line to the western boundary of Tangipahoa Par.) & Washington Parishes
ZONE 4 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James (north of the Miss. River), West Baton Rouge & West Feliciana Pars.
ZONE 5 - All of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles & St. John the Baptist Pars.; Parts of St. Tammany & Tangipahoa (south of I-12 from the Miss. State Line to the western boundary of Tangipahoa Par.) Parishes
ZONE 6 - Assumption, Iberia (east of the Atchafalaya River), Lafourche, St. James (south of the Miss. River), St. Martin (eastern segment of the Atchafalaya River), St. Mary (east of the Atchafalaya River) & Terrebonne Parishes
ZONE 7 - Avoyelles, Grant, LaSalle & Rapides Parishes
ZONE 8 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 9 - Natchitoches & Sabine Parishes
ZONE 10 -Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes

CEMENT MASONS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1	$11.91				.05
ZONE 2	12.53				
ZONE 3	10.75	.50	.75		.05
ZONE 4	12.105	.79	.50		.09
ZONE 5	11.35				
ZONE 6	9.00				
ZONE 7	10.50	.45			
ZONE 8	11.17		.50		
ZONE 9	10.00		.30		

ZONE 1- Ascension, Assumption, East Baton Rouge, East Feliciana, Ibervi Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, West Baton Rouge & West Feliciana Pars
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3- Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Pars.
ZONE 4 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany (north to Interstate Hwy. 12) & Terrebonne Parishes
ZONE 5 - St. Tammany (northern half including Covington north of Hwy. 190) & Washington Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle & Rapides Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincloln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes
ZONE 9 - Natchitoches & Sabine Parishes

ELECTRICIANS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1 - Electricians	14.46	5%	8%		3/10%
Cable splicers	14.71	5%	8%		3/10%
ZONE 2 - Electricians	12.80	.45	3%		.02
Cable splicers	13.30	.45	3%		.02
ZONE 3 - Electricians	14.75	.55	3%+.40		1/10%
Cable splicers	15.00	.55	3%+.40		1/10%
ZONE 4 - Electricians	14.00	.70	3%		2/10%
Cable splicers	14.25	.70	3%		2/10%
ZONE 5 - Electricians	13.65	.45	3%+.40		.05
Cable splicers	13.65	.45	3%+.40		.05
ZONE 6 - Electricians	12.75	.85	3%		1/2%
Cable splicers	13.25	.85	3%		1/2%
ZONE 7 - Electricians	13.25	1.75	3%		1%
Cable splicers	13.75	1.75	3%		1%
ZONE 8 - Electricians	13.21		3%		1/2%
Cable splicers	13.46		3%		1/2%

ZONE 1 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge, & West Feliciana Pars.
ZONE 2 - St. Tammany, Tangipahoa & Washington Parishes
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes
ZONE 4 - Acadia, Iberia, Lafayettte, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes
ZONE 5 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern segment), St. Mary (that portion northeast of the Atchafalaya River) & Terrebonne Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Pars.
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS					
ZONE 1 - Mechanics	10.575	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
ZONE 2 - Mechanics	11.66	1.195	.82	a+b	.035
Helpers	70%JR	1.195	.82	a+b	.035

FOOTNOTES FOR ELEVATOR CONSTRUCTORS

a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6% over 5 yrs.- 8% of basic hourly rate

b - Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the Friday after Thanksgiving Day; Christmas Day

ZONE 1 - Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia,, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary,St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge & West Feliciana Pars.

ZONE 2 - Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll & Winn Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS - ZONE 1	$12.25			c+d	.02
ZONE 2	9.90				.01
ZONE 3	10.825	.17	.30		.01
ZONE 4	9.88		.30		.04
ZONE 5	6.80				
ZONE 6	10.99				

FOOTNOTES FOR GLAZIERS:

c - 5 days paid vacation

d - Paid Holidays: New Years' Day; Good Friday; Fourth of July; Labor Day; Thanksgiving Day; Christmas Day

ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 2 _ Acadia, Ascension (north of Hwy. 22), Assumption (north of Hwy. 22), East Baton Rouge, East Feliciana, Iberia, Iberville, Lafayette, Livingston (north of Hwy. 22), Pointe Coupee, St. Helena, St. Landry (south half), St. Martin, St. Mary (except Morgan City Area), Tangipahoa (west of Hwy.51), Vermilion, West Baton Rouge & West Feliciana Pars.

ZONE 3 - Ascension (south of Hwy. 22), Assumption (south of Hwy. 22), Jefferson, Lafourche, Livingston (south of Hwy 22), Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary (Morgan City Area), St. Tammany (southern portion) & Terrebonne Parishes

ZONE 4 - Bienville (western half), Bossier, Caddo, Claiborne, DeSoto, Natchitoches (to city of Natchitoches), Red River, Sabine & Webster Parishes

ZONE 5 - Bienville (eastern portion, everything east of Rt. 9 inclusive), Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn (northern half, everything north of a line running east & west through Winfield, excluding Winfield) Parishes

ZONE 6 - St. Tammany (northern 2/3, everything north of a straight line running east & west from Pearl River to Mandeville), Tangipahoa (everything east of Route 51 & everything north of a straight line running east & west from Madisonville through Ponchatoula) & Washington Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS					
ZONE 1	12.52	.93	.65		.08
ZONE 2	12.54	.60	.75		.04
ZONE 3	12.45	.45	.90		.06
ZONE 4	12.85	.60	1.15		.06
ZONE 5	10.70	.45	.85		.04
ZONE 6	12.88	.60	.65		.05

ZONE 1 - All of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist & St. Tammany Pars.; Parts of Lafourche, Livingston, St. James, Tangipahoa, Terrebonne & Washington Pars. (west of a straight line drawn from the La.-Miss. border, east of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico)

ZONE 2 - All of Ascension, Assumption, Avoyelles, East Baton Rouge, East Feliciana, Iberia, Iberville, Pointe Coupee, St. Helena, St. Martin, St. Mary, West Baton Rouge & West Feliciana Pars., Parts of Acadia, Evangeline, Lafayette, St.Landry & Vermilion Pars. (east of a line drawn from the meeting point of the boundaries of the Pars. of Rapides, Avoyelles & Evangeline, southeast along the western city limits of Abbeville to the Gulf of Mexico); Parts of Lafourche, Livingston, St. James, Tangipahoa, Terrebonne & Washington Pars. (west of a straight line drawn from the La.-Miss. border, west of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico); Parts of Catahoula, Concordia & LaSalle Pars. (south of a line drawn from Natchez through the city of Cottonport to the Rapides Par. Line, then west along the southern border of Rapides Par.)

ZONE 3 - All of Bossier, Caddo, DeSoto, Red River & Webster Pars.; Parts of Bienville, Claiborne, Natchitoches & Winn Pars. (west of a line drawn directly south from the Ark.-La. border through the cities of Arcadia & Cloutierville); Part of Sabine Par. (north of a line drawn from the Natchitoches Par. boundary west through the city of Peason to the Tex.-La. border)

ZONE 4 _ All of Caldwell, East Carroll, Franklin, Grant, Jackson, Lincoln, Morehouse, Ouachita, Rapides, Richland, Tensas, Union & West Carroll Pars.; Parts of Bienville, Claiborne, Natchitoches & Winn Pars. (east of a line drawn directly south from the Ark.-La. border through the cities of Arcadia & Cloutierville); Part of Madison Par. (except the cities of Mound, Delta & Adjacent Areas) Parts of Catahoula, Concordia & LaSalle Pars. (north of a line drawn from Natchez through the city of Cottonport to the Rapides Par. Line)

ZONE 5 - That part of Madison Par. (including the cities of Mound, Delta & adjacent areas)

ZONE 6 - All of Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Pars.; Parts of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars. (southwest of Rapides Par. & west of a line south of the western most border between Rapides & Evangeline Pars.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1- Group 1	7.20	.30			
Group 2	7.40	.30			
Group 3	7.45	.30			
ZONE 2 - Group 1	7.35	.25	.27		.05
Group 2	7.55	.25	.27		.05
ZONE 3 - Group 1	8.88	.25	.27		.05
Group 2	8.98	.25	.27		.05
Group 3	9.03	.25	.27		.05
Group 4	9.84	.25	.27		.05
Group 5	9.40	.25	.27		.05
Group 6	9.24	.25	.27		.05
Group 7	8.93	.25	.27		.05
Group 8	9.13	.25	.27		.05
ZONE 4 - Group 1	8.20	.30	.27		.05
Group 2	8.30	.30	.27		.05
Group 3	8.35	.30	.27		.05
ZONE 5 - Group 1	7.80	.30	.27		.05
Group 2	7.90	.30	.27		.05
Group 3	7.95	.30	.27		.05
ZONE 6 - Group 1	9.45	.30	.27		.05
Group 2	9.55	.30	.27		.05
Group 3	9.70	.30	.27		.05
ZONE 7 - Group 1	8.075	.25	.27		.05
Group 2	8.225	.25	.27		.05
Group 3	8.275	.25	.27		.05
ZONE 8 - Group 1	6.89	.25	.27		.05
Group 2	7.09	.25	.27		.05
Group 3	7.14	.25	.27		.05
Group 4	7.19	.25	.27		.05
Group 5	7.54	.25	.27		.05
ZONE 9 - Group 1	7.53	.25	.27		.05
Group 2	7.63	.25	.27		.05
Group 3	7.68	.25	.27		.05
Group 4	7.73	.25	.27		.05
ZONE 10 - Group 1	7.28	.25	.27		.05
Group 2	7.38	.25	.27		.05
Group 3	7.53	.25	.27		.05

LABORERS - ZONE 1 (CLASSIFICATION DEFINITIONS)
GROUP 1 - Building and labor construction
GROUP 2 - Stone mason tenders, mechanical tool operators; sewermen (bottom men, caulkers, tenders, joint wipers, hot pot, grade carriers, layers & ditchers 4 ft. or over); tender of all crafts; sandblaster (nozzlemen); sandblaster (pot tender); laying non-metallic pipe over 4 ft. deep, including sewer, drain & underground tile; septic tank diggers & installers, over 4 ft. deep; gas & oil pipeline laborers & wrappers
GROUP 3 - Gunite tool operators
LABORERS - ZONE 2
GROUP 1 - Building laborer; rotary drill laborers; foundation drill crewman
GROUP 2 - Mason mixer; plaster mixer; mechanical tool op.; sandblaster; laying concrete, clay, plastic, asbestos cement, casing & corrugated metal pipe, as sewer, drain & underground tile (caulkers, joint wrappers hot pot & pipe layers); gas & oil pipeline laborers wrappers & dopers
LABORERS - ZONE 3
GROUP 1 - Building & general laborer; tenders (carpenter, plaster, cement finisher, mason); tank & vessel cleaners
GROUP 2 - Air tool op. (except jackhammer); interior of closed tanks & vessels power equipped
GROUP 3 - Mortar mixers
GROUP 4 - Blasterers
GROUP 5 - Blaster tenders; concrete cutters behind paving machine & puddlers; form setters & liner asphalt worker
GROUP 6 - Wiping joints, laying pipe & tile from pumpcrete
GROUP 7 - Interior of closed tanks & vessels manually
GROUP 8 - Jackhammer operators
LABORERS - ZONES 4 & 5
GROUP 1 - Building and general laborers, carpenter tenders
GROUP 2 - Power tool ops. (hammer men, tamper, vibrators, power buggies, concrete chippers or cutters, chain saw ops., etc); pipelayers (non-metallic)
GROUP 3 - Mason tenders, plaster tenders, cement mix (wet or dry) tenders, hod carrier tender; mortar mixers & cement mixers (wet or dry)
LABORERS - ZONE 6
GROUP 1 - Laborers
GROUP 2 - Laborers handling steel pans, stone masons tenders, mechanical tool ops., sewermen (bottom men, caulkers, tenders, joint wipers, hot pot, grade carriers, layers & ditchers 4 ft. & over), sandblaster (nozzlemen & pot tender); laying non-metallic pipe over 4 ft. deep, septic diggers & installers over 4 ft. deep, gas & oil pipeline laborers & wrappers
GROUP 3 - Gunite tool operators

LABORERS ZONE 7
GROUP 1 - Common laborers
GROUP 2 - Jackhammermen, sewermen, mason tenders, plasterer tenders, stone masons tenders, vibratormen
GROUP 3 - Mortar mixers
LABORERS - ZONE 8
GROUP 1 - Common laborers; carpenter tenders; mason tenders (other than cement); plasterers tenders; stone masons tenders; concrete workers; scaffold builders

GROUP 2 - Air tool ops. (jackhammer, vibrator & tamper); sewer pipe joiners & setters; concrete cutters; hod carriers; creosote materials handler; acid worker; mason tenders(cement); Mortar mixer (wet or dry); motorized buggy op.; water proofers (mastic); form setters (steel paving forms)
GROUP 3 - Chain saw operator
GROUP 4 - Asphalt raker, tamper, smoother & shovelers; sewer pipelayers; blaster tenders
GROUP 5 - Powderman
LABORERS - ZONE 9
GROUP 1 - Laborers
GROUP 2 - Mason tenders, plaster tenders; asphalt rakers, asphalt smoothers
GROUP 3 - Mortar mixers
GROUP 4 -Air jack op., vibrator ops.; sewer pipelayers, sewer pipe wrappers
LABORERS - ZONE 10
GROUP 1- Laborers, tenders (brickmasons, stonemasons, cement masons, carpenters, plasterers, stripping & dismantling; concrete form work; loading, unloading,carrying & handling steel & steel mesh; assisting to the setting of cut stone, granite or artifical stone; building scaffolds; shoring
GROUP 2 - Mechanical tool op. (air, electric, motor, engine, etc.); sewer pipelayers; mortar mixers (hand or machine); gunite op.; tile, terrazzo & marble setters finisher
GROUP 3 - Pipe dopers & burners

ZONE 1 - St. Tammany (as far south as Bayou Lacombe & east to the Miss. State Line at Pearlington), Tangipahoa (all but southwestern corner) & Washington Parishes
ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary (excluding that part of Parish to the Calumet Locks west) & Vermilion Parishes
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 4 - All of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, West Baton Rouge & West Feliciana Pars.; Parts of Assumption, St. James, St. John the Baptist Pars. (north of a line drawn from the southern limits of the town of St. James in St. James Par. to the northern limits of the town of Napoleonville in Assumption Par. & then directly west to the Par. Line, all of St. James Par. except that part which is east of a line drawn from Lutcher to U. S. Hwy 61 (Airline Hwy) then west on U. S. 61 to Blind River & on a direct line to Manchac)
ZONE 5 -Livingston, St. Helena & Tangipahoa (south & west of a line running from the western Par. Line to a point directly east which touches the northern limits of the town of Independence, then directly south to Lake Pontchartrain) Parishes
ZONE 6 - Jefferson (except Grand Isle), Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist (on the west bank of the Miss. River & the portion of St. John the Baptist on the east bank of the Miss. River as far as the Sycamore Inn at Lutcher & north to Blind River & Manchac) & St. [illegible] (north as far as Bayou Lacombe, east to the Miss. State Line at Pearlington) Parishes
ZONE 7 - Assumption (north of Napoleonville), Jefferson (Grand Isle), Lafourche, St. James (on the west bank & including the town of Vacherie), St. Mary (that part of Parish to the Calumet Locks west) & Terrebonne Parishes

ZONE 8 - Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, & Winn Parishes
ZONE 9 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine & Webster Pars.
ZONE 10 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Pars.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS					
ZONE 1	$11.13	.55	.40		.05
ZONE 2	11.28	.55	.40		.05
ZONE 3	11.53	.55	.40		.05
ZONE 4	11.88	.55	.40		.05
ZONE 5	12.60	.60	.60		.10
ZONE 6	11.40				.01
ZONE 7	13.485	.55			.01
ZONE 8	12.85				
ZONE 9	9.40				.01

ZONE 1 - That part of Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars. which are 12.5 miles from center of New Orleans
ZONE 2 - That part of Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars. which are within a 22.5 mile radius of New Orleans center.
ZONE 3 - That part of Jefferson, Lafourche (except that area southeast of Raceland to Bayou Lafourche), Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany & Tangipahoa Pars. which are within a 32.5 mile radius of New Orleans center
ZONE 4 - That part of Jefferson, Lafourche (including that area southeast of Raceland to Bayou Lafourche), Livingston (westward to Rt. 22 including towns of Maurepas, Killian & Springfield), Plaquemines, St. Bernard, St. James (including towns of Gramercy, Lutcher & Paulina), St. Tammany, Tangipahoa (northward to Rt. 16 including towns of Amite & Holton), Terrebonne (westward to Rts. 24 & 315 including city of Houma) & Washington (only northward to Rt. 10 to southern limits of towns of Bogalusa, Sheridan & Franklinton) Pars. outside 32.5 mile radius New Orleans Center

ZONE 5 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville (except lower Grand River), Livingston (western part), Pointe Coupee, St. Helena, St. James (only towns of Union, Hymel, Convent & Lutcher), St. Martin (only lower separted section), St. Mary (only Morgan City), Tangipahoa (north of Rt. 16 & west of Rt. 51 including Amite, Hammond & Pontchatoula), Washington (only north of Rt. 16 & west of Rt. 25), West Baton Rouge & West Feliciana Parishes
ZONE 6 - Acadia, Evangeline (northward to Rt. 10 including Ville Platte and Mamou), Iberia, Iberville (eastward to lower Grand River), Lafayette, St. Landry, St. Martin (excluding lower separted section), St. Mary (east to Berwick) & Vermilion Pars
ZONE 7 - Allen, Beauregard, Calcasieu, Cameron, Evangeline (excluding Ville Platte & Mamou), Jefferson Davis & Vernon (west of Rt. 117 & north of Rt. 8) Pars.
ZONE 8 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Lincoln, Natchitoches, Red River & Webster Pars.
ZONE 9 - Avoyelles, Caldwell, Catahoula, Concordia, Franklin, Grant, LaSalle, Morehouse, Ouachita, Rapides, Richland, Vernon (except west of Rt. 117 & north of Rt. 8) & Winn Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
ZONE 1 - GROUP 1	$13.65	.45	3%+.40		.05
GROUP 2	75%JR	.45	3%+.40		.05
GROUP 3	65%JR	.45	3%+.40		.05
GROUP 4	45%JR	.45	3%+.40		.05
GROUP 5	50%JR	.45	3%+.40		.05

GROUP 1 - Linemen
GROUP 2 - Op. hole digging equip.; op. tractor with winch & derrick; op. line truck with winch & derrick working hot lines
GROUP 3 - Op. using hole truck & trailer or pole hauling & setting truck (not in energized lines)
GROUP 4 - Op. using truck without winch
GROUP 5 - Groundmen

ZONE 2					
Linemen	$14.46	5%	8%		3/10%
Cable splicers	14.71	5%	8%		3/10%
Equipment operators	10.85	5%	8%		3/10%
Truck drivers & groundmen	6.51	5%	8%		3/10%
ZONE 3					
Linemen, equipment op	14.75	.55	3%+.40		1/10%
Cable splicers	15.00	.55	3%+.40		1/10%
Groundmen	12.75	.55	3%+.40		1/10%
ZONE 4					
Linemen, equipment ops.	14.00	.70	3%		
Cable splicers	14.25	.70	3%		
Groundmen	50%JR	.70	3%		
ZONE 5					
Linemen, equipment ops.	13.21		3%		1/2%
Cable splicers	13.46		3%		1/2%
Groundmen	60%JR		3%		1/2%
ZONE 6					
Linemen, equipment ops.	12.25	.85	3%		1/2%
Cable splicers	12.75	.85	3%		1/2%
Groundman	4.17	.85	3%		1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 7 - Linemen; Operators	13.25	1.75	3%		1%
Cable splicer	13.75	1.75	3%		1%
Groundmen	11.25	1.75	3%		1%

ZONE 1 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern Segment), St. Mary (that portion northeast of the Atchafalaya River) & Terrebonne Pars.
ZONE 2 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge & West Feliciana Pars.
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes
ZONE 4 - Acadia, Iberia, Lafayette, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes
ZONE 5 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Pars.
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE, TILE & TERRAZZO WORKERS & FINISHERS					
ZONE 1 - Marble setters	$12.70	.75	.485		.10
Tile & terrazzo workers	12.15	.40			.10
Marble, tile & terrazzo finishers	7.90	.40		.20	
ZONE 2 - Marble & terrazzo workers	13.50	.63	.85		.05
Tile setters	9.30	.48	.67		.02
ZONE 3 - Marble setters	12.50				
Terrazzo workers	10.05				
ZONE 4 - Marble, tile & terrazzo workers	11.42		.50		
ZONE 5 - Marble, tile & terrazzo workers	10.10	.55			
ZONE 6 - Marble, tile & terrazzo workers	14.25				
Marble, tile & terrazzo finisher	7.90	.40		.20	
ZONE 7 - Tile setters	12.25				
Tile finishers	7.90	.40		.20	

ZONE 1 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany (extending northward to that part of St. Tammany Par. from the Tangipahoa Par. Line on the west along U.S. Hwy. 190 through the lower limits of Covington, along State Hwy. 58 through the lower limits of Abita Springs & Talisheek & on a line due east from Talisheek to the Miss. State Line) & Terrebonne Parishes
ZONE 2 - Acadia, Allen Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Iberia, Lafayette, St. Martin, St. Mary & Vermilion Parishes
ZONE 4 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes
ZONE 5- Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Pars.
ZONE 6 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Pars.
ZONE 7 - St. Tammany (northern half including Covington north of Hwy 190) & Washington Pars.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS					
ZONE 1 - GROUP 1	$12.615		.30		
GROUP 2	12.815		.30		
GROUP 3	12.96		.30		
GROUP 4	14.405		.30		
ZONE 2 - GROUP 1	10.65		.50		.08
GROUP 2	11.92		.50		.08
ZONE 3 - GROUP 1	9.845	.625	.60		.08
GROUP 2	10.22	.625	.60		.08
GROUP 3	11.095	.625	.60		.08
ZONE 4 - GROUP 1	10.99				
GROUP 2	11.43				
GROUP 3	11.12				
GROUP 4	12.25				
GROUP 5	12.59				
GROUP 6	11.09				
GROUP 7	11.33				
ZONE 5 - GROUP 1	9.95				
GROUP 2	10.45				
GROUP 3	10.95				
ZONE 6 - Painters, tape & float, vinyl & paperhangers	10.60	.40	.30		.05
ZONE 7 - GROUP 1	7.80				
GROUP 2	8.30				
GROUP 3	8.80				
ZONE 8 - Painters	9.90		.50		.08

ZONE 1 - GROUP 1 - Painters brush, roller & buffer
GROUP 2 - Paperhanging, taping & floating
GROUP 3 - Spray, sandblasting, hydroblasting, spider op., rubberizing, & pyroflexing, steam jennies, taping & floating machine
GROUP 4 - Water towers, radio & TV towers

ZONES 2 GROUP 1 - Brush; taping; floating & texture
GROUP 2 - Sandblasting, industrial & steel

ZONE 3 - GROUP 1 - Painters, paperhangers & sheetrock tapers & floaters
GROUP 2 - Structural steel painters of new buildings under construction; the following overall of 30 ft.: tanks, air conditioning, towers, smoke stacks sprinkler systems, wharves & structrual steel in old buildings; spray painters, swing stage painter
GROUP 3 - Industrial

ZONE 4 - GROUP 1 - Brush
GROUP 2 - Brush swing stage
GROUP 3 - Brush industrial
GROUP 4 - Spray; spray steel, sandblasting
GROUP 5 - Spray swing stage
GROUP 6 - Paperhanger
GROUP 7 - Sheetrock finishers

ZONE 5 - GROUP 1 Painters, paperhangers, tapers, floaters; commercial steel, such as churches or any commercial building with closed roof deck or walls
GROUP 2 - Other commercial work brush spray, stage, window jacks flagpoles & steeple work
GROUP 3 - All industrial work including sandblasting or power tools of any kind

ZONE 7 - GROUP 1 - Painters, paperhangers, tapers, floaters
GROUP 2 - Stage, window jacks, bosun chairs, structural steel, rollers, equipment painting; sandblasting, spray, stack sign, tank painting, steeple jack
GROUP 3 - Structural steel brush

ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 2 - Ascension (north of Hwy.22), Assumption (north of Hwy.22), East Baton Rouge, East Feliciana, Iberville, Livingston (north of Hwy.22), Pointe Coupee, St. Helena, Tangipahoa (west of Hwy. 51), West Baton Rouge & West Feliciana Pars.

ZONE 3 - Ascension (south of Hwy 22), Assumption (south of Hwy. 22), Lafourche, Livingston (south of Hwy. 22) Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary (Morgan City Area), St. Tammany (southern portion) & Terrebonne Parishes

ZONE 4 - St. Tammany (northern 2/3, everything north of a straight line running east & west from Pearl River to Mandeville), Tangipahoa (everything east of Rt. 51 & everything north of a straight line running east & west from Madisonville through Ponchatoula) & Washington Parishes

ZONE 5 - Allen (northeastern most corner, north of Rt. 10), Avoyelles, Catahoula, Evangeline, Grant, LaSalle, Natchitoches (southern half, everything south of Rt. 6 including City of Natchitoches), Rapides, St. Landry (northern portion) & Winn (southern half from a line running east & west through the intersection of Rts. 84 & 71, including the town of Winnfield at that intersection) Parishes

ZONE 6 - Bienville (western half), Bossier, Caddo, Claiborne, DeSoto, Natchitoches (to City of Natchitoches), Red River, Sabine & Webster Parishes

ZONE 7 - Bienville (eastern portion, everything east of Rt. 9 inclusive), Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn (northern half, everything north of a line running east & west through Winfield excluding Winfield) Parishes

ZONE 8 - Acadia, Iberia, Lafayette, St. Landry (south half), St. Martin, St. Mary (except Morgan City Area) & Vermilion Parishes

		Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS -	ZONE 1	$11.70				
	ZONE 2	10.50				.01
	ZONE 3	13.25				
	ZONE 4	12.70				.01
	ZONE 5	10.08	.60	.35		.08
	ZONE 6	8.00				.01
	ZONE 7	9.75			1.00	
	ZONE 8	12.70		.50		
	ZONE 9	11.50		.30		

ZONE 1 - St. Tammany (northern half including Covington north of Hwy. 190) & Washington Pars.

ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Pars.

ZONE 3 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 4 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. James, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Pars.

ZONE 5 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany (par. line on the west along U.S. Hwy. 190 through the lower limits of Covington & Abita Springs along State Hwy 435 to Talisheek & on a line due east from Talisheek to the Miss. State Line) & Terrebonne Parishes

ZONE 6- Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle & Rapides Pars.

ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, & Webster Pars.

ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Pars.

ZONE 9 - Natchitoches & Sabine Parishes

PLUMBERS & PIPEFITTERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1	$13.10	.75	1.00		.10
ZONE 2	12.75	.88	.955		.09
ZONE 3	12.50	.90	.80		.10
ZONE 4	11.87	.70	1.10	1.00	.09
ZONE 5	14.01	.67	.72		.08

ZONE 1 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James (northern 2/3 of Par.), St. John the Baptist, St. Tammany, Tangipahoa, Terrebonne & Washington Pars.
ZONE 2 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia (eastern ½ of Par), Iberville, Livingston, Pointe Coupee, St. Helena, St. James (western 1/3 of Par), St. Martin (southern part of Eastern ½ of Par), St. Mary, West Baton Rouge & West Feliciana Pars.
ZONE 3- Avoyelles, Caldwell, Catahoula, Concordia, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln , Madison, Morehouse, Natchitoches (south of Hwys. 84 & 86 from Winnfield to Natchitoches & southeast from Natchitoches to Anacoco through Bellwood), Ouachita, Rapides, Richland, Tensas, Union, Vernon (northeast of Hwy. 10), West Carroll & Winn Parishes
ZONE 4 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine & Webster Pars.; Parts of Natchitoches & Vernon Pars. (northwest from a line drawn from Natchitoches to Anacoco through Bellwood & north of Hwy. 111 between Anacoco & Haddens)
ZONE 5 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia (western ½ of Par.) Jefferson Davis, Lafayette, St. Landry, St. Martin (west of Hwy. 31) & Vermilion Pars.

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1 - GROUP 1	$ 8.62	.65	1.00		.05
GROUP 2	9.31	.65	1.00		.05
GROUP 3	9.40	.65	1.00		.05
GROUP 4	9.72	.65	1.00		.05
GROUP 5	11.20	.65	1.00		.05
ZONES 2, 3 & 4 - GROUP 1	8.55	.65	1.00		.05
GROUP 2	9.43	.65	1.00		.05
GROUP 3	9.51	.65	1.00		.05
GROUP 4	9.92	.65	1.00		.05
GROUP 5	11.77	.65	1.00		.05
ZONE 5 - GROUP 1	8.56	.65	1.00		.05
GROUP 2	8.24	.65	1.00		.05
GROUP 3	8.03	.65	1.00		.05
GROUP 4	8.84	.65	1.00		.05
GROUP 5	11.23	.65	1.00		.05
GROUP 6	9.25	.65	1.00		.05
GROUP 7	9.93	.65	1.00		.05

POWER EQUIPMENT OP. (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 6 - GROUP 1	$12.96	.65	1.10		.10
GROUP 2	13.21	.65	1.10		.10
GROUP 3	13.46	.65	1.10		.10
GROUP 4	13.71	.65	1.10		.10
GROUP 5	14.21	.65	1.10		.10
GROUP 6	13.96	.65	1.10		.10
GROUP 7	12.71	.65	1.10		.10
GROUP 8	11.32	.65	1.10		.10
GROUP 9	9.89	.65	1.10		.10
GROUP 10	8.99	.65	1.10		.10
GROUP 11	8.37	.65	1.10		.10
GROUP 12	9.36	.65	1.10		.10
ZONE 7 - GROUP 1	12.03	.65	1.10		.10
GROUP 2	10.40	.65	1.10		.10
GROUP 3	11.38	.65	1.10		.10
GROUP 4	11.28	.65	1.10		.10
GROUP 5	9.34	.65	1.10		.10
GROUP 6	8.39	.65	1.10		.10
GROUP 7	12.28	.65	1.10		.10
GROUP 8	12.53	.65	1.10		.10
GROUP 9	12.78	.65	1.10		.10
GROUP 10	13.03	.65	1.10		.10
GROUP 11	13.53	.65	1.10		.10
GROUP 12	14.03	.65	1.10		.10

POWER EQUIPMENT OPERATORS - ZONES 1,2,3&4 CLASSIFICATION DEFINITIONS
GROUP 1 - Oiler
GROUP 2 - Oiler-Driver
GROUP 3 - Scaleman

GROUP 4 - Air compressor; asphalt plant; bulldozers, D-4 & equivalen & under; bullfloats; concrete spreader; finishing machines; concrete mixer (16-s or less); concrete saw; distributors (bitum surface); dowell bar machine; farm-type tractor (with all attachments except backhoe); fireman; fork lifts (other than setting steel, machinery or pipe); hoist, 1 drum less than 4 stories; kolum buff machine; pull cats; pump (3" & over); pump, concrete (under 6"); rollers, except on asphalt or brick; straddle buggies; sweepers on streets & roads (motorized); winch truck, A-frame (other than handling steel or pipe)
GROUP 5 - Asphalt spreader; backhoe; bulldozer, over D-4 & equivalent cableways; concrete mixer, over 16-s; cranes; derricks; ditching or trenching machines; draglines; fork lifts (setting steel, machine or pipe); front end loaders (except farm-type tractors); grease serviceman; hoist, 1 drum, 4 stories or more or 40 ft. (on structure other than buildings), hoist, 2 drums & over; hydrolifts; heavy duty mechanic; motor patrols; piledrivers; pump, concrete (6" & over); road pavers; rollers on asphalt or brick; scoopmobiles; scrapers; sideboom cats; shovels; tractorvators; welder, journeyman; well point system; winch cats (hoisting); winch truck, A-frame (handling steel or pipe)

POWER EQUIPMENT OPERATORS - ZONE 5

GROUP 1 - Scale op.; oiler-driver on motor crane; batch plant

GROUP 2 - Pumps under 3 inch suction

GROUP 3 - Oiler

GROUP 4 - Fireman

GROUP 5 - Combination oiler-compressor; combination oiler-fireman; asphalt spreaders; backhoe (all types); bulldozers; cableways; cherry pickers (all types); concrete mixers (over 1 sack); cranes; deck winch (2 drums or over); derricks; ditching or trenching machines (riding type); draglines; dredges; fork lifts (other than farm type); outside warehouses; foundation drill; front end loaders (except farm type); grease serviceman; hoist-1 drum (4 stories or more on buildings); hoist-1 drum (over 40 ft. on structures other than buildings); hoist (2 drums or over); Locomotives (all types); mechanic; mixer plant-central mix; motor patrols; piledrivers; pull cat; pump crete-6" & over discharge; push cat; road pavers; rollers (plant mix asphalt); scrapers; shovels; sidebooms; unit op.; welder, journeymen; well point system; whirleys; winch cats (Cat D-4 & over); winch truck with A-frame (5 ton & over); work boats-requiring licensed op.

GROUP 6 - Bush hog; compressor; concrete pump-under 6" discharge; concrete saw; deck winch (1 drum); distributors; ditching or trenching machines (non-riding type); dowel bar machine; farm-type tractors (when used to pull discs, grasscutters, etc.); hoist-1 drum (under 4 stories on building); hoist-1 drum (40 ft. or under on structures other than buildings); Kolum buff machines; mixers (1 sack & under); motorized street sweepers self-propelled; pump 3" & over); test pump-internal combustion engine powered; water blast pumps

GROUP 7 - Asphalt plant; boom trucks; bullfloats; concrete spreader; farm-type front end loaders; finishing machines (roadway, riding type); roller (other than plant mix asphalt); straddle buggies; winch truck with A-frame (under 5 tons); workboats-not requiring licensed operator

POWER EQUIPMENT OPERATORS - ZONE 6

GROUP 1 - Crane op. 60 tons & over; Crane op. boom 100 ft. & over but less than 150 ft.; Piledriver op. leads 100 ft. & over but less than 150 ft.

GROUP 2 - Crane op. 100 tons up to 125 tons; Crane op. boom 150 ft. & over but less than 225 ft.; Piledriver op. leads 150 ft. & over but less than 225 ft.

GROUP 3 - Crane op. 125 tons up to 200 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Piledriver op. leads 225 ft. & over but less than 300 ft.

GROUP 4 - Crane op. 200 tons up to 300 tons

GROUP 5 - Crane op. 300 tons

GROUP 6 - Crane op. 300 ft. & over

GROUP 7 - Crane; Backhoe; Cableway; Concrete mixer, 16S & up; Derrick; Dragline; Dredge; Hoist-2 drum; Locomotive crane; Paving mixer; Piledriver; Road paver; Roller on asphalt or brick (5 tons or over); shovel; Sideboom cat ; Bulldozer; Motor patrol; Scraper ; Hydrolift crane; Hydrolift truck, yard crane, cherry picker, etc.; Foundation, boring & reaming machine; Cement stabilizer; Trenching machine; Asphalt spreader; Traxcavator & similar front end loading equipment with scoop or bucket of 1 cu. yd. or more capacity; Tug boat op.; Turnapull, euclid, DW-10 & other similar self-loading earth moving equipment; Concrete pump (not pumpcrete)

POWER EQUIPMENT OPERATORS - ZONE 6 (CONT'D)

GROUP 8 - A-frame truck; Crew boat op.; Fireman; Fork lift; Straddle buggy; Traxcavator, Scoopmobile & similar front end loading equipment with scoop or bucket under 1 cu. yd. capacity; Locomotive; Well point system; Unit operator; Hoist-1 drum, 4 stories & over

GROUP 9 - Air compressor; Asphalt plant engineer; Blade grader; Distributor (bitum surface); Finishing machine (concrete, paving); Hoist-1 drum, less than 4 stories; Concrete mixer under 16-S; Oiler driver; Pump crete; Street & road sweeper; Roller (except on asphalt or brick); Roller, asphalt or brick (under 5 tons); Post-hole digger; Tractor operated bush hog & similar grass or bush cutting equipment

GROUP 10 - Batch plant operator

GROUP 11 - Oiler

GROUP 12 - Pumps, over 3 inch suction; Snatch cat

POWER EQUIPMENT OPERATORS - ZONE 7

GROUP 1 - A-frame truck when working with ironworkers, pipefitters, boilermakers & electricians; Bulldozers & tractors; Cableways; Concrete mixer (over 16S) paving machines, cranes, derricks, draglines & clamshells; Concrete pump/boom combinations; Deck winches (2); Economobile model #620B or equivalent or heavier equipment; Gradealls; Hi-Ho & similar type equipment; Hoist, 1 drum, 4 stories & over; Hoist, 2 drums or more; Hydro cranes; Mechanics; Motor patrols; Piledrivers; Rollers on brick & asphalt; Rubber tired front end loader, with or without blade attachment, 1 cu. yd. capacity or more; Scraper; Shovels, backhoes (all types); Side boom cats; Stabilizers, 3 drums or more; Traxcavators; Trenching machines;Welder, Journeyman; Work boats requiring licenced ops.

GROUP 2 - A-frame truck except when working with ironworkers or pipefitters; Air compressor; Asphalt plant engineers; Asphalt finisher, screed men; Blade graders; Small boat op.; Bull floats; Concrete joining machines; Concrete mixer, 16S & under; Concrete spreader; Crusher op.; Deck winch (1); Distributors, asphalt; "Ditch Witch" & similar equipment; Electric elevator (inside); Finishing machine; Firemen; Form graders; Fork lifts; Hoist, 1 drum, under 4 stories; Power subgraders; Pug mill; Pull tractors; Pump; Pump crete; Rollers, except on brick & asphalt; Rubber tired front end loader (with or without attachment) less than 1 cu. yd. capacity; Scale op.; Scoopmobile; Snatch cats; Spray machines; Stabilizers, less than 3 drums; Straddle buggy; Trench machines & equivalent machines

GROUP 3 - Unit and wellpoint operator

GROUP 4 - Outside electric elevator operator

GROUP 5 - Batch plant operator, Oilers (Driver)

GROUP 6 - Oiler

GROUP 7 - Crane op. 60 tons & above; Crane op. boom 100 ft. & over but less than 150 ft.; Tower crane op. boom height 100 ft. & over but less than 150 ft.

GROUP 8 - Crane op. 100 tons & up to 125 tons; Crane op. boom 150 ft. & over but less than 225 ft.; Tower crane op. boom height 150 ft. & over but less than 225 ft.

GROUP 9 - Crane op. 125 tons & up to 200 tons

GROUP 10 - Crane op. 200 tons & up to 300 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Tower crane op. boom height 225 ft. & over up to 30 floors

POWER EQUIPMENT OPERATORS - ZONE 7 (CONT'D)
GROUP 11 - Crane op. 300 tons & up to 400 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Tower cranes over 30 floors
GROUP 12 - Crane op. over 400 tons; Crane op. boom 400 ft. & over

ZONE 1 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 2 - Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry & Winn Parishes
ZONE 3 - All of Acadia, Lafayette & Vermilion Parishes. Parts of Iberia, St, Martin & St. Mary Parishes (west of a line drawn from the city of Berwick to the Junction of Iberville-St. Landry Parishes border)
ZONE 4 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes
ZONE 5 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 6 - All of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, St. Helena, West Baton Rouge & West Feliciana Parishes; Parts of Assumption & St James Parishes (northwest of a straight line drawn from the city of Berwick to the city of Lutcher); Parts of Iberia & southern & northern St. Martin Parishes (east & west of a line from the city of Berwick north to the eastern boundary of the city of Krotz Springs); Parts of Livingston, Tangipahoa & Washington Parishes (west of a line drawn north from the city of Lutcher to the east side of the city of Hammond to the Louisiana-Mississippi border)
ZONE 7 - All of Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany & Terrebonne Parishes; Parts of Assumption, Livingston, St. James, St. Martin, St. Mary, Tangipahoa &Washington Parishes (that portion of southeastern Louisiana bounded on the north by the State of Mississippi, on the east by the State of Mississippi & the Mississippi Sound, on the south by the Gulf of Mexico & on the west by a line drawn as follows: beginning at a point on the Louisiana-Mississippi boundary in Washington Parish, due north of the town of Hackley, thence southwesterly in a straight line to a point on the east bank of the Mississippi River at the southernmost point of Lutcher (including Gramercy in the area), thence in a more southwesterly direction in a straight line to midstream of the Atchafalaya River at Morgan City-Berwick (including Morgan City in this area), thence southerly on a line following midstream of the Atchafalaya River to the Atchafalaya Bay & in a line due south to the Gulf of Mexico.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
ZONE 1 - Roofers	$11.13		.20		
ZONE 2:					
Roofers	9.56	.80	.85	.50	.70
Preparers remove old roofing, place, stock or move materials, tools or equipment for the journeymen	4.55	.50			
ZONE 3:					
Roofers	9.96	.60	.70		.04
Roofer helpers does not use the tools of the trade in removing & disposing of old roofing, stocking & unloading material, hauling materials to the journeymen & sweeping	6.14	.60	.70		.04
ZONE 4 - Roofers	9.70		.30		
Kettlemen	8.35		.30		
ZONE 5 - Roofers	11.38		.20		.04
Kettlemen	7.88		.20		.04

ZONE 1 - Allen, Beauregard Calcasieu, Cameron, Evangeline, Jefferson Davis, Vermilion & Vernon Parishes
ZONE 2 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines. St. Bernard, St. Charles, St. James, St. John the Baptist, South St. Martin, St. Mary, St. Tammany, Terrebonne & Washington Parishes
ZONE 3 - Acadia, Ascension, East Baton Rouge, East Feliciana, Iberia, Iberville, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, North St. Martin, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 4 - Avoyelles, Caldwell, Catahoula, Concordia, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Ouachita, Rapides, Richland, Tensas, Union, West Carroll & Winn Parishes
ZONE 5 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine & Webster Parishes

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS					
ZONE 1	$13.50	.58	.60		.18
ZONE 2	12.25	3%+.65	1.11		.16
ZONE 3	13.57	.55	.80		.16
ZONE 4	12.09	3%+.69	.50		.19

ZONE 1 - Calcasieu Parish
ZONE 2 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Terrebonne & Washington Parishes
ZONE 3 - Acadia, Allen, Ascension, Assumption, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, St. Martin, St. Mary, Tangipahoa, Vermilion, West Baton Rouge & West Feliciana Parishes
ZONE 4 - Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll & Winn Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SPRINKLER FITTERS	12.80	.80	1.20		.08
TRUCK DRIVERS					
ZONE 1 - GROUP 1	10.11	.70			
GROUP 2	10.59	.70			
GROUP 3	10.82	.70			
GROUP 4	10.61	.70			
GROUP 5	10.71	.70			
GROUP 6	10.63	.70			
GROUP 7	11.05	.70			

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Truck Drivers (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 2 - GROUP 1	7.20				
GROUP 2	7.45				
GROUP 3	8.00				
GROUP 4	7.85				
GROUP 5	8.30				
GROUP 6	8.40				
GROUP 7	8.70				
GROUP 8	8.85				
ZONE 3 - GROUP 1	8.22				
GROUP 2	8.30				
GROUP 3	8.55				
GROUP 4	8.70				
GROUP 5	8.85				
GROUP 6	9.05				
GROUP 7	9.40				
ZONE 4 - GROUP 1	9.18				
GROUP 2	9.48				
GROUP 3	9.63				
GROUP 4	9.83				
GROUP 5	9.98				
GROUP 6	9.78				
ZONE 5 - GROUP 1	8.64	.45			
GROUP 2	9.25	.45			
GROUP 3	9.30	.45			
GROUP 4	9.56	.45			

TRUCK DRIVERS

ZONE 1 - GROUP 1 - Teamsters, Pick-up drivers
GROUP 2 - Stake bodies (all sizes)
GROUP 3 - Trucks trailer & dumps over 8 yds.; mixers on trucks over 3 yds; Miss wagons & Koehring dumpsters & similar dirt moving equipment (up to & incl. 8 yds.)
GROUP 4 - Mixers on trucks up to including 3 yds.
GROUP 5 - Winch trucks
GROUP 6 - Trucks, dump
GROUP 7 - Miss. wagons & Koehring dumpsters & similar dirt moving equip. over 8 yds.

ZONE 2 - GROUP 1 - Teamsters, pick-up drivers
GROUP 2 - Stake bodies (all sizes); platform dump
GROUP 3 - Truck & trailer; dump
GROUP 4 - Mixers on trucks, up to and including 3 yds.
GROUP 5 - Mixers over 3 yds.
GROUP 6 - Winch trucks
GROUP 7 - Miss. wagons & Koehring dumpsters, tandem dumps & similar dirt moving equipment, up to and including 8 yds.
GROUP 8 - Miss. wagons, Koehring dumpsters, tandem dumps & similar dirt moving equipment, over 8 yds.

ZONE 3 - GROUP 1 - Pick-up drivers, spotters & dumpers of dirt, gravel, asphalt & rock
GROUP 2 - Stake bodies; flat beds (all sizes)
GROUP 3 - Single axle dumps & water trucks; transit mix, up to & including 3 yds.
GROUP 4 - Tandem axle dump, batch & water trucks over 3 tons pickups with trailer
GROUP 5 - Miss. wagons, floats, tractor trailers; rubber tired tractors & wobble wheels
GROUP 6 - Euclids, lowboys, dempsey dumpsters, Koehring-dumps, 5 axle trucks, transit mix over 3 yds.
GROUP 7 - Fork lift

ZONE 4 - GROUP 1 - Pick-ups
GROUP 2 - Over 1 tons, up to but not including 3 tons
GROUP 3 - 3 tons up to but not including 5 tons
GROUP 4 - 5 tons & over including but not limited to: winch, dempsey dumpster, lowboy, semi-trailer, euclid, tournapull & similar equipment when used for transporting material
GROUP 5 - Larger trucks carrying capacity rear axles 50,000 lbs. & over
GROUP 6 - Winch truck with A-frame when used for transporting material

ZONE 5 - GROUP 1 - Truck drivers, up to but not including 1½ tons
GROUP 2 - Truck drivers, 1½ tons up to but not including 3 tons
GROUP 3 - Truck drivers, 3 tons up to but not including 5 tons
GROUP 4 - Truck drivers, 5 tons & over, including euclids, winch truck, dempsey dumpsters, lowboys, semitrailers, fork lifts, etc.

ZONE 1 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Pars.
ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Pars.
ZONE 3 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 4 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 5 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist & St. Tammany Parishes

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Louisiana

PARISHES: Bossier, Caddo & Calcasieu

DECISION NO. LA80-4089

DATE: Date of Publication

Supersedes Decision No. LA80-4039, dated May 23, 1980 in 45 FR 35136

DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Bossier & Caddo Parishes	$12.99	.70	1.00		.03
Calcasieu Parish	13.32	.775	1.18		.04
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS:					
Bossier & Caddo Parishes	11.30	.55	.65		
Calcasieu Parish	13.50	.63	.85		.05
CARPENTERS:					
Bossier & Caddo Parishes:					
Carpenters	11.10	.55	.50		.04
Millwrights	11.85	.55	.50		.04
Piledrivermen	11.35	.55	.50		.04
Calcasieu Parish:					
Carpenters and Pile-drivermen	12.51	.80	.33		.07
Millwrights	14.41				.07
CEMENT MASONS:					
Bossier & Caddo Parishes	10.50	.45			
Calcasieu Parish	12.53				
ELECTRICIANS:					
Bossier & Caddo Parishes:					
Electricians	13.25	1.75	3%		1%
Cable Splicers	13.75	1.75	3%		1%
Calcasieu Parish:					
Electricians	14.75	.55	3%+.40		1/10%
Cable Splicers	15.00	.55	3%+.40		1/10%
ELEVATOR CONSTRUCTORS:					
Bossier & Caddo Parishes:					
Mechanics	11.66	1.195	.82	a+b	.035
Helpers	70%JR	1.195	.82	a+b	.035
Calcasieu Parish:					
Mechanics	10.575	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
GLAZIERS:					
Bossier & Caddo Parishes	9.88		.30		.04
Calcasieu Parish	12.25			c+d	.02
IRONWORKERS:					
Bossier & Caddo Parishes	12.45	.45	.90		.06
Calcasieu Parish	12.89	.60	.65		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Bossier & Caddo Parishes:					
GROUP 1					
Laborers	$ 7.53	.25	.27		.05
GROUP 2					
Mason tenders, plasterer tenders; asphalt rakers, asphalt smoothers	7.63	.25	.27		.05
GROUP 3					
Mortar mixers	7.68	.25	.27		.05
GROUP 4					
Air jacks, vibrators; sewer pipe layers and wipers	7.73	.25	.27		.05
Calcasieu Parish:					
GROUP 1					
Building & general laborers; tenders (carpenter, plaster, cement finisher, mason); tank & vessel cleaners	8.88	.25	.27		.05
GROUP 2					
Air tool op. (except jack-hammer); interior of closed tanks & vessels power equipment	8.98	.25	.27		.05
GROUP 3					
Mortar mixers	9.03	.25	.27		.05
GROUP 4					
Jackhammer operators	9.13	.25	.27		.05
GROUP 5					
Blasterers	9.84	.25	.27		.05
GROUP 6					
Blaster tenders; concrete cutters behind paving machines & puddlers; form setters & lines asphalt worker	9.40	.25	.27		.05
GROUP 7					
Wipe joints, laying pipe & tile from pumpcrete	9.24	.25	.27		.05
GROUP 8					
Interior or closed tanks & vessels manually	8.92	.25	.27		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Bossier & Caddo Parishes	$ 12.85				
Calcasieu Parish	13.485	.55			.01
MARBLE SETTERS:					
Bossier & Caddo Parishes	10.10	.55			
Calcasieu Parish	13.50	.63	.85		.05
PAINTERS:					
Bossier & Caddo Parishes:					
Painters, tape & float, vinyl & paperhangers	10.60	.40	.30		.05
Calcasieu Parish:					
GROUP 1					
Brush, roller, buffer	12.615		.30		
GROUP 2					
Paperhangers, taping and floating	12.815		.30		
GROUP 3					
Spray, Sandblasting	12.96		.30		
PLASTERERS:					
Bossier & Caddo Parishes	9.75			1.00	
Calcasieu Parish	13.25				
PLUMBERS & PIPEFITTERS:					
Bossier & Caddo Parishes	11.87	.70	1.10	1.00	.09
Calcasieu Parish	14.01	.67	.72		.08
ROOFERS:					
Bossier & Caddo Parishes:					
Roofers	11.38		.20		.04
Kettlemen	7.88		.20		.04
Calcasieu Parish:					
Roofers	11.13		.20		
SHEET METAL WORKERS:					
Bossier & Caddo Parishes	7.74	3%+.67			.15
Calcasieu Parish	13.50	.58	.60		.18
SOFT FLOOR LAYERS:					
Bossier & Caddo Parishes	11.10	.55	.50		.04
Calcasieu Parish	12.51	.80	.33		.07
SPRINKLER FITTERS	12.80	.85	1.20		.08
TERRAZZO WORKERS:					
Bossier & Caddo Parishes	10.10	.55			
Calcasieu Parish	13.50	.63	.85		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TILE SETTERS:					
Bossier & Caddo Parishes	$ 10.10	.55			
Calcasieu Parish	9.30	.48	.67		.02
TRUCK DRIVERS:					
Bossier & Caddo Parishes:					
GROUP 1					
Pick-ups, spotters and dumpers	8.22				
GROUP 2					
Stake bodies; flat beds (all sizes)	8.30				
GROUP 3					
Single axle dumps & water trucks; transit mix up to & including 3 yds.	8.55				
GROUP 4					
Tandem axle, dump, batch & water trucks over 3 tons, pick-ups with trailer	8.70				
GROUP 5					
Mississippi wagons, floats, tractor trailers; rubber tired tractors & wobble wheels	8.85				
GROUP 6					
Euclids, lowboys, Dempsey dumpsters, Koehring dumps, 5 axle trucks, transit mix over 3 yds.	9.05				
Calcasieu Parish:					
GROUP 1					
Pick-ups	10.11	.70			
GROUP 2					
Stake bodies (all sizes)	10.59	.70			
GROUP 3					
Trucks trailer & dump over 8 yds.; mixers on trucks over 3 yds.; Mississippi wagon & Koehring dumpsters & similar dirt moving equipment (up to & including 8 yds.)	10.82	.70			

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS CONT'D:					
Calcasieu Parish Contd:					
GROUP 4					
Mixers on trucks up to & including 3 yds.	10.61	.70			
GROUP 5					
Winch trucks	10.71	.70			
GROUP 6					
Dump trucks	10.63	.70			
GROUP 7					
Mississippi wagons & Koehring dumpsters & similar dirt moving equipment over 8 yds.	11.05	.70			
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS & GLAZIERS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS & GLAZIERS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate
b - Paid Holidays - A thru G
c - 5 days paid vacation
d - Paid Holidays, A,C,D,E,G & Good Friday

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Calcasieu Parish:					
GROUP 1	$ 8.56	.65	1.00		.05
GROUP 2	8.24	.65	1.00		.05
GROUP 3	8.03	.65	1.00		.05
GROUP 4	8.84	.65	1.00		.05
GROUP 5	11.23	.65	1.00		.05
GROUP 6	9.25	.65	1.00		.05
GROUP 7	9.93	.65	1.00		.05

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS

GROUP 1 - Scale Operators; oiler-driver on motor crane; batch plant operator
GROUP 2 - Pumps under 3 inch suction
GROUP 3 - Oiler
GROUP 4 - Fireman
GROUP 5 - Combination oiler-compressor; combination oiler-fireman; asphalt spreaders; backhoe (all types); bulldozer; cableways; cherry pickers (all types); concrete mixers (over 1 sack); cranes; deck winch (2 drums or over); derricks; ditching or trenching machines (riding type); draglines; dredges; fork lifts (other than farm type) outside warehouses; foundation drill; front end loaders (except farm type); grease serviceman; hoist-1 drum (4 stories or more on buildings); hoist-1 drum (over 40 ft. on structures other than buildings); hoist (2 drum or over); locomotive (all types); mechanic; mixer plant operator-central mix; motor patrols; pile-drivers; pull cat; pump crete-6" and over discharge; push cat; road pavers; rollers (plant mix asphalt); scrapers; shovels; sidebooms; unit operator; welder, journeyman; well point system; whirleys; winch cats (cat D-4 & over); winch truck with A-Frame (5 ton & over); work boats-requiring licensed operator
GROUP 6 - Bush hog; compressor; concrete pump-under 6" discharge; concrete saw; deck winch (1 drum); distributors; ditching or trenching machines (non-riding type); dowel bar machine; farm-type tractors (when used to pull discs, grass cutters, etc.); hoist-1 drum (under 4 stories on buildings); hoist-1 drum (40 ft. or under on structures other than buildings); Kolum Buff Machines; mixers (1 sack & under); motorized street sweepers self-propelled; pump (3" & over); test pump-internal combustion engine powered; water blast pumps
GROUP 7 - Asphalt plant operator; boom trucks; bull floats; concrete spreader; farm type front end loaders; finishing machines (roadway, riding type); roller (other than plant mix asphalt); straddle buggies; winch truck with A-frame (under 5 tons); work boats-not requiring licensed operator

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Harrison
DECISION NO.: TX80-4088 DATE: Date of Publication
Supersedes Decision No. TX79-4032, dated March 16, 1979. in 44 FR 16325.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.99	.70	1.00		.03
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS	11.75		.50		
CARPENTERS	6.59				
CEMENT MASONS	8.00				
ELECTRICIANS:					
Electricians	11.70	.60	3%		1/4%
Cable splicers	12.05	.60	3%		1/4%
GLAZIERS	5.15				
IRONWORKERS	6.88				
LABORERS:					
Laborers	3.21				
Mason tenders	4.15				
Plasterers' tenders	4.75				
LATHERS	8.95	.40	.20		
PAINTERS:					
GROUP 1 - Journeymen painters, paperhangers, hand rollers & tools used for cleaning	5.155				
GROUP 2 - Window jack or window sill; sand tape & floating	5.275				
GROUP 3 - Swing stage; spray & sandblasting; sign painting; steel swing stage, boatswain's chair brush	5.65				
GROUP 4 - Steam cleaning, buffing, burners & torch	6.90				
GROUP 5 - Steel brush	5.40				
GROUP 6 - Steel swing stage, boatswain's chair, spray & sandblasting	7.65				
PLASTERERS	8.075				
PLUMBERS & PIPEFITTERS	7.60				
ROOFERS	8.10				
SHEET METAL WORKERS	10.42	.50	.66		.105
SPRINKLER FITTERS	11.71	.55	1.20		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. TX80-4088

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 7.765	.65	1.00		.15
GROUP 2	11.53	.65	1.00		.15
GROUP 3	11.93	.65	1.00		.15

GROUP 1 - Oiler-Fireman
GROUP 2 - Air compressor (1); Pump (1); Pulsometer; Conveyor; Throttle valves; Wagon drill; Elevators building; Form graders; Hoist, single drum; Mixers, less than 14 cu. ft.; Screening plants: Welding machine gas & diesel (2 or more); Crushing plants; Fork lifts (short, under 25 feet); Concrete pumps (all types); Bobcat type equipment
GROUP 3 - Ford tractor or like with any attachments (except backhoe); Drilling machines (all types); Scoopmobile; Hoist, two drums or more; Forklifts (over 25 feet); Winch trucks; Six wheel truck, when used continuously for 5 days; Mixer-mobile; Locomotives; Mixer, 14 cu. ft. or over; Blade graders, self-propelled; Cableways; Cranes - power operated to 100 feet; Fordson type backhoe; Derrick, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving mixer (all types); Pile drivers; Mobile concrete mixers over 14 cu. ft.; Bulldozers, loaders, tractovators; Scrapers and pulls ; Welders; Trenching machines; Roller, ten tons or over; Air compressors, three; Air compressors & one pump; Pump, three or more; Air compressor & air tugger; Boilers, two or more fired by one man; Heavy duty mechanic

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Gregg
DECISION NO.: TX80-4087 DATE: Date of Publication
Supersedes Decision No. TX79-4035, dated September 28, 1979, in 44 FR 56108.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.99	.70	1.00		.03
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS	12.10		.45		.05
CARPENTERS:					
Carpenters	10.60				.015
Millwrights	13.25				.015
Piledrivermen	11.10				.015
CEMENT MASONS	6.50				
ELECTRICIANS:					
Electricians	11.70	.60	3%		1/4%
Cable splicers	12.05	.60	3%		1/4%
GLAZIERS	5.80				
IRONWORKERS	8.95	.35	.35		.04
LABORERS:					
Laborers	3.40				
Mason tenders	3.80				
Plasterers' tenders	4.40				
LATHERS	6.875	.20	.10		.01
PAINTERS, BRUSH	6.75				
PLASTERERS	7.68				
PLUMBERS & PIPEFITTERS	7.79	.43	.90		.10
ROOFERS	6.40				
SHEET METAL WORKERS	8.455	3%+.35	.50		.055
TILE SETTERS	6.90				
TILE SETTERS' FINISHERS	3.65				
TRUCK DRIVERS	3.50				
POWER EQUIPMENT OPERATORS:					
Backhoes	4.50				
Blade graders	4.50				
Bulldozers	4.75				
Cherry pickers	4.50				
Drilling machine ops.	3.75				
Loaders	4.50				
Motor graders	5.00				
Rollers	4.87				
Scrapers	4.28				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler
DECISION NO. TX 80-4085 DATE: Date of publication
Supersedes Decision No. TX80-4001, dated Jan. 4, 1980 in 45 FR 1376
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories). (Use current heavy & highway general wage determination for paving and Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.95	.80	1.25		.02
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS	12.60		.80		
CARPENTERS:					
Zone 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Counties:					
Carpenters	12.20		.50		.01
Millwrights	12.55		.50		.01
Zone 2 - Childress Co.:					
Carpenters	11.85	.48	.60		.10
Millwrights	12.35	.48	.60		.10
CEMENT MASONS	11.40				
ELECTRICIANS:					
Zone 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Counties:					
Electricians	11.58	.60	3%+.50		1/2%
Cable Splicers	12.74	.60	3%+.50		1/2%
Zone 2 - Childress Co.:					
Electricians	12.10	.60	3%		1/10%
Cable Splicers	12.35	.60	3%		1/10%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS	$ 7.90			a	
IRONWORKERS:					
Zone 1: Armstrong, Carson, Castro, Childress (excluding southeastern 1/4), Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Counties	12.10	.55	1.40		.10
Zone 2: Childress County (southeastern 1/4)	10.825	.55	1.40		.10
LABORERS:					
Group 1: General or Construction Laborers	6.82	.63	.40		
Group 2: Air or electric tool operators, jackhammers, vibrator tampers chipping hammers, pipe wrappers, kettleman, asphalt rakers, sand blasterers, pot-tenders, riprap stone pavers, cutting torch operators (demolition), mortar mixer (hand or machine), mason tenders, plasterer tenders, hod carriers, loader and placer, chuck tenders, timberman, collapsible form setters, concrete power buggy operators; carpenter tenders, pipe layers: main, sewer and drainage; make-up man, powderman and blasters; gunite ops. or concrete operators	6.97	.63	.40		
LATHERS	12.15				.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Zone 1 - Childress County:					
Lineman; Operators	$12.10	.60	3%		1/2%
Cable Splicers	12.35	.60	3%		1/2%
Groundman	70%JR	.60	3%		1/2%
Zone 2 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Counties:					
Lineman	11.58	.60	3%+.50		1/2%
Cable Splicers	12.74	.60	3%+.50		1/2%
Groundman	7.66	.60	3%+.50		1/2%
Operator - hole digger, line truck	8.91	.60	3%+.50		1/2%
Flat bed truck driver	6.72	.60	3%+.50		1/2%
MARBLE MASONS (EXTERIOR)	12.60		.80		
PAINTERS:					
Group 1 - Brush and Roller; Paperhangers; Perfa-tapers	9.95		.50		
Group 2 - Structural steel; Swinging stage or chair below 50 ft.	10.07		.50		
Group 3 - Spray and Sandblasters	10.70		.50		
Group 4 - Perfa-tape machine operator	10.20		.50		
PLASTERERS	12.15				.01
PLUMBERS & PIPEFITTERS	11.90	.50	.65	1.06	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	$ 4.50				
SHEET METAL WORKERS	12.38	.50	.66		.12
SPRINKLER FITTERS	13.71	.85	1.20		.08
TRUCK DRIVERS:					
1/2 ton to 3 tons; Ready mix concrete to 3 yds.	3.10				
3 to 5 tons; Ready mix concrete over 3 yds.	3.13				
5 tons and over	3.38				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					
FOOTNOTE FOR GLAZIERS: a. - Paid Holidays A thru F.					

PAID HOLIDAYS FOR GLAZIERS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
Group 1	$11.70	.65	.50		.15
Group 2	11.20	.65	.50		.15
Group 3	9.25	.65	.50		.15

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group 1: Blade Grader, self-propelled; Clam Shells; Cable Ways; Cranes, power operated (all types); Air Compressors, Pumps, Welding Machines and Light Plants (7 to 12 machines); Derricks, power operated (all types); Draglines; Elevating Graders, self-propelled; Hoist, 2 drums or more; Locomotive; Mixermobiles; Paving Mixers, all types; Pile Drivers; Scrapers; Bulldozers; Side Boom; Cherry Pickers-12½ tons and over; Shovels; Heavy Duty Mechanics; All Welders; All tractors with power attachments; Ditching Machines - crawler type; Farm type Tractor (Loader, 1 yd. and over) with Backhoe

Group 2: Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants (3 to 6 machines); Cherry Pickers - unders 12½ tons; Ditch Witch - J30 and under; Farm type Tractor (Loader under 1 yd.) with Backhoe; Go-Devil; Mixers, 14 cu. ft. or over; Rollers over 10 tons; Air Compressor and one Tugger; Boilers, 2 or more; Winch Trucks; Front End Scoopmobile, Loader, Payloader; Blade Grader, towed; Elevators, building; Fork Lifts; Hoist, single drum or 1 line hoisting (1 tugger); Mixers less than 15 cu. ft.; Rollers; Screening Plants; Crushing Plants; Tractors - Wheel type except when hauling material

Group 3: Oiler

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise

DECISION NO: TX80-4086 DATE: Date of Publication

Supersedes Decision No. TX80-4035, dtd. June 20, 1980 in 45 FR 41832

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving Incidental to Building Construction in Tarrant Co. and for Paving & Utilities Incidental to Building Construction in remaining Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.99	.70	1.00		.03
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS:					
ZONE 1 - Grayson County	10.60				
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	12.98	.57	.50		.07
ZONE 3 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Counties	11.89	.57	.50		.04
CARPENTERS:					
ZONE 1 - Grayson County:					
Carpenters	11.52	.70	.55		.005
Millwrights	11.92	.70	.55		.005
Piledrivermen	12.02	.70	.55		.005
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
Carpenters	12.22	.80	.75		.08
Millwrights	13.50	.80			.08
CEMENT MASONS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Counties	9.645	.40	.60		
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Counties	9.485	.55	.60		.01
ELECTRICIANS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Counties:					
Electricians	12.70	.60	7%		1%
Cable splicers	12.95	.60	7%		1%
ZONE 2 - Collin, Dallas, Ellis, Grayson, Hunt, Kaufman & Rockwall Counties:					
Electricians	12.65	.60	7%		1%
Cable splicers	13.92	.60	7%		1%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Mechanics	$11.14	1.195	.82	a+b	.035
Helpers	70%JR	1.195	.82	a+b	.035
GLAZIERS:					
Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	11.45	.40	.65		.025
IRONWORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto (excluding northwest corner), Rockwall, Tarrant & Wise (excluding northwest 1/2) Counties	11.81	.55	1.45		.07
ZONE 2 - Palo Pinto (northwest corner) & Wise (northwest 1/2) Counties	10.825	.55	1.40		.10
LABORERS:					
ZONE 1 - Grayson County:					
GROUP 1 - Unskilled labor	7.145	.30	.40		.02
GROUP 2 - Air tool op, jackhammer, vibrator), mason tenders & mortar mixers, pipelayers	7.395	.30	.40		.02
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
GROUP 1	7.83	.30	.40		.02
GROUP 2	7.98	.30	.40		.02
GROUP 3	8.08	.30	.40		.02
GROUP 4	8.23	.30	.40		.02

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging dirt work & backfilling; firing of salamanders, loading & unloading of materials to & from hoist or cages; loading & unloading of tools & equipment; wheeling, placing & pouring of concrete; all excavation; handling of lumber, steel, cement; distribution of all materials; flagging trucks; miscellaneous job clean-up; wrecking & razing of buildings & all structures; Cleaning & clearing of all debris; handling of broken concrete or other damaged or undamaged materials; removing, moving, handling & greasing of forms, wrecking forms; storing materials to storage place; slip form jacks, scaffold builders, checking materials & tools in & out of receiving lots & sheds; tool house men; landscaper; asphalt ironer & raker; waterproofing tender; dumper; spotter; concrete pumpcrete pipe (handling & laying); carpenter tender

GROUP 2 - All power tool & equipment operators (gas, electric or air); cutting torch man; concrete grademan; power buggy operator; wagon drill operator, well driller, drilling rig tender; cement finisher tender; metal pan & steel form men; handling creosoted materials; liquid acids or like materials injurious to health, eyes, skin or clothes; all newly developed equipment which replaces wheelbarrows or buggies previously used by laborers, scale men on batch plants

GROUP 3 - Concrete & clay pipe (handling & laying); mason handler; scaffold builder; mason tender; hod carriers mortar mixers; lather tenders, plaster tenders; water pump operators up to 4 inches; cement mason tenders; mortar mixers; hod carriers; dry mixers; tank cleaning; all pipe doping, treating & wrapping, including all men working with dope, mortar & plaster mixing machines grout machines, pump crete machines, gunite mixing machines, including placing & cleaning of pipe & conduits used in placing of concrete, handling & placing of gunite materials from stockpiles, screening sand, running sand dryer & loading & operating sand blaster, except nozzle, conveying, stocking & handling of all materials for brickmasons, lathers, cement finishers, plasterers; ditch work over 6 ft. & cleaning out drill piers

GROUP 4 - Sand blaster, blaster powderman; gunite worker; gunite nozzleman & terrazzo grinder

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$12.18				.04
LINE CONSTRUCTION:					
Linemen	13.78		3%		1/2%
Cable splicers	15.16		3%		1/2%
Groundman	9.65		3%		1/2%
MARBLE, TILE & TERRAZZO WORKERS: Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	10.92		.30		
MARBLE & TILE FINISHERS: Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.	7.40				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hunt, Kaufman & Rockwall Counties:					
GROUP 1 - Brush	$10.73	.55	.60		.07
GROUP 2 - All wall covering work: paper, fabric, sheeting, flexwood, etc.	10.98	.55	.60		.07
GROUP 3 - Ames tools op.	10.855	.55	.60		.07
GROUP 4 - Structural steel, stage work, bosun chair, spray gun, sandblasting & window jacks, fire escapes	11.105	.55	.60		.07
ZONE 2 - Hood, Johnson, Palo Pinto, Tarrant & Wise Counties:					
GROUP 1	11.58		.20		.12
GROUP 2	11.83		.20		.12
GROUP 3	12.83		.20		.12
GROUP 1 - Brush					
GROUP 2 - Spray, wallcovering; pressure roller; sandblasting; structural steel; bosun chair, window jack & window sill; stage, fire escape; steel storage tank; stilts; mittens; ames tools, drywall finishing					
GROUP 3 - Steeple jack (radio & TV towers, smoke stacks, chimneys & water towers & similar facilities & flag poles atop buildings located closer to the edge of the building than the height of the pole); toxic material rate (creosote, coal tar products or similar materials injurious to the skin)					
PLASTERERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Counties	9.44	.45		.50	.03
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Counties	10.41				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Collin, Dallas, Ellis, Grayson Hood, Hunt, Kaufman & Rockwall Counties	$12.76	.43	1.00		.10
ZONE 2 - Denton, Johnson, Palo Pinto, Tarrant & Wise Counties	12.53	.64	1.00		.12
ROOFERS:					
GROUP 1 - Slate & tile	10.155				
GROUP 2 - Composition & built-up roofing, damp-proofing & bituminous waterproofing	10.005				
SHEET METAL WORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Rockwall, Tarrant & Wise Cos.	12.645	.60	.84		.145
ZONE 2 - Palo Pinto Co.	12.29				.09
SOFT FLOOR LAYERS	10.85	.40	.40		.03
SPRINKLER FITTERS	13.71	.85	1.20		.08
TRUCK DRIVERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Counties	4.25				
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Counties	4.00				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:

a. 1st 6 months - none; 6 months to 5 years - 6%; over 5 years - 8%; basic hourly rate

b. Paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:

A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day G-Christmas Day

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1 - Dallas County:					
GROUP 1	$ 7.89	.65	.90		.125
GROUP 2	10.595	.65	.90		.125
GROUP 3	10.995	.65	.90		.125

GROUP 1 - Oilers

GROUP 2 - Air compressor, water pumps, welding machines (2 to 6 machines) & generators; Blade grader, towed; Flex plane; Form grader; Concrete mixer, less than 14 cu. ft.; Pulsometer; Wagon drill operator; Conveyor; Hoist, single drum; Scraper, 3 cu. yd. or less; Bob cat with loader

GROUP 3 - Heavy duty mechanic; Asphalt mixer operator on job; Blade grader, self-propelled; Bull clam; Backfiller; Bulldozer & all cat type tractors; Backhoe; Concrete mixers, over 14 cu. ft.; Crusher operator on job; Concrete batch plant operator; Clam shell; Cranes (all types); Truck mounted or crawler requires oiler including groves (hydraulic) or similar type over 12½ ton capacity; Escalated rate on crane and derricks booms: .01¢ per hour, per foot over 90' including jib; draglines; derricks, power operated (all types); DW-10 caterpillar, S-8 Euclid and similar tractors; Elevating grader, self-propelled; Foundation drilling machines (all); Forklifts, used in handling machinery on construction; Gradeall; Hoist, motor driven, 2 drums or more; Locomotive crane; Mixmobile; Paving mixers (all types); Pile driver; Pumpcrete machines; Pneumatic rollers, self-propelled; Shovels, power operated; Scrapers, over 3 cu. yds.; Scoopmobile; Trenching machine, all types; Winch trucks, when pole and winch is used; Water well drilling machines, used on construction; Well point pump; Welding machines (7 to 13 machines)

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONT'D):					
ZONE 2 - Collin, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
GROUP 1	$7.765	.65	1.00		.15
GROUP 2	11.53	.65	1.00		.15
GROUP 3	11.93	.65	1.00		.15

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment

GROUP 3 - Ford Tractor or like with any attachments (except blade and mower on rear); Drilling Machines (all types); Scoopmobiles; Hoists, two drums or more; Forklifts (over 25 ft.); Winch Truck, Six Wheel Truck, when used continuoulsy for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic ft. or over; Blade Graders, self-propelled; Cableways; Cranes-power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 80-34496 Filed 11-6-80; 8:45 am]

BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: VIRGINIA

LOCATION: York & James City Cos. & the Independent Cities of Hampton and Newport News

DECISION NO.: VA80-3068

DATE: DATE OF PUBLICATION

Supersedes Decision No. VA76-3254, dated October 8, 1976, in 41 FR 44680

DESCRIPTION OF WORK: Residential construction consisting of single family houses and apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 8.50				
Carpenters	6.32				
Cement Masons	6.80				
Dry Wall Hanger	6.49				
Dry Wall Tapers & Finishers	6.00				
Electricians	4.53				
Insulation Mechanics	5.00				
Laborers, Unskilled	4.08				
Painters, Brush	5.29				
Plumbers	7.65				
Roofers	5.51				
Sheet Metal Workers	4.41				
Soft Floor Layers	6.50				
Truck Drivers	4.00				
POWER EQUIPMENT OPERATORS:					
Backhoe	5.43				
Bulldozer	6.36				
Forklift	5.03				
Loader	4.56				

federal register

Friday
November 7, 1980

Part V

Department of Health and Human Services

Food and Drug Administration

Laser Products; Intent to Amend Performance Standard

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1040

[Docket No. 80N-0364]

Laser Products; Intent To Amend Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering amending the laser product performance standard to require certain reporting, recordkeeping, and labeling for original equipment manufacturer component sales, to simplify the definition for "human access," and to clarify the concepts of "protective housing" and "product classification." Additionally, there may be a need to extend the wavelength range of control, to relax the general requirements for safety interlocks and viewing optics, and to eliminate the requirements for a remote control connector and an emission indicator delay on Class III products below 5 milliwatts peak power output. A change may also be proposed to clarify the need for scanning safeguards on certain lasers as a function of product classification, to require an emission indicator on operator controls separated from the laser system in excess of 2 meters, and to require a new "manual reset mechanism" performance feature for Class III and Class IV laser products. The standard may also be amended to incorporate appropriate requirements for laser light shows. FDA's experience in administering the laser standard has indicated a need to make changes.

DATE: Comments and data by January 6, 1981.

ADDRESS: Written comments and supporting data 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: Richard S. Sternchak, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: FDA issued the performance standard for laser products in Part 1040 (21 CFR Part 1040) as a final rule in the **Federal Register** of July 31, 1975 (40 FR 32252). Based on its experience in administering the laser standard since it became effective on August 2, 1976, FDA has recognized that some provisions of the standard needed to be revised. The agnecy issued amendments to the performance standard as a final rule in the **Federal Register** of November 28, 1978 (43 FR 55387). These amendments removed unneeded criteria for determining human access to laser or collateral radiation; specified more appropriate parameters for measuring the accessible emission levels of laser and collateral radiation, including scanned laser radiation; relaxed the accessible emission limits for collateral radiation in the wavelength range of greater than 400 nanometers (nm); relaxed the labeling and performance requirements for some Class II laser products; and allowed more administrative flexibility in determining the wording of warning labels. These amendments solved major problems in the standard. They also reduced the burden on manufacturers by increasing the design latitude within each of the graded risk classes for laser products without compromising the public health and safety.

As a result of the agency's continuing effort to evaluate the significance of new information and its experience enforcing the present laser standard and processing variance applications, FDA has concluded that other amendments may be necessary. The modifications under consideration, FDA believes, would further clarify the standard without affecting the hazard classification scheme; would appreciably reduce the burden on affected manufacturers without compromising the public health; and would generally improve the effectiveness of regulation of the laser industry without imposing undue constraints.

This notice is being issued under FDA's policy of seeking early public participation in performance standard amendment activities. Comments and supporting data concerning the rationale for the proposed amendments discussed below would be particularly useful:

1. The agency believes that there may be a need to require manufacturers of laser products not subject to the performance standard to maintain relevant records, to provide certain reports, and to affix additional labeling. Any laser product sold to, by, or for a manufacturer of an electronic product subject to the performance standard for use as a component (or replacement thereof) in such electronic product, commonly referred to as an original equipment manufacturer (OEM) component, currently is not subject to the performance standard for laser products set forth in § 1040.10(a) (1) and (2) (21 CFR 1040.10(a) (1) and (2)) and is excluded from the reporting and recordkeeping requirements for electronic products set forth in § 1002.1(b) (21 CFR 1002.1(b)). Under these circumstances, FDA's Bureau of Radiological Health (the Bureau) cannot ensure that these laser products actually meet the conditions required for exclusion from the standard.

FDA has information that some manufacturers have been selling uncertified and noncompliant laser components to end users rather than to actual laser product manufacturers. To prevent these unauthorized sales, the agency is considering actions to ensure the proper identity, use, and traceability of OEM laser products. These could include the requirement that a label listing the manufacturer's name and address, the date of manufacture, and model and unit identification be placed on all components. A requirement that OEM manufacturers verify, prior to shipment, that all sales of laser products not subject to the performance standard are sold to, by, or for other manufacturers for use as components in electronic products could be imposed. The records that manufacturers may be required to maintain would be similar to those required by § 1002.30(a) (4) and (b) (21 CFR 1002.30(a) (4) and (b)) and would include records of OEM sales verification. Records to be obtained by dealers and distributors would be the same as those listed in § 1002.40 (21 CFR 1002.40). The conditions for the preservation, inspection, and disposition of records would be in accordance with §§ 1002.31 and 1002.41 (21 CFR 1002.31 and 1002.41). One proposal is to limit reporting to annual reporting under the provisions of § 1002.11 (21 CFR 1002.11), except that the submission might need only to summarize the contents of the records to be maintained under § 1002.30(a) (4) and (b).

2. The current definition of "laser" in § 1040.10(b)(15) specifies the applicability of the laser product performance standard to a wavelength range between 250 and 13,000 nm. The agency is considering extending the wavelength range for the classification limits of laser products, because it has found that laser products are being manufactured outside the present control range. At the low end of the wavelength spectrum, excimer (rare gas-holgen combination) lasers are commercially available that emit short, intense pulses in the shortwave ultraviolet (UV). These include argon fluoride (ArFl) and krypton chloride

(KrCl) lasers that radiate at 193 nm and 220 nm wavelengths, respectively. Fluorine (Fl) lasers operating at 157 nm are also available but may not be placed under performance standard control because they operate in the vacuum-UV range.

Several types of lasers are available in which far-infrared output is obtained by illuminating a gas with a carbon dioxide (CO_2) or carbon monoxide (CO) laser. These lasers generally produce low-power, pulsed, or continuous-wave output for spectroscopic purposes. Molecules used in these lasers include methanol of 119 micrometer (μm) output, hydrogen cyanide for 311 μm or 337 μm, ammonia for 34 to 388 μm, and methyl fluoride for 496.1 μm. The agency is considering extending the wavelength range of control to between 180 nm and 10^6 nm (1 millimeter) to include these laser products.

Of concern is the lack of biological data upon which limits would be based in the expanded regions. Without such data, it may not be possible to effect this change. The agency invites submission of relevant biological effects data. This expanded wavelength range, however, does coincide very nearly with the 200 nm to 10^6 nm wavelength range contained in the American National Standards Institute (ANSI), Inc.'s recommended "Standard for the Safe Use of Lasers" (ANSI-Z 136.1-1980, revision pending).

3. Reference to a line-of-sight path of up to 100 centimeters (cm) was included in the present definition of "Human access" in § 1040.10(b)(12)(ii) to account for the possible insertion into a laser product of optical fiber probes, tools, or other foreign objects that could allow access to specularly reflected laser radiation. These types of objects inserted through a small hole, crack, or opening in a protective housing could possibly reach points accessible by a straight, unobstructed path of up to 100 cm from any part of the human body and reflect accessible laser radiation. The likelihood of this occurring may not be sufficiently great to warrant the added design difficulty posed by this requirement. The agency is considering whether the 100 cm line reference should be modified for clarification or simply be deleted. Modification may require the specification of the maximum allowable size of dimensions of permanent openings in protective housings other than exit apertures and temporary openings that result from intended portions of the protective housing being removed and displaced.

4. Based on the review of initial reports and the inspection of actual products, FDA has found that laser product manufacturers have particular difficulty interpreting the present laser performance standards requirements for protective housings. Consequently, manufacturers have had difficulty designing products with protective housings that comply with the standard. Therefore, the agency is considering rewording § 1040.10(f)(1) to make it easier to understand. This action may include stating the general requirement more simply, clarifying the phrase "wherever and whenever", and relating the concept of protective housing more closely to the amended definition of human access.

5. FDA, from experience, recognizes that product classification is a complex process. That process involves the simultaneous consideration of a set of interrelated criteria for permitting or preventing human access to laser or collateral radiation. These criteria vary with the individual function and form of each product. This complexity often leads to misclassification of laser products. The agency believes that the wording of § 1040.10(c)(1) can be improved to make product classification more understandable. It is considering restructuring the section by providing more procedural details, using simplified terms and sentence structure, and integrating the concept of protective housing more closely with the concept of product classification.

6. The agency is considering relaxing the requirements for safety interlocks. Under the conditions currently defined in § 1040.10(f)(2), each laser product, regardless of its class, requires a safety interlock for each portion of the protective housing that is designed to be removed or displaced during operation or maintenance, if removal of displacement of that portion of the protective housing could permit human access to laser or collateral radiation in excess of the limit of the lowest class necessary for the performance of the intended function of the product. To comply with the current standard, safety interlocks must prevent human access to unnecessary laser and collateral radiation upon removal or displacement of the interlocked portion of the protective housing and preclude the removal or displacement of that portion of the housing upon failure of the interlock to prevent human access to radiation in excess of the required limit. If defeatable, the safety interlock must also provide an indication of interlock defeat, and when defeated, it must preclude replacement of the removed or displaced portion of ther protective housing.

The requirements for safety interlocks and the concepts for meeting them are discussed in the Bureau's Interpretative Guideline No. 12, dated September 9, 1976. Since that time, the Bureau has relaxed its policies on safety interlock requirements. The Bureau states in Interpretative Guideline No. 20, dated July 1, 1977, that it will not object to the use of standard electrical and mechanical interlocks with appropriate labeling for operation and maintenance ports in the protective housing of laser products through which access to levels of visiable laser radiation not exceeding Class II limits is possible. This relaxation was considered warranted because eye damage, while possible from chronic exposure to Class II levels of laser radiation, is not likely to occur from acute exposure. The agency is now considering relaxation of the laser standard regarding safety interlocks because experience has shown that the current requirements may be overly restrictive. With regard to laser products that could permit human access to visible laser or collateral radiation through portions of the protective housing intended for removal or displacement, the agency is considering elimination of interlock requirements for accessible levels below the limits of Class II. It may also eliminate the requirements of § 1040.10(f)(2)(i)(*b*) for accessible visible laser radiation levels in excess of the limits of Class II but equal to or less than 5 milliwatts (mW) peak power, as long as an interlock and interlock failure indicator are provided. In addition, the agency is considering allowing the use of dual interlocks in lieu of the requirements of § 1040.10(f)(2)(i)(*b*) when access to visible laser radiation levels in excess of 5 mW peak power can be gained. Panels intended for removal or displacement during operation or maintenance may still require safety interlocks meeting all requirements of the present § 1040.10(f)(2) if access could be gained to laser radiation above 710 nm or less than 400 nm wavelengths. These changes would make the safety interlock requirements of the laser standard more consistent with the less restrictive guidelines recommended in ANSI-Z 136.1-1980, (revision pending) and by the International Electrotechnical Commission (IEC).

7. Section § 1040.10(b)(30) currently defines a remote control connector as an electrical connector which permits the connection of external controls placed apart from other components of the laser product to prevent human access to all laser and collateral radiation in excess of the limits specified in §§ 1040.10 and

1040.11 (21 CFR 1040.10 and 1040.11). The agency questions the need for a remote control connector on products intended for outdoor use and certain other products that radiate at or below 5 mW peak power in the visible wavelength range. This is because external barrier interlocks and optional remote switches are almost never used on products in this category, which includes surveying, leveling, and alignment laser products. Furthermore, these laser systems are generally not used under conditions that would pose a high risk of injury due to retinal burns. Both the IEC and ANSI only recommend the implementation of this performance feature on Class III_b and Class IV laser products.

8. The agency is considering requiring a new performance feature for Class III lasers above 5 mW peak power output and Class IV systems to protect the operator from dangers associated with the unexpected resumption of radiation emission following interruption of product operation due to any temporary power failure, interlock failure or defeat, or use of the remote control connector. A "manual reset mechanism" safety feature may be added to laser products that exceed 5 mW peak power to preclude the high risk of injury to an attendant from the sudden automatic reenergizing of the product.

9. Section 1040.10(f)(5)(ii) states that each laser system classified as a Class III or IV laser product shall incorporate an emission indicator which provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I, and sufficiently prior to emission of such radiation to allow appropriate action to avoid exposure to the laser radiation. Technically, visible radiation of 5 mW peak radiant power is a level at which biological damage to human tissue is possible from acute direct exposure, and direct viewing should be prevented. There is no clear distinction, however, between the bioeffects of lasers at the low end of Class III and that of lasers at the upper levels of Class II, where radiation may be viewed under carefully controlled exposure. Therefore, the agency is considering not requiring an emission delay for laser products radiating in the visible up to 5 mW peak power output because of the marginal safety benefit that would be provided by this requirement. The degree of risk involved by not providing an emission delay in these circumstances may not justify the cost of implementation.

10. On the other hand, the agency may require an emission indicator on operator controls that are separated from the laser head and the laser energy source by a distance of greater than 2 meters. Experience has shown that the requirement of a second emission indicator is often more appropriate on the controller than on a power supply under the same condition of separation. This requirement would be consistent with the safety criteria set forth in § 1040.10(f)(5)(iii), which states that, "if the laser and laser energy source are housed separately and can be operated at a separation distance of greater than 2 meters, both laser and laser energy source shall incorporate an emission indicator as required in accordance with § 1040.10(f)(5)(i) or (ii)."

11. FDA is also considering an amendment to relax the requirements for viewing optics during the performance of service functions. Unlike operation and maintenance, service must often be performed under compromised circumstances of human access to higher levels of laser and collateral radiation. However, these activities are generally performed under controlled conditions, for shorter periods, and by individuals having more technical awareness. For these reasons, the agency is considering allowing Class II accessible emission levels through viewing optics during service.

12. The agency believes that it may be necessary to clarify the requirement for a scanning safeguard on laser products which emit accessible scanned laser radiation for laser products classified at a higher level than would be exceeded upon scan failure. There is a question concerning the need, under all circumstances, for a scan failure safeguard to preclude change of class of scanned radiation as now required in § 1040.10(f)(9).

13. FDA is considering modifications to the specific purpose section of the laser product performance standard, § 1040.11(c) (21 CFR 1040.11(c)), to include requirements for laser light show products. At the time of the development of the laser standard, the widespread use of higher powered lasers in light shows was not anticipated. Consequently, in most cases, it is impossible for a laser light show to meet the requirements of the standard for "demonstration laser products." Therefore, those light show products are now regulated by the use of procedures for variance from the laser performance standard. FDA is considering amending the standard to incorporate the appropriate requirements for these special laser products to negate the need for variances.

Interested persons are invited to participate in these efforts to improve the laser product performance standard by submitting written data, views, or arguments concerning the matters discussed in this notice and any associated environmental and economic concerns. Written comments or data should be sent (preferably four copies) to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The comments should be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Comments submitted before December 3, 1980, may be discussed at the next meeting of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), tentatively scheduled for December 3-4, 1980, as part of its review of possible proposed amendments resulting from this notice. This committee, a statutory advisory committee to the Secretary of Health and Human Services, must be consulted prior to the establishment of standards under the Radiation Control for Health and Safety Act of 1968. All comments received will be considered to the fullest possible extent in formulating the proposed amendment(s). Information submitted in response to this notice will be available for public inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the authority of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f) and the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: November 2, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-34720 Filed 11-4-80; 10:12 am]

BILLING CODE 4110-03-M

federal register

Friday
November 7, 1980

Part VI

Environmental Protection Agency

Toxic Substances Premanufacture Notification Requirements and Review Procedures; Statement of Revised Interim Policy

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 720

[OPTS-50019; TSH-FRL 1653-5]

Toxic Substances Premanufacture Notification Rquirements and Review Procedures; Statement of Revised Interim Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed-Rule-Related Notice.

SUMMARY: On January 10, 1979, EPA proposed rules and notice forms for permanufacture notification for new chemical substances under section 5 of the Toxic Substances Control Act, 15 U.S.C. 2604 (44 FR 2242). On that date, EPA also established an interim policy for the submission of premanufacture notices. This policy was to apply for 90 days after the effective date of the premanufacture notification requirement. On May 15, 1979, EPA published a statement of Interim Policy to clarify its earlier proposal (44 FR 28564). The latter statement extended the Interim Policy's coverage to all notices filed before the effective date of the final premanufacture rules and notice forms. The May 15 statement also outlined procedures that the Agency intended to follow concerning premanufacture notices filed under the Interim Policy.

This Revised Interim Policy Statement, is intended to clarify further the original interim policy. Provisions of the May 15 notice which are not addressed in this statement will remain in effect as published on May 15, until the final rules are promulgated.

ADDRESS: All materials regarding the premanufacture notification rulemaking are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays at: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-429, 401 M St., SW., Washington, DC 20460, Toll Free: 800-424-9065; in Washington, D.C., 202-554-1404.

SUPPLEMENTARY INFORMATION:

I. Background

On January 10, 1979, EPA proposed regulations governing the submission of premanufacture notices under section 5 of the Toxic Substances Control Act (TSCA or the Act) (44 FR 2242). Section 5 provides that any person who intends to manufacture (or import) a new chemical substance for a commercial purpose must submit a notice to EPA at least 90 days before he commences manufacture (or import). A "new chemical substance" is defined in section 3(a) of the Act as any chemical substance which is not included on the list of existing substances which EPA keeps under section 8(b). Premanufacture notices are required for all new chemical substances manufactured or imported 30 or more days after publication of the section 8(b) list. The notification requirement for any chemical substance manufactured, or imported in bulk became effective July 1, 1979, 30 days after publication of the Revised Inventory. The notification requirement for new chemical substances imported as part of a mixture was effective August 30, 1980, 30 days after publication of the Revised Inventory.

The preamble to the January 10, 1979 proposed regulations contained an interim policy for the submission of notices for new chemical substances to be manufactured or imported within 90 days after the section 5 requirement took effect (44 FR 2245). That policy covered notices submitted prior to publication of the Inventory, for chemicals believed to be "new" and which submitters intended to initially manufacture or import within 120 days after publication of the Inventory.

On May 15, 1979, EPA published another Statement of Interim Policy to clarify the terms of the initial interim policy statement. The May 15 statement replaced the interim policy published in January and applied to all notices received prior to the effective date of the premanufacture notification rules. Reporting under this policy began on July 1, 1979, 30 days after publication of the Inventory.

The purpose of this notice is to clarify the Interim Policy based on the comments received and on the Agency's experience with notices since July 1, 1979. As stated in the May 15 Interim Policy Statement, EPA cannot require compliance with the proposed regulations before completion of the rulemaking. However, pending final rulemaking, EPA will continue to act on a case-by-case basis when a notice fails to meet the statutory requirements. The provisions of the May 15 notice which are not addressed in this statement will remain in effect as published on May 15, until the final rules are promulgated.

The Agency currently is working on various aspects of section 5 rulemaking. EPA is reviewing comments received on the proposals of January 10, 1979 and October 16, 1979 (44 FR 59764). In addition, the Agency will propose the economic analysis and Draft Regulatory Analysis for public comment. In the **Federal Register** of August 15, 1980, the Agency proposed a rule extending reporting requirements to processors (45 FR 54642). This may be incorporated into the final section 5 rules. After a review of the economic analysis and the comments received on all these issues, the Agency will promulgate the final section 5 rules.

II. Notice Contents

Section 5(d) of TSCA requires that notices contain certain categories of information that are listed in section 8(a)(2) of the Act and reprinted in the May 15 Interim Policy. Persons who do not submit any data relevant to one of those categories or who submit little data should indicate in their notice that the missing information is "not known or reasonably ascertainable." This is preferable to simply failing to provide information without any explanation. However, in some cases EPA will presume that certain information is known to or reasonably ascertainable by the submitter. This may be true for some types of chemicals or processes in question, or for some kinds of information, such as production volume and use. EPA particularly will question responses by submitters that molecular structure is not known or reasonably ascertainable.

To date, EPA has received several submissions which initially did not meet these statutory requirements. The policy has been to notify the submitter as soon as possible of the inadequacy of the submission and what action must be taken to fulfill the statutory requirements. The notice period does not begin until the required information is provided by the submitter. To avoid similar problems, which cause both the submitter and the Agency unwanted delays, EPA is providing the following examples of responses which did not meet the statutory requirements.

One submission did not include the molecular structure of the new chemical substance. Section 8(a)(2)(A) requires this information to the extent that it is known to or reasonably ascertainable by the submitter. In providing identity information, submitters should follow the instructions for reporting for the Inventory. Substances with no known Chemical Abstract Service (CAS) number should be identified in accordance with Appendix 5 of

"Reporting for the Chemical Substance Inventory" which describes the development of chemical structure diagrams. If submitters cannot provide exact structural diagrams because of the nature of the substances, representative structures are satisfactory. For the notice in question, EPA scientists determined that representative molecular structures for the new chemical substance were in fact known to or reasonably ascertainable by the submitter because a knowledgeable chemist should have been able to derive the structure from available process information. Therefore, the notice review period did not begin until this information was provided to EPA.

Section 8(a)(2)(B) requires the submitter to include in the premanufacture notice the categories or proposed categories of use for the chemical substance described in the notice. The category of use should be specific enough to enable EPA to estimate potential consumer exposure as part of the risk assessment of the subject chemical. The Agency received several submissions that were incomplete since, without use information, it was unable to make reasonable assessments of consumer exposure. In one case, the submitter described the new substance only as a "captive intermediate" without specifying the substance's end use. Clearly EPA could not estimate consumer exposure from such a use description. Therefore, the 90-day review period did not start until the submitter supplied more specific use information.

Section 8(a)(2)(C) requires that a notice include "reasonable estimates of the total amount of the new substance to be manufactured or processed." In one case, the notice submitter only provided minimum production volume estimates. EPA does not believe that an estimate with only a lower limit is a "reasonable" estimate of the "total amount." Submitters should provide a range for production estimates, or at least provide an estimated maximum production volume.

Sections 8(a)(2) (D), (F) and (G) require submitters to describe the byproducts, the number of individuals exposed in their places of employment and the duration of that exposure, and the method of disposal of the new chemical, respectively. Such information should be provided for the total lifecycle of the new substance to the extent it is known or reasonably ascertainable. The submitter, knowing proposed uses of the new chemical, should be able to provide information on worker exposure, byproducts, and disposal beyond those processess such as manufacturing or processing over which the submitter has control. If such information is not known to or reasonably ascertainable by the submitter, EPA will make its own best estimates of worker exposure, byproducts and disposal for the lifecycle of the chemicals.

Regarding workplace exposure, one submitter only stated that exposures would be in accord with OSHA requirements. Such a statement is not sufficient to meet the statutory requirements of section 8(a)(2)(F) since EPA under TSCA may reach workplace exposures OSHA cannot. Section 8(a)(2)(F) requires estimates for workplace exposure, at least in the aggregate, and preferably divided among the stages of manufacture, processing, distribution in commerce, use, and disposal to the extent that they are known or reasonably ascertainable. The notice review period did not begin until the Agency had received this information.

In another case, a submitter only provided statements that exposures would be "minimal or nonexistent" or "no hazard". Such qualitative statements do not meet the requirements of section 8(a)(2)(F) for estimates of the number of individuals who will be exposed in their places of employment and the duration of that exposure. In this case, the notice review period did not begin until the Agency received quantitative exposure estimates.

Finally, section 5(d)(1)(B) requires the submission of any test data on the health or environmental effects of the new substance in the possession or control of the person submitting the notice. In some cases the Agency has received only conclusions based on the health or environmental effects data. A submitter should provide actual test data (including protocols or methods), results, and conclusions of tests for health or environmental effects of the new substance in the notice.

III. Use of the Notice Form

EPA proposed a notice form in January 1979 and proposed a revised form in October 1979. While use of a form is not mandatory until the Agency has completed its rulemaking, EPA strongly encourages submitters to use the revised form. Using the form will (1) provide the Agency with a consistent format, (2) speed the review process, and (3) provide the Agency with experience for additional, future clarification of the form when finally promulgated. Use of the form also benefits the submitters by allowing standard organization of data, thus reducing completion time.

The following is a brief explanation of the parts of the form which have most often raised questions.

Byproducts and impurities: Some submitters have been unsure where to list byproducts, impurities and other related substances. Impurities should be listed in Subsection 4 of Part I, Section B, Chemical Identity. Information on other related chemical substances, such as byproducts that are produced during manufacture of the new substance, should be included in the Block Diagram, Part II, Section A, Subsection 2. For industrial sites controlled by the submitter, Part II, Section A, Subsection 3.5, requests a listing of related chemicals to which workers may be exposed. For sites controlled by others, information on related chemicals such as byproducts or feedstocks should be provided in Part II, Section B, Subsection 2 as part of the process description and in Subsection 4.3 for those related materials that contain the new chemical substance and will be disposed of as solid or liquid waste. In addition, byproducts which are formed as a result of consumer and commercial categories of use should be reported in Part II, Section C, Subsection 4.

Manufacture, processing, use and disposal: Some submitters indicated that it is difficult to distinguish between manufacture, processing, use and disposal and as a result they were uncertain for which industrial sites they must submit information. Submitters must provide worker exposure and environmental release and disposal data for all industrial sites where activity with the new chemical substance occurs. The following examples will clarify where this information should appear on the form.

If submitter A produces a new solvent X to be used in paints, data on human exposure and environmental release during manufacture should be provided in Part II, Section A, Industrial Sites Controlled By the Submitter. If another party manufactures the substance under contract, this information should be provided in Section B, Industrial Sites Controlled By Others. If the solvent X is used in paint formulation, processing may be conducted by manufacturer A or it may be conducted by paint manufacturer B to whom manufacturer A has supplied solvent X. If A produces the paint at his own site, he should provide worker exposure and environmental release information in Part II, Section A. However, if manufacturer A supplies solvent X to manufacturer B, then manufacturer A should supply the worker exposure and

environmental release information in Section B.

Site-specific exposure and environmental release data are required only for use of the new substance at an industrial site. The paint containing solvent X in the previous example may be used to paint automobiles at an automotive manufacturing site not controlled by manufacturer A. In this case, A should provide information concerning worker and environmental release in Part II, Section B of the form. If, however, the paint containing the solvent X is distributed for general consumer use and no further use occurs at an industrial site, A should complete Part II, Section C, Consumer and Commercial User Exposure.

Site disposal information must be provided for any site where liquid or solid wastes are generated during manufacture, processing, or industrial use of the new chemical substance. For example, if disposal occurs at the manufacturing site, manufacturer A should complete Part II, Section A, Subsections 3 and 4. If disposal occurs at commercial or municipal disposal sites, manufacturer A should complete Section B. If solvent X is used by manufacturer B to produce auto paint, manufacturer A should report disposal by manufacturer B in Section B, no matter where disposal occurs. If solvent X is used as a degreasing agent at an automotive manufacturing site, manufacturer A should also report disposal of the waste solvent in Section B.

If the submitter controls an industrial site, Part II, Section A should be completed. If other persons control the site, Part II, Section B should be completed.

Category of use: Some submitters have asked what information should be provided on the categories of use that are the basis for the production volume estimates for Category of Use, Part I, Section D, Subsection 2. The category of use list should include all phases of industrial, commercial and consumer applications. For example, if the submitter intends to manufacture a new solvent to be used in house paint the following categories of use would be reported: solvent: paint manufacture, industrial; solvent: house paint, consumer, commercial.

Detailed data concerning human exposures and environmental release associated with these categories are required in Part II of the notice. Information concerning the processing of the new solvent in the manufacture of paint would be reported in Part II, Section A, if the submitter controlled the site, or Section B, if other persons controlled the site. Similarly, information concerning consumer use and exposure for the "house paint" category of use would be provided in Part II, Section C, Consumer and Commercial User Exposure. If the submitter believes that completion of these parts of the form does not explain the exact nature of each category of use, he may attach a narrative description of the operation and conditions that are expected for each category of use.

Human exposure and environmental release data: Some submitters have asked what kind of exposure data should be provided and how detailed it should be. Part II of the proposed form requires human exposure and environmental release and disposal data to be submitted for all industrial, commercial and consumer uses of the new chemical substance. In most places where quantitative estimates are requested, ranges have been provided. If ranges are not provided, submitters may use their own ranges. If submitters have information more detailed than that requested by the form, they may voluntarily provide such information.

Plant hours of operation: Some submitters were confused about reporting the hours of operation of the industrial plant that manufacturers, processes, or uses the new chemical substance. Estimates should be based on the operations that involve the new chemical substance only and not total hours of operation for each site.

Federal Register *notice:* The October 16 reproposal also included a page for information to be published in the **Federal Register** in accordance with section 5(d)(2) of the Act. This information comes from various parts of the form. The submitter is given the opportunity to provide generic substitutes for any of the information which would appear in the **Federal Register** but has been claimed confidential on the form. If the submitter does not complete this part of the proposed form, EPA will compile nonconfidential information from other parts of the form and publish it in the **Federal Register.**

IV. Confidentiality

Pending the promulgation of section 5 regulations, the assertion and review of confidentiality claims and the disclosure of information will be governed by EPA's general rules for confidentiality of business information submitted under TSCA (40 CFR 2.306.)

Until the section 5 rules are effective, the policy discussed below will apply to all information submitted to EPA under the premanufacture notification program. After the rules are effective, all such information in the possession of the Agency will be subject to the rules. EPA will give submitters ample opportunity to update past confidentiality claims to conform to the new rules.

A. Asserting Claims

As stated in the May 15 Interim Policy, if a person wishes to assert a business confidentiality claim for all or part of the information submitted to EPA, he must assert this claim with the notice. If the person does not assert a claim at the time he submits the information, EPA will make the information available to the public without further notice to the submitter.

If the submitter uses the proposed notice form, he may assert his claims of confidentiality in accordance with the instructions published as an appendix to the October 16 reproposal.

The form as proposed in October provided a system for asserting claims of confidentiality. The Agency, recognizing the relationship between various pieces of information, allowed submitters, by checking one box, to claim several pieces of related information confidential for the same reason. For example, if submitters want to claim confidential all the information in questions 1, 2, 3 under Manufacturer Identification (Part I) on page 2 of the proposed form, they only have to check the box at the top of Section A. There is no need to individually check the boxes next to items 1, 2, and 3 to assert the same claim of confidentiality.

If the submitter does not use the proposed form, section 2.203(b) of EPA's business confidentiality regulations prescribes the methods for claiming confidentiality. For example, confidential portions of otherwise non-confidential documents should be identified clearly. EPA strongly urges submitters to be as specific as possible in identifying confidential information. Each page of a document should be marked appropriately. In some cases, if non-confidential and confidential material are mixed on a single page, item-by-item markings would be appropriate. Section 2.203(b) also states that where a portion of an otherwise non-confidential document is asserted to be confidential, the person may submit separate confidential and non-confidential documents to facilitate identification and handling by EPA. The Agency strongly encourages persons to submit two copies of premanufacture notices if some of the information is claimed confidential. Section 5(d)(1) of TSCA requires the Agency to make public any non-confidential information in premanufacture notices. Therefore, if

a submitter does not file a non-confidential copy, EPA will prepare an excised copy for the public file, based upon the submitter's confidentiality claims. Submitter preparation of the public copy will ease the administrative burden on EPA, and will reduce the remote possibility that EPA inadvertently will disclose information which a submitter claims as confidential.

Another question raised about confidentiality concerns the treatment of generic names submitted to the Agency when the specific chemical identity of a new chemical substance is claimed confidential. The proposed form requests the submitter to provide three generic names. Because disclosure of more than one generic name could reveal the confidential chemical identity of a substance, EPA treats as confidential business information the two generic names not included in the section 5(d)(2) notice published in the **Federal Register.**

B. Substantiation of Claims

The Agency encourages submitters of notices containing claims of confidential business information to substantiate those claims when the notice is submitted. The October 16 reproposed form and accompanying instructions provide a method for substantiating the claims. If the claim is not substantiated, the Agency, early in the notification period, will send the notice submitter a detailed letter requesting substantiation of all information claimed confidential. EPA must do this to meet short Freedom of Information Act deadlines in view of the large number of requests received and anticipated. Therefore, the Agency encourages persons to substantiate their confidentiality claims at the time the notice is submitted and thus avoid the duplication and delay which is caused by separate substantiation.

Any information which the submitter furnishes in response to substantiation questions, can be claimed as confidential by marking Confidential at the top of each page containing such information. EPA will not disclose such information to the public unless ordered by a court.

C. Disclosure of Chemical Identity during the Interim Period

Pending completion of section 5 rulemaking, EPA will not disclose a specific chemical identity included in a health and safety study submitted with a premanufacture notice, if such disclosure would reveal confidential business information. This policy will apply both before and after a person has commenced manufacture or import of the substance. However, all information submitted to the Agency during the interim period will be subject to the section 5 rules when they become final.

V. Test Marketing Exemptions

Section 5(h)(1) of TSCA authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b) of the Act, and to permit applicants to manufacture or process new chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. Section 5(h)(6) provides that EPA must either approve or deny the application within 45 days of its receipt and must publish a notice of its decision in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Based on the exemption applications received to date, the Agency is concerned about the failure of test marketing applicants to provide sufficient data for EPA to make the required finding that the test marketing will not present any unreasonable risk of injury to health or the environment. For example, some manufacturers have not provided any toxicity data in their applications. In some cases, EPA may not be able to obtain sufficient information to determine that the substance will not present any unreasonable risk during test marketing and thus could not approve the application. To approve an exemption application, the Agency must make an affirmative finding that there will not be any unreasonable risk presented by the test marketing activities. It is not sufficient for EPA to find only that there is no basis to conclude that there may be an unreasonable risk. Moreover, EPA has only 45 days to determine if there is an adequate basis for making the statutory finding for approval of an exemption. This limits the extent to which EPA can search beyond the manufacturer's application for information indicating a lack of unreasonable risk.

If the manufacturer does not include adequate information to assess the risks presented by a proposed exemption and if data otherwise are not readily available to EPA during the 45-day review period for the applications, EPA will not be able to make the finding of no unreasonable risk and will deny the request for an exemption. Taken alone, the absence of data in the application will not be the basis for a denial. However, if at the end of the 45-day review period there is significant uncertainty concerning the risk presented because of a lack of data on the toxicity of, or exposure to, the chemical substance during test marketing, the Agency will not approve the application.

To facilitate review of applications and to enable EPA to meet the statutory burden for granting test marketing exemptions, applicants are encouraged to include, at minimum: all existing data regarding health and environmental effects of the substance, including physical and chemical properties and in the absence of such data, a discussion of toxicity based on Structure-Activity Relationships (SAR) and relevant data on the selected analogues; the maximum quantity of the substance which the applicant will manufacture for test marketing purposes; the maximum number of persons that may be provided the substance for test marketing purposes; the maximum number of persons who may be exposed to the substance as a result of test marketing, including information regarding duration, concentration, and route of such exposures; and a description of the test marketing operation, including its length, and how it can be distinguished from full-scale commercial production.

VI. Public Inquiries

Since the effective date of the premanufacture notification program, the Agency has received inquiries concerning various aspects of the program. This Revised Interim Policy Statement will outline the Agency's policy on how these inquiries will be handled.

EPA has received three types of inquiries related to the premanufacture notification program.

1. General inquiries concerning the status of the program.

2. Inquiries from persons preparing a notice or considering the submission of one, who have specific questions about their responsibilities.

3. Inquiries concerning notices that have been submitted to EPA.

Guidance for those who may wish to consult with the Agency in any of these areas is discussed below.

General inquiries: The Office of Toxic Substances (OTS) created an Industry Assistance Office to respond to general inquiries concerning the various programs operating under TSCA. General inquiries concerning the premanufacture notification program, not related to a specific chemical or notice, should be directed to the Industry Assistance Office. That office is open from 8:00 a.m. to 5:00 p.m., Monday through Friday (except holidays). Persons may contact that

office by telephone toll-free at 800–424–9065 or, in Washington, 554–1404. Written inquiries may be sent to: John B. Ritch, Jr., Director, Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–429, 401 M St., SW., Washington, D.C. 20460.

Prenotice communications: The Notice Review Branch (NRB) of the Chemical Control Division (CCD), the office primarily responsible for implementation of the premanufacture notification program, employs a Prenotice Communications Coordinator to assist persons preparing a notice of considering the submission of one. Although a wide range of topics is covered under this category, the NRB Prenotice Communications Coordinator should be the initial Agency contact. The Coordinator will either respond directly to the question or refer the inquirer to the OTS staff person who can best answer the specific question. The NRB Prenotice Communications Coordinator can be reached by telephone at 202–426–3980 or by writing to the: Prenotice Communications Coordinator, Chemical Control Division (TS–794), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

EPA staff may respond to telephone inquiries but the Agency will consider the response only informal advice by staff that may not necessarily represent the official Agency view. The Agency will treat prenotice communications with high priority and will respond as quickly as possible.

Inquiries about notices submitted to EPA: Once a notice has been submitted, a notice manager in the Chemical Control Division is assigned to that notice. The notice manager is responsible for coordinating the review of that notice and is the Agency spokeperson for all matters concerning the notice. During the review, as a general rule, no information about a specific notice, othe than that available in the Public File, will be discussed with anyone other than an authorized representative of the company and preferably only with those listed as company contacts on the notice. Persons wishing to speak with the notice manager for a particular notice can contact the NRB Prenotice Communications Coordinator for the notice manager's name and phone number. That information also is listed in the section 5(d)(2) **Federal Register** notice.

In addition, the Agency is establishing an Advisory Circular System to inform the regulated industry and the general public of EPA decisions or interpretations which may affect the implementation of section 5. The Advisory Circular System will provide information on the Agency's procedures under the Interim Policy and under the rules when promulgated. Subscriptions to the series can be obtained free of charge by writing to: John B. Ritch, Jr., Director, Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–429, 401 M St., SW., Washington, D.C. 20460.

Dated: October 23, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80–34723 Filed 11–6–80; 8:45 am]

BILLING CODE 6560–01–M

federal register

Friday
November 7, 1980

Part VII

Department of Agriculture

Food and Nutrition Service

Summer Food Service Program for Children

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program for Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule completely reorganizes the regulations for the Summer Food Service Program for Children (Program) to make them easier to understand and use. The proposal also makes several substantive changes. It requires State agencies to establish for each food service site serving vended meals an approved level of meal service. Program sponsors will not receive reimbursement for meals served in excess of the approved levels. This change is intended to reduce waste in the Program by reducing the number of excess meals claimed for reimbursement under the Program. The requirements for State agency monitoring of sponsor and site operations have been changed to reduce the burden of conducting reviews early in the summer while emphasizing the need for follow-up reviews of program operations. This change is intended to give State agencies greater flexibility in utilizing their monitoring resources. The proposed rule spells out corrective action requirements for State agencies dealing with meal service violations at the site level. These requirements will assist State agencies in reducing Program mismanagement and abuse. The proposed rule will allow Food and Nutrition Service regional offices (FNSRO's) greater discretion in the scheduling of conducting management evaluations of State agencies.

Interested parties are offered the opportunity to comment on this proposal.

DATE: Comments must be received by December 7, 1980, to be assured of consideration in the final rulemaking.

ADDRESS: Written comments should be sent to Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Either Mr. Benderly or Ms. Beverly Walstrom at the above address or by telephone at (202) 447-6509. 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 either Mr. Benderly or Ms. Beverly Walstrom at the above address or telephone number. Copies of all written comments will be available for review during normal business hours at room 644, 500 12th Street SW., Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This proposed regulation has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The Summer Food Service Program is authorized by section 13 of the National School Lunch Act. Comprehensive Program regulations were last published on January 2, 1979 (44 FR 8). On October 30, 1979 (44 FR 62279), and February 1, 1980 (45 FR 7227), amendments were published implementing the provisions of Public Law 96-38, which set a deadline for the submission of the final claim for reimbursement for fiscal year 1979. On January 8, 1980 (45 FR 1844), amendments to the regulations were published which implemented the changes in Program eligibility mandated by Public Law 96-108, and made several other minor changes.

This proposed rule comprehensively reorganizes the regulations and makes several changes which are based on Program experience and recommendations received from various sources. A 30-day comment period is afforded to allow interested people and organizations to submit criticisms, favorable opinions, and information to affect the regulatory policies. All interested parties should note that legislation that would make several significant changes in the Program is currently pending in the Congress. If the legislation is enacted, the Department will publish appropriate amendments to Part 225 as quickly as possible.

Comment Period

The President has directed each Executive Agency to adopt procedures to improve the public comment and rulemaking process (Executive Order 12044, issued March 24, 1978, at 43 FR 12661). Although the Executive Order establishes a 60-day comment period for significant rulemaking, it does allow for shorter comment periods under certain circumstances. A shortened comment period for this proposed rule will allow timely publication of final regulations to give involved agencies and organizations at all levels an adequate amount of time to plan and prepare for the next summer's Program. The Program's authorizing legislation mandates that final regulations be published no later than January 1 of each year. Therefore, 30 days, rather than 60 days, are being allowed for public comment. Accordingly, the Department is issuing proposed amendments to Part 225 as follows:

1. Reorganization

In response to numerous comments from the public that the Program's regulations are difficult to use, the Department decided to reorganize the regulations. The purpose of the reorganization is to make it easier for those who take part in the Program to find the information they need in the regulations.

The order of sections of the proposed rulemaking flows from the general or administrative to the more specific or operational requirements. The regulations begin with the general purpose, definitions, and administrative structure of the Program. The next two sections deal with financial and commodity assistance to States. The following 13 sections deal with the administrative responsibilites of States, covering areas such as the requirements for the State management and administration plan, monitoring and corrective action requirements, and Program payment procedures. These sections also include general procurement standards, as well as procedures for dealing with food service management companies. The next four sections establish the eligibility requirements for sponsors and their operational responsibilities. The regulations conclude with a section containing miscellaneous provisions and a section listing the addresses of Food and Nutrition Service Regional Offices and the States in each region. Some of the significant features of the reorganization are listed below.

(i) All of the provisions regarding payments to States through Letters of Credit appear in one section, § 225.4. Previously the provisions appeared in two separate sections.

(ii) The procedures for the review and approval of applications have been placed in a single section, § 225.8.

(iii) All of the contents of the Program application are brought together in § 225.9 for convenient reference.

(iv) State agency requirements for Program expansion and assistance appear in one section, § 225.10.

(v) All requirements for State agency records and reports are listed in § 225.11.

(vi) Provisions governing procedures for payment to sponsors and giving base rates of reimbursement (not current rates) are located in § 225.12.

(vii) All provisions for audits and management evaluations are covered in one section, § 225.13.

(viii) Special emphasis is placed on corrective action in a separate section, § 225.14.

(ix) All of the provisions dealing with food service management companies, including requirements for registration, competitive bidding, and the standard contract are in one section, § 225.17.

(x) In order to make the meal patterns easier to use, they are presented in a chart form in § 225.21(b).

The reorganization encompasses not only a reordering of the regulatory provisions; but it also includes a rewording of many of the paragraphs. In most cases the rewording is intended to make the provisions easier to understand rather than to change their meaning. (Substantive changes are discussed below). The Department believes that this reorganization makes the contents of the regulations more readable and that it will enhance understanding of the Program.

2. Assistance to States

a. *Letter of Credit.* The Department has made two changes in the Letter of Credit provisions. These changes only affect provisions for payments to States and have no effect on the procedures for payments to sponsors. The first change modifies the Letter of Credit provision for Program advance payments so that the regulatory wording more closely follows current payment procedures. Previously, the regulations called for each Letter of Credit to be equal to 65 percent of the amount of Program funds that would be needed in the State for one month's Program payments. The proposed rule makes it clear that the amount of each of the Letters of Credit for advance payments is to be in an amount sufficient to ensure that a total of 65 percent of the amount of Program funds that would be needed in the State for the complete summer's Program, has been provided, based on the best available data. (See § 225.4(a).)

The other change is in regard to the second Letter of Credit for State administrative funding. In the past, the second Letter of Credit has been in an amount not to exceed 75 percent of the State administrative funds which the State expects to receive for the summer. The proposed rule provides 80 percent of that amount. The increase is proposed in order to make the second payment consistent with the percentage given in the provision for the State administrative funding assurance. (See §§ 225.4(g)(2) and 225.4(j).)

b. *Special developmental projects.* In the past, Program regulations have provided for funding of special developmental projects, as allowed under Section 10 of the Child Nutrition Act of 1966. Provision of these funds is at the discretion of the Secretary. The funding allowed for this purpose in each State has been in an amount equalling up to one percent of the Program funds earned in the State during the prior year. However, serious concerns have arisen about the effectiveness of projects that are intended to lead to regulatory change or Program improvement, as little time is available to study proposals and only six to eight weeks are available to conduct the projects. Furthermore, for many States the amount of money involved is not sufficient to conduct a well planned and thoroughly documented study. The projets have generally yielded very little in the way of useable results, while they have absorbed a great deal of staff time in State agencies and FNSRO's.

Therefore, the proposed rule deletes the provision of special developmental project funding under the Program. This change is within the discretionary authority provided to the Secretary in the statute. The Department believes that this change is in the best interest of the Program and will promote more effective use of Federal funds.

3. Administrative Requirements

a. *Approved levels of meal service for sites.* Audit reports from some parts of the country suggest that excess meals at some sites may run as high as 20 to 30 percent of the meals claimed under the Program. Excess meals have been a particular problem in programs serving meals provided by food service management companies, where frequently too many meals are prepared and delivered to the sites. In self-preparation programs it is easier to adjust the number of meals prepared to the number of children in attendance. Regulations in previous years have contained no mechanism for ensuring that on a day-by-day basis, sites serving meals prepared by food service management companies do not have a large number of excess meals. In the interest of reducing waste in the Program and providing sponsors of vended-meal programs with more specific guidance as to the number of meals to have prepared and delivered to their sites, the Department is proposing to require State agencies to set an "approved level" of meal service for each site serving meals prepared by a food service management company. These levels will be the maximum number of meals, including seconds, which may be served at the site at a given meal service.

The Department envisions the process as working in the following manner: State agencies will set an approved level of meal service for each vended site during the application approval period. For such sites which were used in the Program in prior years, the State agencies will base the approved levels on the historical record of attendance at those sites and other available information. In some instances, State agencies could approve a site for a level higher than the historical record would dictate, based on changes in local population charcteristics caused by events such as the influx of large numbers of immigrants, lay-offs in the area, or the construction of a new housing development in the neighborhood, or if the State agency believes that the site is capable of providing meal service to a larger number of children than were served at the site in other years. If proposed sites were not used in prior years, State agencies will base these maximum approved levels on their own best estimates of attendance. These estimates could result from pre-approval visits to the sites, information provided by the sponsors, or the historical records of other sites which operated in the same locales.

State agencies are encouraged to adjust these levels as circumstances warrant throughout the summer, based on information either collected during reviews or included in sponsor requests. Sponsors of vended programs are required to notify food service management companies of the maximum approved level for each site for which they provide meals prior to commencement of Program operations and whenever adjustments are made to those levels, so that deliveries may be adjusted accordingly. The State agency is required to maintain on file documentation of any adjustments and to send immediate written confirmation of adjustments to the sponsors. This will help to prevent misunderstanding between the State agency and the sponsor. Once approved levels are set, State agencies will be required to disallow all meals in excess of those levels found at sites during reviews.

The idea of setting approved levels of meal service for sites is not a new element in the Program. In fact, some State agencies have administered the Program in such a manner for the past several years. Program experience in those States has demonstrated that establishing approved levels is an effective mechanism for ensuring that sponsors are preparing or ordering meals for their sites with the objective

of providing only one meal per child and, thereby, reducing waste in the Program. So long as State agencies allow sponsors to request adjustments to these levels as circumstances warrant, approved levels should not prevent sponsors from providing the number of meals needed to meet the demand of their programs. As under prior regulations, sponsors are required to adjust the number of meals prepared or ordered with the objective of providing only one meal per child. For vended sites, sponsors must make these adjustments below the approved levels of meal service.

Setting and adjusting these approved levels should not be a major burden to State agencies. States which have imposed similar systems in the past report, instead, that approved levels are a helpful administrative tool. In addition, while some added workload is involved in setting and adjusting the approved levels, the Department has responded with some adjustments for pre-approval and monitoring visits by States (see below). Approved levels should, however, help alleviate the problems experienced by State agencies in dealing with large numbers of excess meals by preventing them from being delivered to sites. State agencies may choose, as under prior regulations, to establish approved levels for any sponsor which prepares its own meals. (See § 225.8(j).)

b. *Program assistance/review requirements.* The Department is aware that the State agency monitoring requirements for sponsors and sites in current Program regulations impose a major workload on administering agencies prior to, and at the beginning of, Program operations. This workload results from the minimum number of pre-approval visits and program reviews required by the regulation's various monotoring provisions. Under regulations of previous years, State agencies were required to visit, prior to approving the application, (1) all sponsors which did not participate in the previous year or which the State agencies deemed to need such a visit; (2) all new non-school sites located in cities whose total elementary and secondary public school enrollment exceeds 75,000; and, (3) any new site with a proposed average daily attendance of more than 300 children. Additionally, State agencies were required to conduct program reviews of (1) all sponsors which operate 10 or more sites and, at a minimum, an average of 15 percent of the sites under those sponsors, during the first four weeks of operations; (2) for States earning more than $250,000 in State administrative funding, an additional 75 percent of the non-school sites and 25 percent of the school sites under sponsors which operate 10 or more sites and are located in cities whose total elementary and secondary public school enrollment exceeds 75,000, during the first four weeks of operations; and, (3) 80 percent of the remaining sponsors, including an average of 10 percent of their sites, at least once during the period of Progrm operations. (These monitoring provisions appeared in § 225.5(b)(1)–(6) of the 1980 regulations.) Several changes to these monitoring requirements are included in the proposed rule.

The first change reduces the requirements for pre-approval visits of sponsors and sites. The proposed rule retains the first category of pre-approval visits, for new applicant sponsors, and for sponsors which the State agency determines are in need of such a visit. The second category of pre-approved vistis (for new nonschool sites in cities with school enrollment over 75,000) is deleted from the proposal in order to free up State agency administrative resources. The Department feels that these resources may be more effectively used in assisting sponsors and sites with special needs, prior to the commencement of operations and during the crucial early phases of operations. Finally, the proposed rule modifies the requirement for pre-approval visits of new sites with proposed average daily attendance of more than 300 children by limiting the requirement to sites which are not schools. This change is proposed in response to comments and Program experience indicating that school-sites are normally well controlled and have greater capacity than most other site types.

The provisions for pre-approval visits described above are minimum requirements. State agencies are urged to conduct as many additional visits as are necessary to ensure proper Program operations. (See § 225.10(e)(1).) The second change relieves State agencies of the burden of conducting reviews during the first four weeks of operations of sponsors with 10 or more sites which operated the Program in the prior year with no significant problems. This review burden included reviews of an average of 15 percent of the sites of these sponsors. Although the Department believes that the often substantial amounts of money involved warrant placing special emphasis on large sponsors, it also feels that sponsors of large programs which have a record of successful operations may not necessarily need to be reviewed during the first four weeks of operation, as opposed to later in the summer. The proposed rule maintains the requirement for reviews of sponsors of 10 or more sites and an average of 15 percent of their sites which have operated with no significant problems, but allows the State agency to conduct such reviews at any time during the period of program operations. The proposed rule continues to require these reviews during the first four weeks of operations of sponsors of 10 or more sites (1) which did not participate in the Program in the prior year, and (2) which the State agency determines to need these reviews due to problems observed in the sponsors' programs in the prior year. (See § 225.10(e)(1).)

The third change deletes the requirement that States expecting to earn $250,000 or more in State administrative funds conduct reviews of 75 percent of the non-school sites and 25 percent of the school sites under sponsors with 10 or more sites in cities which have a public school enrollment exceeding 75,000, during the first four weeks of operations. Since only three States (California, New York, and Pennsylvania) have cities and Programs large enough to be affected by this requirement, the impact of deletion will be felt by only a few States.

This provision originally was directed at intensifying site review efforts in States which experienced major problems with large urban programs. It was particularly directed at improving performance in New York City, where the most severe Program abuse had occured. However, since that time, New York City has implemented statistical monitoring procedures in lieu of conducting site reviews under this provision, as allowed under the regulations. For this reason, the deletion of this site review requirement will not affect New York City.

For the other two States, the proposed deletion will allow the States to better target their monitoring resources in those cities. Instead of devoting almost all of their monitoring efforts to meeting this numerical requirement, the State agencies will be able to direct their efforts at itensified review and follow-up of sponsors and sites most in need of attention.

The programs in the big cities of these States are often operated by private sponsors which contract with food service management companies. These sponsors have been associated with high levels of waste and mismanagement and have therefore required extensive monitoring by State agencies. The Department believes that the requirement, described earlier in this

preamble, that State agencies established maximum approved levels for meal services at sites serving vended meals will contribute significantly to the reduction of such abuses. For these reasons, the Department is proposing the deletion of this site review requirement.

The fourth change reduces the number of program reviews State agencies are required to conduct of sponsors with fewer than 10 sites, from an average of 80 percent to 70 percent of the sites of such sponsors. This change is proposed to lessen the administrative burden on State agencies. In choosing which sponsors to review, the State agency is directed to consider whether or not a sponsor was reviewed during the prior year. This will prevent the problem of any sponsor going unreviewed over a period of several years.

These changes in monitoring requirements are designed to accomplish several objectives. First, some reduction in State agency workload is needed in view of the added workload required to implement the provision for establishing and adjusting the maximum approved levels of meal service for sites serving vended meals. The Department believes that the establishment of maximum approved levels of meal service for sites serving vended meals is likely to deal more effectively with the problem of overordering and excess meals, perhaps the most frequent violation in the Program, than would the retention of the prior monitoring requirements. (See § 225.10(e)(2)(ii).)

In addition, these modifications in monitoring requirements would provide State agencies with greater flexibility in allocating their monitoring resources. The Department believes that by reducing the workload imposed by minimum numbers of pre-approval visits and some of the burden of the initial program reviews, more State agency resources can be marshalled for the task of follow-up. Therefore, the proposed rule emphasizes the importance of follow-up efforts in ensuring corrective action on program deficiencies.

c. *Reviews by sponsors.* The proposed rule expands the number of items which State agencies must include in the forms to be completed by monitors. New items required in the forms include the number of meals prepared or delivered, the number of meals served to children, and any deficiencies noted. These are added to the requirements for the form to emphasize the importance of thorough monitoring by sponsors and to improve the quality of the information gathered on the forms. They are especially important for the purpose of ensuring that the approved levels of meal service are not exceeded. State agencies are urged to add any other items to their monitor review forms which they feel will help to achieve these objectives. (See § 225.10(e)(6).)

d. *Audits.* Many Regional Offices and State agencies have suggested that the $50,000 level is no longer adequate as a measure for determining which sponsors need to be audited annually and is, therefore, resulting in an ineffective use of Program funds. Program regulations for prior years required sponsors which expected to earn $50,000 or more in reimbursement to arrange for an audit of their programs every year and allowed them to claim the costs of their audits as an administrative cost under the Program. State agencies were required to arrange for audits of other sponsors every other year, with certain exemptions, and the costs of these audits were paid out of the State's administrative funds. The effect of inflation since the $50,000 level was established in 1977 justifies raising it to $75,000, as a sponsor earning $75,000 in Program payments in 1981 would operate a program about the same size as that of a sponsor which earned $50,000 in 1977. For this reason, the Department proposes to require annual audits of all sponsors which expect to earn $75,000 or more in Program reimbursement.

Although the Department realizes that the effect of raising this level will be an increase in the number of biennial audits which State agencies must arrange and pay for out of State administrative funds, we feel the resulting savings to the Program by eliminating unnecessary annual audits warrants increasing the level at this time. Also, the Department is concerned that many sponsors whose programs have experienced only minimal growth over the past few years have been unduly burdened with the responsibility for having an audit conducted of their programs every year merely because inflation has raised their level of reimbursement to $50,000 or more. The Department solicits comments on the adequacy of the proposed $75,000 level. (See § 225.13(a).)

e. *Management evaluations.* The regulations for 1980 required that FNS Regional Offices conduct a management evaluation of each State agency's Program administration prior to the initiation of Program operations. The Department is concerned, however, that for some States a pre-operational evaluation may not be sufficient to ensure that management problems are noted and corrected. In some cases, it is necessary to observe a State agency's management practices in operation.

For this reason, the proposed rule allows the Regional Offices to conduct management evaluations either prior to or during the first six weeks of Program operations. Regional Offices are directed to choose the time that they believe will be the most effective for evaluating each State's management systems. The Department believes that by giving Regional Offices this flexibility, the management evaluations can be made more useful as a management tool. The proposed rule also requires the Regional Offices to conduct a follow-up evaluation if the management evaluation reveals serious problems in the State's administration of the Program. The purpose of the follow-up evaluation will be to assist States in ensuring that appropriate corrective action is taken. In addition, the proposed rule provides Regional Offices with authority to require the State agency to submit on 20 days notice a corrective action plan regarding serious problems as served during any phase of the management evaluation. This is intended to address problems which require immediate attention. (See § 225.13 (c) and (f).)

f. *Corrective actions procedures.*—(i) *Tolerance level.* In the past, Program regulations have required State agencies to disallow all meals which were served in violation of meal service requirements. State agencies have often faced the dilemma of being required by the regulations to disallow meals when the violations observed involved only minor infractions which occurred inadvertently or larger infractions which resulted from events clearly beyond the sponsor's control. In such situations, the State agencies have been forced either to penalize the sponsor for the minor infractions, or to ignore the violations and allow reimbursement for the meals, contrary to the regulations. To deal with this problem, the proposed rule provides State agencies with some flexibility for addressing violations which are observed during a site review. The proposed rule continues to authorize the State agency to disallow all meals served in violation of the meal service requirements. As an option to such action, the proposed rule also provides State agencies with authority to allow sponsors to claim any meals found during the review to be in violation of Program requirements if the aggregate of meals served in violation does not exceed five percent of the total number of meals provided at the meal service. If more than five percent of the meals at the site are found to violate Program

requirements, however, all of the meals in violation will be disallowed for reimbursement. The proposal requires that whenever the State agency chooses, in accordance with this provision, to allow meals served in violation, it shall require the sponsor to take immediate corrective action to ensure that the violations do not recur.

This proposal will provide State agencies with some flexibility for dealing with infractions occurring on a small scale (i.e., below a level of five percent). At the same time, it will help to reduce Program abuse by clearly defining the boundaries for tolerance of violations. With a standardized tolerance policy, State agencies will not be tempted to reimburse sponsors for meals in violation of the meal service requirements when the violations observed during a site review occur on a larger scale. Since Program violations of a greater magnitude sometimes occur as a result of unusual circumstances clearly beyond the sponsor's control, the proposed rule allows State agencies to reimburse sponsors for meals in violation of the meal service requirements in excess of the five percent level due to such unusual occurrances. Such circumstances include natural disasters, severe weather conditions, or other unforseeable events. The proposed rule requires that whenever the State agency allows a sponsor to claim meals in violation of the meal service requirements in excess of five percent as allowed under this provision, the State agency shall document in its files the reasons for allowing the higher tolerance.

The only meal service violation which may not be included in the five percent tolerance is meals served in excess of the approved level of meal service established for vended sites. All meals served in excess of the site's approved level must be disallowed. Service of seconds, as allowed under § 225.20(d), is not a violation, and is therefore not to be included in the tolerance level.

The Department has considered allowing a tolerance level of either five or ten percent. The five percent level has been proposed because the Department believes that, in the interest of accountability, the lower tolerance is preferable. At the same time, the Department recognizes that the five percent level may be rather rigid, since it represents an aggregate of all types of meal service infractions. The Department is especially interested in comments on the adequacy of the five percent level and on the advisability and feasibility of establishing tolerance levels.

(ii) *Termination of sponsors.* In prior years, regulations have required State agencies to deny applications of sponsors identifiable through their organizations or principals which at any time participated in the Program and were determined by the State agency to be seriously deficient in their operation of the Program. The proposed rule changes the provision in several ways.

First, prior regulations have only stated that serious deficiencies in the operation of the Program are grounds for disapproval of applications. The proposed rule makes it clear that serious deficiencies in the operation of any Federal child nutrition program are grounds for disapproval and are also grounds for the termination of sponsors which are operating the Program. However, State agencies are required to afford the sponsor every reasonable opportunity to correct its problems before initiating termination procedures. This proposed change clarifies the provision in prior regulations (§ 225.18(b)) of the regulations for 1980 requiring the State agency to terminate sponsors which fail to comply with the conditions of the Program.

Regulations in prior years required the State agency to deny the application of a sponsor determined at any time to have been seriously deficient. This was effectively a permanent exclusion from the Program of any sponsor determined seriously deficient. The proposed rule limits this period of mandatory exclusion from the Program to three fiscal years. In addition, to provide some flexibility for dealing with sponsors which have been determined seriously deficient, the proposed rule allows the State agency, with FNSRO concurrence, to approve the application of a sponsor determined to have been seriously deficient before the expiration of three fiscal years if the State agency is convinced that the sponsor has taken all corrective actions needed to prevent recurrence of the deficiencies. The Department is proposing this change in order to allow deficient sponsors a reasonable opportunity to improve their programs and regain eligibility. At the same time, the State agency should be circumspect in considering early readmission of an applicant which has been found to be a seriously deficient sponsor.

(iii) *Termination of sites.* The Department has received several requests that the new regulations clearly spell out provisions governing the termination of site participation in the Program. The proposal addresses this issue by specifying two situations in which the State agency must terminate a site.

The first such situation is when the sponsor fails to take corrective action on Program violations noted in a State agency review report. Under the regulations for prior years, State agencies have not been provided with clear regulatory authority to enforce corrective action on the part of the sponsor, other than by disallowing meals. The proposed provision will lend strength to State agency efforts to improve site performance through corrective action. The second situation in which the State agency is required to immediately terminate a site's participation is whenever, due to conditions at the site, the health or safety of the children is imminently threatened.

The proposed rule also requires the State agency to notify the appropriate food service management company, if applicable, of the site's termination within 48 hours of taking such action. This is intended to guarantee that food service management companies are informed of terminations in a timely manner. (See § 225.14(c),(f), and (g).)

g. *Claims against sponsors.* Program regulations in prior years have required State agencies to recover any improper payments in excess of $35 made to sponsors but have not identified specific procedures and time frames for recovery of such payments. The proposed rule provides a minimum procedure and schedule for State agency demands for repayment. The State agency shall, at a minimum, make three written demands of the sponsor for the return of improper payments. The demands are to be made at 30 day intervals. If the State agency has received no satisfactory response from the sponsor within 90 days of the initial demand, the State agency must refer the claim against the sponsor to the appropriate legal authorities. The State agency may use its own procedures for the recovery of improper payments as long as they meet the minimum procedures described above. The Department is proposing these requirements in order to provide State agencies with clear guidance and to ensure prompt recovery of improper payments. (See § 225.15(b).)

h. *Appeal procedures.* The proposed rule makes several changes in the minimum procedures for granting a fair hearing to sponsors of food service management companies which request a review of a State agency decision. (Decisions which may be appealed are listed in § 225.16(a).) The first change is a requirement that, if the sponsor or food service management company wishes to submit written documentation

refuting the State agency's decision, it must do so within seven days of submitting its request for a review. This change is made simply to ensure that documentation is submitted in sufficient time to allow the review official to examine it and hold the review within 14 days of receiving the request for a review, as is required under § 225.16(b)(7). The time restrictions are necessary in order to make a quick resolution of the review possible. Quick resolution is essential because of the short duration of the Program.

The second change in the fair hearing procedures included in the proposed rule is a requirement that the State agency provide the appellant five days advance written notification of the time and place of the hearing, sent by certified mail, return receipt requested. This provision is proposed with the intention of providing the sponsor or food service management company with enough time to prepare for the hearing and travel to its location. Again, the amount of time allowed is under the constraints of the schedule for completion of the appeal process. (See § 225.16(b)(4) and (6).)

The third change is the inclusion of a requirement that a representative of the State agency be allowed to attend any hearing. This change is proposed in response to comments from administering agencies that, because State agencies have not had the opportunity to respond to arguments appellants raise during hearings, review officials sometimes have not had the benefit of the State agency's response to arguments raised by the appellant. The proposed change will help to provide for an equitable fair hearing procedure. (See § 225.16(b)(5).)

Finally, the proposed rule raises the number of days in which the review official must make a final determination, following a hearing, from three to five days. This change is intended to provide review officials with more time to carefully consider all of the evidence submitted and to render a decision. The Department believes that the two-day increase in the time allowed for the final determination will not impose an unnecessary hardship on appellants. (See § 225.16(b)(10).)

i. *Nondiscrimination.* The proposed rule contains a new section concerning the State agency's responsibility to comply with the Department's nondiscrimination regulations, which were issued pursuant to Title VI of the Civil Rights Act of 1964. This section also provides the address of the contact person to whom complaints of discrimination based on race, color, or national origin must be referred by State agencies. Although this information has not been included in prior regulations, its inclusion in the proposed rule does not signal a change in policy. As before, State agencies are responsible for collecting racial and ethnic participation data, public notification of the nondiscrimination policy, reviews to ensure compliance, and referral of complaints to FNS's Washington office. This new section, in effect, simply alerts State agencies to the areas of Civil Rights compliance for which they are responsible. Specific instructions regarding these areas of compliance will be issued by the Department at a later date. (See § 225.10(h).)

4. Sponsor provisions

a. *Claims for meals examined.* The proposal formalizes the Department's policy which allows sponsors to receive reimbursement for meals which are examined for meal quality by the State agency, auditors, or local health authorities and are found to meet the meal pattern requirements. State agencies may deal with meals examined and found to be deficient in accordance with their normal procedures for deficient meals. (See § 225.12(d).)

b. *Site personnel.* Regulations in prior years have required that sponsors hold training sessions for their administrative and site personnel and that no site be allowed to operate until site personnel have been trained. The proposed rule clarifies this requirement by mandating that each site shall have present at each meal service at least one person who has received the required training. If a turnover of site personnel occurs the sponsor will be required to ensure that the new site personnel have been trained in Program requirements. (See § 225.20(i).)

c. *Simultaneous service of meals.* The current policy of directing sponsors to serve only one meal at a time to children is clarified by a provision in the proposed rule. While sponsors must plan for and prepare or order meals with the objective of providing only one meal per child, the regulations have recognized that allowance must be made for unusual and unexpected fluctuations in attendance and have allowed the service of seconds to attending children in such cases. The proposed rule stipulates that when seconds are served, they may only be served after all children have received their first meals. This is intended to help prevent a situation in which some children will go unfed, because they arrive late or are last in line, while others get two meals due to the simultaneous service. This should also help to prevent site personnel from encouraging children to overeat by presenting them with more food than they need. (See § 225.20(d).)

d. *Meal pattern requirements.* The proposed regulations present the meal component and portion requirements for the various meal types in chart rather than narrative form. This change in format is designed to achieve greater clarity and to facilitate quick reference. (See § 225.21(b).) Some of the newly established meal pattern requirements of the National School Lunch Program (NSLP) (issued at 45 FR 32502) have been incorporated into the Program. The proposed rule includes the NSLP's new nutritional equivalencies for various foods, including the amount of eggs and cooked dry beans and peas needed to provide the protein equivalent of the meat/meat alternate requirement. The recommendation in NSLP meal planning guidance that the amount of fat, sugar, and salt be kept at a moderate level and the new yield standards established in NSLP's Food Buying Guide will be included in future Program guidance materials.[1] These changes are based on the most recent nutritional information available and can be readily accommodated by the Program. (See § 225.21(b).)

Other changes in the NSLP meal pattern requirements are not being incorporated into the Program because they do not lend themselves to the manner in which the Progam operates. For instance, the NSLP's weekly, rather than per meal, bread requirement would be difficult to implement as the Summer Program is often provided at open sites where no enrollment records are kept. Since the Program is most commonly operated at unenrolled sites or parks which are frequented by the entire neighborhood and where attendance fluctuates from day to day, there is no way of knowing whether or not a nutritional requirement based on more than one meal is being met. Likewise, the NSLP's portin size requirements which divide participants into five age groups would be nearly impossible to implement in the Program. Incorporation of NSLP portion size requirements by age group in the Summer Program would have required site supervisors to estimate the next day's attendance by each age group, a task the Department does not believe should be imposed on them. It would also complicate the production of meals, and for vended programs it might increase the cost of meals.

[1] It should be noted that several pages have been withdrawn from the Food Buying Guide. The withdrawn pages are not a part of the Buying Guide, and will not be reflected in SFSP guidance materials.

The proposed rule also amends the provision dealing with varying portion sizes relative to the greater or lesser food needs of children. In prior years, the regulations included a provision allowing the State agency to permit sponsors to serve varied portion sizes "in accordance with the age levels of the children served." Such variations were to be allowed for meals served to children under 10 or over 12 only if the State agency was convinced that the sponsor had the capability of adequately controlling portion sizes. The Department believes that it is necessary to provide firmer guidelines for meals with smaller quantities than those indicated in the normal meal pattern to ensure that the needs of the younger children are met. Therefore, the proposed rule changes the provision by requiring that meals served with lesser quantities meet the minimum requirements for meals served to the appropriate age group given in the Child Care Food Program regulations (7 CFR Part 226). These variations require prior State agency approval. In order to be consistent with the age groups given in the Child Care Food Program regulations, the proposed rule allows lesser quantities to be served only to children under age six. As before, greater quantities of food may be served to older children to meet their food needs. These changes are intended to provide firmer guidelines for sponsors approved to serve smaller quantities to younger children and to provide State agencies with uniform standards for monitoring compliance. (See § 225.21(d) and (f).)

e. *Deadline for submission of claims.* The proposed rule includes provisions which were promulgated for Fiscal Years 1979 and 1980, setting a December 31 deadline for the submission of Claims for Reimbursement. However, this provision does not prohibit the amending of claims after that date if the amendments represent adjustments of the initial claims (Submitted on or before December 31) based on the results of audits, reviews, or other information available to the State agency. By allowing these amendments, the proposed rule permits State agencies to correct claims should new information affecting the claims become available. The Department proposes to extend this provision to future fiscal years to ensure prompt submission of claims and to facilitate more rapid finalization for each fiscal year's accounts. (See § 225.12(c)(7) and (9).)

Miscellaneous provisions

1. *Operating dates.* Section 225.1 (General purpose and scope) of the regulations has been reworded in the proposed rule to make it clear that the Program is intended to operate only during periods when area schools are closed for vacation. State agencies should only approve applicant sponsors which will serve children on school vacation from the first day of operation. Sponsors may be approved to serve areas during periods when some, but not all, local schools are closed for vacation, provided that they will serve needy children who attend the schools which are closed. State agencies are encouraged to carefully scrutinize applicants which propose to operate in such areas. The Department believes that this clarification is consistent with the wording of the statute that defines eligible service institutions (i.e., sponsors) as those which "developed special summer or school vacation programs providing food service similar to that made available to children during the school year" under the National School Lunch and School Breakfast Programs. (See § 225.1.)

2. *Definition of "camps".* The proposed rule clarified the definition of the term "camp" by stipulating that nonresidential camps must operate for at least six hours each day. The Department believes that this stipulation is justified because any sponsor wishing to qualify a site as a nonresidential camp should assume responsibility for children for a full day of activities. Actually, this does not constitute a change in the Program, as the requirements governing the length of time that must elapse between meal services and the number of meal types which must be served at nonresidential camps dictate that nonresidential camps operate for at least six hours a day. (See § 225.2(e).)

3. *Procurement standards.* Regulations in prior years have contained a lengthy section covering general procurement standards as required in Attachment O of Office of Management and Budget Circular A-102. However, A-102 is intended to apply only to entities of State government, local government, and Indian tribal territories. Any other types of institutions or agencies are covered under Attachment O of Office of Management and Budget Circular A-110. Rather than including a lengthy section detailing procurement standards from each of the Circulars for each type of sponsor, the proposed rule cites the two Circulars, indicating which one applies to each type of sponsor. State agencies are required to provide sponsors with information on these procurement standards as appropriate. The proposed rule also makes clear that all procurements made with Program payments, including contracts with food service management companies, must be made in conformance with the appropriate Office of Management and Budget Circulars. FNS will provide the attachments and other guidance materials for distribution. (See § 225.17(a) and 225.18).)

4. *Fraud provision.* The proposed rule includes a new provision requiring State agencies to inform the appropriate Regional Office, for referral to the Office of the Inspector General, of all cases of suspected fraud or other criminal acts. This change builds on a statutory provision of Pub. L. 95-627, enacted on November 10, 1978, amending section 12(g) of the National School Lunch Act, providing fraud penalties in the Department's special nutrition programs.

The Department believes that the proposed change will: (1) provide a basis for monitoring States' anti-fraud efforts; (2) aid in the prevention and detection of fraud and other criminal acts; and (3) ensure that all cases are handled in a reasonable and timely manner. (See § 225.14(b).)

5. *Overpayment.* In 1973 the Department instituted a policy of allowing State agencies, FNS, and OIG to disregard overpayments to a sponsor unless the overpayments exceeded $35, except that, in States which are not administered by FNSRO, the State agency may disregard overpayments up to the level generally permitted by State laws, regulations, or procedures. Administering agencies have commented that it is unreasonable to require them to expend more money to recover a small overpayment than can possibly be recovered. The Department agrees that it may not be cost effective in many cases to go through all of the steps required under § 225.15(b) for making claims against sponsors when the amount of money is very small. In addition, the effect of inflation since 1973 would justify an increase in the level. For these reasons, the proposed rule raises the level of overpayments which may be disregarded to $100. As under prior regulations, the proposed rule stipulates that no overpayment may be disregarded when there are unpaid claims for the sponsor for the same fiscal year from which the overpayment may be deducted. (See § 225.13(g).)

6. *Late applications.* The Department has received comments from OIG indicating that when a State agency receives sponsor applications after the State's deadline date for submission of applications, it sometimes feels compelled to hurry approval of the late applications. This action may result in approval of applicants which are not

actually prepared to assume responsibility for operating a summer program. The proposed rule modifies the procedures for approval of sponsor applications which are submitted late by stipulating that the State agency shall not approve a late application any sooner than seven days following its submission. This change will ensure that the State agency has enough time to evaluate a late application and will prevent the State agency from feeling compelled to approve any late application within a shorter time frame. (See § 225.8(a).)

7. *Affirmative action to increase participation by minority food service management companies.* It has come to the Department's attention that the regulations should be expanded to stress affirmative action on the part of administering agencies to increase the participation of minority food service management companies in the Program. The authorizing legislation and existing regulations require administering agencies and sponsors to take positive efforts to utilize minority owned business as sources of supplies and services. The Department has undertaken activities in the past to make administering agencies aware of minority owned firms which might be potential participants in the Program.

The Department agrees that increased emphasis on minority business participation is both necessary and important. Therefore, the proposed rule highlights certain provisions included in the Office of Management and Budget (OMB) Circular A-102.

Administering agencies should ensure that the following practices are followed in the Summer Program: (1) include minority business enterprises (MBEs) on solicitation lists; (2) solicit such enterprises whenever they are potential sources of goods and services; (3) whenever economically feasible, divide total requirements into smaller tasks or quantities in order to permit maximum participation by these businesses; (4) whenever possible, establish delivery schedules which will assist minority businesses to meet deadlines; and (5) use the services and assistance of the Small Business Administration (SBA), the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration. Additionally, the Department expects to collect data during the food service management company registration process for the summer of 1981 regarding the level of minority participation in the Program. (See § 225.17(c)(2).)

Anticipated Legislative Amendments and Departmental Proposals for Implementation

Congress is now considering legislation affecting the Program. The House passed bill (H.R. 7664) was significantly amended by the Senate and both versions of the bill have been referred to a conference committee which has not yet filed a report. In this section of the Supplementary Information, the proposed statutory amendments are discussed, and the Department's proposals for implementing these amendments are discussed. In order to facilitate implementation of the amendments if enacted, the Department is soliciting public comments on these proposals. While the Department believes that an opportunity for comment should be afforded at this time, the proposals are presented for public consideration with the cautionary advice that some or all of the amendments may not be enacted.

Comments on these proposals should be clearly linked to this section of the Supplementary Information so that they will not be incorrectly associated with provisions in the proposed rule.

1. State administrative funding

H.R. 7664, as passed by the Senate, changes the State administrative funding (SAF) formula which has been in effect during the last two years. The formula would be altered by making available to each State an additional $30,000, provided that the State's total SAF cannot exceed 33⅓ percent of the total Program funds to be made available to the State for the year. This amendment would increase SAF for all States. It would allow the Secretary to adjust the amount of SAF made available (subject to the 33⅓ percent limitation) based on changes in the size of the State's Program.

The amendment would also permit the Secretary to provide the State with additional SAF if the State establishes that it would otherwise have insufficient funding to ensure proper Program administration. The Department solicits public comment concerning the method (described below) in which it proposes to implement this option.

A State would be eligible for additional SAF to facilitate effective Program administration if the State has assumed administration of the Program, or has transferred responsibility for administration of the Program from one agency of the State to another, during the prior two fiscal years. A State would also be eligible to receive additional SAF if it earns over $250,000 in SAF based on the funding formula, it has expended at least 90 percent of its SAF each of the prior two fiscal years, and it has satisfactorily addressed in its management and administration plan all of the deficiencies noted during the prior year's management evaluation. This additional method for establishing eligibility for extra SAF would be provided to States operating large programs because of the special Program management challenges they encounter.

The Department would require that a request for these additional funds be included in the State's management and administration plan as an addendum, and that it clearly detail how the requested additional SAF will be used to address critical areas of Program management which might otherwise not be addressed. The request for additional SAF would be considered only if the State has submitted its complete plan, including the addendum, the FNS Regional Office by February 15. It would also be required that the entire plan, except the request for additional SAF, be approved by the Regional Office not later than March 15 in order for the request to be considered.

Although the Regional Office would submit a recommendation regarding each request, all requests would be approved or disapproved by FNS national headquarters because it is necessary to ensure equal consideration of all requests nationwide, and because authorization of additional SAF would be subject to the availability of funds. FNS headquarters would be required to respond to all requests by April 15.

2. Program audits

Two percent funding: H.R. 7664, as passed by the Senate, requires the Secretary to make funds available to States for the conduct of audits of Program sponsors. The amount of these funds would be equal to not more than two percent of the Program funds expended in the State during the prior fiscal year. If this amendment is enacted, the Department proposes to establish the audit funding level at the maximum authorization of two percent.

Special audit procedures: H.R. 7664, as passed by the Senate, authorizes the Secretary to establish special procedures for the conduct of audits of participating sponsors in order to ensure Program integrity. The Department solicits public comment on its proposal to implement this authorization in the following manner.

In conjunction with the provision of two percent audit funds, the Department proposes to alter the schedule for the conduct of audits in a manner suited to both the needs of the Program and the

amount of funds that would be available to the States. Audits would be provided for by the State agency, and no sponsor would be required to provide for its own audit. Each year, the State agency would be required to provide for audits of:

(a) Sponsors which expect to earn $100,000 or more in Program funds during the fiscal year; (b) Sponsors which were audited during the prior year and were found to have had significant problems in meeting Program requirements; and (c) Sponsors which were not audited during the prior year, including sponsors which did not operate the Program in the prior year.

State agencies which would not earn sufficient two-percent funds to pay for all of the required audits would be allowed to waive the audit requirement for sponsors anticipating less than $10,000 in Program payments. States would be expected to conduct all of the required audits that their two-percent funding will permit. State agencies with more than sufficient audit funding to provide for the required audits would be encouraged to utilize the balance in conducting audits of sponsors which would not otherwise be audited (i.e., those on a biennial schedule).

It should be noted that these special audit procedures differ significantly from those proposed in § 225.13(a)(1)–(3) of this rule. The differences stem from the introduction of the anticipation two-percent audit funding. In the event that Congress does not make this funding available, Program audit procedures will be governed by § 225.13 of this rule, as modified in response to public comment.

Final Payment: H.R. 7664, as passed by the Senate, would mandate that sponsors required to be audited receive final payment for their Program expenses as soon as the results of the audit have been received, reviewed, and approve by the State.

The Department solicits comments on its proposal to implement this amendment in the following manner. Commenters are invited to address not only the Department's proposal, but also the possible effects of its proposal on payment systems.

If Congress were to authorize the two-percent audit funding, the State agency would be required to contract for all Program audits. The State agency would be required to ensure that the audit conducted on any sponsor's program is completed and reviewed within 75 days of the date of submission of the sponsor's final claim for reimbursement. The State agency would also be required to withhold payment on the final claim of any sponsor which is under audit until the audit has been completed and the results have been reviewed by the State agency. However, if the State agency has failed to ensure that the audit is completed and reviewed within 75 days of the date of submission of the sponsor's final claim, it would be required to pay this claim after the 75 days have elapsed unless; (1) the State agency has reason to believe that the sponsor's claim is incorrect or invalid, or (2) in the opinion of the State agency, faults in the sponsor's recordkeeping procedures have caused the delay in the conduct of the audit.

It should be noted that the proposed rule (§ 226.13(b)) requires some sponsors to provide for their own Program audits. In the proposed rule, State agency review of the audit as a condition for payment of the final claim applies only to these sponsors.

3. Crossover of Reimbursement

H.R. 7664, as passed by the Senate, provides the Secretary with the authority to allow States to permit sponsors which prepare their own meals to use, or "cross over," a preapproved portion of reimbursement that is otherwise available for operating costs to defray administrative costs. States could also be allowed to permit such sponsors to use a preapproved portion of reimbursement that is othewise available for administrative costs to defray operating costs. Only at the discretion of the State agency would any sponsor be allowed to make such use of funds.

The Department solicits public comments on its proposal to implement this proposed statutory amendment in the following manner.

If the State agency chooses to authorize crossovers, the sponsor would be required to submit its request for permission as part of its Program application. The request would have to be supported in the sponsor's administrative budget. It would also have to provide sufficient justification of anticipated costs for the State agency to determine (1) that crossover is warranted and (2) that crossover will not reduce either the sponsor's ability to administer its program properly or the quality of Program meal service under the sponsor. State agencies would be expected to evaluate each request carefully and, if necessary, negotiate with the sponsor the amount to be crossed over.

The Department recognizes that crossover of reimbursement otherwise available for operating costs to defray administrative costs may, in extremes, pose a risk to the quality of meals provided to children. In order to prevent excessive crossover in favor of administrative reimbursement, State agencies would be required to limit this form of crossover to 50 percent of the administrative reimbursement for the appropriate meal type normally available to self-preparation sponsors. With State agency approval, such sponsors could thus increase their administrative reimbursement by up to 50 percent. State agencies would be permitted to restrict eligibility for crossover in favor of administrative reimbursement to school sponsors who prepare their own meals. No limit would be imposed on the crossover to augment operating reimbursement because the Department believes that resultant reductions in administrative reimbursement would tend not to pose a serious threat to the Program.

4. School Sponsorship

H.R. 7664, as passed by the Senate, contains an amendment concerning the participation of schools in the Summer Program. Under this amendment the State agency would, by March 15 of each year, be required to inform all school food authorities operating the National School Lunch Program of their eligibility to participate in the Summer Program.

In order to preserve their priority status as applicants for Program sponsorship, schools would be required to inform the State agency by March 15 that they intend to participate. If a school did not propose until after March 15 to sponsor the Program and a nonschool sponsor proposed to serve the same area as the school, the State agency would be required to select the sponsor which it determined would operate the Program most successfully.

After March 15, the State agency would be required to provide information upon request to any member of the public regarding whether any school has proposed to operate the Program in an area.

The Department would establish a deadline for State agencies to inform school food authorities operating the National School Lunch Program of their eligibility for Summer Program sponsorship. This information would have to be conveyed to schools early enough to afford sufficient time for a response prior to the March 15 due date. The Department solicits recommendations regarding a date by which State agencies would be required to inform schools.

The Department would also require that schools' statements of intent to sponsor the Program include a list of the facilities which would operate as sites under their sponsorship.

Accordingly, the Department proposes to revise and reissue 7CFR Part 225 as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.
225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—Assistance to States

225.4 Payments to State agencies and use of Program funds.
225.5 Commodity assistance.

Subpart C—State Agency Provisions

225.6 Program management and administration plan.
225.7 State agency personnel.
225.8 Procedures for approval of applications.
225.9 Program applications.
225.10 Program expansion monitoring and assistance.
225.11 Records and reports.
225.12 Program payments.
225.13 Audits and management evaluations.
225.14 Corrective action procedures.
225.15 Claims against sponsors.
225.16 Appeals procedures.
225.17 Procedures for food service management companies.
225.18 Procurement standards.

Subpart D—Provisions for Sponsors

225.19 Requirements for sponsor participation.
225.20 Operational responsibilities of sponsors.
225.21 Meal service requirements.
225.22 Free meal policy.

Subpart E—Miscellaneous Provisions

225.23 Other provisions.
225.24 Program information.

Authority: Sec. 2, 6, 10, Pub. L. 95-627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1759a).

Subpart A—General

§ 225.1 General purpose and scope.

This part announces the policies and prescribes the regulations under which the Secretary will carry out a Summer Food Service Program to assist States through grants-in-aid to initiate, maintain, and expand non-profit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children as a substitute for the National School Lunch and School Breakfast Programs, during periods when area schools are closed for vacation, except that the Summer Food Service Program is directed toward children from needy areas.

§ 225.2 Definitions.

(a) "Act" means the National School Lunch Act, as amended.

(b) "Administrative costs" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the program, and excluding interest costs and operating costs.

(c) "Advance payments" means financial assistance made available to a sponsor for its operating costs or administrative costs prior to the end of the month in which such costs will be incurred.

(d) "Areas in which poor economic conditions exists" means (1) the local areas from which a site draws its attendence in which at least 33⅓ percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined (i) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (ii) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (iii) from other appropriate sources, or (2) an enrollment program in which at least 33⅓ percent of the children are eligible for free or reduced price school meals as determined by statements of eligibility based on the sizes and incomes of the families of the children enrolled.

(e) "Camps" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children and which serve up to four meals a day. Nonresidential programs shall operate at least six hours each day and shall offer a continuous schedule of organized cultural or recreational program for enrolled children.

(f) "Children" means (1) persons 18 years of age and under, and (2) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

(g) "Costs of obtaining food" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

(h) "Continuous school calendar" means a situation in which all or part of the student body of a school are (1) on a vacation for periods of 15 continuous school days or more during the periods October through April and (2) in attendance at regularly scheduled classes during most of the period May through September.

(i) "Department" means the U.S. Department of Agriculture.

(j) "Fiscal year" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(k) "FINS" means the Food and Nutrition Service of the Department.

(l) "FNSRO" means the appropriate FNS Regional Office.

(m) "Food service management company" means any commercial enterprise or non-profit organization which contracts with a sponsor to manage any aspect of the food service program. Food service management companies may be (1) public agencies or entities; (2) private, nonprofit organizations; or (3) private, for-profit companies.

(n) "Income accruing to the Program" means all monies (other than Program payments) received by a sponsor for use in the Program from Federal, State and local governments, from food sales to adults, and from any other source, including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

(o) "Meals" means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

(p) "Milk" means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

(q) "Needy children" means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

(r) "OIG" means the Office of the Inspector General of the Department.

(s) "Operating costs" means the cost of operating a food service under the Program, including (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space and (5) costs for transporting children in rural areas to feeding sites in rural areas, but excluding (i) the cost of the purchase of land, acquisition or construction of buildings, (ii) alteration of existing buildings, (iii) interest costs, (iv) the value of in-kind donations, and (v) administrative costs.

(t) "Private nonprofit" means tax exempt under the Internal Revenue Code of 1954, as amended.

(u) "Program" means the Summer Food Service Program for Children authorized by Section 13 of the Act.

(v) "Program funds" means Federal financial assistance made available to State agencies for the purpose of making Program payments.

(w) "Program payments" means financial assistance in the form of start-up payments, advance payments or reimbursement paid to sponsors for operating and administrative costs.

(x) "Rural" means (1) any area in a county which is not a part of a Standard Metropolitan Statistical Area or (2) any "pocket" within a Standard Metropolitan Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

(y) "Secretary" means the Secretary of Agriculture.

(z) "Self-preparation" means the sponsor prepares the meals which will be served at its site(s), and does not contract with a food service management company for the preparation of all or a portion of the meals.

(aa) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools.

(bb) "Session" means a specified period of time during which an enrolled group of children attend camp.

(cc) "Site" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

(dd) "Special account" means an account between a sponsor and a food service management company with a State or Federally insured bank in which checks from the State agency for operating costs are deposited by the sponsor and released only in accordance with the terms of the special account agreement.

(ee) "Sponsor" means a public or private nonprofit institution which develops a special summer or other school vacation program providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Institutions eligible to be sponsors include (1) camps and (2) nonresidential institutions which provide a year-round service to the community, or provide a food service to the children of migrant workers, or provide a food service for a significant number of needy children which would not otherwise have reasonable access to the Program. (Sponsors are referred to in the Act as "service institutions").

(ff) "Start-up payments" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative costs payments.

(gg) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(hh) "State agency" means the State educational agency or an alternate State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or in States where FNS administers the Program, FNSRO.

§ 225.3 Administration.

(a) FNS shall act on behalf of the Department in the administration of the Program.

(b) Each State shall designate a State agency to administer the Program within the State, except that FNSRO shall administer the Program in any State where the State agency is not permitted by law or is otherwise unable to disburse the Federal funds payable to the State under the Program. Each State agency shall notify FNS by each November 1 as to whether or not it will administer the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in the State in accordance with the provisons of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR Part 15), issued under Title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations.

(d) When the Secretary determines that the State is not operating the Program in accordance with the provisions of this part, he shall, through FNSRO, assume the responsibility for administration of the Program in the State as provided for in § 225.23(b).

(e) In States in which FNSRO administers the Program, it shall assume all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part.

Subpart B—Assistance to States

§ 225.4 Payments to State agencies and use of Program funds.

(a) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments of operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.12(c)(12). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS. (2) Not later than May 15, FNS shall make available, if necessary, additional funds in a Letter of Credit to ensure that at least 65 percent of the Program operating and administrative funds estimated to be needed for the summer in the State's approved management and administration plan has been provided to each State. (3) Not later than July 1, FNS shall make available, if necessary, in a Letter of Credit an amount sufficient to ensure that at least 65 percent of the Program operating and administration funds determined during the evaluation required in § 225.13(c) and (d) to be needed for the summer has been provided to the State. Funds made available in these Letters of Credit shall be used by the State agency to make Program payments to sponsors. FNS may make appropriate changes in the

amounts included in these Letters of Credit based on any information available upon which determinations of actual Program size may be made.

(b) *Continuous school calendar.* The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(c) *Remaining funds.* FNS shall make available any remaining Program funds due within 45 days of the receipt of valid Claims for Reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted for any fiscal year if they are submitted after December 31 of the following fiscal year, except as allowed under § 225.12(c)(7).

(d) *Return of funds.* Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *State administrative funds.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to (1) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year; (2) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year; (3) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and (4) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year: Provided, however, That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS.

(f) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(g) *State administrative funds Letter of Credit.* (1) Not later than October 1 of each fiscal year, FNS shall make available to each State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (e) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) The remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in § 225.13(c) and (d) (but not later than September 1) and shall be in an amount equal to that determined to be needed during the funding evaluation, less the amounts paid under paragraphs (g)(1) and (2) of this section. As described in § 225.13(d), further adjustments in the levels of State administrative funds paid or payable to a State may be made.

(h) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (e) of this section to the total amount of Program payments made within the State during the prior fiscal year, or, 80 percent of the amount obtained by applying the formula to the amount of Program funds estimated to be needed in the management and administration plan. The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under in this part.

(i) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(j) *Adjustment of Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(k) *Health inspection funds.* By April 15 of each fiscal year, FNS shall make available by Letter of Credit to each State agency an amount equal to one percent of Program funds expended in the preceding fiscal year in the State. Following approval of the State's management and administration plan, FNS shall make available in a Letter of Credit any additional funds necessary to ensure that 1 percent of Program funds estimated to be needed for Program payments in the State's management and administration plan is available to the State. These funds shall be used solely to enable State or Local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. An adjustment may be made in the amount provided for in this paragraph based on the evaluation required in § 225.13(c) and (d), if such an adjustment is warranted. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

§ 225.5 Commodity assistance.

(a) Sponsors eligible to receive commodities under the Program include only those which prepare the meals to be served at their sites and those which have entered into an agreement with a school or school district for the preparation of meals. The State agency shall make available to these sponsors information on available commodities.

(b) Not later than June 1 of each year State agencies shall prepare a list of the names of sponsors which are to receive commodities. The list shall indicate the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the information included on the list to reflect additions or terminations of sponsors and for adjusting the average

daily participation data as it determines necessary.

Subpart C—State Agency Provisions

§ 225.6 Program management and administration plan.

(a) Not later than February 15 of each year, each State Agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15, or if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.4(h).

(c) Prior to submission, the State shall ensure that interested parties have opportunity to make comments and recommendations and that timely comments and recommendations have been given full consideration in the development of the Plan.

(d) The Plan shall have the original signature of the Chief Official (Commissioner or Superintendent) of the State agency.

(e) The State agency shall give the Govenor, or his delegated agent, the opportunity to comment on the management and administration plan. A period of 45 calendar days from the date of receipt of the Plan shall be afforded to make such comments.

(f) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(g) The Plan shall include, at a minimum, the following information:

(1) The State's plan for the use of State administrative funds, Program funds, and funds from within the State to reach needy areas, and a description of the means of identifying needy areas. It shall provide the procedures and timeframes for achieving the maximum participation of needy children, particularly needy children in rural areas, in Indian tribal territories, and in areas with a concentration of migrant farmworkers, by disseminating information on the availability of the Program to potential sponsors. The Plan shall provide the State's procedures for locating sponsors eligible under § 225.19(a)(1) through (5);

(2) The estimated number and types of sponsors and sites expected to participate and the estimated average daily attendance. A description of the estimation methods used shall be included;

(3) The estimated amount of Program funds, by month, needed for operating costs payments to sponsors. The plan shall describe the State's method for calculating the amount and the procedures and timeframes for disbursing these payments to sponsors;

(4) The estimated amount of Program funds, by month, needed for administrative costs payments to sponsors. The plan shall describe the State's method for calculating the amount and the method and timeframes for disbursing these payments to sponsors;

(5) The State agency budget, by month, for the use of State administrative funds, including but not limited to staffing, salaries, travel, and per diem;

(6) The State's procedures, deadlines, timeframes, and criteria to be used in the approval process for sponsor applications, including sponsors seeking eligibility under § 225.19(a)(6);

(7) The State's procedures and timeframes for providing technical assistance and training to sponsors, including the number of such training sessions and any other types of technical assistance the State agency intends to provide.

(8) The State's procedures and timeframes for (i) monitoring sponsors and sites, including the number of pre-approval visits and Program reviews conducted in the prior fiscal year and the number of Program reviews planned for the current fiscal year, (ii) followup and corrective action to remedy Program deficiencies and violations detected during such monitoring, and (iii) additional monitoring of sponsors described in § 225.19(a)(6) and sites administered by such sponsors;

(9) The State's procedures and timeframes for (i) registering, (ii) training, and (iii) monitoring of food service management companies, (iv) ensuring that food service management companies do not enter into contracts for more than they can provide effectively and efficiently, and (v) followup and corrective action to remedy food service management company Program deficiencies and violations;

(10) The State's Plan to provide for health inspections and meal quality tests, and the State's plan for the use of funds provided under § 225.4(k);

(11) The State's plan for maximizing the use of school food service facilities and on-site meal preparation;

(12) The actions to be taken to ensure compliance with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15);

(13) The State's procedures and timeframes for auditing sponsors not subject to the auditing requirements prescribed by the Secretary in accordance with § 225.13(a)(1). The Plan shall also include the total number of audits performed during the prior fiscal year;

(14) The State's procedures for granting a fair hearing and prompt determination to any sponsor wishing to appeal a State's decision affecting its application for participation, its site participation, or its Program payments, and the State's procedures for granting a hearing and prompt determination to any food service management company wishing to appeal a States' denial of registration in the State. The State shall also identify the title and/or position of the hearing official responsible for hearing appeals by sponsors and food service management companies of any State decision concerning any aspect of their participation in the Program. The Plan shall provide evidence of that official's independence from the original decision-making process;

(15) The amount of non-Federal funds made available to the Program through direct State appropriations;

(16) An explanation of significant deviations in last year's actual Program operations from that proposed in the Plan for last year. This explanation shall include the State's corrective action plan for resolving any problems or deficiencies which occurred during the prior fiscal year and for reducing waste and mismanagement in the Program.

§ 225.7 State agency personnel.

(a) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(b) All administrative personnel shall be employed and available for Program duties at least 30 days prior to the State agency's sponsor application deadline date. All field staff personnel shall be employed and available at least 15 days prior to the first day of Program operations. However, the State agency may submit to FNSRO a written request for an exception to these hiring dates.

The requests shall include information in sufficient detail for FNSRO to determine that the exception is necessary and will not adversely affect Program administration and operation. The requests must be submitted prior to the first of the hiring dates.

§ 225.8 Procedures for approval of applications.

(a) Each State agency shall establish and inform all of the previous year's sponsors and all potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall approve the application of an otherwise eligible applicant sponsor submitted after the deadline date established by the State agency only when the failure to do so would deny the Program to an area in which poor economic conditions exist or a significant number of needy children would not otherwise have reasonable access to the Program. The State agency shall inform potential sponsors inquiring after the sponsor application deadline date of the possibility of approval if the sponsor qualifies under these terms. The State agency shall not approve an application submitted after the deadline date any sooner than seven days following its submission.

(b) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.16.

(c) The State agency shall determine the eligibility of applicant sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.19.

(d) The State agency shall review each applicant's administrative budget as a part of the application approval process, in order to assess the applicant's ability to operate in compliance with these regulations within is projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(e) State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: (1) it is a residential camp, or (2) it proposes to provide a food service for the children of migrant workers, or (3) a failure to do so would deny the Program to an area in which poor economic conditions exist, or (4) a significant number of needy children will not otherwise have reasonable access to the Program. Such an applicant may be approved to operate more than 50 sites only if it will provide a food service for the children of migrant workers and the State agency determines that the applicant has adequate capabilities and facilities and has provided services to migrant communities in prior years. When approving the applications of such applicants, the State agency shall take particular care to ensure that such applicants are timely in their Program planning and thoroughly prepared to assume and carry out all Program responsibilities.

(f) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the eligibility requirements for free and reduced price school meals.

(g) The State agency shall use the following order of priority in approving sponsors eligible under § 225.19(a) (1) through (5) to operate sites which propose to serve the same area or the same enrolled children:

(1) Applicant sponsors which are public or nonprofit private schools which have demonstrated successful Program performance in a prior year;

(2) Applicant sponsors which oppose to prepare meals at their own facilities or which operate only one site;

(3) Applicant sponsors which propose to utilize local school food service facilities for the preparation of meals;

(4) Other applicant sponsors which have demonstrated ability for successful Program operations; and

(5) Applicant sponsors which plan to integrage the Program with Federal, State, or local employment or training programs.

(h) The State agency shall not approve the application of any applicant sponsor which seeks eligibility under § 225.19(a)(6) unless the applicant fully documents that it has a consistent record of reliable and honest management and administration of community food service programs. For the purpose of determining eligibility under § 225.19(a)(6), "community food service program" means a program that provides meals on a regular schedule, and which has the stated objective of providing nutritionally balanced meals to participants. The State agency shall approve these applicants only if sponsors indentified in § 225.19(a) (1) through (5) are not available to administer the Program in the same geographic area or a significant number of needy children will not otherwise have reasonable access to the Program. Upon receiving an application from a potential sponsor seeking eligibility under § 225.19(a)(6), the State agency shall make every reasonable effort to locate a sponsor eligible under § 225.19(a) (1) through (5) to serve sites in that same area. The State agency may also assist applicants seeking eligibility under § 225.19(a)(6) in making changes in their proposed programs that would make the applicants eligible under one of the other categories in § 225.19(a) (1) through (5).

(i) When evaluating a proposed food service site, the State agency shall ensure that:

(1) If not a camp, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2(d);

(2) The number of meals, by type, proposed to be served to children at the site does not exceed the number of children residing in the area to be served, or, if applicable, the number enrolled;

(3) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal and that the total number of meals, by type, served to children at all sites does not exceed the number of children residing in the area; and

(4) The site is approved to serve no more than the number of children for which its facilities are adequate.

(j) When approving each application, the State agency shall establish an approved level for the number of meals which may be claimed for reimbursement under the Program for each site at which the sponsor proposes to serve meals prepared by a food service management company. The approved level shall be set with the objective of providing only one meal per child. The approved level shall be based upon the historical record of attendance at the site, if the site has been used in the Program in prior years. If the site has not been used in prior years, the State agency shall establish the approved level based on its own best estimate of

attendance. The approved level shall be adjusted, if warranted, based upon information collected during site reviews. The sponsor may seek an adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that its attendance at a site exceeds the site's approved level. Whenever the State agency makes such adjustments, it shall document them in its files, and it shall immediately send written confirmation of the adjustments to the sponsor. Upon approval of its application or any adjustment of approved levels, the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals.

(k) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.12(b), and where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.(12)(a).

(l) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless it can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(m) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which participated during the prior three fiscal years and was seriously deficient in its Program operations. In the event that an applicant sponsor's application is denied, the State agency shall inform such applicant sponsor of the procedure to request a review of the denial. The official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Serious deficiencies which are grounds for nonapproval are described in § 225.14(c).

(n) Pending the outcome of a review of a denial the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (g) of this section, without regard to the application under review.

(o) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or knowingly withholds information which may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

§ 225.9 Program applications.

(a) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FNS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the State agency deadline date established under § 225.8(a). At a minimum, the application shall include the items listed below:

(1) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

(i) An organized and supervised system for serving meals to attending children;

(ii) The estimated number and types of meals to be served and the times of service;

(iii) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(iv) Arrangements for food service during periods of inclement weather;

(v) Access to a means of communication for making adjustments as needed in the number of meals delivered in accordance with the number of children attending daily at each site;

(vi) The geographic area to be served by the site;

(vii) The percentage of children to be served by the site who meet the eligibility requirements for free or reduced price school meals; and

(viii) Whether the site is rural, as defined by § 225.2(x), or non-rural, and whether the site's food service will be self-preparation or vended.

(2) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization, which supports eligibility for those children as a group. When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites applicants shall only be required to obtain new documentation every other year. Prior to filing their Claims for Reimbursement for each session or at such time as specified by the State agency, camps shall submit to the State agency family-size and income information which documents the number of children enrolled in each session who meet the eligibility requirements for free or reduced price school meals.

(3) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.19, and the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, an administrative and operating budget, and a staffing and monitoring plan.

(4) A complete administrative budget for State agency review and approval. The budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate under the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(5) A plan for and a synopsis of its invitation to bid for food service, if a bid is required under § 225.17.

(6) A free meal policy statement, as required in § 225.22.

(7) For sponsors applying after the deadline date established by the State agency under § 225.8(a), an explanation to the State of why they are applying late. The State shall maintain a record documenting all late submissions.

(8) Applicants which sponsored the Program during any of the prior three fiscal years shall not be required to submit the documentation described in this paragraph. Applicants under § 225.19(a)(6) of this part which have not sponsored the Program during the prior three fiscal years shall submit sufficient documentation with the application to demonstrate that they have been consistently reliable and honest in the management and administration of community food service programs. The following types of documentation shall be submitted by these applicants for any other community food service programs

administered during the prior three years, and may be submitted for any program administered prior to that time:

(i) A description of all food service programs which the applicant has managed or administered, including lists of names of corporate officers, addresses of food service sites, and sources of funding;

(ii) Independent audit reports stemming from any audits which may have been conducted of the applicant's food service programs;

(iii) An assurance that the applicant has not been terminated or determined to have been seriously deficient in its operation of community food service programs; and

(iv) Any other relevant information which is available to the applicant concerning its record in management and administration of food service programs.

(b) Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at some other time or times during the year for children on school vacation under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.21 during a period designated as the meal service period by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(4) Issue a policy statement in accordance with § 225.22;

(5) Meet the training requirement for its administrative and site personnel, as required under § 225.20(i);

(6) Provide for an audit if it expects to receive over $75,000 in Program payments, as outlined in § 225.13(a)(2);

(7) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who are eligible for free or reduced price school meals. No permanent changes may be made in the time of any meal service period unless the changes are approved by the State agency;

(8) Submit Claims for Reimbursement in accordance with procedures established by the State agency, and those stated in § 225.12;

(9) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(10) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(11) Have access to facilities necessary for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency;

(13) Maintain on file documentation of site visits and reviews in accordance with § 225.20(g) and (h);

(14) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. These records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigation findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(15) Maintain children on site while meal are consumed; and

(16) Retain final financial and administrative responsibility for its program.

(c) Each State agency shall require applicant sponsors submitting Program applications, site information sheets, Program agreements or Claims for Reimbursement, and sponsors requesting advance payments, to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(d) Within two weeks of receiving notification of their approval, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(e) Within two weeks of receiving notification of its approval, any sponsor whose total Program payments are expected to exceed $75,000 shall submit to the State agency a copy of its letter of agreement with the accounting firm or individual which is to conduct the audit of its program in accordance with § 225.13(a) and (b).

(f) In addition, the State agency may require any sponsor which contracts with a food service management company to enter into an agreement with the State agency to provide that the sponsor shall establish a special account with a State of Federally insured bank for operating costs payable to the sponsor by the State. The special account agreement shall specify that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain other terms agreed to by both sponsor and food service management company, which are not inconsistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

§ 225.10 Program expansion, monitoring and assistance.

(a) Program availability. By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a listing of potential sponsors which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farmworkers which qualify for the Program and shall actively seek eligible applicant sponsors to serve such areas. States shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. Outreach efforts shall be directed toward potential sponsors which would be eligible under § 225.19(a)(1) through (5). State agencies shall make every reasonable effort to locate high priority sponsors for sites in areas where poor economic conditions exist. The State agency shall encourage potential sponsors to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(b) *Training.* Each State agency shall plan for and carry out Program training for sponsors, food service management company representatives, auditors, and health inspectors which will participate in the Program in that State. Prior to Program operations, each State agency shall ensure that the sponsor's

supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall be structured and scheduled to reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize sponsors which have previously participated in the Program in such training and to train site personnel regarding their responsibilities. Training should be made available at convenient locations. Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration for representatives from all food service management companies and each health department which will participate in the Program in the current year.

(c) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to adequately prepare for their participation in the Program.

(d) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of the contracts between sponsors and food service management companies.

(e) *Program monitoring and assistance.* The State agency shall conduct monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites as specified below, to further assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the Program in the prior year;

(ii) All other applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit;

(iii) All proposed nonschool sites with an expected average daily attendance of 300 children or more and which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites, to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum consider whether or not the sponsor or site has been used or reviewed in prior years, the performance of the sponsor or site in prior years, the performance of other sites operated by the same sponsor in prior years and the current year, and the performance of the applicable sponsor in prior years and the current year. Reviews shall be conducted as follows:

(i) For the following types of sponsors, State agencies shall conduct both a review of sponsor operations and reviews of an average of 15 percent of their sites during the first four weeks of the sponsor's operations:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year, and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) The State agency shall review the following types of sponsors and sites not reviewed under subparagraph (2)(i) of this paragraph at least once during the period of program operations:

(A) All remaining sponsors of 10 or more sites and an average of at least 15 percent of their sites, and

(B) 70-percent of all sponsors of fewer than 10 sites and an average of 10-percent of their sites.

(iii) The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(3) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the appropriate food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance. As a part of its monitoring system, the State agency may elect to implement a five-percent tolerance level, as allowed under § 225.14(f). Sponsors and site personnel shall be afforded every opportunity to make necessary corrections in a timely manner.

(4) *Records.* Documentation of Program assistance and results of such assistance shall be maintained on file by the State agency.

(5) *Food Preparation facility visits.* As a part of the review of any sponsor which contracts with a food service management company for the preparation of meals, the State agency shall inspect the facilities of the food service management company. Each State agency shall establish an order of priority for visiting facilities at which food is prepared to be served in the Program. The State agency shall respond promptly to complaints concerning facilities with potential problems. Funds provided for in § 225.4(k) may be used for this purpose.

(6) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, time of reviewer's arrival and departure, site supervisor's signature, certification statement to be signed by monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, and corrective actions taken by sponsor and date of such actions.

(7) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (e)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. FNS will develop guidance outlining statistical monitoring procedures. States should use the statistical monitoring procedures provided by FNS, or develop alternate procedures and obtain FNS approval prior to implementation. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sponsors in subparagraph (2) of this paragraph.

(8) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.14. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(f) *Food quality and preparation facility inspections.* The State agency shall make a positive effort to ensure that inspections of food preparation facilities and food service sites, including meal quality tests, are conducted. The procedures for carrying out the inspections and tests shall be consistent with procedures used by local health authorities. For inspections of facilities of food service management companies not conducted by State agency personnel, copies of the results of the inspections shall be provided to the State agency. The company and the

sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required.

(g) *Financial management.* Each State agency shall establish a financial managment system in accordance with Office of Management and Budget Circular A–102 and FNS guidance to identify allowable Program costs and establish standards for sponsor recordkeeping and reporting. The system shall also be consistent with Federal Management Circular 74–4. The State agency shall provide guidance on these financial management standards to each sponsor.

(h) *Nondiscrimination.* (1) Each State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, and the Department's regulations concerning nondiscrimination issued thereunder (7 CFR Part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program. (2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or the Secretary of Agriculture, Washington, D.C. 20250.

§ 225.11 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF–269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.16, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) By December 15 of each year the State agency shall provide FNS with information on the scope of Program operations within the State.

(c) Each State agency shall report information to FNS on the use of funds and on Program operations on a form provided by, and as instructed by, FNS.

(d) Not later than March 1 of each fiscal year, the State agency shall submit to FNS a final Operations and Financial Status Report for the prior fiscal year, on a form (SF–269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves of such an increase, it will make payment, subject to the availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.15(d), except that amounts recovered may not be used to make Program payments.

(e) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

§ 225.12 Program payments.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not excpeed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsors does not receive advance payments, from the first administrative reimbursement.

(b) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to assist sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraphs (b) (1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.*

(i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligible for the second advance payments, the sponsor must have conducted training sessions for its own personnel and site personnel covering Program duties and responsibilities. A sponsor shall not receive advance operating costs payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment: (A) The total operating costs paid to the sponsor for the same calendar month in the preceding year, or (B) for sponsors contracting with a food service management company, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for sponsors preparing their own meals, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.*

(i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will operate under the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for ten or more days only in one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one half and no more than two thirds of the total

amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available date. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.15.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid Claim for Reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid Claim for Reimbursement.

(c) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. The State agency may make full or partial reimbursement upon receipt of a Claim for Reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites approved in the administrative budget and that there has been no significant change in its projected administrative costs since its preceding claim or, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(2) Claims for reimbursement shall be submitted by the 10th day of the month following the month for which the claim is made. The State agency may require that claims be submitted more frequently than once each month.

(3) Sponsors whose first month of operation consists of less than 10 days shall submit a combined claim for that month and the month immediately following.

(4) Sponsors whose final month of operations consists of less than 10 days shall submit a combined claim for the final month and the month immediately preceding within 10 days of the last day of operation.

(5) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(6) The State agency is not required to act upon any Claim for Reimbursement which is not received within 30 days of the sponsor's last day of food service operations, unless the State agency determines that the late submission is due to circumstances beyond the sponsor's control, in which case payment shall be made if the claim is valid.

(7) Claims for reimbursement for any fiscal year shall not be considered if they are submitted later than the following December 31, with the exception of Claims submitted on or before December 31 and subsequently amended as a result of audits or investigations.

(8) Claims for reimbursement shall include data sufficient to justify the amount claimed and to enable the State agency to provide the information required in Program reports. Sponsors shall also certify that records supporting the claim are available. The cost of meals served to adults performing necessary food service labor may be included in the claim.

(9) The State agency shall promptly take corrective action with respect to any Claim for Reimbursement for which such action is determined necessary based upon the results of Program reviews or any other information available. The corrective action must be completed in time to be reflected in the final Program Operations and Financial Status report for each fiscal year if reimbursement for the claim is to be made available for that fiscal year through the Letter of Credit system described under § 225.4(j).

(10) Payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor, or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 85.75 cents for each lunch or supper, 42.75 cents for each breakfast and 22.50 cents for each supplement. These are base rates of reimbursement, not current rates, and must be adjusted in accordance with paragraph (c)(12) of this section.

(11) Payments to a sponsor for administrative costs shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 6.75 cents for each lunch or supper, 3.50 cents for each breakfast and 1.75 cents for supplements, except that sponsors shall be eligible to receive an additional 1.50 cents for each lunch or supper, 1.00 cents for each breakfast, and .50 cents for each supplement served to participating children at rural or self-preparation sites. All rates in this subparagraph are base rates of reimbursement, not current rates, and must be adjusted in accordance with paragraph (c)(12) of this section.

(12) Each January 1, FNS shall publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (c)(10)(ii) and (11)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(13) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for free or reduced-price meals is documented. Any nonresidential camp

reduced to fewer than four meals per day under the terms of § 225.14(d) shall receive reimbursement only for those meals served to children eligible for free or reduced-price school meals.

(14) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's Claims for Reimbursement.

(d) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(e) In reviewing a sponsor's claim, the State agency may limit payments to the sponsor according to the approved level for meal service which may be claimed for reimbursement at the sponsor's sites, as provided for in § 225.8(j).

§ 225.13 Audit and management evaluation.

(a) *Audits.* (1) Upon approval of applicant sponsors whose total Claims for Reimbursement are expected to exceed $75,000, the State agency shall provide those sponsors with an audit guide to be used in the conduct of the audit required by § 225.20(k) and any other guidance necessary to enable them to comply with the audit requirements of this part. The audit guide developed by the State agency shall, at a minimum, contain the standards set forth in the audit guide issued by the Department for the Program.

(2) In addition to the plan submitted under § 225.6(g)(13), the State agency shall ensure that all sponsors within the State whose total Claims for Reimbursement are expected to be more than $75,000 provide for an annual audit of their program. Any sponsor required to provide for an audit of its program shall engage an accounting firm or individual which is independent of the sponsor to conduct the audit.

(3) The State agency shall also provide for biennial audits of sponsors whose total Claims for Reimbursement are expected to be less than $75,000 with the following exceptions: (i) sponsors under $10,000, (ii) sponsors receiving other Federal funds, and subject to an organization-wide audit in accordance with OMB Circular A-102, and (iii) sponsors for which the State agency determines an audit is unnecessary based on program performance. States must justify and document all exemptions made to the biennial audit requirement. The cost of such audits shall be considered an allowable State administrative expense, and in no case may the cost of such audits be passed through to sponsors. States which can demonstrate that compliance with the requirement will impose financial hardship may initiate an appeal through FNSRO to FNS.

(4) Any audit of an organization which is conducted in accordance with the Program audit guide and includes the Program covered by this part may be included to meet a portion of the audit requirement contained in this section.

(5) Audits shall be conducted by: State agency internal auditors; State Auditors General; State Comptroller's Offices; other comparable State or local government audit groups; Certified Public Accountants; or public accountants licensed on or before December 31, 1970, and currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(6) Within the first two weeks of the sponsor's operation of the Program, the auditor engaged by any sponsor required to have an annual audit shall submit to the sponsor and to the State agency a copy of a letter evaluating and making recommendations for the improvement of the sponsor's accounting and recordkeeping systems.

(7) Each State agency shall coordinate its monitoring review findings under § 225.10 and the audit reports provided for under § 225.20(k). Each State agency shall ensure that monitoring is conducted to result in a representative review of the sponsor's operations under the Program.

(8) While OIG shall rely to the fullest extent feasible upon State-sponsored audits, it shall, when considered necessary, (i) make audits on a Statewide basis, (ii) perform on-site test audits, and (iii) review audit reports and related working papers of audits performed by or for State agencies.

(9) State agencies shall provide FNS and OIG with full opportunity to conduct management evaluations (including visits to sponsors) and audits of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS or OIG. OIG shall also have the right to make audits of the records and operations of any sponsor.

(10) Use of Program audit guides available from OIG is encouraged. When this guide is utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(b) For each sponsor whose total Program payments under any Program agreement are expected to exceed $75,000, the final Claim for Reimbursement under the agreement shall not be eligible for payment until the audit has been completed and the results have been reviewed by the State agency. The cost of the audit may be considered an administrative cost. All such audits shall be subject to review by the Department.

(c) *Management evaluations.* For management purposes, FNSRO shall conduct an annual evaluation of Program operations within each State agency to determine Program needs and identify potential problem areas. Based on information obtained during this assessment, FNSRO may provide training or technical assistance to the State agency. FNSRO shall conduct management evaluations either prior to the initiation of Program operations, or during the first six weeks of Program operations, whichever time FNSRO considers best to evaluate the State. If the management evaluation discloses serious problems, a follow-up evaluation shall be made.

(d) In addition to the management evaluation, FNSRO shall collect data on the need for Program and State administrative funding within each State agency. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under § 225.4(g) to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and collected during the period of Program operations, but no later than August 1. Immediately following this data collection, payment of State administrative funds shall be made to the State agency. The payment may reflect adjustments in the level of State administrative funding, based on the information collected. FNS shall not decrease the amount of a State's administrative funds unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(e) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation. The response shall be in the form of a corrective action plan, as required under § 225.6(g)(16).

(f) FNSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious

problems observed during any phase of the management evaluation.

(g) In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

§ 225.14 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* The State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program at any time during the previous three fiscal years, including the fiscal year of its application to the Program, and which was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. Following such termination, the sponsor shall not be eligible to participate in the Program during the remainder of the fiscal year of its termination and the subsequent two fiscal years. The State agency may, before the expiration of the three fiscal years, approve the application of a sponsor which has been disapproved or terminated in accordance with this paragraph if the State agency, with FNS concurrence, determines that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. However, the State agency shall afford a sponsor every reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all Claims for Reimbursement in any prior year, provided that failure to return any advance payments for months for which Claims for Reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sites which include, but are not limited to, the following:

(i) Noncompliance with the between meal time requirements;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* The State agency shall restrict to one meal service per day (1) any food service site which is determined to be in violation of the time restrictions for meal service included in § 225.21(a) when corrective action is not taken within a reasonable time as determined by the State agency, and (2) all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions included in § 225.21(a). If this action results in children not receiving any meals under the Program, the State agency shall make every reasonable effort to locate another source of meal service for the children.

(e) *Meal disallowances for improper planning.* If the State agency determines that a sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service at a food service site, the State agency shall withhold reimbursement for the number of meals prepared or ordered in excess of the number of children served. The State agency shall withhold reimbursement for any meals observed during a site review, in excess of a site's approved level, established under § 225.8(j).

(f) *Tolerance level.* The State agency may elect not to reimburse the sponsor for any meals served in violation of Program requirements. However, the State agency may reimburse the sponsor for meals served in violation which are observed during a site review if the number of meals in violation does not exceed five percent of the total number of meals served at the meal service. In making such a determination, the State agency shall in no case allow meals served in excess of the site's approved level, set in accordance with § 225.8(j). If the State agency elects to reimburse the sponsor for any meals served in violation of Program requirements, it shall require the sponsor to take immediate corrective action to ensure that the violations do not recur. The State agency may reimburse sponsors for meals in violation of the five percent level only if it determines that the high level of meal service violations is due to unusual circumstances beyond the control of the sponsor. If the State agency elects to take such action, it shall document in its files the reasons for allowing the five percent tolerance level to be exceeded. Seconds served in accordance with § 225.20(d) are not violations and, therefore, shall not be counted in the aggregation of violations under this paragraph.

(g) *Termination of sites.*

(1) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the State agency and specified in the review report.

(2) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(3) Within 48 hours of terminating a site, the State agency shall, if applicable, notify the food service management company providing meals to the site of the termination.

(4) Upon terminating a sponsor's site, the State agency shall inform the sponsor of its right to appeal under § 225.16.

§ 225.15 Claims against sponsors.

(a) The State agency shall disallow any portion of a Claim for Reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in § 225.13(g). However, the State agency shall notify the sponsor of the reasons for the disallowance or demand for repayment, and allow the sponsor full opportunity to submit evidence on appeal as provided for in § 225.16.

(b) Minimum State Agency collection procedures for unearned payments shall include: (1) written demand to the sponsor for the return of improper payments; (2) if after 30 days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested; (3) if, after 60 days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested; and (4) if after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized (1) to make Program payments to sponsors for the period for which the funds were initially available, and (2) to repay the State for any of its own funds used to make payments on Claims for Reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

§ 225.16 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant requesting a review of a denial of an application for participation, a denial of a request by a sponsor for an advance payment, a denial of a claim by a sponsor for reimbursement, a claim againt a sponsor for remittance of a payment, the termination of the sponsor or a site, a denial of a sponsor's application for a site, or a denial of a food service management company's application for registration.

(b) At a minimum, the procedures for those reviews shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a full description of the sponsor's or food service management company's rights and responsibilities under this section;

(2) The sponsor or food service management company be advised in writing that the request for review must be made within a specified time. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date of receipt of the notice of action;

(3) The appellant be afforded the opportunity to reveiw any information upon which the action was based;

(4) The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the request for review;

(5) A hearing shall be held by the reveiw official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specified in the letter of request for review. The appellant may retain legal counsel, or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing;

(6) If the appellant has requested a hearing, the appellant shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing shall be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraph (b)(4) of this section;

(8) The review official shall be independent of the original decisionmaking process;

(9) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued operation under the Program shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) A complete record regarding each review shall be kept by the State agency, as required under § 225.11(a).

§ 225.17 Procedures for food service management companies.

(a) Any sponsor may contract with a food service management company for the preparation of unitized meals with or without milk. In all cases, the sponsor shall adhere to the procurement standards indicated in § 225.18. All meals prepared by a food service management company shall be unitized, with or without milk, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing prior to advertising for bids. The State agency shall notify the

sponsor in writing of it determination in a timely manner.

(b) Any sponsor which contracts with a food service management company shall be responsible for ensuring that the food service oparation is in conformity with its agreement with the State agency and all the applicable provisions of this part. No sponsor may contract out for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications.

(c) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, except that a school acting as a food service management company and a food service management company which has an exclusive contract with a school for year-round service (and no contracts with other sponsors) shall not be required to register with the State. The procedures for registration of all other food service management companies are as follows:

(1) By February 1, each State agency shall notify each food service management company which participated in the Program in either of the prior two years in the State that it must register with the State agency. This notification shall include at a minimum: (i) a statement that registration with the State agency is a prerequisite to participation in the Program during the fiscal year; (ii) a list of the items which must be submitted in the application for registration as set forth in paragraph (c)(2) of this section; (iii) a complete description of the criteria developed by the State agency for determining registrant eligibility; and (iv) any other information necessary to apply for registration. In addition, each State agency shall by the same date issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(2) With the exceptions described in the first sentence of this paragraph, each food service management company shall register with the State by March 15 of each fiscal year. At a minimum, registration shall require: (i) submission of name and mailing address and any other names under which such food service management company presently or in the past two years has marketed its services; (ii) a certification that the food service management company meets applicable State and local health, safety, and sanitation standards; (iii) disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program; (iv) records of contract terminations, disallowances, and health, safety, and sanitation code violations related to prior Program participation during the past two years; (v) records of any other contract terminations and health, safety, and sanitation code violations during the past two years; (vi) the address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the local officials responsible for the operation of the facilities; (vii) the number of meals which can be prepared in each preparation facility in a twenty-four hour period for use in the Program; (viii) a certification that the food service management company will operate in accordance with current Program regulations; (ix) a statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company; and (x) submision of a Certified Public Accountant's audit report if an audit was performed during the prior year and, (xi) a statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business,

(A) In which the management and daily operations of the business are controlled by a member or members of a minority group; and

(B) At least 51 percent of which is owned by a member or members of a minority group; (1) if the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; (2) if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group. Minority groups are Black, Hispanics, American Indians, Alaskan Natives and Aleuts.

(3) A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year, if the State agency determines that the lack of registration could result in a significant number of needy children not having reasonable access to the Program.

(4) Prior to registration, the State agency shall provide for inspections of all food service management companies' food preparation facilities listed on the applications for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that the facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of meals for use in the Program. The State agency may waive this inspection requirement if a facility was registered last summer and operated in accordance with Program requirements.

(5) No food service management company shall be registered by the State agency if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which do not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with a prior Program operation.

(6) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination on the application within 30 calendar days after receipt of the complete application. The State agency shall inform any food service management company whose application for registration has been denied of the procedures to request a review of the denial as provided for in § 225.16. The official making the

determination of denial must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.11(e).

(d) In the absence of any applicable State or local laws governing bid procedures, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph, except that a sponsor which is a school which has an exclusive contract with a food service management company for year-round service and a sponsor whose total contracts with food service management companies will not exceed $10,000 shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that normally accepted bidding procedures are followed in contracting with any food service management company.

Each sponsor whose proposed contract is subject to competitive bidding procedure shall ensure, at a minimum, that:

(1) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid opening;

(2) The bids shall be publicly opened; and

(3) The State agency is notified at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening.

(4) When advertising for bids, the sponsor shall adhere to the following requirements, at a minimum:

(i) The invitation to bid shall not specify a minimum price;

(ii) The invitation to bid shall contain a cycle menu approved by the State agency upon which the bid shall be based;

(iii) The invitation to bid shall contain food specifications and meal quality standards approved by the State agency upon which the bid shall be based;

(iv) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(v) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(vi) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) A copy of the food service management company registration determination issued by the State agency shall be submitted by the food service management company with each bid;

(6) Sponsors shall submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen;

(7) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(e) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. (Sponsors which are public institutions and sponsors exempt from the competitive bid procedures described in paragraph (d) of this section may use their existing or usual form of contract, if such form of contract has been submitted to and approved by the State agency.) The standard contract developed by the State agency shall expressly and without exception provide that:

(1) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site (established under § 225.8(j)), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(2) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall report to the sponsor promptly at the end of each month, at a minimum;

(3) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals beings served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service management in the locality. Results of the inspections shall be submitted to the sponsor and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(5) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department, and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract;

(6) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(10) All meals served under the Program shall meet the requirements of § 225.21;

(11) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs the sponsor incurs by obtaining meals from another source; and

(12) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments made by the State agency to the sponsor in accordance with the conditions given in § 225.9(f), the contract shall so specify.

(f) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal.

(g) Each State agency shall have a representative present at all procurement bid openings of sponsors which expect to receive more than $100,000 in Program payments.

(h) The State agency may require any sponsor which contracts wih a food service management company to establish a special account in a State or Federally insured bank for the deposit of Program payments for operating costs. The special account shall be such that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company, and shall be in accordance with the other specifications included in § 225.9(f).

(i) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations.

(j) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(k) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the bond within ten days of the awarding of the contract.

(l) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570.

(m) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.23(b). If a food service management company fails to take the actions recommended to correct violations noted by the State agency or health inspectors in the conducting of a review or inspection, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. When the State agency takes such action, it shall inform the sponsor of its right to appeal under § 225.16.

§ 225.18 Procurement standards.

(a) State agencies and sponsors which are Federally recognized Indian tribal governments or entities of State or local governments (such as some school districts, elementary and secondary schools, and public park authorities) shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A-102 in the procurement of food, supplies, goods, and other services with Program payments.

(b) All sponsors other than those identified in paragraph (a) of this section shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A-110 in the procurement of food, supplies, goods, and other services with Program payments.

(c) The State agency shall make available to sponsors information on Office of Management and Budget Circulars A-102 and A-110, as appropriate.

(d) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with the approval of FNS, to prevent fraud, waste, and Program abuse.

(e) In accordance with OMB Circular A-102, the State agency shall ensure that sponsors described in paragraph (a) of this section adhere to the following practices with respect to minority business enterprises. The State agency shall encourage all other sponsors to observe these practices:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

Subpart D—Provisions for Sponsors

§ 225.19 Requirements for sponsor participation.

(a) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public sponsors;

(2) Private nonprofit sponsors, including residential summer camps, which prepare their own meals or obtain meals from a public facility, such as a school district, public hospital, or State university;

(3) Private nonprofit schools, including colleges and universities;

(4) Private nonprofit migrant farmworker organizations, including those that purchase meals from a food service management company, which develop programs for children of migrant families;

(5) Private nonprofit sponsors which serve not more than a total of 500 children daily at not more than three sites and which purchase meals from a food service management company; and

(6) In areas where no sponsors described in paragraph (a) (1) through (5) of this section are available to operate the Program, or where a significant number of needy children will not otherwise have access to the Program, private nonprofit service institutions which purchase meals from a food service management company, and which are determined to have a consistent record of reliable and honest management and administration of community food service programs.

(b) *Requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service.

(2) Has not been seriously deficient in operating the Program in prior years.

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualifies as a camp.

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site incuding adequate personnel to conduct

the visits and reviews required in § 225.20 (g) and (h).

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.8(e);

(6) Certifies that all sites have been visited and have the capability and the facilities for the meal service planned for the number of children anticipated to be served;

(7) If not a camp, provides documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2(d). If a camp, certifies that it will collect family size and income information to support its Claim for Reimbursement; and

(8) If a summer school, is open to serve children in addition to those enrolled in the accredited school program or is a school serving children outside of the summer school hours.

(c) *Applications.* Applicants shall make written application to the State agency for participation in the Program as sponsors. Such application shall be made on a timely basis in accordance with the requirements of § 225.9.

(d) *Agreements.* Each sponsor shall enter into a written agreement with the State agency upon approval of its application, as rquired in § 225.9(b).

(e) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with paragraphs (f) and (g) of this section.

(f) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which qualify for free and reduced price meals under the guidelines established for the National School Lunch Program (7 CFR Part 210). The sponsor shall maintain a copy of the family income documentation of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(1) A residential camp may serve up to four meals each day.

(2) A nonresidential camp shall serve four meals each day or three meals consisting of breakfast, lunch, and supper.

(3) Camps are not subject to the time restrictions for meal service given in § 225.21(a)(1).

(4) A camp shall be approved to serve these meals only if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the service period of the different meals does not coincide or overlap.

(5) A camp may be approved to serve supplemental food and also participate in the Special Milk Program (7 CFR Part 215). Any camp which participates in both Programs shall keep separate records for each Program, and shall not claim or receive reimbursement under both Programs for the same milk.

(g) *Sites other than camps.* Food service sites other than camps shall serve children in areas where poor economic conditions exist, as defined by § 225.2(d). A sponsor which operates in accordance with this part shall receive reimbursement for all eligible meals served to children at these sites. Food service sites other than camps may serve up to three meals each day provided that at least one of these meals is a supplement. These sites shall not be approved to serve supplemental food and also participate in the Special Milk Program (7 CFR Part 215).

§ 225.20 Operational responsibilities of sponsors.

(a) Sponsors shall operate the food service in accordance with the provisions of this part and any instructions and handbooks issued by FNS under this part or issued by the State agency which are not inconsistent with the provisions of this part.

(b) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities, or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(c) Upon approval of its application or any adjustment in the approved levels of meal service for its sites, established under § 225.8(j), the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals.

(d) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of meals needed and to reduce the resultant waste, any excess meals within the approved level for the site that are prepared or ordered may be served to children and claimed for reimbursement unless the State agency determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal. In no case shall the sponsor order or prepare meals for any site in excess of its approved level, established in accordance with § 225.8(j).

(e) Sponsors shall submit Claims for Reimbursement only for meals served to children in accordance with this part. Claims shall be submitted by the 10th day of the month following the month for which the claim is made. However, the State agency may require that claims be submitted more frequently.

(f) Sponsors shall maintain accurate records which justify all costs and meals claimed. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final Claim for Reimbursement for the fiscal year.

(g) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(h) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(i) Each sponsor shall hold training sessions for its administrative and site personnel with regard to Program duties and allow no site to operate until site personnel have attended at least one of these training sessions. Training of site personnel, at a minimum, shall include: the purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative and site personnel are thoroughly knowledgeable in all requisite areas of Program administration and operation and are provided with sufficient information to

enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(j) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this Chapter, or any other Federally-funded program for meals served under the Program.

(k) Each sponsor whose total Program payments under any Program agreement are expected to exceed $75,000 shall have an audit conducted of its Program claims and the supporting documentation for those claims. The audit shall be conducted in accordance with the provisions of § 225.13(a) and (b). A report on the audit shall be submitted to the State agency.

§ 225.21 Meal service requirements.

(a) *Time restrictions for meal service.*

(1) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this subparagraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals for each meal service which are not prepared at the food service site shall be delivered within one hour of the beginning of the appropriate meal service unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations.

(6) The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency.

(b) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program.

Breakfast [1]

(b)(1) The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Milk[2]	
Milk, fluid	1 cup [3] (½ pint, 8 fl. oz.).
Vegetables and Fruits	
Vegetables(s) and/or fruit(s)	½ cup.
or	
Full-strength vegetable or fruit juice.	½ cup (4 fl. oz.).
or	
An equivalent quantity of any combination of vegetable(s), fruit(s), and juice	
Bread and and Bread Alternates [4]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[5].	1 serving.
or	
Cold dry cereal [6]	¾ cup or 1 oz.
or	
Cooked cereal or cereal grains	½ cup.
or	
Cooked pasta or noodle products	½ cup.
or	
An equivalent quantity of any combination of bread/bread alternate.	
Meat and Meat Alternates (optional)	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.
or	
Peanut butter	2 tbsp.
or	
An equivalent quantity of any combination of meat/meat alternate	

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

[2] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

[3] For the purposes of the requirement outlined in this subsection, a cup means a standard measuring cup.

[4] Bread, pasta or noodle products, cereals, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.

[5] Serving sizes and equivalents to be published in guidance materials by FNS.

[6] Either volume (cup) or weight (oz.), whichever is less.

Lunch or Supper [1]

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Milk	
Milk, fluid, served as a beverage	1 cup [2] (½ pint, 8 fl. oz.).
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)[3]	¾ cup total.
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[5].	1 serving.
or	
Cooked pasta or noodle products	½ cup.
or	
Cooked cereal grains	½ cup.
or	
An equivalent quantity of any combination of bread/bread alternate	
Meat and Meat Alternates	
Lean meat or poultry or fish	2 oz.
or	
Cheese	2 oz.
or	
Eggs	2 large eggs.
or	
Cooked dry beans or peas	1 cup.
or	
Peanut butter	4 tbsp.
or	
An equivalent quantity of any combination of meat/meat alternate	

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s) or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

[4] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or ennched meal or flour; cereal shall be whole-grain or enriched or fortified.

[5] Serving sizes and equivalents to be published in guidance materials by FNS.

Supplemental Food [1]

(3) The minimum amounts of food components to be served as supplemental food are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Milk [2]	
Milk, fluid	1 cup [3] (½ pint, 8 fl. oz.).
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	¾ cup.
or	
Full-strength vegetable or fruit juice.	¾ cup (6 fl. oz.).
or	
An equivalent quantity of any combination of vegetable(s), fruit(s), and juice	
Bread and Bread Alternates [4]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc [5].	1 serving.
or	
Cold dry cereal [6]	¾ cup or 1 oz.
or	
Cooked cereal	½ cup.
or	
Cooked pasta or noodle products	½ cup.
or	
Cooked cereal grains	½ cup.
or	
An equivalent quantity of any combination of bread/bread alternate.	
Meat and Meat Alternates	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.
or	
Peanut butter	2 tbsp

Food components	Minimum amount
or	
An equivalent quantity of any combination of meat/meat alternate	

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

[2] Milk should be served as a beverage or on cereal, or used in part for each purpose.

[3] For purposes of the reuirements outlined in this subsection, a cup means a standard measuring cup.

[4] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[5] Serving sizes and equivalents to be published in guidance materials by FNS.

[6] Either volume (cup) or weight (oz.), whichever is less.

(c) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used as both.

(3) Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(d) *Varying amounts.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (b) of this section to children under six years of age if the State agency determines that the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. In such cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(e) *Infant meal patterns.* Sponsors approved to serve children under one year of age shall be required to comply with the applicable meal requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(f) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

(g) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(h) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in the tables included in this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(i) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements and authorized: a serving of a starchy vegetable, such as ufi, tanniers, yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(j) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (b) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statements shall be kept on file by the sponsor.

(k) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, in so far as practicable, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

§ 225.22 Free meal policy.

(a) *Basic policy.* As part of the application, applicants shall submit a statement of their policy for serving free meals at all sites under their jurisdiction. No application may be approved unless its accompanying policy statement is approved. The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(b) *Camps.* In addition, the policy statement for a camp which charges separately for meals shall include the following:

(1) A statement that the camp's eligibility standards conform to the State's family size and income standards for free and reduced-price school meals;

(2) A description of the method for accepting applications;

(3) A description of the method for collecting payments from children who pay the full price of the meal while protecting the anonymity of children receiving a free meal.

(4) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals which provides for the following:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appended both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate nofice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(5) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered.

(6) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, or national origin.

(c) *Public Announcements.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance, the availability of free meals. Camps shall annually announce to all participants the availability of free meals for eligible children. All announcements must also state that meals are available without regard to race, color or national origin.

Subpart E—Miscellaneous Provisions

§ 225.23 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachment K of the Office of Management and Budget Circular A-110 (41 FR 32016, July 30, 1976), or Attachment L of the Office of Management and Budget Circular A-102 (42 FR 45828, September 12, 1977), whichever is applicable.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds. (2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program. (3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 225.24 Program information.

(a) Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(1) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(2) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(3) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30367.

(4) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(5) In the States of Arkansas, Louisana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, TX 75202.

(6) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 80211.

(7) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

(Catalog of Federal Domestic Assistance Programs No. 10.559, Summer Food Service Program for Children).
(The Summer Food Service Program for Children is subject to Part III of Attachment A of OMB Circular No. A-95 (revised). Part III requires that Governors or their designated Plan review agency be given the opportunity to reivew the State plans required by Program regulations.)

Dated: November 4, 1980.

Sydney J. Butler,

Acting Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-34784 Filed 11-6-80; 8:45 am]

BILLING CODE 3410-30-M

federal register

Friday
November 7, 1980

Part VIII

Office of Management and Budget

Proposed Circular on Managing Generally Applicable Requirements for Assistance Programs; Request for Comment

OFFICE OF MANAGEMENT AND BUDGET

Proposed Circular on Managing Generally Applicable Requirements for Assistance Programs; Request for Comment

AGENCY: Office of Management and Budget.

ACTION: Request for comment on proposed OMB Circular on managing generally applicable requirements for assistance programs.

BACKGROUND: Section 8 of the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224, 41 U.S.C. 507) required OMB to study the management of Federal assistance including the feasibility of establishing a comprehensive system of guidance for assistance activities and to recommend actions for proceeding with implementation of system elements deemed warranted. The study process provided for extensive participation of interested parties and a report on the study was transmitted to the Congress on March 5, 1980.

A major finding of the study was that:

"At the same time that the number and value of Federal assistance programs have multiplied, both Congress and the Executive Branch have seen opportunities for advancing national social and economic goals by requiring recipients of federal assistance to do or refrain from doing certain things while conducting federally-assisted activities. For example, recipients must protect the environment, avoid discrimination in employment practices, and provide for the handicapped.

"This study has identified and described 59 general policy and administrative requirements called 'crosscutting' because they apply to assistance programs of more than one agency or department. Over half of these requirements have been promulgated within the last 9 years. Some of these are standard administrative requirements which have been issued to simplify program management and reduce recipient burdens. These include such management improvements as standards for record maintenance, auditing, and payment of indirect costs. Unfortunately, even some of these simplifying standards seem to have added to the complexity facing some recipients.

"Individually, each crosscutting requirement may be sound. But cumulatively the conditions may be extraordinarily burdensome on federal agencies or recipients."

In the report the following points are emphasized:

—In too many cases, a single generally applicable requirement has been implemented differently for several assistance programs. The result is that a recipient of several agencies may receive inconsistent or conflicting instructions for meeting a single requirement.

—There can be cases where some of the requirements are mutually conflicting or conflict with individual assistance program purposes. There are, however, few established processes for resolving these conflicts without resort to the courts.

—Some of the larger executive departments are not organized or equipped to manage general assistance policies on a departmental basis.

—Some of the generally applicable requirements have been shunted off to specialists and administered in ways that are not consistent with the assistance programs to which they apply.

—The effectiveness of the requirements and their implementation is often not evaluated on any regular basis.

—There is a need for stronger central leadership in the management of generally applicable requirements and OMB is the most appropriate organization to provide it.

This proposed circular is one of a series of actions designed to meet problems identified in the report.

This Circular is designed to be compatible with and an extension of Executive Order 12044 on Improving Government Regulations. The typical generally applicable requirement is assigned to a single Federal agency to oversee its Government-wide implementation. This agency typically issues regulations or other guidance to the Federal agencies that administer assistance programs. These agencies, in turn, may pass the requirement to their program operating components through one or more successive iterations for the various internal management levels. Then, recipient instructions are often issued in the form of regulations.

The OMB study found that the successive iterations of regulations or guidance through which these requirements pass are a major source of problems. It concluded that the iterative aspect of these requirements require special processes beyond those required by other Government regulations that flow more directly to the public.

SUMMARY: The proposed circular is designed to perform four functions:

—Provide general policy statements to guide agency actions in the management of generally applicable requirements.

—Generally describe the basic phases of a five step process to be used in managing each requirement.

—Specify the responsibilities of federal agencies and OMB.

—Serve as the unifying framework for more detailed or specific guidance as it is developed.

The circular is intended as a central core of what will eventually be an integrated body of policy and procedure. While changes are expected to be made to reflect substantive suggestions and comments received, OMB proposes to issue the policy at approximately the level of generality reflected here. As additional or more detailed guidance is developed in conjunction with the agencies and recipients, it will be added in the form of attachments. Each attachment can be subject to review and improvement independently of the basic Circular itself.

OMB is reviewing its circular structure to see how many circulars may be needed to cover existing assistance policies plus any new policies that may be adopted. The draft that follows may be combined with other policies when it is issued. The draft is being published at this time to obtain comments on its substance.

DATES: Written comments must be received on or before January 15, 1981.

ADDRESS: Comments should be sent to Richard R. Hite, Deputy Associate Director for Intergovernmental Affairs, Office of Management and Budget, Room 5234, NEOB, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Thomas L. Hadd, Chief, Assistance Policy Branch, Intergovernmental Affairs Division, Office of Management and Budget, Room 5217, NEOB, Washington, D.C. 20503, Telephone 202-395-5156.

Linda L. Smith,
Assistant to the Director for Administration.

Circular No. A ———

To: The Heads of Executive Departments and Agencies

Subject: Managing generally applicable requirements for assistance programs

1. *Purpose.* The Circular establishes policies and process to be followed by departments and other executive agencies in the development, implementation, and evaluation of the government-wide national policies and administrative requirements that are

generally applicable to domestic assistance programs.

2. *Background.* All executive departments and over forty other agencies administer domestic assistance programs. There are over sixty government-wide national policies and administrative requirements that generally apply to these assistance programs on a crosscutting basis (see Attachment A). The policies direct actions toward such national goals as preventing discrimination, protecting the environment, and conserving energy. The administrative requirements cover such areas as personnel systems of recipient governments, grant reporting standards, and audit provisions. The growth in the number of assistance programs, the scope of activities affected by them, and the range of types of eligible recipients combined with the increasing number and significance of the crosscutting generally applicable requirements has led to a high level of complexity for federal agencies and recipients. This complexity is particularly serious for recipients of programs of more than one federal agency that provide inconsistent instructions for complying with generally applicable requirements.

The typical generally applicable requirement goes through at least three successive stages of statement and interpretation. First, the basic policy is briefly stated in a statute or an executive order. Then a designated lead executive agency explains and elaborates the policy for all federal agencies that administer assistance programs. Finally, the agencies administering assistance programs incorporate these policy explanations and elaborations in instructions to their recipients. These successive interpretations and re-statements have become a major source of complexity and inconsistency among programs of different agencies.

This Circular builds on and expands the concepts established in Executive Order 12044 on Improving Government Regulations. It is required because of the confusion that can come from successive re-statements of generally applicable requirements, their interaction with individual program requirements, and their affects in a wide variety of local situations.

3. *Summary.* This Circular has three main sets of provisions and provides for a fourth. First, it establishes the basic, long-range policies to guide agencies in the administration of generally applicable requirements for assistance programs. Second, it establishes the framework of a Government-wide process to implement the policies. Third, it specifies the responsibilities of executive departments, other agencies that report to the President which administer assistance programs, and the Office of Management and Budget.

Together, these three sets of provisions are designed to be a stable guide or general view of the level of coordination, cooperation, and management that will be necessary. Supplementary details, procedures, and arrangements have been deliberately omitted.

The fourth set of provisions will be to provide more specific information and direction. These will be issued as attachments to the Circular and may be revised individually as needed. Attachments may be developed to amplify each of the five steps in the management process, the agency action requirements, or other provisions as necessary.

4. *Definitions.* Six major terms used in this Circular have the following specific and restricted meanings.

a. *Generally applicable requirement* means a federal policy or administrative requirement that applies to the assistance programs of two or more assistance agencies and to individual grants or cooperative agreements issued in accordance with the Federal Grant and Cooperative Agreement Act (41 U.S.C. 504–505). Attachment A contains a list of generally applicable requirements as of the date of the Attachment.

b. *Assistance agency* means a department or other agency reporting to the President that administers assistance programs or uses grants or cooperative agreements pursuant to 41 U.S.C. 504–505. Bureaus or other departmental or agency units are considered as components of assistance agencies for purposes of this Circular.

c. *Guidance agency* means an Executive Branch agency authorized to administer government-wide adherence to generally applicable requirements.

d. *Guidance* means the explanations, elaborations, and interpretations of generally applicable requirements written by guidance agencies to assistance agencies. Guidance includes:

(1) Rules, regulations, or standards develped for uniform implementation by assistance agencies.

(2) Statements of policies, goals, objectives, advice, or suggestions intended to quide more flexible implementation.

e. *Recipient* means a state or local government, federally recognized Indian tribe, university, non-profit, for-profit, or other organization that receives assistance, stimulation, or support directly from a federal agency. Individuals are also considered to be recipients if they are eligble to participate in programs along with one or more types of organizations.

f. *Recipient instructions* means the regulation, manuals, notices, or other instructions written by assistance agencies to their applicants and recipients for complying with guidance.

5. *Coverage.* The provisions of this Circular and its attachments shall apply to the actions of all guidance and assistance agencies in developing, implementing, and evaluating generally applicable requirements for domestic assistance programs, awards to domestic recipients of international assistance programs, and individual grants and cooperative agreements awarded pursuant to 41 U.S.C. 504–505.

6. *Basic policies.* The primary purpose of each assistance program is to carry out the provisions and intent of its enabling statutes or the authorizing statutes of the awarding agency.

a. In accomplishing this primary purpose, each program shall conform with all generally applicable requirements and guidance that apply to it.

b. A recipient that receives awards under two or more assistance programs is entitled to receive:

(1) Recipient instructions with each program for complying with a generally applicable requirement, that are:

(a) Identical in practical meaning or

(b) Consistent, differing perhaps in degree or some other respect, but not contradictory or

(2) Prompt resolution of inconsistent or contradictory instructions by the assistance and guidance agencies involved.

c. A guidance agency should be designated for each generally applicable requirement that needs consistent, government-wide implementation.

d. Guidance shall be develped to be compatible with the programs and recipients to which it will apply. While uniform standards are to be used as widely as practicable, it may be necessary to make provisions for different types of programs, classes of recipients, types of relationships or assistance transactions.

e. Guidance shall be implemented by assistance agencies in ways that ensure the greatest possible degree of consistency for each recipient of two or more programs.

f. Whenever possible, conflicts between generally applicable requirements and specific program requirements shall be resolved by the appropriate guidance and assistance agencies involved before the requirements are imposed on recipients.

g. Both guidance and assistance agencies shall help recipients meet generally applicable requirements through advice, technical assistance, and other cooperative techniques to the extent resources allow.

h. The implementation of and accomplishments related to each generally applicable requirement shall be evaluated on a periodic basis. In addition, an evaluation shall be made when there is evidence of significant problems or opportunities for improvement.

These policies of maximum practicable standardization tempered by flexibility where necessary will require extensive coordination, cooperation, and judgment by all assistance and guidance agencies.

Process. This Circular establishes a basic five-step process for the management of all generally applicable requirements. It states, in general terms, who must do what for each step. As the process is developed through experience, additional guidance will be developed as attachments to the Circular.

The Office of Management and Budget will provide leadership and advice to speed implementation of the process.

a. *Policy develpment.* Whenever a new generally applicable requirement is being established or revised in Congress or the Executive Branch, the Office of Management and Budget shall, whenever practicable, ensure there is:

(1) Adequate projection of its potential costs and impacts on assistance programs and recipients.

(2) Critical analysis of the language used to state the requirements to ensure compatibility with existing assistance related statutes, executive orders, guidance, and established conventions of assistance terminology.

(3) Designation of a guidance agency either by statute or the President, unless it is clear that no implementing guidance or oversight will be needed.

b. *Guidance development.* Guidance development is primarily the responsibility of guidance agencies, but it shall be done with the direct involvement of representatives from assistance agences. Representatives of affected recipient classes will be given the maximum practicable opportunity to participate.

(1) In addition to basic problem identification, these representatives should participate in:

(a) The determination of the degree of standardization or flexibility most appropriate for a specific requirement.

(b) The development of the initial guidance draft.

(2) Guidance agencies are reminded that Executive Order 12044 on improving government regulations applies to all formal, general guidance they issue, unless it is purely informational, advisory, or will affect only the internal operations of federal agencies. If guidance has been developed to be inserted directly into recipient instructions without revision, and the guidance was developed in accordance with E.O. 12044, assistance agencies need not go through the E.O. 12044 process again before including it in their recipient instructions. Guidance agencies are also reminded of the government-wide policies administered by OMB on recipient reporting and recordkeeping established pursuant to the Federal Reports Act.

(3) In unusual circumstances, where conditions warrant, OMB may review final guidance prior to issuance by a guidance agency. This review can be requested by federal agencies or representatives of recipients.

c. *Guidance promulgation.* Once issued, guidance should be quickly communicated to the heads of assistance agencies, who will ensure that it is made available to all assistance administrative and program management levels within their respective agencies. There will be established a central repository for all current guidance that is accessible to federal agencies, recipients, and the public.

d. *Guidance implementation.* The implementation phase continues beyond incorporation of guidance in recipient instructions, through personnel training and resolution of related issues or conflicts for the life of the guidance.

(1) To meet the basic policy of compatible recipient instructions:

(a) Assistance agencies should assure a phased implementation of new or revised guidance that is minimally disruptive to recipients. Normally, this will involve revising recipient instructions by the first of each Federal fiscal year, to be applied to recipients with all awards made thereafter.

(b) In the event the guidance is not in the form of a single standard or a set of standards, one or more interagency implementation teams shall be organized by the guidance agency to develop compatible sets of recipient instructions tobe used for similar programs or specific classes of recipients. Executive Order 12044 will apply to the work of these teams, but not to the appropriate use of the resulting instructions with individual programs.

(c) To the degree practicable, each assistance agency should maintain its recipient instructions based on generally applicable requirements apart from those based on program or other requirements. This will allow more rapid and coordinated revisions to the generally applicable requirements set.

(2) The objectives for the recipient instruction writing phase of guidance implementation are:

(a) The greatest possible degree of consistency among programs of different agencies, with recognition of the legitimate needs of various classes of recipients and types of programs.

(b) An annual revision cycle for recipient instructions, to reflect new or revised guidance, to be completed by the start of each federal fiscal year.

(c) Substantially lower government-wide costs to develop recipient instructions based on new or revised guidance.

(d) A general reduction of paperwork for both Federal agencies and recipients.

(3) While interagency coordination and cooperation should provide compatible instructions for most recipients, some combinations of program activities and recipient classes may still lead to guidance related inconsistencies or conflicts. Where these occur:

(a) The federal agencies involved, including both assistance and guidance agencies, shall be responsible for providing waivers of procedures and relatively minor program requirements or negotiating other mutually acceptable solutions.

(b) Guidance agencies shall keep records of such conflicts and their resolutions, to serve the guidance evaluation phase.

e. *Guidance evaluation.* For many generally applicable requirements, the basic statutes, executive orders, supporting guidance, and recipient instructions reflect the information, policy choices, and approaches current when they were written. Since experience can usually be expected to show needs or opportunities for improvement, guidance agencies shall ensure that each generally applicable requirement and related guidance is evaluated periodically.

(1) The purposes of the evaluation are to:

(a) Test the efficacy of the basic policy statement and assess the effectiveness of the chosen implementation strategy.

(b) Seek ways of improving any supplemental guidance to assistance agencies.

(c) Find resolutions to significant or recurring implementation problems affecting recipients.

(2) An evaluation should be undertaken if agency or recipient experience indicates there are

significant problems or opportunities for improvement. Each generally applicable requirement shall be evaluated at least every five years after issuance.

(3) Guidance agencies are responsible for conducting evaluations and ensuring:

(a) Active participation opportunities for assistance agencies and recipients or their representatives in teams similar to those used for guidance development and implementation, but with different members.

(b) Adequate opportunities for public comment.

(c) Development of a public record of issues raised and proposals for their resolution.

8. *Action requirements.*

a. Heads of assistance agencies are responsible for assuring:

(1) Full compliance with all generally applicable requirements and related guidance.

(2) Full agency participation in the five-step guidance process.

(3) Provision of the best efforts possible to resolve conflicts that recipients may encounter with conflicting instructions.

(4) Continuous designation of a policy level official responsible and with authority to ensure the agency meets these responsibilities.

b. *Heads of guidance agencies* are responsible for:

(1) Exercising the leadership necessary to adhere to the five-step process for their assigned generally applicable requirements.

(2) Recommending to OMB or the Congress (subject to applicable statutes and policies) advisable revisions to basic policy statutes that establish generally applicable requirements.

9. *OMB responsibilities.* The Office of Management and Budget is responsible for:

a. Providing leadership and developing appropriate arrangements to ensure successful implementation of this Circular.

b. Reviewing and approving guidance prior to issuance by guidance agencies in those unusual cases where circumstances warrant.

c. Performing as a guidance agency for those generally applicable requirements for which it is responsible.

d. Assisting in the resolution of issues between agencies.

10. *Effective date.* This Circular becomes effective on the date issued.

11. *Sunset review date.* This Circular expires four years after the date issued.

12. For further information, contact Thomas L. Hadd, Chief, Assistance Policy Branch, Intergovernmental Affairs Division, Room 5217, NEOB, Washington, D.C. 20503, Telephone 202-395-5156.

13. *Attachments.* More detailed arrangements and guidance will be developed during implementation of this Circular. These will be added as attachments to the Circular. Attachments issued with the Circular or to be developed in the near future are:

Attachment	Title
A	Inventory of Generally Applicable Requirements.
B	Agency Performance Standards for Complying With the Circular.

In addition, Administrative Notes may be issued by OMB from time to time as advisory or clarifying guidance. Administrative Notes will not be used to direct actions and will not be subject to Executive Order 12044.

Attachment A.—*Inventory of Generally Applicable Requirements*

Socioeconomic policy requirements	Guidance agency
A. Nondiscrimination	
Nonconstruction Activities	
1. Civil Rights Act of 1964, Title VI (race, color or national origin) (42 U.S.C. 2000d *et seq.*). E.O. 11764 gives the Attorney General responsibility for effective implementation.	Justice.
2. Age Discrimination Act of 1975 (42 U.S.C. 6101).	HHS.
3. Title IX of the Education Act Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (20 U.S.C. 1681 *et seq.*).	HHS.[1]
Housing	
4. Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 73 (18 U.S.C. 245).	HUD.
Handicapped	
5. Sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, and Rehabilitation Act Amendments of 1974, Pub. L. 93-516; E.O. 11914 delegates coordination to HEW.	HHS.[2]
6. Architectural Barriers Act of 1968, as amended, Pub. L. 90-480 (42 U.S.C. 4151 *et seq.*).	ATBCB.[3]
Alcoholics	
7. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, Pub. L. 91-616 (42 U.S.C. 4581).	HHS.
Drug Abusers	
8. Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-225, as amended (21 U.S.C. 1174).	HHS.
Construction Activities	
9. E.O. 11246, September 24, 1965, Part III (race, color, creed or national origin).	Labor.

Attachment A.—*Inventory of Generally Applicable Requirements*—Continued

Socioeconomic policy requirements	Guidance agency
B. Environmental Protection	
10. National Environmental Policy Act of 1969, as amended, Pub. L. 91-190 (42 U.S.C. 4321 *et seq.*).	CEQ.
11. Sec. 508 of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), Pub. L. 92-500 (33 U.S.C. 1251 *et seq.*). E.O. 11738, 9/12/73, provides for administration of Act with respect to contracts, grants, or loans.	EPA.
12. Title XIV, Public Health Service Act, as amended by Sec. 1424(e) of the Safe Drinking Water Act of 1974, Pub. L. 93-523 (42 U.S.C. 300f to J10).	EPA.
13. Conformity of Federal Activities with State implementation plans under the Clean Air Act Amendments of 1977, Title I, Sec. 129(b).	EPA.
14. Sec. 306 of Clean Air Act, as amended by the Clean Air Amendments of 1970, Pub. L. 91-604, 84 Stat. 1707.	EPA.
15. Endangered Species Act of 1973, Pub. L. 93-205 (16 U.S.C. 1531 *et seq.*), as amended by Pub. L. 95-632.	Interior.
16. Floodplain Management, Executive Order 11988, May 24, 1977.	Water Resources Council.
17. Protection of Wetlands, Executive Order 11990, May 24, 1977.	Water Resources Council.
18. National Flood Insurance Act of 1968, as amended by Flood Disaster Protection Act of 1973, Pub. L. 93-234, Sec. 102 and 202.	HUD.
19. Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661 *et seq.*).	Interior.
20. Sec. 106 of the National Historical Preservation Act of 1966, Pub. L. 89-665, as amended (16 U.S.C. 470), 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978).	Adv. Council Hist. Pres.
21. Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800).	Adv. Council Hist. Pres.
22. E.O. 11593, May 31, 1971, Protection and Enhancement of the Cultural Environment (36 FR 8921, 16 U.S.C. 470).	Adv. Council Hist. Pres.
23. Wild and Scenic Rivers Act of 1968, Pub. L. 90-542, as amended (16 U.S.C. 1271 *et seq.*).	Interior.
24. Secs. 307(c) and (d) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).	Commerce.
Construction Activities (Grantee Contracts)	
25. Archaeological and Historic Preservation Act, May 24, 1974, Pub. L. 93-291 (16 U.S.C. 469a—469a-2).	Interior.
C. Protection and Advancement of Economy	
26. Cargo Preference Act of 1954, 68 Stat. 832.	Commerce.

Attachment A.—*Inventory of Generally Applicable Requirements*—Continued

Socioeconomic policy requirements	Guidance agency
27. Use of U.S. Flag Air Carriers, International Air Transportation Fair Competitive Practices Act of 1974, Pub. L. 93-623 (49 U.S.C. 1517).	GSA.
28. Placement of Procurement and Facilities in Labor Surplus Areas, 32 A CFR Part 134.	DOD/GSA.
D. Health, Welfare and Safety	
29. Protection of Human Subjects of Biomedical and Behavioral Research, Sec. 474, National Research Act, Pub. L. 93-348 (42 U.S.C. 289-3) as implemented by 45 CFR Part 46.	HHS.
30. Lead-Based Paint Poisoning Prohibition (42 U.S.C. 4831(b)).	HUD.
31. Animal Welfare Act of 1966 (7 U.S.C. 2131-2147).	USDA.
E. Minority Participation	
32. Indian Self-Determination and Education Assistance, Sec. 7(b), Pub. L. 93-638, January 4, 1975, 25 U.S.C. 450e(b).	None assigned.[4]
33. E.O. 12138 of May 18, 1979, Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise.	ICWB.[5]
F. Labor Standards	
Grantee Contracts Only	
34. Davis-Bacon Act, 40 U.S.C. 276a—276a-7 and 27 CFR Pt. 1, 46 Stat. 1494, Appendix A.	Labor.
35. Anti-Kickback (Copeland) Act (18 U.S.C. 874; 40 U.S.C. 276c).	Labor.
36. Contract Work Hours and Safety Standards Act (40 U.S.C. 327.332).	Labor.
G. Natural Resource Conservation	
37. Power Plant and Industrial Fuel Use Act of 1978, Pub.L. 95-620, Sec. 403(b) (92 Stat. 3318); 44 FR 75093; E.O. 12185 of December 17, 1978.	Energy.
Administrative and Fiscal Policy Requirements	
A. Public Employee Standards	
38. Intergovernmental Personnel Act of 1970, as amended by Title VI, Sec. 602, Civil Service Reform Act, Pub. L. 95-454 (42 U.S.C. 4728-4763).	OPM.
39. The Health Act (5 U.S.C. 1501-1508).	OPM.
B. Administrative and Procedural Requirements (General)	
40. Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224 (41 U.S.C. 501-509).	OMB.
41. OMB Circular No. A-40: *Management of Federal Reporting Requirements.*	OMB.
42. OMB Circular No. A-95: *Evaluation, Review, and Coordination of Federal and Federally-Assisted Programs and Projects, Revised, January 13, 1976.*	OMB.
43. OMB Circular No. A-111: *Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures, July 6, 1976.*	OMB.
44. Executive Order 12044: *Improving Government Regulations, March 23, 1978.*	OMB.
45. Department of Commerce Directives for the Conduct of Federal Statistical Activities, May, 1978 (Formerly OMB Circular No. A-46).	Commerce.
46. FMC 74-8: *Guidelines for Agency Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 Pub. L. 91-646, October 4, 1976.*	GSA.
47. Treasury Circular No. 1082: *Notification to States of Grant-in-Aid Information,* August 8, 1973.	Treasury.
48. Treasury Circular No. 1075 (Fourth Revision): *Regulation Governing the Withdrawal of Cash from Treasury for Advance Payments under Federal Grant and Other Programs,* December 14, 1947.	Treasury.
49. Claims Collection Act of 1966, Pub. L. 89-508, 89 Stat. 309 (31 U.S.C. 952).	GAO.
C. Recipient-Related Administrative and Fiscal Requirements	
Non-profit Organizations and Institutions	
50. OMB Circular No. A-21 (Formerly FMC 73-8, December 19, 1973): *Cost Principles for Education Institutions,* March 6, 1979.	OMB.
51. OMB Circular No. A-110: *Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations—Uniform Administrative Requirements,* July 30, 1976.	OMB.
52. FMC 73-3: *Cost Sharing on Federal Research, December 4, 1973.*	OMB.
53. OMB Circular No. A-88 (Formerly FMC 73-6): *Coordinating Indirect Cost Rates and Audit at Educational Institutions,* December 5, 1979.	OMB.
54. FMC 73-7: *Administration of College and University Research Grants,* December 19, 1973.	OMB.
State and/or Local Governments	
55. OMB Circular No. A-90: "Cooperating with State and Local Governments to Coordinate and Improve Information Systems", September 21, 1968.	OMB.
56. OMB Circular No. A-102: "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, Revised", August 24, 1977.	OMB.
57. OMB Circular No. A-73 (Formerly FMC 73-2): Audit of Federal Programs, March 15, 1978.	OMB.
58. FMC 74-4: "Cost Principles Applicable to Grants and Contracts with State and Local Governments", July 18, 1974.	OMB.
D. Access to Information	
59. Freedom of Information Act (5 U.S.C. 552).	None assigned.
60. Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 522a).	OMB.

[1] Pending assignment to Department of Justice.
[2] Pending reassignment to Department of Justice.
[3] Architectural and Transportation Barriers Compliance Board.
[4] Pending Assignment to EEOC.
[5] Interagency Commission on Women's Business.

[FR Doc. 80-34811 Filed 11-6-80; 8:45 am]

BILLING CODE 3110-01-M

federal register

Friday
November 7, 1980

Part IX

Department of Energy

Indexes for Interpretations and Rulings

DEPARTMENT OF ENERGY

10 CFR Ch. II

Indexes for Interpretations and Rulings

AGENCY: Department of Energy.

ACTION: Notice of Indexes for Interpretations and Rulings.

SUMMARY: Attached are indexes to all interpretations and rulings issued by the General Counsel (or his delegate) of the Department of Energy or predecessor agencies through October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Diane Stubbs, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 5E052, Washington, D.C. 20585, (202) 252-2931.

SUPPLEMENTARY INFORMATION:

Interpretations issued pursuant to 10 CFR part 205, Subpart F are published from time to time in the **Federal Register** in accordance with editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977. Interpretations have been published as indicated in the following table.

1974-1 through 1974-29: 42 FR 25648, May 18, 1977.
1975-1 through 1975-74: 42 FR 23722, May 10, 1977.
1976-1 through 1976-23: 42 FR 7923, February 8, 1977.
1976-24: 42 FR 10963, February 25, 1977.
1976-25: 42 FR 23722, May 10, 1977.
1977-1 through 1977-5: 42 FR 10963, February 25, 1977.
1977-6: 42 FR 17100, March 31, 1977.
1977-7 through 1977-16: 42 FR 31143, June 20, 1977.
1977-17 through 1977-21: 42 FR 39959, August 8, 1977.
1977-22 through 1977-27: 42 FR 41095, August 13, 1977.
1977-28 through 1977-33: 42 FR 46270, September 15, 1977.
1977-34 through 1977-38: 42 FR 54268, October 5, 1977.
1977-39 through 1977-44: 42 FR 61271, December 2, 1977.[1]
1977-45 through 1977-53: 42 FR 1479, January 10, 1978.
1978-1: 43 FR 5797, February 10, 1978.
1978-2 through 1978-5: 43 FR 12848, March 28, 1978.
1978-6 through 1978-10: 43 FR 15617, April 14, 1978.
1978-11 through 1978-21: 43 FR 19817, May 9, 1978.
1978-22 through 1978-28: 43 FR 25079, June 9, 1978.
1978-29 through 1978-42: 43 FR 29528, July 10, 1978.[2]
1978-43 through 1978-47: 43 FR 34433, August 4, 1978.
1978-48 through 1978-56: 43 FR 40200, September 11, 1978.[3]
1978-57 through 1978-59: 43 FR 46517, October 10, 1978.[4]
1978-60: 43 FR 51755, November 7, 1978.
1978-61: 43 FR 57583, December 8, 1978.
1978-62 and 1978-63: 44 FR 3021, January 15, 1979.
1979-01 and 1979-02: 44 FR 12160, March 6, 1979.[5]
1979-03 and 1979-04: 44 FR 16891, March 20, 1979.
1979-05: 44 FR 24045, April 24, 1979.
1979-6 and 1979-7: 44 FR 29431, May 21, 1979.
1979-8, 1979-9 and 1979-11: 44 FR 39375, July 6, 1979.
1979-10 and 1979-12 through 1979-14: 44 FR 44472, July 30, 1979.
1979-15 and 1979-16: 44 FR 50588, August 29, 1979.
1979-17 through 1979-22: 44 FR 60264, October 19, 1979.
1979-23 through 1979-25: 44 FR 72096, December 13, 1979.
1979-26: 45 FR 5663, January 24, 1980.
1980-1 through 1980-3: 45 FR 13043, February 28, 1980.
1980-4: 45 FR 21203, April 1, 1980.
1980-5 and 1980-6: 45 FR 25375, April 15, 1980.
1980-7 through 1980-9: 45 FR 33950, May 21, 1980.
1980-10 through 1980-12: 45 FR 42248, June 24, 1980.
1980-13 through 1980-17: 45 FR 46787, July 11, 1980.
1980-18 through 1980-20: 45 FR 59786, September 10, 1980.
1980-21 through 1980-26: 45 FR 61562, September 16, 1980.
1980-27 through 1980-32: 45 FR 66772, October 8, 1980.

The appendices to today's notice provide an updated comprehensive index system covering all of the published interpretations and rulings issued by FEO/FEA/DOE through October 15, 1980. Previously published indexes have appeared at 43 FR 1613, January 11, 1978, 43 FR 17337, April 24, 1978, 43 FR 49775, October 25, 1978, 44 FR 29896, May 23, 1979, and 45 FR 10321, February 15, 1980. A total of 365 interpretations and rulings are covered by the indexes published today.

Appendix A provides an alphabetical listing of the firms or persons to whom or on whose behalf interpretations have been issued, while Appendix B lists rulings in chronological order of issuance by number and title. Appendix C contains an index of interpretations and rulings according to informal subject entries, such as "Base Period Supplier," "Class of Purchaser," "Stripper Well Lease Exemption," etc. Interpretations and rulings are indexed in Appendix D according to the regulation sections which they interpret. Appendix E provides an index of rulings construed by interpretations, and Appendix F contains a list of statutes construed by interpretations and rulings.

Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)), and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted to the extent that the interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, interpretations are subject to reconsideration by the General Counsel (§ 205.85(f)). The interpretations indexed herein have been published only for general guidance in accordance with the reasons set forth in the FEA Notice first cited above.

Issued in Washington, D.C., October 31, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Appendix A—Alphabetical Listing of Interpretations Issued Through December 31, 1979

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Baker Industries, Inc.—1980-8
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Barber Oil Corp.—1980-22
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[1] (Correction Notice) 1977-42: 43 FR 64104, December 22, 1977.
[2] (Correction Notice) 1978-35: 43 FR 57583, December 8, 1975.
[3] (Correction Notice—Rescission) 1978-51: 45 FR 59790, September 10, 1980.
[4] (Correction Notice) 1978-58: 43 FR 46517, November 7, 1978.
[5] (Correction Notice) 1979-02: 44 FR 39375, July 6, 1979.

Berry Holding Co., *et al.*—1975-43
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Brocato, Charles P.—1979-12
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Cities Services Oil Co.—1976-10, 1980-12
City of Long Beach, Calif.—1977-2
Clark Oil & Refining Corp.—1977-25
Collier & Collier, *et al.*—1978-20
Colt, Mack C., Inc.—1978-56
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Concord Oil Co., Inc.—1980-19
Consolidated Paper, Inc.—1975-23
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Sulphur Springs L. P. Gas, Inc.—1979–6
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Appendix B—Chronological Index of Rulings by Number and Title Issued Through December 31, 1979

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1974–1, Prices for Base Period Purchasers
1974–2, Redirected Sales Pricing
1974–3, Supplier/Purchaser Relationships Under the Petroleum Allocation Regulations
1974–4, Impact of State Tax on Gross Sales
1974–5, Determination of Propane Prices Under the Petroleum Allocation Regulations
1974–6, Discrimination Among Purchasers of Allocated Products
1974–7, Truck Stop Leases
1974–8, Allocation of Non-Bonded Aviation Fuel
1974–9, Minimum Rent Provisions in Leases of Real Property in the Retailing of Gasoline
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1974–12, Unrecouped Increased Product Costs Where Prices Charged Under Fixed-Price Contracts Are Less Than The Lawful Base Price
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1974–14, Base Rent Regulations
1974–15, Portable Sanitation Industry
1974–16, Allowable Use of Multiple Allocation Fractions
1974–17, Base Price Computation
1974–18, Discounted May 15, 1973 Price to a Class of Purchaser
1974–19, Competitive Bids: Supplier/Purchaser Relationships
1974–20, Additional Use of Property Used in the Retailing of Gasoline
1974–21, Exchanges of Refined Petroleum Products for Crude Oil
1974–22, Supplier/Purchaser Relationships Applying to the Department of the Interior
1974–23, Car Wash Sales of Gasoline
1974–24, Truck Stop Leases
1974–25, Spot Sales Under Part 211
1974–26, Application of the Refiner's Cost Formula of § 212.83(c) to Refiners Required to Sell Crude Oil Under the Allocation Program
1974–27, Allocation of Refiner's Increased Product Costs to Sales Volume
1974–28, Inapplicability of the "Stripper Well Lease" Exemption of 10 CFR § 210.32 to Gas Wells
1974–29, Production Wells for Purposes of the "Stripper Well Lease" Exemption of 10 CFR § 210.32
1974–30, Measurement of the Number of Barrels of Production from an Oil Well for the "Stripper Well Lease" Exemption of 10 CFR § 210.32
1975–1, Transportation Costs
1975–2, Application of the Term "Class of Purchaser" under FEA Petroleum Price Regulations
1975–3, Prospective Increases in Rent for Real Property Used in the Retailing of Gasoline
1975–4, Storage Tank Rentals
1975–5, Treatment of Confidential Information Received by FEA Pursuant to Oil and Gas Reserves Survey (Form FEA P–301–S–0)
1975–6, Pricing of Natural Gas Liquid Products Prior to January 1, 1975
1975–7, Export Sales
1975–8, Qualification of Certain Consignees as Wholesale Purchaser-Resellers
1975–9, Storage Costs
1975–10, Transportation Costs Where Transportation is Provided by the Firm Concerned
1975–11, Rentals of New, Higher Cost Storage Tanks
1975–12, Calculation of "Average Daily Production" for Purposes of the Stripper Well Lease Exemption of 10 CFR 210.32 Where Production Has Been Curtailed
1975–13, Early Payment Percentage Discounts
1975–14, Prices Charged to Reflect Non-Product Cost Increases Incurred by Resellers, Reseller-Retailers and Retailers
1975–15, Definition of "Property" for Purposes of Computing Base Production Control Level Pursuant to 10 CFR 212.72
1975–16, Carry-Forward of the Amount by Which Prices Charged are Less than the Price Increase Permitted to Reflect Increased Non-Product Costs by Resellers, Reseller-Retailers, and Retailers
1975–17, Application of FEA's Mandatory Petroleum Price and Allocation Regulations During September 1975

1975–18, Computation of Increased Cost of Natural Gas Shrinkage
1976–1, Allocations with Respect to Newly Constructed or Purchased Refineries Under Crude Oil Buy/Sell Program
1976–2, Production of "New" Crude Oil Due to Extra Day in February, 1976; Effect on Cumulative Deficiency Requirement and BPCL Adjustments
1976–3, Interpretation of Naval Petroleum Reserves Production Act of 1976
1976–4, Inapplicability of Mandatory Petroleum Allocation and Price Regulations to Synthetic Fuels Processed from Oil Shale, Tar Sands, and Coal
1976–5, Retail Sales Outlet Operator's Entitlement to Motor Gasoline
1976–6, Record Keeping Requirements
1977–1, Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil
1977–2, Further Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil
1977–3, Cargo Sales
1977–4, Timing of Landed Cost for Inter-affiliate Transactions
1977–5, Application of the Definition of "Transaction" for Purposes of Computing Weighted Average May 15, 1973, Prices
1977–6, Applicability of the Stripper Well Property Exemption to Properties that Produce Both Crude Oil and Condensate Recovered in Non-Associated Production
1977–7, Post-September 1, 1976 Treatment of Separate Reservoirs as Stripper Well Properties
1977–8, Termination of Crude Oil Supplier/Purchaser Relationships by a Producer
1979–1, Application of "Transaction" Definition to Variable-Price Contracts
1979–2, Redirection of Motor Gasoline
1980–1, Kerosene-fueled Water Heaters
1980–2, Allocation of Motor Gasoline at Retail Sales Outlets
1980–3, Clarifications to the Newly Discovered Crude Oil Ceiling Price Rule
1980–4, Clarification of the Definition of "Operational"

Appendix C.—*Subject Index for Interpretations and Rulings Issued through Dec. 31, 1979*

Subject	Interpretations	Rulings
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Agricultural production, def	1979–24; 1980: –4, –35	
Allocation entitlement	1974–17; 1975–37; 1979–10; 1980: –11, –24.	
Allocation entitlement, method of	1974–19	
Allocation entitlement, transfer of	1974–29; 1975–35; 1977–47; 1979–23; 1980: –16, –18, –20.	1974–13.
Allocation fraction	1960–21	1974–16.
Allocation levels	1974–1; 1979: –9, –13, –15, –24; 1980: –4, –8, –32, –35.	
Assignment by agency	1976–25	
Average daily production, def	1974–22; 1975: –41, –43	
Average monthly purchases, def	1980–34	
Aviation fuel, allocation of		1974–8.
Base period supplier	1974: –6, –15; 1975: –31, –73; 1980–1	
Base period supplier, designation of	1974–21	
Base period supply obligations	1974–25; 1976–11; 1977: –19, –20	1974–25.
Base period use, adjustments to	1977: –28, –32; 1978–24; 1979–20; 1980–34.	1974–13.
Base period volume	1975–50; 1980–11	
Base price	1975–5	1974: –2, –17, –18, –26; 1975–6; 1977–5.
BPCL	1975–27; 1976–16; 1977: –12, –37; 1978–6; 1979–1, –1; 1977–2; 1980: –17, –25.	1975–15; 1976–2.
Base rent rule	1974: –24, –29	1974: –7, –9, –14, –20, –24; 1975–3.
Base rent rule, lease termination	1975–58	
Benzene and toluene, special rules for	1976–10	
Blending costs, retailer	1975–74	
Bonded fuel, def	1975: –8, –26, –46	
Bonded fuel exemption	1975: –8, –26, –46	
Borrow-pay back rule	1975–30	
Burning of petroleum products by power generators.	1975–25	
C, subpart; part 212	1979–21; 1980–29	
California lower tier crude oil	1978–48	
Certification	1977: –33, –52; 1978: –12, –24; 1979–19; 1980–14.	
Class of purchaser	1974–7; 1975: –5, –6, –22, –31, –47, –63; 1976: –1, –6, –7, –20; 1977: –10, –11; 1978–44; 1980–16.	1974: –1, –2, –17, –18; 1975–2.
Commission agents or consignees	1974–10; 1975: –13, –17, –19, –31, –33, –48; 1977: –8, –17, –27, –39, 40; 1978: –59, –60; 1979–6; 1980: –1, –18, –24.	1975–8.
Competitive bids	1975–56	1974–19.
Condensate, def	1978–35M; 1979: –4, –26; 1980–31	
Confidential information		1975–5.
Cost of crude oil, def	1976–4	
Covered products, def	1976–24; 1977: –9, –50; 1978: –11, –28, –54.	

Appendix C.—*Subject Index for Interpretations and Rulings Issued through Dec. 31, 1979—Continued*

Subject	Interpretations	Rulings
Crude oil buy/sell program	1977-34; 1978-39; 1979-8	1974-26; 1976-1.
Crude oil, def	1975-29; 1977: -3, -22, -31; 1979: -3, -4; 1980-29.	
Crude oil resales	1978-25	
Crude oil runs to stills, def	1978-31; 1979-26; 1980-27	
Crude oil ceiling price rules, long-term contracts (premiums).	1977: -2, -14; 1978-21	
Current cumulative deficiency	1974-8; 1976-16	1976-2.
Customary discounts	1975-66	1974: -18, -23; 1975-13.
Customary price differential	1978-44; 1980-16	
D, subpart; part 212	1974-20; 1975-29; 1977-3; 1978-21; 1979: -17, -21; 1980: -7, -9, -17, -20, -22, -23, -25.	
December 1 rule	1974: -2, -3, -4; 1975-45; 1976: -15, -20; 1977: -7, -13, -14, -15, -42M; 1978: -1, -45.	1974: -11, -21, -22; 1977-8.
Disallowance of costs	1979-11	
E, subpart; part 212	1978: -16, -29, -61; 1979: -3, -11; 1980: -3, -12, -15, -16, -19, -29.	
EPAA supercession of other Federal laws	1974-27; 1975-15	
Emergency services, def	1980; -8, -32	
End-user, def	1980-2, -35	
Energy conservation program:		
Room air conditioners	1978-26	
Clothes washers	1980-28	
Emergency building temperature restrictions	1980-33	
Kerosene-fueled water heaters		1980-2.
Operational, def		1980-4.
Solar energy exemption	1980-33	
Energy production, def	1979; -9, -13, -15	
Entitlements program	1975-21; 1976-22; 1977: -5, -22, -31, -45; 1978: -31, -42, -48; 1979: -4, -16, -26; 1980: -10, -27, -29.	1976-3.
Equal application rule	1975-5; 1976-17; 1978: -36, -53; 1980-15	
Exchange agreements	1977: -5, -36; 1978-10	1974-21.
Export sales, def	1977-16	
Export sales deduction	1975-21; 1977: -16, -30, -36, -44; 1978: -10, -42, -54, -55; 1980-10.	
Export sales exemption	1977-16, -21, -44; 1978: -10, -42	1975-7.
F, subpart; part 212	1976-6; 1977-3; 1978: -4, -63; 1979-23	1977-3.
Federal preemption of State laws	1978-4	
Field	1977-43	
Firm, def	1975: -3, -32, -52, -55, -69; 1976: -3, -8; 1977: -6, -18, -29; 1978: -62, -63; 1979: -3, -16, -22; 1980-2.	
1st sale, def	1976-4; 1977-38; 1978: -21, -63; 1979-14; 1980: -22, -23.	
5 percent rule	1974-14; 1977: -6, -24	
Fuel use act regulations:		
Alternate fuel, def	1980-5	
Refinery, def	1980-5	
Waste gas	1980-5	
G, subpart; part 212	1974: -24, -28; 1975-69	1974-24; 1975-3.
Gas plant, def	1980-26	
Gasoline reseller—going out of business	1980-24	
Guam	1975: -8, -26, -46	
Import exemption	1975-24	
Inventories	1975-23	1977-3.
K, subpart; part 212	1976: -2, -5; 1977-3; 1978: -16, -27, -29, -32, -34, -35M, -37, -41, -61, -62, -63; 1979: -2M, -3, -14; 1980: -26, -31.	1975: -6, -18.
Landed costs	1980-12	1977-4.
Lease condensate, def	1979-4	
Motor gasoline, def	1978-47	
Naphtha, def	1978-47	
Naphtha allocation	1975-44	
Naval petroleum reserves, crude oil price exemption.		1976-3.
Natural gas shrinkage	1978: -27, -34, -37, -41, -61, -62; 1979: -2M, -3.	
Natural gas liquids, def	1978: -32, -35M; 1980-31	
Natural gas liquid products	1974-13; 1977-3; 1978: -3, -27; 1980-26	1975: -6, -18.
Natural gasoline, def	1978-35M	
Net-back sale, def	1978-32; 1979-14	
New and released crude oil	1975-2; 1977-42M; 1979-19	1974-11.
New item and new market rule	1974: -23, -24; 1975: -3, -9; 1976: -5, -7; 1978-3.	1974-20.
"New" motor gasoline retail sales outlet	1975-61	1976-5.
"New" wholesale purchaser-reseller	1975-57; 1977-28	
Newly discovered crude oil	1980: -17, -25	
Non-product cost increases	1975: -48, -59, -74; 1978: -8, -13, -14, -52, -63; 1979-7; 1980-15.	1975: -1, -4, -10, -11, -14, -16.
Normal business practices	1974: -3, -16, -27; 1975: -49, -62; 1977: -8, -11, -19, -26, -35; 1978: -7, -21, -38, -56, -57; 1979: -5, -6, -10; 1980: -2, -6, -16, -19.	1974: -6, -10, -11, -23; 1975: -4, -11, -13.
Oil import regulations	1978-50	
Once-a-month rule	1975-64	
Over-recoupment	1975-12	

Appendix C.—*Subject Index for Interpretations and Rulings Issued through Dec. 31, 1979—Continued*

Subject	Interpretations	Rulings
Passenger transportation services	1975-65	
Posted Price, def	1976-4; 1977: -26, -43; 1978: -17, -20, -30, -43.	1977-1.
Price, def		1974-10.
Price increase	1977-53	
Price/octane No. information and posting	1976-9	
Priority allocation levels	1979: -9, -15, -24; 1980: -4, -8, -32, -35	
Procedural requirements	1975-40; 1976-12; 1977-28	
Processing agreements	1974-6	
Producer, def	1974-20; 1980: -22, -23	
Producer of crude oil, price rule	1978-17	
Product cost increases	1974-5; 1978: -40, -51 (rescinded); 1980-12	1974: -5, -26, -27; 1975: 1-9, -10, -13, -18; 1977-3.
Product cost increases, carryover of	1975-16	1974-12; 1975-16.
Propane allocation	1975-14; 1976: -19, -21	
Propane prices	1978-4	1974-5.
Property, def	1974-22; 1975: -2, -4, -27, -42; 1977: -1, -37, -42M, -46; 1978: -5, -9, -15, -18, -58M; 1979: -1, -17, -21; 1980: -17, -25.	1975-15; 1977: -1, -2, -7.
Reclamation of waste crude oil	1978-18	
Record-keeping requirements	1979-12	1976-6.
Refined petroleum products, def	1975-1; 1978-42; 1979-26	
Refiner, def	1974-13; 1976-2; 1977: -6, -29; 1978: -22, -33, -63; 1979: -3, -16, -22, -26.	
Refiner gasoline price variation rules	1978: -36, -53	
Refiner price formula:		
"A" factor	1978-40; 1980-29	
"B" factor	1978-51 (rescinded)	
"V" factor	1975-7	1974-27; 1975-7.
"H" factor	1977-23	
"N" factor	1978: -8, -13, -14, -52; 1979-7; 1980-15	
"Y" factor	1978-51 (rescinded)	
Refiner price rule	1977-53 1978: -11, -13; 1980-30	1974-26.
Refinery yield	1976-23	
Refunds	1975-12	
Rent, def	1975-51	
Rent regulations (see also base rent rule)	1975-69	1974: -7, -9, -14, -20, -24; 1975-3.
Reporting requirements, refiner	1975-11; 1977-24	
Reseller, def	1974-12; 1976-2; 1977: -3, -8, -29; 1978: -22, -33M, -63.	
Residual fuel oil, def	1975-29	
Retail price rule	1980-30	
Retail sales outlets, motor gasoline	1979-23	1974-13.
Retailer, def	1974-12; 1976-2; 1978-22	
Retaliatory actions	1975-63	
Retroactive price increase	1977-14; 1978-2	
Sales by Federal, State, and local governments	1974-4; 1975-15	1974-22; 1976-3.
Sanitation services, def	1974-1; 1975-39; 1980-35	1974-15.
Seller, def	1976-8	
September 1975; application of price/allocation regulations during		1975-17.
Small refiner bias	1979-22	
Social service agency use, def	1980-32	
State set-aside program	1980: -11, -21	
State tax increase pass-through	1975-18	1974-4.
Storage tank rentals		1975: -4, -11.
Stripper well lease exemption	1974: -22, -26; 1975: -4, -10, -41, -43; 1977-48; 1978: -5, -9, -58M; 1979-21; 1980: -13, -14.	1974: 28, -29, -30; 1975-12; 1977: -1, -2, -6, -7-.
Supplier, def	1976-23	
Supplier/purchaser relationship	1974: -17, -18, -19; 1975: -20, -54; 1976: -13, -14, -18; 1977: -20, -49; 1978: 23, -45, -46, -49, -56, -57, -59, -60; 1979: -18, -23, -25; 1980: -6, -16, -20	1974: -3, -19; 1975-8.
Supplier substitution	1976-25	
Surplus product, purchase of	1974-19; 1975-20; 1977-41	
Synthetic fuels		1976-4.
S.N.G. feedstock allocation	1975-34	
Temporary discounts on May 15, 1973	1975-6	
Tertiary incentive crude oil program	1980: -7, -22, -23	
Transaction, def	1978-19	1977-5; 1979-1.
Transfer pricing	1974-20; 1978: -61, -63; 1979-14	
Transportation costs, def	1978-25	
Transportation costs to reseller/retailer inventory	1977: -4, -51	1975: -1, -9, -10.
Transportation cost, refiner	1977-25; 1980-3	
United States, def	1975: -8, -26, -46	
Unitization	1974-22; 1975: -2, -4, -10, -27; 1978: -6, -9; 1980: -13, -17, -25.	1975-15; 1977-2.
Unleaded gasoline	1976-3	
Unusual growth adjustment	1980-34	
Waste crude oil, reclamation of	1974: -11, -20; 1977-22	
Wholesale purchaser-consumer, def	1975: -37, -52; 1980: -32, -35	1974-19.
Wholesale purchaser-reseller, def	1974: -10, -12; 1975: -13, -17, -19, -33, -37, -38, -53, -60, -67, -68, -70, -71, -72; 1977: -17, -27, -39, -40; 1978: -46, -59; 1979-6; 1980: -1, -2, -18, -24	1975-8.

Appendix D.—*Regulation Index for Interpretations and Rulings Issued Through Dec. 31, 1979*

Regulation interpreted [1]	Interpretations	Rulings
Part 202, subpart A		1975-5.
205.2	1976-12; 1977-28	
205.26(d)	1975-40	
205.33(a)	1976-12; 1977-28	
205.194	1975-12	
205.202	1980: -6, -9, -19	
210.21	1975: -8, -26, -46; 1977-5; 1980-10	
210.32	1974: -22, -26; 1975: -4, -10, -41, -43	1974: -28, -29, -30; 1975-12; 1977-1.
210.33	1975: -8, -26, -46	
210.61	1975-63	1974-3.
210.62	1974: -3, -27; 1975-49; 1977: -8, -19, -26; 1978: -7, -21, -38; 1979: -6, -10; 1980: -2, -6, -16.	1974: -6, -10, -11; 1975: -4, -11, -13.
210.62(a)	1974-16; 1975: -62, -63; 1977-35; 1978: -56, -57; 1979-5; 1980: -9, -19.	
210.62(c)	1976-18; 1977-11; 1980-9	1974-23.
210.77	1975-51	
210.91	1977-24	
210.92		1976-6.
211.1(a)	1977-8	
211.9	1974: -15, -19; 1975: -58, -62; 1976-25; 1977: -19, -49; 1978: -46, -49, -59, -60; 1980: -11, -20.	1974: -3, -19.
211.9(a)	1974-18; 1975: -20, -54, -56, -73; 1977-8; 1978-23.	
211.9(c)	1977-20	
211.10	1975: -20, -56, -73; 1980-11	
211.10(a)	1975-35	
211.10(b)	1974-17; 1980-21	1974: -16, -25.
211.10(e)	1974-29	
211.10(g)	1974-19; 1976: -14, -21; 1977-41	
211.11	1974-17; 1975-61; 1976-19; 1980: -18, -20, -24.	
211.11(b)	1974-6	
211.11(d)	1975-35	
211.12	1975: -50, -57; 1976-11; 1980-11	
211.12(b)	1980-21	
211.12(e)	1974-17; 1976-19; 1977: -28, -49; 1978-38; 1979-25.	1974-19.
211.12(f)		1974-19.
211.12(h)	1976-18	
211.12(g)	1976-21	
211.13	1975-50	
221.13(c)	1976-12; 1977: -28, -32; 1978: -24, -38; 1979-20.	
211.13(f)	1977-28; 1978-24	
211.14(d)		1974: -3, -16.
211.17(h)	1980: -11, -21	
211.22	1975-23	
211.24		1974-3.
211.24(a)	1974-25; 1976-11	
211.25	1975-31; 1976-25; 1978-23	
211.25(a)	1977-20	
211.25(c)	1975-30	
211.28	1980-16	
211.29	1975-34; 1976-19	
Special rule No. 1 to subpart A of part 211	1975-34; 1976-19	
211.31	1977-8	
211.51 (definitions)	See corresponding subject entry, app. C	See corresponding subject entry, app. C.
211.62 (definitions)	See corresponding subject entry, app. C	See corresponding subject entry, app. C.
211.63	1974: -2, -3, -4; 1975-45; 1976: -14, -20; 1977: -7, -13, -14, -15, -42M; 1978: -1, -45; 1979-18; 1980-6.	1974: -21, -22; 1977-8.
211.64	1974: -2, -3	
211.64(a)		1974-11.
211.65	1974-6; 1977-34; 1978-39, 1979-8	1976-1.
211.67	1977: -5, -22, -31; 1978-31; 1979: -4, -26; 1980: -27, -29.	1976-3.
211.67(a)(4)	1978-48	
211.67(d)(2)	1975-22; 1976-22; 1977: -16, -30, -36, -44; 1978: -10, -42, -54, -55; 1980-10.	
211.67(d)(5)	1977-45	
211.71(c)	1976-23	
Special rule No. 7 to subpart C of part 211	1976-22	
211.82	1976-21; 1978-49; 1980-20	
211.83	1975-14; 1980-20	
211.83(c)	1976-19	
211.85	1978-49	
211.86	1978-49	
211.96(b)	1977-49	
211.102	1975: -20, -73; 1980: -8, -32, -35	
211.103	1975-65; 1979: -9, -15, -24; 1980: -4, -8, -32.	

Appendix D.—*Regulation Index for Interpretations and Rulings Issued Through Dec. 31, 1979—Continued*

Regulation interpreted [1]	Interpretations	Rulings
211.103(a)	1974-1	
211.104	1974-6; 1980-34	
211.105(d)	1979-25	
211.105(f)	1980-11	
211.106	1975: -58, -61, -73; 1976-11; 1977: -19, -47; 1980-16.	1974-13; 1976-5.
211.106(b)	1974: -12, -25	
211.106(c)	1975-53; 1977-19	
211.106(d)	1974-25	
211.106(e)	1975-57; 1979-23	
211.145	1976-13	1974-8.
211.145(c)	1974-21	
211.145(d)	1974-21	
211.162	1975-54	
211.166	1974-19	
211.182	1978-47	
211.183	1975-44	
211.201	1975-37	
211.202	1975-37	
211.203(c)(2)(iii)	1975-37	
212.1		1975-3.
212.2	1975-24	
212.31 (definitions)	See corresponding subject entry, app. C	See corresponding subject entry, app. C.
212.52	1974-4; 1975-15	
212.53	1975-24; 1976-22	1975-7.
212.53(a)	1977: -16, -21, -36, -44; 1978: -10, -55	
212.53(c)	1977-30	
212.54	1974: -22, -26; 1977: -2, -48; 1978: -5, -9, -58M; 1979-21; 1980: -13, -14.	1977: -6, -7.
212.55	1977-2	1976-3.
212.71	1974-11	
212.72	1974: -8, -11; 1975: -2, -4, -27; 1976-16; 1977: -1, -3, -12, -33, -37, -38, -42M, -46, -52; 1978: -5, -12, -15, -18, -58M; 1979: -1, -17, -19, -21; 1980-25.	1977-7.
212.73	1974-11; 1975-42; 1977: -2, -3; 1978-20	
212.74	1974: -8, -11; 1975: -2, -4, -42; 1977: -2, -3; 1978: -2, -17, -20, -30, -43; 1979-1.	1974-11.
212.74(c)	1977-14	
212.75	1978-6; 1980: -17, -25	1977-2.
212.76		1976-2.
212.78	1980: -7, -22, -23	
212.79	1980: -17, -23	
212.81	1977-29	
212.82	1975: -5, -47; 1976: -3, -4, -5; 1977: -6, -18; 1980-12.	1974: -17, -18.
212.82(a)	1976-1	
212.82(b)	1975: -22, -31	
212.83	1974-20; 1975: -3, -5, -7; 1976-10; 1977: -23, -53; 1978-16; 1979: -2M, -3; 1980: -12, -16, -19.	1974: -12, -26, -27; 1975: -6, -7, -13.
212.83(b)	1976-4	
212.83(c)	1978-40	
212.83(c)(1)(i)(C)	1980-30	
212.83(c)(1)(iii)		1974-5.
212.83(c)(1)(iii)(C)	1980-29	
212.83(c)(2)(iii)(D)	1978-51 (rescinded) 1980-15	
212.83(c)(2)(iii)(E)	1978: -8, -11, -13, -14, -52; 1979-7	
212.83(e)	1975: -12, -16	
212.83(h)	1976-17; 1978: -36, -53; 1980-15	
212.84	1979-11	1977-4.
212.85	1977-25	
212.85(d)	1980-3	
212.88		1974-26.
212.91	1974-14; 1975: -3, -59; 1977: -3, -6, -24, -29; 1978-63.	
212.92	1975: -48, -74; 1976: -6, -8; 1977: -4, -51; 1980: -15, -30.	1975: -1, -9, -10.
212.93	1974: -5, -12; 1975: -6, -9, -18, -59, -74, 1976-6; 1977-4.	1974: -4, -17.
212.93(a)	1976-7; 1977-3; 1980-30	
212.93(b)	1975: -48, -55, -64	1975: -1, -10, -14, -16.
212.93(e)		1975-16.
212.94	1978-39; 1979-8	1974-26.
212.101	1975-58	
212.102	1974-24; 1975: -51, -58	1974: -7, -9, -14, -20, -24; 1975-3.
212.103	1975-51	1974: -7, -9, -14, -20, -24; 1975-3.
212.111	1974: -23, -24; 1975: -3, -9; 1976: -5, -7; 1978-3.	1974-20.
212.111(c)(2)	1978-18	
212.112	1976-3	
212.126	1975-11	
212.128	1979-12	1976-6.

Appendix D.—*Regulation Index for Interpretations and Rulings Issued Through Dec. 31, 1979—Continued*

Regulation interpreted [1]	Interpretations	Rulings
212.129	1976-9	
212.131	1977: -33, -52; 1980-14	
212.131(a)(2)	1978-12	
212.161	1976-2; 1978: -61, -63; 1979-3	
212.161(b)(2)	1978-29	
212.162	1977-3; 1978: -3, -27, -32, -35M, -37, -41, -61, -52, -63; 1979-14; 1980-26.	
212.163	1978: -32, -61, -63	
212.163(a)	1976-5; 1977-3	
212.164	1978: -29, -61, -63	
212.164(a)	1976-5	
212.164(e)	1980-26	
212.165	1978-16; 1980-26	
212.166	1978-61	1975-18.
212.166(b)(3)	1978: -27, -37, -41, -62	
212.167(b)	1978: -16, -34; 1979-2M	
212.168	1978-34; 1979-3	
212.169	1978-32	
212.170	1978-16	
212.182	1978-25	
212.183	1978-25	
213.35	1978-50	
215.3	1975-25	
215.5	1975-25	
10 CFR:		
Part 430	1978-26; 1980-28	1980-1.
Part 490	1980-33	
Fuel use act regulations: 500.2(a)	1980-5	

[1] Regulations listed as cited in interpretations and rulings. No attempt has been made to change citations to reflect those relatively few cases in which regulations have been renumbered.

Appendix E—Rulings Construed by Interpretations Issued through December 31, 1979

Rulings and Interpretations

1974-3, 1975: -61, -62; 1976-25; 1980: -18, -20, -24
1974-4, 1975-18
1974-10, 1974-16
1974-11, 1976-15
1974-15, 1975-39
1974-17, 1975-66
1974-18, 1975: -6, -66; 1976-20
1974-19, 1974-15; 1975: -52, -56
1974-20, 1974-24
1974-22, 1977-7
1974-24, 1974-28
1974-29, 1975: -41, -43
1975-1, 1975-74; 1977: -4, -51
1975-2, 1975: -22, -47, -63, -66; 1976: -1, -7, -20; 1980-16
1975-4, 1977-11; 1978-7
1975-6, 1979-2M
1975-8, 1975: -33, -60, -67, -70, -71, -72; 1976-23; 1977: -17, -27, -39, -40; 1979-6; 1980: -18, -24
1975-9, 1975-74, 1977: -4, -51
1975-10, 1977: -4, -51
1975-11, 1977-11; 1978-7
1975-12, 1975: -41, -43; 1977-48
1975-14, 1976-8
1975-15, 1975-42; 1978: -6, -9, -15; 1979: -1, -17; 1980-25
1975-18, 1978-62; 1980-31
1977-1, 1977: -1, -26, -37, -43; 1978-15; 1979: -1, -17; 1980-17
1977-2, 1980: -6, -15; 1979-17
1977-4, 1979-21
1977-5, 1978-19
1980-3, 1980-25

Appendix F.—*Statutes Construed by Interpretations and Rulings Issued Through December 31, 1979*

Statutes	Interpretations	Rulings
Economic Stabilization Act of 1970, as amended	1975-12; 1976-24	
Energy Policy and Conservation Act of 1975, as amended.	1977: -7, -12, -22, -26, -38, -42; 1978-26	
Energy Supply and Environmental Coordination Act of 1974.		1975-5
Emergency Petroleum Allocation Act of 1973, as amended.	1974: -6, -13, -22, -26, -27; 1975: -1, -5, -8, -12, -15, -56, -66; 1976: -4, -6, -12, -20, -21, -22, -23, -24; 1977: -3, -5, -7, -11, -28, -42; 1978: -1, -4, -51 (rescinded), -54; 1980-6.	1974: -3, -28; 1975-17; 1976-4; 1977-1.
Federal Energy Administration Act of 1974	1974-13	
Freedom of Information Act		1975-5
Fuel Use Act	1978-26; 1980: -5, -28, -33	1980: -2, -4
Naval Petroleum Reserves Production Act of 1976.		1976-3
Trans-Alaska Pipeline Authorization Act		1975-12; 1977-1

[FR Doc. 80-34868 Filed 11-6-80; 8:45 am]
BILLING CODE 6450-01-M

federal register

Friday
November 7, 1980

Part X

Department of Energy

Economic Regulatory Administration

Crude Oil Reseller Regulations; Final Rule

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-48]

Crude Oil Reseller Regulations

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending the price regulations applicable to resales of crude oil (Subpart L of 10 CFR Part 212) to establish a uniform, maximum permissible average markup of twenty cents per barrel for all crude oil resellers. We are also amending the general price rule to provide that a reseller may not charge a price for crude oil that exceeds its acquisition cost if between the time of purchase and the time of resale (i) the crude oil remained in the same physical location or (ii) such reseller did not take physical possession of the crude oil; unless, in either case (i) or (ii), the reseller (A) was the importer of record, or (B) purchased the crude oil from the producer of that crude oil, or (C) sells the crude oil to a refiner which certifies in writing that the crude oil is being purchased for refining purposes, or (D) receives certification from the refiner that refines the crude oil that it would not have received the crude oil but for a service performed by the reseller. We are also adopting a clarifying amendment to the definition of "average markup" set forth in section 212.182 to explicitly provide that a reseller may not include in its average-markup calculations any sales with respect to which the regulations would prohibit the reseller from charging a price for the crude oil involved that exceeds its acquisition cost for that crude oil. Finally, we are adopting an amendment providing that a reseller that first sold crude oil during the period May 1973 through November 1977 but had no sales of crude oil in November 1977 shall utilize the first month prior to November 1977 during which it did sell crude oil for purposes of determining its permissible average markup for the period January 1978 through November 1980.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-4055.

Daniel J. Thomas or Ralph Rohweder (Office of Regulatory Policy), Economic Regulatory Administration, Room 7116, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3263.

William Funk or Jack Kendall (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6736 (Funk); 252-6739 (Kendall).

SUPPLEMENTARY INFORMATION:

I. Background.
II. Amendments Adopted.
III. Procedural Matters.

I. Background

A. Current Regulations

Subpart L of 10 CFR Part 212, which became effective January 1, 1978, sets forth the regulatory scheme applicable to the pricing of crude oil by resellers and refiners (42 FR 64856, December 29, 1977). A reseller is permitted to charge any price in a particular sale of crude oil so long as its average markup (over allowed costs) for all crude oil sales in a month does not exceed its permissible average markup and provided that it does not unreasonably discriminate among purchasers.

Under Subpart L, the method to be used by a reseller in determining its permissible average markup depends on the time period during which it first resold crude oil. The permissible average markup of a reseller that resold crude oil in May 1973 is defined as its total lawful revenues from sales of crude oil in May 1973, less all allowed costs and expenses associated with sales of crude oil in that month, divided by the number of barrels of crude oil sold in that month. A reseller that entered the crude oil reselling business after May 1973 but prior to December 1977 is required to impute a permissible average markup based on what its average markup on sales in November 1977 would have been if it had set its prices in all sales that month in accordance with the provisions of 10 CFR Subpart F which governed pricing in crude oil resale transactions prior to January 1, 1978.

As originally adopted, Subpart L did not set forth the permissible average markup applicable to resellers first doing business on or after December 1, 1977 ("post-November 1977 reseller"). However, we announced in the preamble to Subpart L our intent to establish at a later time the permissible average markup applicable to these new entrants into the reselling market. Furthermore, we afforded these new entrants the means for assuring compliance with the regulations by providing in § 212.183(c) that, if in any month a post-November 1977 reseller's average markup should exceed the permissible average markup subsequently established by the ERA, the reseller woud nevertheless be deemed to have complied with the price rule if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was sold by the nearest comparable reseller in the month.

B. October 1979 Notice of Proposed Rulemaking

A primary consideration leading to the adoption of Subpart L was the expression by crude oil resellers that additional pricing flexibility—such as that afforded by the average markup rule of Subpart L—was needed to provide a regulatory system that would appropriately recognize the differences between these resellers and resellers of other covered products. Since the adoption of Subpart L, we have observed apparently unjustified disparities in the average markups being realized by resellers. We concluded that these disparities might be resulting partly from those provisions that provide that a reseller will be included within one of three regulatory classes depending solely on when its reselling activities began. However, we also concluded that the observed disparities must be largely unjustified since, even though the regulations provide a different method to assure compliance for each class of reseller, all three methods were designed to insure that every reseller's permissible average markup would be consistent with the historical markups of resellers generally. Moreover, we decided, regardless of whether intentional violation or unintentional misapplication of the pricing provisions was more responsible for the wide variance in markups, that modifications to Subpart L might be appropriate to insure that a reseller's permissible markup in any transaction be both commensurate with the services it performed in that transaction and the permissible markups of other firms offering comparable services. We also became concerned that the average markup rule was being utilized by some resellers as a means of disguising violations of the price regulations through the insertion of sham transactions, or less-than-arms'-length transactions, in the calculations of their average markups to make it appear that they had not exceeded their permissible average markups.

On October 25, 1979, we issued a notice of proposed rulemaking setting forth various proposed amendments formulated in response to the above concerns (44 FR 62848, October 31, 1979). These proposals were both numerous and, in some instances, complex. We have determined, as discussed below, not to adopt those proposals which would require extensive and complicated revisions to Subpart L. Rather than present in this notice a complete exposition of all aspects of the October 1979 proposals, we believe it appropriate to refer interested persons to the October 31, 1979 edition of the **Federal Register**. However, we are including a summary of the October 1979 proposals in order to facilitate consideration of the summary of public comments set forth below.

Description of October 1979 Proposals

1. *Primary Proposal to Establish Maximum Permissible Price Rule for All Crude Oil Resellers for Application on Transaction-by-Transaction Basis*

a. *General Price Rule.* We proposed to amend Subpart L to provide that a reseller may not charge in any resale of crude oil, except as provided below, a price exceeding the sum of (1) the acquisition cost of the crude oil sold; plus (2) any amounts associated with the transportation of the crude oil between the reseller's points of acquisition and sale which were (a) actually paid by the reseller to an unaffiliated common carrier or other third party or (b) actually incurred by a common carrier or other entity affiliated with the reseller; plus (3), in sales in which the reseller has transported crude oil by means of its own facilities, a "transportation allowance" permitting a return on investment in transportation and storage facilities; plus (4) one cent per barrel to permit a return on any services, other than transportation by means of its own facilities, that the reseller performs.

The two following alternative methods for computing the "transportation allowance" in any sale were proposed. *Comparable Common Carrier Tariff.* Under the first alternative, a reseller that uses its own facilities to transport crude oil would have been permitted to include in its price, regardless of the transportation expenses actually incurred, an amount equal to the expense the reseller would have incurred if it had used a common carrier to transport the crude oil. A reseller would have been required to utilize a comparable common carrier tariff filed with the appropriate State or Federal agency.

Transportation Expenses plus Return on Investment. Under the second alternative, a reseller's transportation allowance in any sale would have been equal to the expenses incurred by the reseller in using its own transportation facilities plus an additional amount to permit return on investment. We proposed that a reseller be permitted to include in its transportation allowance in any sale an amount equal to the expense it would have incurred in transporting the crude oil the same distance by the same mode of transportation in the month prior to the preceding month.

We also proposed that a reseller's transportation allowance include an amount to permit a return on the reseller's investment in transportation, gathering and storage facilities. We proposed two means of accomplishing this objective. First, we proposed a fixed per barrel amount. Based on then available information, we believed the appropriate amount would be approximately twenty-five cents per barrel. Second, we proposed in the alternative that a reseller be permitted to include an amount in its transportation allowance equal to either (1) an amount equal to a percentage of its transportation expenses associated with that particular sale or (2) the product of an amount equal to a percentage of the reseller's depreciated original cost of investment in transportation and storage facilities multiplied by the number of barrels in that sale that are transported in facilities (other than common carrier facilities) owned and used by the reseller and divided by the total number of barrels sold in the month that are transported by all modes of transportation (other than common carrier) owned and used by the reseller.

General and administrative expenses. We proposed to limit the passthrough of general and administrative expenses by including those costs in a reseller's transportation allowance in sales where the reseller has transported the crude oil by means of its own facilities. We requested comments on any modifications that might be necessary to account for general and administrative expenses under any of the proposed methods for determining a reseller's transportation allowance.

b. *Permissible Markup in Resales of Crude Oil Not Subject to General Price Rule.* We proposed a separate price rule to provide that, if between the time of purchase and the time of resale of crude oil by a reseller (a) the crude oil remained in the same physical location or (b) the reseller did not take actual physical possession of the crude oil, the reseller generally would be limited to recoupment of its acquisition cost of the crude oil. However, the reseller would have been permitted a markup of one cent per barrel, if it (1) sold the crude oil directly to a refiner certifying to the reseller that the crude oil was being purchased for refining purposes, or (2) received certification from the refiner that ultimately refines the crude oil that the refiner would not have received that volume of crude oil but for the reseller's service or (3) purchased the crude oil from the producer, or (4) in the case of imported crude oil, was the importer of record.

2. *Alternative Proposal to Establish Specified Permissible Average Markup*

We recognized that the primary proposal represented a significant departure from the regulatory scheme in Subpart L. Inasmuch as many resellers have expressed support for the average markup concept, we also solicited comments on an alternative to the primary proposal that would retain Subpart L in basically its present form, but that would limit all resellers to a fixed average markup of twenty-five cents per barrel. However, we proposed that general and administrative expenses be included in this permissible average markup, as opposed to providing for the separate itemization and passthrough of such expenses as under the current regulations.

We also proposed to further modify the current Subpart L price rule by adopting the provision of the primary proposal that, while generally prohibiting profit margins in resales of crude oil the reseller neither stored nor transported, would permit a one cent per barrel markup in such sales if the reseller (1) sold the crude oil directly to a refiner that certified that the crude oil was being purchased for refining purposes, or (2) receives certification from the refiner that ultimately refines the crude oil that it would not have received that volume of crude oil but for the reseller's service, or (3) purchased the crude oil from its producer, or (4) in the case of imported crude oil, was the importer of record.

Finally, we proposed, as requested by many commenters following the adoption of Subpart L, to extend from one to three months the compliance period for purposes of determining whether a reseller's average markup has exceeded its permissible average markup. In view of this proposal to extend the compliance period, we also proposed to eliminate the self-correcting refund provisions of § 212.185 and the per se rule set forth in § 212.185(b)

which provides that, notwithstanding the self-correcting refund provisions, a reseller will be deemed to be in violation of the price regulations if its prices result in average markups in excess of that reseller's permissible average markup during three consecutive months.

3. *Applicability of Subpart L to Crude Oil Exchanges*

We proposed a definition of the term "exchange" to emphasize that a transaction between a reseller and any other firm will be deemed to be an exchange only if the circumstances and terms of the arrangement indicate an intent, to the extent commercially practicable, on the part of each firm to transfer to each other volumes of crude oil of equal value. The proposed definition would have provided that any compensating payment should not exceed the quality, location, or time differences between the value of the volumes exchanged. It would also provide that exchange transactions include matching purchase and sale agreements (also known as buy/sell agreements). We proposed to define a matching purchase and sale as a transaction in which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the cash paid and received by each firm are dependent on the value of the volumes received.

4. *Certification of Imported Crude Oil by Resellers*

Section 212.131(b)(1) of the price regulations currently requires each reseller of crude oil to certify in writing to any purchaser the respective volumes and prices of each category of domestic crude oil sold. In order to aid our enforcement efforts and administration of the entitlements program, we proposed to amend § 212.131 to extend such certification requirements to volumes of imported crude oil.

5. *Definition of Reseller*

We proposed a definition of the term "reseller" to emphasize that a reseller is permitted a markup under Subpart L with respect to any volume of crude oil only if no other firm or entity with which the reseller shares significant affiliations has realized a profit associated with that volume of crude oil. Accordingly, the proposed definition would provide that a "reseller" means a firm that carries on the trade or business of purchasing crude oil for resale in substantially unchanged form and that a "reseller" includes generally the parent of the reseller and the consolidated and unconsolidated entities directly or indirectly controlled by either the reseller or its parent.

6. *Affiliated Common Carriers*

Common carrier tariffs normally include a return on capital investment. Therefore, use by a reseller of the tariff paid to an affiliated common carrier in computing the reseller's transportation and gathering cost can be expected to add a margin which represents this return on capital investment to the prices of crude oil resales. In interpretation 1978–25, the DOE's Office of General Counsel concluded that a firm may utilize the tariff paid an affiliate for purposes of computing transportation and gathering costs under Subpart L. We tentatively determined, however, that it could create inequitable disparities to permit resellers that establish affiliated common carriers to obtain an additional return on investment. Therefore, we proposed an amendment to provide that, in the event we did not adopt an amendment that would permit all resellers to use a comparable common carrier tariff, any reseller may include in its recoverable transportation and gathering costs only those expenses actually incurred by an affiliated common carrier.

7. *Resellers First Selling Crude Oil After May 1973 but Prior to December 1977 that had No Sales in November 1977*

A reseller that entered the crude oil reselling business after May 1973 but prior to December 1977 is required to determine an imputed permissible average markup based on its lawful revenues in November 1977. Some resellers requested guidance as to how they should apply the regulations in the event they had no sales in November 1977. Therefore, we proposed an amendment to Subpart L to require that any such reseller determine its permissible average markup in reliance on its lawful revenues in the month first preceding November 1977 in which it did sell crude oil.

8. *Proposed Permissible Average Markup for Resellers First Reselling Crude Oil on or After December 1, 1977*

The preamble to Subpart L announced our intent to establish at a later date a permissible average markup for resellers first doing business on or after December 1, 1977. Based on available information, we proposed in the October 1979 notice to establish a permissible average markup of fifteen cents per barrel for such resellers. This proposal was based on our belief that such a markup would be consistent with the profit margins realized by most resellers in May 1973, a period of relative stability and strong competition in the crude oil reselling market. Furthermore, since pre-December 1977 resellers generally have not been permitted under either Subpart F or Subpart L to obtain markups in excess of actual or imputed May 1973 profit margins, it was our further belief that post-November 1977 resellers that established their prices with reference to their nearest comparable resellers in reliance on § 212.183(c) would not be prejudiced by the adoption of the proposed fifteen-cent per barrel average markup.

Summary of Comments

Comments on the October 1979 proposed amendments were solicited from all interested parties through December 31, 1979. In addition, public hearings on the proposals were held in Houston, Texas and Washington D.C. on December 6, 1979 and on December 11 and 12, 1979, respectively. Thirty oral presentations were made at the public hearings. In addition, one hundred thirty-nine written comments were received. Some firms filed more than one written submission or made both oral and written comments.

Comments were submitted by thirty-five representatives of crude oil resellers. The commenters also included six of the major integrated oil companies, twelve small refiners, an association representing small refiners, one large independent refiner, and one firm with plans to construct a small refinery. Independent producers were represented by an association representing a group of independent producers in California and Texas and twenty-eight independent producers commenting individually. Finally, comments were submitted by a non-profit public interest group and an association representing farm cooperatives.

Those aspects of the October 1979 notice pertaining to the establishment of separate price rules for transactions where the reseller transports and those where it does not transport the crude oil generated intense interest on the part of the commenters, often to the exclusion of any reference to other matters dealt with in the notice. A summary of the comments with respect to those aspects of the October 1979 proposals that the commenters did address follows.

1. *Uniform Permissible Markup for Crude Oil Resellers*

Many of the commenters indicated that they shared our concerns regarding apparently unjustified disparities in resellers' markups. In particular, historical resellers with substantial investments in crude oil transportation facilities and some refiners stated that some of the more recent entrants into

the crude oil marketplace that provide minimal or no services in moving crude oil from producer to refiner are in many instances selling crude oil at dramatically higher markups than other firms that provide greater services.

Many of the commenters expressing concern regarding the seemingly unjustified disparities among resellers' markups indicated that adoption of a uniform markup for all resellers would be appropriate. Other commenters argued that any attempt to impose a uniform markup would prove financially ruinous for some resellers while giving a bonanza to others. Still other commenters indicated that, while they might at an earlier time have supported adoption of a uniform markup for all resellers, they felt that such action would no longer be warranted in view of the fact that price controls are scheduled to expire in a relatively short period of time.

2. *Permissible Average Markup versus Permissible Transaction-by-Transaction Markup*

While refiners indicated some support for a price rule that would limit resellers' markups in individual transactions, resellers argued strongly for retention of the flexibility afforded by the permissible average markup rule. Resellers stressed, as they did prior to the adoption of Subpart L, that any price rule that would impose a maximum permissible markup on individual transactions would fail to comport with the realities of the marketplace. Several resellers emphasized that they have historically operated on margins that vary from transaction to transaction, from region to region, and even from station to station, depending upon the services being provided and market conditions. These commenters asserted that a transaction-by-transaction markup rule would be impracticable because costs associated with particular volumes of crude oil cannot always be accurately determined. They further emphasized that removal of the pricing flexibility provided by the average markup rule would result in disruptions in the crude oil distribution system, since resellers might find it necessary to refrain from entering into supply arrangements that can be made profitable under an average markup rule but that simply might not permit an adequate return on investment if subject to a maximum permissible transaction markup.

3. *Separate Price Rule for Transactions where Reseller does not Transport*

Opposition was particularly strong with respect to the proposal that a reseller be permitted no markup or, at most, a one-cent markup in any sales where the reseller did not transport the crude oil sold. The strongest objections on this issue were voiced by those resellers that do not perform a transporting function. However, while refiners objected to those markups of non-transporters which they perceived to be excessive in many instances, small refiners indicated that the service of these firms is sometimes essential in finding sufficient supplies of suitable crude oil to keep their refineries running efficiently. Crude oil producers also indicated that the October 1979 proposals created too great a dichotomy between transporting and non-transporting resellers. Small producers, in particular, asserted that the non-transporting resellers often are the only prospective buyers of relatively small volumes of crude oil. For example, a non-transporting reseller may go about obtaining title to small volumes of crude oil from serveral producers in the same geographic area in order to aggregate a volume of crude oil large enough to provide adequate incentive for a transporting firm to enter the area and go from site to site to pick up the crude oil. Generally, even the transporting firms were unable to give unqualified endorsement to the proposal, since these firms to varying extents make sales of crude oil that they do not transport. They felt either that they should be permitted a reasonable profit on such sales or that an unreasonable administrative burden would be involved in segregating for accounting purposes sales of crude oil that they had transported from sales of crude oil that they had not transported.

4. *Treatment of General and Administrative Expenses*

Resellers were very critical of our proposal to eliminate the separate itemization and passthrough of general and administrative expenses in order to lessen the opportunity for price manipulation. They argued that these expenses can vary greatly among and within firms and, therefore, that it would be infeasible to limit recovery of these expenses to a fixed amount. Other commenters expressed some support for elimination of the separate passthrough of general and administrative expenses as a means of preventing resellers from padding such expenses. However, even non-resellers indicated that they also believed that any attempt to limit resellers to the passthrough of a uniform, fixed amount representing general and administrative expenses could lead to arbitrary results in many instances.

5. *Alternative Proposal to Establish Twenty-Five-Cent Per Barrel Permissible Average Markup*

Although resellers were strongly opposed to the transaction-by-transaction proposal, many commenters, including resellers, recognized the need to prevent arbitrary discrepancies in resellers' markups. They indicated a strong preference for the alternative proposal to establish a permissible average markup of twenty-five cents per barrel in all sales where the reseller transported the crude oil involved. However, this support was qualified in two respects. First, resellers generally indicated that they would support the establishment of a twenty-five-cent per barrel permissible average markup only so long as the regulations continued to permit the separate itemization and passthrough of currently allowed general and administrative expenses. Second, resellers, including transporting resellers, indicated that the proposed twenty-five-cent per barrel permissible average markup should also apply to those legitimate transactions where the reseller does not transport the crude oil involved.

6. *Passthrough of Transportation Expenses Paid to Common Carrier Affiliates*

We proposed, in the event we did not adopt an amendment that would permit all resellers to use a common carrier tariff in computing their transportation and gathering allowance, to amend Subpart L to provide that a reseller may include in its recoverable transportation and gathering costs ony those expenses actually incurred by a common carrier affiliate in transporting crude oil, regardless of the applicable tariff.

Resellers that own common carrier pipelines and truck lines objected vehemently to the proposal. They emphasized that implementation of the proposal would effectively require that they abandon their common carrier affiliates. No commenter expressed support for the proposal.

7. *Certification of Imported Crude Oil*

The only commenter that specifically addressed our proposal to require that resellers certify imported crude oil as such supported it.

8. *Applicability of Subpart L to Crude Oil Exchanges*

Some commenters expressed appreciation of our proposal to define the terms "exchange" and "matching purchase and sale" in order to deter layering and to prevent resellers from using certain types of transactions in computing their average markups so as to make it appear that they have not exceeded their permissible average markups. However, only one commenter

indicated that it would support adoption of the proposed definitions. Other commenters recommended that the definitions not be adopted either because they felt they were unclear or would prevent resellers from profiting in certain types of transactions that historically have been profitable.

9. *Resellers that First Sold Crude Oil After May 1973 but prior to December 1977 but had no Sales in November 1977*

Only a few resellers addressed our proposal that resellers that began crude oil reselling operations during the period June 1973 through November 1977 but had no sales in November 1977 should determine their permissible average markups with reference to the first month preceding November 1977 during which they did sell crude oil. In general, these firms merely indicated the need for guidance in establishing their permissible average markups. However, two firms indicated that they did not favor the proposal because they had been operating on the assumption that since they did not sell crude oil in November 1977 they should look to those provisions applying to post-November 1977 resellers. Therefore, these firms were more concerned with the fifteen-cent per barrel permissible average markup proposed for application to sales by post-November 1977 resellers since January 1, 1978.

10. *Proposed Three-Month Compliance Period*

We proposed that, in the event we decided that the average markup rule should be retained, the period for determining compliance with the price regulations be extended from one to three months. While few commenters addressed this proposal, reaction to the proposal was favorable.

C. February Notice Regarding Peparation of Regulatory Analysis

After considering the comments received in response to the October 1979 proposals, we decided that the preparation of a regulatory analysis would be helpful in our consideration of the proposed amendments. In particular, we believed that further consideration would be appropriate, in view of the comments, to determine whether it would be feasible to adopt a transaction-by-transaction price rule and eliminate the separate itemization and passthrough of general and administrative expenses. Accordingly, we issued a notice announcing our intent to defer final rulemaking action until an analysis could be completed (44 FR 8025, February 6, 1980).

We have conducted an economic analysis of today's amendments based on data submitted by resellers on Form ERA-69. The findings of this analysis are set forth in section III of this notice. However, we have determined that preparation of a regulatory analysis of all aspects of the October 1979 proposals is not necessary in view of our decision that extensive revisions to Subpart L should not be made at this time. Furthermore, having conducted an economic analysis of the amendments that are being adopted, we believe that further delay in implementing those amendments would be inappropriate in view of possible inequities occurring as the result of the current disparities in resellers' markups.

D. July 1980 Interim Final Rule

While § 212.183(c) of Subpart L had afforded post-November 1977 resellers the means to assure compliance with the regulations, the permissible average markup for these resellers had not been established. We recognized both the possible administrative inconvenience to these recent entrants and the restrictions on our own enforcement efforts resulting from the lack of a fixed permissible average markup for these firms. Therefore, we determined that, while other aspects of the October 1979 proposals might require longer consideration, we should establish at the earliest possible time the permissible average markup for application to crude oil sales by post-November 1977 resellers since the adoption of Subpart L.

As stated in the October 1979 notice of proposed rulemaking, it was our intent that any permissible average markup adopted for application to sales by post-November 1977 resellers on or after January 1, 1978 should be consistent with the average markups realized by crude oil resellers in May 1973. Accordingly, we reviewed our proposed permissible average markup of fifteen cents per barrel for post-November 1977 resellers in view of the information submitted on Form ERA-69 by firms doing business in May 1973. We concluded that it would be appropriate to limit our analysis to data concerning those firms in business in May 1973, since under both Subpart F and Subpart L crude oil resellers have been required in order to assure compliance to set their prices in accordance with regulations designed so that their markups would be consistent with those realized by firms in May 1973.

Thirty-nine firms reported crude oil sales in May 1973. However, five of these firms reported neither gathering and transportation expenses nor any general and administrative expenses. We could not establish whether these five firms incurred such expenses and simply did not report them or included such expenses under another expense category. Furthermore, since we assume that all resellers performing a legitimate function must incur general and administrative expenses, we concluded that the data for these firms was incomplete and, therefore, that we could not reasonably ascertain the average markups of these firms. Accordingly, we omitted their data from the statistical analysis. One firm reported an average markup in May 1973 of $3.95 per barrel. Data concerning this firm was also excluded since we determined, in view of the findings discussed below, that its reported average markup was not representative of resellers' average markups in May 1973.

Our analysis of the data submitted by the thirty-three remaining firms indicated that the median average markup of those firms in May 1973 was twelve to thirteen cents per barrel. Twenty-four of those firms (i.e., seventy-three percent of those resellers providing reliable data) reported average markups in May 1973 that were less than twenty cents per barrel. We also reviewed the data for those firms on a volume weighted basis. This analysis indicated that half of all barrels of crude oil resold by those resellers in May 1973 were sold by those resellers reporting average markups of less than twelve to thirteen cents per barrel. Eighty-five percent of all barrels of crude oil resold in May 1973 were sold by those resellers reporting average markups of less than sixteen cents per barrel. Finally, ninety-nine percent of all barrels of crude oil resold in May 1973 were sold by resellers reporting average markups of less than twenty cents per barrel.

Based on this analysis, we concluded that a permissible average markup of twenty cents per barrel for post-November 1977 resellers would be reasonable since it would be both fair and consistent with historical average markups and, thus, the average markups of other resellers that had correctly determined and utilized their permissible average markups under Subpart L. This conclusion was reached after review of the relevant comments received in response to the October 1979 proposed rulemaking. On July 29, 1980, we issued an interim final rule establishing a permissible average markup of twenty cents per barrel for application to crude oil sales by post-November 1977 resellers since January 1, 1978 and prospectively (45 FR 52112, August 5, 1980).

II. Amendments Adopted

In view of the comments received in response to the October 1979 notice of proposed rulemaking, as well as our own recognition of the relatively short time remaining to regulate crude oil prices, we have determined that extensive revisions substantially altering the regulatory structure of Subpart L should not be made at this time. In addition, we recognize that with respect to some of the October 1979 proposals there were few or no comments because most of the commenters, especially those appearing at the public hearings, felt it necessary to limit their attention to those issues of the most critical interest to them. In view of these considerations, we are adopting only those amendments discussed below, even though we continue to believe that certain additional aspects of the October 1979 proposals have substantial merit.

A. Establishment of Uniform Permissible Average Markup of Twenty Cents Per Barrel

It is our conclusion that further rulemaking action is necessary to prevent the continuance of apparently unjustified disparities in the markups being realized by crude oil resellers. This conclusion has been reinforced by the findings of our analysis of the data submitted by resellers on Form ERA-69 which, while unaudited by the ERA, indicate (as discussed below in section III of this notice) that in general resellers' markups have been widely disparate. While Subpart L has required firms entering the crude oil reselling business at different times to ascertain their permissible average markups in different manners, it is our belief that in many instances those firms with relatively high markups will be unable to justify those markups. We believe this conclusion follows since under both Subpart F and Subpart L all crude oil resellers have been required as a matter of assuring compliance to set their prices in accordance with regulatory provisions designed so that their markups would be consistent with those realized by firms in May 1973.

Regardless of whether any particular reseller can justify its markups under Subpart L, it is our intent to insure that, during the remaining time in which price controls are in effect, Subpart L provide for, to the maximum extent practicable, equity among resellers, while retaining an adequate basis for effective enforcement action. It is our conclusion that these objectives can be best balanced and most readily achieved by adopting a modified version of our October 1979 alternative proposal to establish a uniform permissible average markup for resellers, regardless of when a particular reseller began reselling crude oil. As indicated above in the discussion of comments received in response to the October 1979 proposals, there was substantial support expressed by the commenters for our alternative proposal to establish a uniform permissible average markup of twenty-five cents per barrel, provided that the same price rule apply to all legitimate transactions, not just those where the reseller transports the crude oil involved, and further provided that the regulations continue to permit the separate itemization and passthrough of general and administrative expenses.

As discussed above, our recently adopted interim final rule establishing a permissible average markup of twenty cents per barrel for post-November 1977 resellers was based on our decision that such a markup would be reasonable since it would be both fair and consistent with historical average markups. Since issuing that July 1980 interim final rule, resellers which were in business before December 1977 have recommended that a twenty-cent permissible average markup be established for all resellers. Furthermore, we believe the comments received in response to the October 1979 proposal indicate support for our conclusion that a permissible average markup of twenty cents per barrel with continued provisions in the regulations for the separate itemization and passthrough of general and administrative expenses would be consistent with our October 1979 proposal to establish a twenty-five-cent per barrel permissible average markup but eliminate the separate passthrough of general and administrative expenses. In view of all these considerations, we have concluded that it would be reasonable to adopt a final rule amending Subpart L, effective December 1, 1980, to provide that the permissible average markup for all crude oil resellers be twenty cents per barrel.

B. Amendment and Discussion Pertaining to Transactions Where Resellers Are Restricted to Recoupment of Acquisition Cost

In view of the scheduled expiration of crude oil price controls, we have determined, as discussed above, that extensive revisions to Subpart L at this time to insure that in all instances a reseller's permissible markup be commensurate with the particular services performed in a particular transaction would not be warranted. Therefore, we are not adopting today those aspects of the October 1979 proposal that would establish separate price rules for application to transactions where the reseller transports the crude oil involved and transactions where the reseller does not transport the crude oil involved. Neither are we adopting formulae or other means to insure that each transporting firm's permissible average markup accurately reflect its investment in transportation facilities.

We believe the comments support our decision that it would be infeasible to make extensive revisions to the regulations, given the short time crude oil price controls are scheduled to remain in effect. However, many commenters, including those who felt that non-transporting firms in many instances offer a valuable service, nevertheless shared our opinion that the non-transporting firms—and, in some instances, those resellers that generally transport—are engaging in many transactions that serve no function in moving crude oil supplies to the refinery and, therefore, could only be for the purpose of obtaining the markup that could be had simply by inserting an additional, unnecessary transaction that has no effect on the ultimate destination of the crude oil involved. Many commenters also indicated agreement with our observations that these unnecessary transactions, through the process of accumulated markups, may indicate collusion on the part of firms or afford greater opportunity for firms to miscertify price-controlled oil.

It is our continued opinion that in most instances an intermediate reseller (i.e., a reseller other than one that is a first purchaser or importer of record or sells directly to a refiner) does not perform a service or other function traditionally and historically associated with the resale of crude oil that justifies a markup (and therefore is layering) in those transactions where such a reseller takes title to crude oil from one firm and passes title to that crude oil to another firm and, between the time of purchase and resale of the crude oil by the reseller, the crude oil remains in the same place or the reseller does not even take physical possession of the crude oil. We are particularly concerned with the high incidence of in-line pipeline transactions that appear to have no effect on the ultimate destination of the crude oil involved. In these transactions, the resellers do not appear to provide any service or function traditionally and historically associated with the resale of crude oil. In fact, our observations indicate that in many instances firms are not only purchasing and selling but

often repurchasing and reselling identical volumes of crude oil.

These firms do not own, operate or control the pipeline systems through which the crude oil is transported. Neither do they arrange or provide gathering services, accounting or reporting services for producers, or transportation, storage and handling services; nor do they find any new buyers to take crude oil off the pipelines or find any new end-users, i.e., refiners, for the crude oil. Furthermore, these firms do not at any time acquire, hold, or exercise physical control, possession, or custody of the crude oil involved, but merely take title to the crude oil for brief periods and shortly pass that title to another firm at a higher selling price. In such in-line transfers, the firms involved do not serve as shippers of the crude oil in the pipeline involved. They do not pay transportation or other charges for shipment of the crude oil, deliver the crude oil to the pipeline for shipment, provide the necessary facilities for receiving the crude oil when it leaves the pipeline, or bear the risk of loss of the crude oil while it is in the pipeline. Neither do these firms serve as the final consignees of the crude oil or obtain title to the crude oil when it leaves the pipeline or assume the responsibility for removing it from the pipeline.

The regulations clearly prohibit resellers from taking markups in transactions such as the above described pipeline transactions. In recent months, we have issued to a number of firms Notices of Probable Violation based on audits indicating that these firms have realized illegal revenues as the result of such transactions. Our continued observations of such practices as those described above have led us to the conclusion that it would be appropriate to further emphasize our position in this regard. Therefore, we are revising the general price rule of Subpart L to include provisions explicity prohibiting resellers from charging prices in excess of their crude oil acquisition costs in transactions where circumstances clearly indicate that layering has occurred. Accordingly, we are adopting an amendment, similar to that set forth in our October 1979 notice, that would amend the price rule set forth in section 212.183 to provide that, if between the time of purchase and the time of resale of crude oil by a reseller (i) the crude oil remained in the same physical location or (ii) such reseller did not take physical possession of the crude oil, the reseller may not charge a price for that crude oil which exceeds the acquisition cost of that crude oil, unless, in either situation (i) or (ii), the reseller (A) was the importer of record, or (B) purchased the crude oil from the producer of that crude oil, or (C) sells the crude oil to a refiner which certifies in writing to the reseller that the crude oil is being purchased for refining purposes, or (D) receives certification from the refiner which refines the crude oil that such refiner would not have received the crude oil but for a service performed by the reseller.

This amendment is intended as an explicit statement of our position that a firm that, for example, purchases crude oil (from a firm other than the producer of the crude oil) that is already in a pipeline or in storage is in most instances layering where the firm then sells that crude oil to another firm (other than a refiner that is purchasing for refining purposes) while it is still in the same pipeline or at the same storage location. We believe this conclusion is justified since, from the examples, it appears that the firm has performed no service (and that the transaction, therefore, would not appear likely to have any effect on the ultimate destination of the crude oil involved), since the crude oil has remained in the same physical location (e.g., in the same pipeline or at the same storage location) and the firm has not taken physical possession of the crude oil involved (e.g., the firm does not own or control the pipeline or storage facility, serve as the shipper of the crude oil or ultimately receive the crude oil into transportation or storage facilities owned or controlled by the firm).

We believe this amendment permits adequate opportunity for a firm to demonstrate that it is entitled to a markup on any intermediate transaction, since it provides that the firm will be permitted to realize a profit if it obtains a certification from the refiner that eventually refines the crude oil involved stating that it would not have received the crude oil but for the reseller's service. However, in this regard, we wish to emphasize our position, as indicated in the above discussion concerning in-line pipeline transfers, that the mere fact that a firm happened at some time to hold title to crude oil does not in and of itself demonstrate that the firm has had any effect on the ultimate destination of that crude oil. Accordingly, a refiner should not provide certification to a reseller that it would not have received a particular volume of crude oil but for that reseller's service unless it can document the service performed by the reseller and not merely that the reseller previously held title to the crude oil.

We cannot here give examples of all situations in which it could be demonstrated that a reseller has performed a service but for which a particular refiner would not have received a particular volume of crude oil. However, for example, we believe a reselling firm would be entitled to a markup if a refiner can document that it, rather than another refiner, has received—as a consequence of the reselling firm's transaction—crude oil that theretofore had consistently been sold to the other refiner. Or, most likely in the case of crude oil that remains in the same storage location between the times of purchase and resale by a reselling firm, a refiner could certify that it would not have received a particular volume of crude oil but for the reselling firm's service if it can document that it would not have received the crude oil but for, as an example, the reselling firm's agreement to assume the risk of loss while the crude oil remained in storage.

Unlike our October 1979 proposal, under today's amendment any reseller that in a particular transaction meets the requirements of any of the designated exceptions, even if he does not take possession of the crude oil or the crude oil remains in the same location, will be permitted to charge any price in that transaction subject to the provisions of the general price rule that its average markup in the month that transaction occurs does not exceed the twenty-cent permissible average markup. This decision reflects not only our recognition that in such instances a non-transporting reseller may perform a service of value but also our determination, as discussed above, that it is not practicable at this time to revise Subpart L to insure that the permissible average markup of a reseller—be it a transporter or non-transporter—in all instances reflect the degree of service performed by that reseller in a particular transaction. Moreover, it reflects the comments of many refiners that crude oil resellers may provide valuable services even in the transactions where they do not transport or otherwise take physical possession of the crude oil involved.

Notwithstanding the above, we wish to emphasize that—regardless of the nature of a particular reseller, the point at which that reseller's transaction occurs, or the fact that the reseller may perform certain of the traditional reselling functions discussed above—every reseller remains subject in every transaction to the layering clause of § 212.186. Accordingly, today's final rule should not be construed to indicate any

lessening of our intention to enforce vigorously the prohibitions against sham or unnecessary transactions that subvert the intent of the price regulations or any other activities in which a reseller has heretofore been engaged or may prospectively be engaged in violation of the layering clause, or the general prohibitions of 10 CFR 205.202, or the normal business practices rule of § 210.62(c), or the new item rule of § 212.111, or the certification requirements of §§ 212.131 and 212.185(c), or of any other aspect of the price regulations governing that reseller.

C. Clarifying Amendment Regarding Calculation of Average Markup

The reseller price rule in § 212.183(a) provides, in general, that a reseller may charge any price in a sale of crude oil, provided that the reseller's average markup for any month shall not exceed the reseller's permissible average markup. When calculating its average markup for a particular month, a reseller may not include data concerning any transaction that constitutes layering or in which the crude oil was improperly certified and with respect to which the regulations would, respectively, prohibit the reseller from charging a price for crude oil that exceeds the actual price paid by the reseller for that crude oil, after taking into account any differentials involved in an exchange or matching purchase and sale (*see* § 212.186, "Layering") or require a refund of any portion of the reseller's selling price for crude oil that exceeded its weighted average acquisition cost for crude oil of that regulatory category in the month the crude oil was sold (*see* section 212.185, "Improper certifications"). If resellers were permitted to utilize data for layered sales or sales with respect to which refunds have been required, they could readily make it appear that their average markup in any given month did not exceed their permissible average markup. We are particularly concerned regarding sales made at very low markups in less-than-arms'-length circumstances. Our observations indicated that in such instances layering has frequently occurred as the result of firms treating as sales with very low markups transactions that, but for an intent to frustrate the price regulations, would be treated as exchanges or matching purchases and sales. As an indication of our intent to scrutinize individual transactions in order to determine whether an intent to impair the objectives of the regulations is present, we are today adopting a clarifying amendment to the definition of "average markup" in § 212.182 to emphasize that only data concerning sales in which the crude oil is properly certified and which are not subject to the special pricing restrictions of § 212.186 may be utilized in calculating a reseller's average markup for any month.

D. Amendment Regarding Resellers That First Sold Crude Oil After May 1973 But Prior to December 1977 But That Had No Sales in November 1977

A reseller which entered the crude oil reselling business after May 1973 but prior to December 1977 has been required to determine its permissible average markup based on its lawful revenues in November 1977. Some resellers requested guidance as to how they should apply the regulations in the event they had no sales in November 1977. Therefore, we proposed in the October 1979 notice an amendment to Subpart L to provide that a reseller first selling crude oil after May 1973 but prior to December 1977 but that made no sales in November 1977 should determine its permissible average markup in reliance on its lawful revenues in the month first preceding November 1977 in which it did sell crude oil. We requested comments as to whether it would be appropriate to adopt this proposed method for determining regulatory compliance by this group of resellers during the period January 1, 1978 through the effective date of any final rule we might adopt in this proceeding.

After considering the relevant comments (discussed above), we have decided that it is appropriate to include in today's rule an amendment, identical to that proposed in October 1979, providing that a reseller that first sold crude oil during the period June 1973 through November 1977 but that had no sales in November 1977 should determine its permissible average markup for the period January 1978 through November 1980 in reliance on its lawful revenues in the month first preceding November 1977 in which it did sell crude oil. We believe this action is appropriate based on our conclusion that it could be reasonably anticipated and that consistency among resellers' permissible average markups can be best promoted by requiring that a reseller that did not sell crude oil in November 1977 use as its reference month the first month prior to November 1977 in which it did sell crude oil for purposes of determining its permissible average markup during the period January 1978 through November 1980.

In response to the comments of those firms that indicated their assumption that they have been, due to their lack of sales in November 1977, subject to those provisions applicable to post-November 1977 resellers, we must state that we do not believe that it was reasonable for a firm to assume that it would be considered for purposes of the regulations to be a post-November 1977 reseller simply because it did not sell crude oil in November 1977 even though it had sales in prior months. In this regard, we believe to be of particular relevance the reasons stated at the time Subpart L was adopted for our decision to postpone the adoption of a permissible average markup for post-November 1977 resellers. We stated that "with respect to firms which enter the reselling business on or after December 1, 1977, a more difficult problem is presented, since existing firms' prices upon which a new entrant would have to rely in order to apply the new item rule, may be in a state of transition beginning January 1, 1978, since they will no longer be subject to pricing rules providing for a maximum permissible price applicable to each transaction." (*See* 42 FR 64856, December 29, 1977). In view of this language, we believe a pre-November 1977 reseller could not have reasonably assumed that it would be appropriate to characterize itself as a post-November 1977 reseller if it had been engaged in crude oil reselling activities in any month prior to November 1977 and, therefore, could apply the rule that by definition applied to it.

III. Other Matters

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (DOE Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95–91, as amended), we have referred this final rule to the Federal Energy Regulatory Commission for a determination whether it would significantly affect any matter within the Commission's jurisdiction. By letter dated October 27, 1980, the Commission communicated to the ERA its determination that this rule would not significantly affect any of its functions.

B. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1975 (15 U.S.C. 787 *et seq.*, Pub. L. 93–275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days

during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment.

A draft copy of this notice was sent to the EPA Administrator. By letter dated October 17, 1980, the Administrator communicated to the ERA that, based on preliminary review, he does not foresee these actions having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

C. National Environmental Policy Act

It has been determined that these amendments do not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. *et seq.*, Pub. L. 91–190), and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

D. Section 553 of the Administrative Procedures Act

Subsection (d)(1) of Section 553 of the Administrative Procedures Act provides that the required publication of a rule be made at least thirty days before the effective date of the rule, except when the rule relieves a regulatory constraint, is a non-substantive amendment, or the agency finds good cause for not publishing the rule thirty days before its effective date. We have decided that there is good cause to make today's final rule effective prior to thirty days following publication. This decision is based on our determination that action should be taken at the earliest possible time in order to eliminate current disparities in resellers' markups that are resulting in substantial inequities to a significant number of resellers, particularly those resellers that are subject to permissible average markups that are less than twenty cents per barrel but, because they were in business prior to December 1977, may not utilize the twenty-cent permissible average markup established in July 1980 for post-November 1977 resellers, effective September 1, 1980. In view of these considerations, today's final rule is being made effective December 1, 1980, the beginning of the first full calendar month following the date of issuance.

E. Regulatory Analysis

Crude oil resellers are assigned to one of three classes, depending on the date of their first resale of crude oil. Class A firms sold crude in May 1973. Class B firms made their first sales after May 1973 and before December 1977. All firms that started sales in December 1977 or later months are considered to be in Class C.

The permissible average markups (PAMs) of each class are determined differently. Class A resellers compute their PAMs as the average difference between sales revenue and the costs specified in 10 CFR Part 212 Subpart L in May 1973. Class B resellers were required to establish their first sale prices under the new item rule (10 CFR 212.111). In turn, lawful selling prices in November 1977 were derived from these initial selling prices, and used to establish the PAM for each Class B reseller. On July 29, 1980, (45 FR 52112, August 5, 1980), ERA established a 20 cent permissable average markup for Class C resellers. The final rule issued today establishes the same 20 cent PAM for Class B and Class A resellers.

The potential impact of these changes are evaluated using the sales volumes and average markups reported to DOE on form ERA–69 by approximately 250 firms in each of the first six months in 1980. This data has not been audited by DOE. Reported average markup may be understated and sales volume overstated because of the inclusion of sham transactions.

Methodology

Class A and Class B resellers were organized in accordance with the average markups reported to EPA in each month. We found exceptionally high and low margins due to omission of various costs or sales revenue, and deleted all firms whose average markups were not between minus $2.00 and plus $2.00. As discussed later, many firms reported negative margins during the first half of 1980.

We then classified firms into three margin categories: those exceeding 20 cents, those showing profits less than 20 cents, and firms showing losses. The volume weighted average margins for each category were calculated. The impact of the rule was determined as the total change in revenues of each margin category for class A and B resellers that could have occurred in 1980 if they had been limited to the 20 cent PAM.

Discussion

The total volume of crude sold by resellers has increased substantially since 1973. Approximately 1,250 million barrels were reported as sold by resellers in the first half of 1980. During this six month period, the monthly volume increased by 50%, due primarily to increased sales by Class C resellers, although Class C resellers also increased sales. (See Table 1.)

Table 1.—*1980 Estimated Volume of Sales by Class of Reseller*

[Million barrels]

	Class A	Class B	Class C	Total
January	62	33	66	161
February	60	43	89	192
March	63	47	84	194
April	59	48	98	205
May	66	47	130	243
June	68	55	126	249
Total	378	273	593	1,244

The number of reselling firms has also increased since 1973. Approximately 50–55 Class A resellers, 85 Class B resellers, and about 120 Class C firms reported sales in 1980. There was no significant change in the number of firms reporting in each category during the first six-months of 1980.

The tier mix of these sales by resellers shows that approximately 60% of these sales were exempt crudes, and that this proportion was fairly constant for each of the six months. The total volume of exempt crude sales increased substantially during these six months. Upper tier sales also increased somewhat, while lower tier volume was unchanged. (See Table 2)

Table 2.—*1980 Estimated Volume of Sales by Resellers of Each Crude Oil Category*

[million barrels]

	Lower tier	Upper tier	Exempt	Total
January	18	49	94	161
February	20	57	115	192
March	19	54	121	194
April	16	57	132	205
May	17	71	155	243
June	21	64	164	249
Total	111	352	781	1,244

Table 3 shows the number of firms reporting in each margin category, and those that either reported no sales or had reported average markups outside of the acceptable range (from −$2.00 to +$2.00). Though the number of such firms which did not report sales is quite constant within each class, we did not establish if the same firm reported no sales in all months. There is a significantly higher proportion of Class B firms that exceeded the 20 cent average markup among the Class A firms.

Table 3.—*Classification of Resellers by Margin*

[Number of firms]

1980	Total reporting	No sales reported	Margin: Outside acceptable range	Margin: Above 20¢	Margin: Between 0¢ and 20¢	Margin: Below 0¢
Class A:						
January	54	2	5	4	24	19
February	54	1	5	7	22	19
March	54	1	2	9	20	22
April	52	1	7	8	20	16
May	52	1	4	6	21	20
June	51	1	4	7	20	19
Class B:						
January	88	11	8	28	19	22
February	88	11	6	35	20	16
March	85	11	8	31	20	15
April	84	11	7	25	21	20
May	83	11	9	30	19	14
June	79	10	9	26	19	15

Under the final rule, average markups will be limited to 20 cents in each month. If this rule had been in effect

Under the final rule, average markups will be limited to 20 cents in each month. If this rule had been in effect in the first half of 1980, some Class A and Class B resellers would have had to reduce their prices, which would have reduced their total margins by $40 million (See Table 4). Most of these reductions would have been required of the 25 to 35 Class B resellers that exceeded the 20¢ average markup.

Table 4.—*Estimated Reduction in Revenues of Firms Reporting Markups Greater than 20 cents*

[In millions of dollars]

1980	Class A	Class B	Total
January	$0.6	$3.1	$3.7
February	0.8	4.2	5.0
March	0.9	6.6	7.5
April	0.6	7.7	8.3
May	0.8	7.9	8.7
June	0.6	6.0	6.6
Total	4.3	35.5	39.8

On the other hand, the final rule would also have allowed resellers that realized lower markups to have increased their prices. If all Class A and Class B resellers with margins below 20 cents had realized 20 cent average markups for the first half of 1980, their revenues would have increased by $92 million. Therefore, when the $40 million reduction is balanced against the $92 million increase, the maximum impact of this rule would have been to allow an increase of about $50 million in the first six months of 1980, or $100 million for the year. This would increase the average cost of all crude sold by all resellers by $0.04 per barrel or a $0.08 increase in all sales by only Class A and Class B resellers. As these costs are approximately 0.1 and 0.2 cent a gallon, respectively, and would apply only to the portion of the crude sold by these resellers, no significant general impact on consumer costs is likely.

Table 5.—*Potential Increase in Revenue by Resellers with Markups Below 20 Cents*

[Million dollars]

	On volumes sold at 0 to 20 cents markups			On volumes sold below 0 cent markups		
	Class A	Class B	Total	Class A	Class B	Total
January	$4.7	$1.8	$6.5	$2.1	$1.3	$3.4
February	4.8	2.1	6.9	7.4	1.1	8.5
March	4.0	1.6	5.6	10.2	1.0	11.2
April	6.7	1.2	7.9	10.0	2.6	12.6
May	4.1	1.5	5.6	6.3	1.2	7.5
June	6.6	2.3	8.9	3.4	3.9	7.3
Totals	30.9	10.5	41.4	39.4	11.1	50.5

Analysis of Impact

The $100 million per year maximum cost increase projection assumes that all Class A and Class B resellers are able to realize the 20 cent average markup.

We believe that competition and other market forces are affecting crude oil prices, and that only a portion of the markups that are below 20 cents would be increased in the future. For example, its unlikely that resellers would be able to increase margins on exempt crude oil sales, which accounted for about two-thirds of sales in the first six months of 1980. If half of the crudes sold at markups below 20 cents were raised to 20 cents, the increased revenue would essentially equal the reductions for firms that exceed 20 cents, and the net effect on total Class A and Class B revenue will be essentially zero.

However, individual firms may be beneficially or adversely affected. On the basis of the large number of firms that are realizing markups below 20 cents and are apparently increasing their sales volume, we conclude that the 20 cent margin is generally equitable, and that most resellers will be able to continue to function and prosper in the market, so there will be no adverse effects on the crude oil distribution system.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, and Pub. L. 94-163; and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the ERA is amending 10 CFR 212.182 and 212.183 as set forth below, effective December 1, 1980.

Issued in Washington, D.C., October 31, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 212.182 [Amended]

1. 10 CFR 212.182 is amended by revising the definitions of "average

markup" and "permissible average markup" to read as follows:

* * * * *

"Average markup" means the total revenues in sales (other than those to which the pricing restrictions of § 212.186 apply) of properly certified crude oil in a particular month by the reseller, less the costs and expenses associated with such sales of crude oil in the month, divided by the number of barrels of crude oil sold by the reseller in such sales in the month.

* * * * *

"Permissible average markup" means, for the period January 1978 through November 1980, with respect to a reseller that sold crude oil before or during May 1973, the total lawful revenues in all sales of crude oil by the reseller in May 1973 less all allowed costs and expenses associated with sales of crude oil in that month, divided by the number of barrels of crude oil sold by the reseller in that month. With respect to a reseller that sold crude oil before December 1, 1977, but not before or during May 1973, "permissible average markup" means, for the period January 1978 through November 1980, the total lawful revenues from sales of crude oil received by such reseller during the month of November 1977 or, if the reseller sold no crude oil in November 1977, the month first preceding November 1977 in which the reseller did sell crude oil, less the total costs and expenses associated with sales of crude oil for that month, divided by the number of barrels of crude oil sold in that month, plus the per-barrel increase in general and administrative expense and transportation and gathering cost incurred since such reseller's first month of crude oil sales. With respect to a reseller that did not sell crude oil before December 1, 1977, "permissible average markup" means, effective September 1, 1980, 20 cents per barrel. With respect to a reseller that first sold crude oil before December 1, 1977, "permissible average markup" means, effective December 1, 1980, 20 cents per barrel.

* * * * *

2. 10 CFR 212.183 is amended by revising paragraph (a) to read as follows:

§ 212.183 Price rule.

(a) *General.* A reseller may charge any price in a sale of crude oil: *Provided,* That the reseller's average markup for each month shall not exceed the reseller's permissible average markup, and provided that a reseller shall not unreasonably discriminate or grant unreasonable preferences in the pricing of crude oil among its purchasers, and further provided that, if between the time of purchase and the time of resale of crude oil by a reseller (i) the crude oil remained in the same physical location or (ii) such reseller did not take actual physical possession of the crude oil, the reseller shall not charge a price for that crude oil which exceeds the acquisition cost of that crude oil, unless (A) the reseller was the importer of record or (B) the reseller purchased the crude oil from the producer of that crude oil or (C) the reseller sells the crude oil to a refiner which certifies in writing to the reseller that the crude oil is being purchased for refining purposes, or (D) the reseller receives certification from the refiner which refines the crude oil that such refiner would not have received the crude oil but for the reseller's service.

* * * * *

[FR Doc. 80-34848 Filed 11-6-80; 8:45 am]
BILLING CODE 6450-01-M

federal register

Friday
November 7, 1980

Part XI

Department of Labor

Mine Safety and Health Administration

Criteria and Procedures for Proposed Assessment of Civil Penalties; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures For Proposed Assessment of Civil Penalties

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would make significant changes in the current rules for proposing civil penalties by the Mine Safety and Health Administration (MSHA) under the Federal Mine Safety and Health Act of 1977. These changes are intended to provide more effective incentives for the prevention of conditions and practices that may result in injury or illness to the Nation's miners.

DATE: Written comments must be received on or before February 5, 1981.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Frank A. White, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 1978 (43 FR 23514), MSHA published final rules governing the proposed assessment of civil penalties under the Federal Mine Safety and Health Act of 1977 (1977 Act). These rules, which are currently in effect, made certain revisions to previous rules which had been applied under the Federal Coal Mine Health and Safety Act of 1969. Among the most significant revisions made in 1978 were an overall increase in proposed penalty amounts, changes in the assessment procedures, and the inclusion for the first time of the metal and nonmetal mining industries as required by the 1977 Act. The 1978 rules included a "formula system" for determining most proposed penalties. The formula system has been in effect since 1974 and its continued use was encouraged by Congress in enacting the 1977 Act.

In the preamble to the 1978 rules, MSHA stated that once experience had been gained under the 1977 Act, the rules would be evaluated to determine the need for possible changes. On July 30, 1979, the Assistant Secretary for MSHA announced that such an evaluation had begun and solicited public comments and recommendations. Over 30 written comments were received and several informal meetings with interested persons were held to discuss possible revisions to the rules.

After carefully considering these comments and discussions, this proposed rule was developed. To provide the public with the fullest opportunity to present MSHA with its views on this proposal, the period for public comment has been expanded to 90 days. In addition, the agency will conduct a series of public hearings on the proposal and the comments received. The times and places of these hearings will be announced in a future **Federal Register** notice.

II. Discussion of Proposed Rule

A. *General Discussion.* In enacting the 1977 Act, Congress made clear its belief that mandatory civil penalties were necessary to maximize the inducement for compliance with the Act, standards and regulations. Congress was also explicit in setting forth the criteria which were to be applied in determining an appropriate civil penalty. The formula system for proposing civil penalties was developed in 1974 in order to achieve two basic goals: (1) The timely processing of the high volume of cases generated under a mandatory penalty scheme; and (2) the fair and consistent application of the six statutory criteria. In the 1978 revisions to the rules, there were some adjustments made to the formula and the assessment procedures were modified to improve the timeliness of administrative decisions. However, MSHA determined that a more comprehensive review of the penalty assessment rules was appropriate in order to appraise the overall effectiveness of the penalty process.

In its appraisal of the various components of the current rules, MSHA posed two basic questions: (1) Can the rules be revised to result in a fairer and more equitable application of the statutory criteria for the determination of a proposed penalty amount? (2) Can the rules be revised to increase the incentives for mine operators to prevent and correct hazardous conditions? MSHA believes that the new provisions contained in this proposed rule respond affirmatively to these questions, will result in significant improvements in the overall effectiveness of MSHA's civil penalty system and address many of the public comments received since the enactment of the 1977 Act. Among the major revisions are:

(1) A new provision for the assessment of a fixed "minimum penalty" in circumstances of low level gravity and no negligence;

(2) The elimination from an operator's "history of previous violations" of two classes of cases—violations for which a minimum penalty has been paid, and citations pending which have not been finally adjudicated;

(3) Separate gravity consideration for health violations;

(4) The awarding of greater good faith credit for timely abatement and special efforts to abate;

(5) The establishment of separate formula tables for independent contractors; and

(6) a revised and more explicit "special assessment" provision.

MSHA is interested in receiving comments not only on the specific provisions contained in this proposed rule, but also on any other recommendations for improving either the rules themselves of their administration. The system of civil penalty assessment established under the 1977 Act is the predominant vehicle for enforcing the Act, standards and regulations, and this rulemaking is a critical step in improving that system.

B. *Proposed assessment of a fixed "minimum penalty" for low gravity/no negligence violations.* MSHA is proposing in certain types of cases to assess fixed "minimum penalties." This proposed provision appears in new § 100.4. Representatives from many segments of the mining industries have contended that improved health and safety in the Nation's mines are not encouraged by requiring both MSHA and mine operators to go through the same penalty assessment process for minor violations as for more serious violations. It has been noted that resources are often diverted from more productive health and safety efforts by devoting inordinate amounts of time to the administrative handling and contesting of citations for violations whose impact on safety and health is not substantial. However, MSHA is required under sections 104(a) and 105(a) of the Act to assess a penalty for all violations. In light of these considerations, MSHA has been urged to adopt an approach to penalty assessments which permits increased flexibility in both the procedures used and in the penalties imposed for less serious violations.

MSHA agrees that there are certain types of violations for which there is little to be gained in terms of improving health and safety by imposing a substantial penalty. The primary focus of the effort of both MSHA and the mining industry should be the prevention and correction of conditions

which pose a significant risk to safety and health. MSHA's civil penalty system should better reflect that focus and therefore the agency is proposing a minimum penalty for violations involving a low level of gravity and no negligence. In this way, MSHA and mine operators can more effectively focus their efforts on the prevention and correction of those hazards which most directly affect the safety and health of our Nation's miners.

MSHA would make determinations with respect to the appropriateness of fixing a minimum penalty in the following manner. In the initial review of each citation and the accompanying inspector's statement, the Office of Assessments would first apply the negligence and gravity criteria as set forth in the proposed §§ 100.3(d) and (e) of Part 100. Except where a § 104(b) order is issued for noncompliance, the minimum penalty would automatically be proposed in lieu of applying the remainder of the formula, if as a result of that review an operator receives either: (1) A total of four or fewer points for gravity; or (2) zero points for negligence and a total of not more than seven points for gravity. In such cases, there would be an administrative policy that the other factors within the formula do not carry sufficient weight to warrant a penalty above the minimum. Under the proposal, the minimum penalty would be $20.

Section 100.5 of the existing regulation provides opportunity for a conference to discuss the results of MSHA's initial review of an alleged violation before MSHA proposes a penalty. Under the minimum penalty system opportunity for a conference would be preserved, but the scope of the conference would be limited to the issue of whether there has been a violation. In addition, the statutory right to contest a proposed penalty to the Commission would also continue to apply to all assessments under the proposed Part 100. However, in each instance where this statutory right is exercised by contesting an alleged violation beyond the initial proposed assessment stage, the penalty would be independently determined by the Commission's application of the six statutory criteria without consideration of MSHA's formula (30 U.S.C. 815(d), 820(i)).

To further lessen the potential impact of minimum penalty assessments on the operator, violations for which a minimum penalty was assessed and timely paid would not be included in the operator's history of previous violations.

Based on MSHA's experience under the present rule, a significant reduction in regular formula assessments under § 100.3 is expected to result from the implementation of the proposed minimum penalty assessment procedure. MSHA believes that using the gravity and negligence criteria schedules as a basis for determining the appropriateness of a minimum penalty will provide a degree of objectivity and uniformity that may not be easily achievable under other systems. MSHA recognizes that these proposed provisions represent a new approach to the agency's enforcement program and welcomes all suggestions to best implement the "minimum penalty" system.

C. *Section 100.3 Determination of penalty; regular assessment.* This section provides a formula for the application of the six statutory criteria to violations for which the assessment of a minimum civil penalty would be inapplicable. The formula is used in determining the appropriate initial proposal of a civil penalty for a violation. Changes are proposed in the formula for five of the six criteria under this section. The formula is an administrative tool used by MSHA to determine initial assessments. Therefore, the proposed revisions to the formula woud not affect the proposal of penalties in cases contested before the Mine Safety and Health Review Commission.

The sixth criterion (§ 100.3h) involves consideration of the effect of the proposed penalty on the operator's ability to continue in business. This criterion allows the Office of Assessments to reduce a proposed penalty assessment where its imposition will adversely affect an operator's ability to continue in business. Commenters did not suggest changes for this criterion, and MSHA believes that it is effectively applied under the current rules.

1. *Section 100.3(b) The appropriateness of the penalty to the size of the operator's business.* Under the current formula system, up to 15 penalty points can be given for this criterion. Up to 10 points are available for mine size and the remaining 5 points are applied for the size of the controlling entity. Generally, the size of a controller is considered under this criterion when an entity owns such a substantial interest in a mining operation that it is in a position to exercise a significant degree of control over the operation's business affairs. There are separate penalty tables for coal, metal and nonmetal mines, and controlling entities.

Several commenters stated that the size of the controlling entity should not be considered when evaluating the appropriateness of the penalty to the size of the business involved. Some of these commenters recommended that the tables for size of the controller be eliminated from the rules and that the points currently assigned from that portion of the formula be incorporated into the mine size tables. The commenters asserted that each mine is run as an individual profit center which is independent of a controller for its operational status. Consequently, it is their belief that a mine should not be penalized based upon the size of its controlling entity. MSHA disagrees. The fact that a mine may be for most business purposes an independent operational entity does not, and should not, relieve the business organization as a whole from participating in safety and health matters affecting individual mines. In the preamble to the current rules, MSHA stated that "business judgments affecting health and safety may be made at various levels of a business structure and * * * penalties must be such as to encourage management at all levels to respond positively to health and safety concerns." (43 FR 23514, 23515, May 30, 1978). In the legislative history of both the 1969 and 1977 Acts, Congress expressed an intent to "place the responsibility for compliance with the Act and the regulations, as well as the liability for violations on those who control or supervise the operation of * * * mines as well as on those who operate them" (S. Rep. No. 91–411, 91st Cong. 1st Sess. 39 (1969); S. Rep. No. 95–181, 95th Cong. 1st Sess. 40 (1977)). Upper level management decisions such as those affecting capital expenditures, the basic nature and scope of a corporate safety and health program, the hiring of top mine management officials, and other policy matters have a profound effect upon safety and health conditions at individual mines. Penalties should be sufficient to influence such decision-making. Therefore, MSHA proposes to retain the controlling entity aspect of the formula for the size criterion.

Some commenters questioned the agency's rationale for measuring size in terms of "tonnage" for coal mines, while using "hours worked" for metal and nonmetal mines. The principal purpose of the size criterion is to help assure a penalty of a sufficient amount to serve as an economic incentive for future compliance by the operator. Over the past several years the mine and controlling entity size of coal operations have been measured by tonnage. MSHA has found this indicator to be a fair guide to the comparative sizes of coal operations for compliance incentive

purposes, and believes that "hours worked" would not present a more accurate picture of relative size for these purposes.

Tonnage, however, is not usually a useful indicator of size for metal and nonmetal mines because of the vast differences in the commodities mined within that segment of the mining industry. In some instances large volumes of material are mined for only a few ounces of a marketable commodity. In others, nearly one hundred percent of the mined material is marketable. In addition, the costs of production and the market prices may vary markedly within the metal and nonmetal industry. For these reasons, MSHA believes that an annual tonnage measurement of metal and nonmetal operations would not enable the Office of Assessments to fairly evaluate the economic impact of a proposed penalty on each operator. It has been MSHA's experience that the annual hours worked is the only available guide to the relative size of metal and nonmetal operations that can be applied both consistently and equitably throughout the metal and nonmetal industry.

Under the current rules, violations of independent contractors are assessed through the special assessment provision (§ 100.4). MSHA believes that independent contractors should be subject to all aspects of Part 100 including the minimum penalty and formula assessment provisions as well as the special assessment procedures. The new information requirements, procedures for service of documents and enforcement guidelines for independent contractors set forth in 45 FR 44494 now enable MSHA to more effectively integrate independent contractors into the entire penalty assessment process. The proposed rule would add a third size table for independent contractors who have been issued citations under the new MSHA policy and procedures. The proposed table would determine the size of the independent contractor based upon the annual hours worked at all mines. Only work performed by independent contractors at mining operations will be considered in determining size. MSHA believes that the annual hours worked most appropriately reflect the comparative sizes of independent contractors. Because information concerning controlling entities is not readily available for all independent contractors at this time, it would be impracticable to consider the size of controlling entities as a separate factor in the assessment process. However, the information concerning the total annual hours worked at all mines will provide satisfactory means to evaluate whether a proposed penalty will have a sufficient economic impact on an independent contractor to serve as an incentive for future compliance. MSHA is particularly interested in receiving suggestions and comments on the proposed size table as it would apply to independent contractors.

2. *Section 100.3(c) History of previous violations.* MSHA has received a substantial number of comments and recommendations concerning this aspect of the formula. Presently, a total of 20 penalty points may be attributed to a violation on the basis of this criterion. Up to 15 points may be given based upon the average number of violations assessed at the mine per inspection day during the preceding 24 months. The remaining 5 points may be assigned based upon the average number of violations assessed at the mine per year in the preceding 24 months.

The average number of violations per inspection day represents the total number of days spent on enforcement activity at the mine by MSHA inspectors during the preceding 24-month period, divided into the total number of assessed violations which have not been vacated or dismissed. Several commenters urged MSHA to base the determination of what constitutes an "inspection day" on not only the time spent by the authorized representatives of the Secretary (AR), but by all other persons accompanying an AR who may point out violations, such as inspector-trainees or Miners' representatives. Since an AR has received the requisite training to conduct inspections and identify alleged violations and is the only individual who may issue citations or orders, it is MSHA's view that it would be inappropriate to consider time spent by other people. Therefore, MSHA proposes to retain the current approach to computing inspection days.

The average number of violations assessed per year represents the total number of violations cited during the preceding twenty-four month period divided by two. Many commenters urged that the 5-point scale for the average number of violations assessed per year should be eliminated because this scale fails to consider factors which may create a high average number of violations but which should not result in the assignment of a high number of prior history points. For example, large operations will generally have a higher annual volume of violations than small operations. However, this fact is not always indicative of the comparative safety and health records of those operations and should not be a sufficient basis for making distinctions in the assignment of history points. Therefore, MSHA is proposing to eliminate the application of this scale to production operators. Instead, the assessment of points for history of previous violations would be based only upon a mine's average violations per inspection day which MSHA believes presents a more accurate picture of a mine's history of violations.

In contrast, the nature of most services performed by independent contractors at mines does not lend itself to a violations per inspection day scale. Independent contractor activities are frequently closely integrated into the overall mining operation. Therefore, inspections often encompass both operations at the same mine and the complexities of segregating inspection time for purposes of computing inspection days are substantial. As a result, MSHA proposes to establish a 20-point scale based upon the average number of violations assessed per year for independent contractor operators. The use of a separate scale for independent contractors will remove the burden that some production operators believe results from having independent contractor violations counted in their history of previous violations. MSHA is especially interested in receiving comments on this aspect of the proposed rule.

Some of the commenters who suggested that the 5-point scale for average annual violations be dropped also recommended that these 5 points be added to the 15-point scale. These commenters believed that the current scale fixes an unrealistically low average number of violations per inspection day as a basis for assessing the maximum number of penalty points and that the scale should be extended. The statistics do reflect some clustering of violations at the 15-point level. Therefore, MSHA proposes to provide a single 20-point scale for average number of violations per inspection day as the sole basis for determining all production operator's history of previous violations. To receive the maximum point total, an operator would have to receive an average of 2.2 violations per inspection day.

Under the current assessment system, MSHA includes in its prior violation history computations "all violations assessed that have not been vacated or dismissed." Many commenters strongly urged MSHA not to include in such computations any violations, which although assessed, are still in the adjudicatory process and may

ultimately be dismissed or vacated. MSHA agrees that a greater measure of fairness would be attained if violation history points are based only upon those violations which have been finally adjudicated. Therefore, under the proposed rule, only violations which have become final would be considered in determining an operator's history of previous violations. Violations which have been assessed a "minimum penalty" would also be eliminated from an operator's history of previous violations under the proposed rule.

In addition to the suggestions discussed above for revising the penalty point scales for history of previous violations, MSHA has been urged to change its formula to award negative points where an operator's history of previous violations has been maintained at a low level. In view of the fact that one of the primary goals of these revisions is to provide additional incentives for mine operators to prevent hazardous conditions, MSHA has considered whether such a system would provide some measure of incentive for operators to make extra efforts to reduce violations. MSHA believes at this point in the rulemaking process that any reduction of a penalty assessment should be linked to the particular circumstances of each violation, rather than to the overall history of violations at the mine. This philosophy is reflected in the proposed minimum penalty provisions. There may be some incentive for operators to improve their violations record if future penalties were subject to reduction based on low prior history. However, the benefit of such an approach may be offset if it resulted in the reduction of penalties for violations which pose a significant threat to safety and health and clearly demand substantial penalties. MSHA invites further comments on this issue.

3. *Section 100.3(d) Negligence.* Under the current formula system, a total of up to 25 points may be assessed for negligence. From 1 to 20 points may be assessed for ordinary negligence and from 21 to 25 points for gross negligence.

The Act places the primary responsibility to prevent the existence of unsafe working conditions on operators. Under the current rule, negligence is measured on a sliding scale from 0–25 and is designed to penalize the operator to the extent that the violation was caused by its failure to exercise care to protect miners from mine safety or health hazards. When applying this criterion, MSHA evaluates what the operator did to prevent or correct the conditions or practices which caused the violation. This process takes into consideration the risk of harm to miners, and whether the operator could have reasonably anticipated the harm in the particular circumstances. Based on this evaluation, MSHA determines whether the operator exercised adequate care to attempt to avoid the violation. In evaluating the danger posed to miners which could have been reasonably anticipated, the gravity of the violation must be considered. The seriousness of any potential injury, the number of miners exposed and the probability of any harm to miners are all factors in considering the diligence that the operator should have exerted to protect the miners in any given circumstances.

MSHA believes that the more grave the risks posed by a hazard the greater the degree of care that must be exercised to prevent or correct the hazard. Therefore, the negligence section of the existing rule has been clarified by the proposal to reflect this relationship between the gravity and negligence criteria. MSHA also proposes to delete the current terms "gross" and "ordinary" as characterizations of degrees of negligence since they represent complex legal concepts which may not enable operators to adequately evaluate their conduct.

It was also suggested that violations which result from gross negligence and which create a potential for injury should be assessed the statutory maximum penalty amount of $10,000. MSHA agrees that an emphasis on serious safety and health problems should be reflected in the penalty system by further assuring that operators are assessed substantial penalties for more serious violations. Generally, MSHA has been waiving the use of the formula and making a special assessment for certain violations with findings of high negligence and high gravity such as in the cases of unwarrantable failure to comply orders or violations involving fatalities or serious injuries. MSHA proposes to add other high negligence and high gravity violations to the classes of cases reviewed under the special assessment procedures. MSHA believes that the individual case review afforded by these procedures will more equitably and effectively address these special circumstances. (For further discussion of this issue, see "Special Assessment" section of the preamble).

Commenters also asserted that zero negligence points should be assigned to violations which did not result from any operator negligence. MSHA assigns zero negligence points to such violations and proposes to continue this practice. The proposed minimum penalty provision will also have an effect on this criterion.

Many comments on the existing criterion were directed at the manner in which the criterion is administratively applied rather than its Part 100 formula. These comments urged that MSHA's assessment officials rely, to the maximum extent possible, on the inspector's statement which accompanies each citation in determining the degree of negligence in each case. As a result of such comments and after an intensive internal review by the agency, MSHA has taken administrative steps to assure that inspectors' statements will be the primary basis for the application of the negligence criterion.

4. *Section 100.3(e) Gravity.* Under the current gravity criterion, a maximum of 30 penalty points may be assigned. The formula for gravity contains three scales of up to 10 points each for: (1) Probability of occurrence; (2) the seriousness of an injury if it occurred or where to occur; and (3) the number of persons affected.

Many of the comments concerning this criterion have been addressed in the discussion of the new "minimum penalty" provision being proposed. There were also comments suggesting changes in the probability of occurrence scale.

MSHA believes that there can be further refinement of the scales within the existing gravity criterion. In the present Part 100, the first gravity scale measures the probability of occurrence of the event against which a standard is directed. The measure is based upon whether the event's occurrence is "improbable," "probable," "imminent" or has "occurred." Commenters suggested that the term "imminent" relates more to time than probability. MSHA agrees that some ambiguity exists and proposes to substitute the term "highly likely" for "imminent." To further clarify the gravity scale, MSHA also proposes to add the new category of "no likelihood." This category is intended to apply to technical type violations which pose no risk to miners. MSHA also proposes to substitute the term "unlikely" for "improbable" to apply to situations where the hazard's occurrence is remote but possible, and substitute "likely" for the term "probable." Also, for consistency the proposed rule would change the existing schedule's title to "Likelihood of occurrence" instead of "Probability of occurrence." As proposed, the new terms would range as follows: No likelihood, unlikely, likely, highly likely, and occurred.

In the 1977 Act, Congress placed increased emphasis on the protection of miners from occupational health hazards and diseases. In the legislative history, Congress noted in particular the Federal Metal and Nonmetallic Mine Safety Act's lack of a provision specifically tailored or relating to the development of health standards or carrying out health research projects (H.R. Rep. No. 95-312, 95th Cong. 1st Sess. 10-13, 16-17 (1977)). In consideration of this increased emphasis, MSHA believes that the penalty system should be revised to address the legislative intent of the 1977 Act.

Section 101(a)(6)(A) of the Act requires that standards dealing with toxic substances and harmful physical agents "assure * * * that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life." Many health violations involving exposure to toxic substances or harmful physical agents have effects on the health of miners which may not be reflected by an assessment which is based on the existing gravity scales.

Due to the inherent differences between safety and health violations of this type, MSHA proposes two new separate gravity scales for violations involving employee exposure to toxic substances or harmful physical agents. The existing scale which measures the number of employees affected by the violation would continue to be applied to all violations. MSHA believes that the proposed changes should eliminate any ambiguity or uncertainty that is created by the application of the existing scales to employee exposure to toxic substance and harmful physical agent violations.

The first proposed scale would measure the potential adverse effect of the toxic substance or harmful physical agent on human health. This scale is intended to classify the potential harm to human health created by the toxic substance or harmful physical agent to which the employee was overexposed. A potential of ten points could be assigned to a violation under this proposed scale. There would be three categories which would be assigned penalty points as follows: Low Risk Effects (1-3 points); Medium Risk Effects (4-6 points); and High Risk Effects (7-10 points). MSHA would determine how to categorize a substance or agent based on the health effect normally associated with it and the extent to which it tends to impair human health. For example, where the toxic substance or harmful physical agent involved a health violation which has a potential to cause life threatening, life-shortening, or permanent and totally disabling consequences, the violation would be classified as having a high risk effect. Similarly, where there is a potential for a partial disability or a severe illness which does not threaten life, the violation would be classified as having a medium risk effect. When the toxic substance or harmful physical agent involved in the violation has the potential for causing only a mild to moderate and reversible impact on health, the violation would be classified as having a low risk effect.

The second scale measures in multiples of the allowable exposure limit, the magnitude of recorded overexposure. The extent by which the threshold limit value for the toxic substance or harmful physical agent was exceeded is an important factor in assessing the gravity of a violation since the degree of overexposure bears a direct relationship to the potentiality for harm. A maximum of 10 penalty points could be assigned under the proposed scale as follows: recorded exposures exceeding 3 times the permissible limit will receive 8-10 penalty points; those greater than 2 up to 3 times the limit will receive 5-7 penalty points; and those greater than 1 up to 2 times the limit will receive 2-4 points. This scale is premised on the assumption that the greater the threshold limit value is exceeded, the more the likelihood of harm and the more severe the effect on health.

The third scale would be identical to the current scale used to assign points based on the number of personnel affected except the scale would be revised to evaluate the number of persons *potentially* affected. This change would more appropriately reflect the nature of health hazard exposures.

The existing inspector's statement which accompanies each citation and order would be revised to reflect the proposed factors for evaluating violations involving exposure to toxic substances and hazardous physical agents.

MSHA solicits comments with respect to the proposed revisions which create separate gravity scales for health violations involving exposure to toxic substances or harmful physical agents.

5. *Section 100.3(f) Demonstrated good faith of the operator.* Under the existing formula, negative points from minus one to minus ten can be awarded for rapid compliance, zero points for normal compliance, and positive points from one to ten can be added for lack of good faith. Negative points are those which are subtracted from the point total in determining the number of penalty points attributable to a particular violation.

Numerous comments were directed at the application of the "good faith' criterion. Many of the criticisms were directed at the manner in which MSHA applies this aspect of the formula rather than at the formula itself. It was stated that there often appears to be a reluctance to award "rapid compliance" points unless "extraordinary" efforts are made by the operator to abate the violation. MSHA agrees that the statute does not require extraordinary efforts by an operator for good faith abatement credit.

To assure a more equitable application of this aspect of the formula, MSHA proposes to make several revisions. An operator would automatically receive minus 3 points if the violation is abated within the time set for abatement, either as originally set or as extended. This would be considered "normal compliance." It is possible for a penalty to be reduced further, where an operator's abatement actions exceed normal compliance expectations. An operator would be awarded between minus 4 and minus 10 points for "rapid compliance" if;

—The violation is abated before the time that is set by the inspector, either originally or as extended, *or*

—The violation is abated within the time set (i.e., normal compliance) and special efforts have been made to abate, such as the assignment of additional personnel to the abatement effort or the voluntary removal of personnel from the affected area.

No change would be made in the assessment of points for lack of good faith.

MSHA believes that these proposed changes will be responsive to the vast majority of commenters who feel that Congress intended the agency to give credit to operators who achieve a timely abatement and who make special efforts to do so. These proposed changes should act as a further incentive for operators to devote maximum effort and resources to the prompt abatement of hazards.

6. *Section 100.3(g) Penalty conversion table.* After the six statutory criteria have been considered and the penalty points applied according to the formula, a total is derived by adding the points assessed under each criterion. Under the existing regulation, the penalty conversion table converts this point total into a dollar amount which constitutes the monetary penalty for the

particular violation. The proposal does not change this provision.

Representatives of one segment of the metal and nonmetal mining industry suggested that there be separate penalty tables based upon "commodity groups." These commodity groups would be determined based upon the selling price of the commodity and the applicable penalty table would reflect the differences in selling price between the commodity groups. For example, where the selling price of a commodity such as sand and gravel is three dollars per ton, the penalty for a particular violation which had been assessed 20 penalty points might be 30 dollars; whereas a commodity such as coal with a selling price of 40 dollars per ton, might be assessed 90 dollars for the same violation.

MSHA is not persuaded at this point in the rulemaking process that the linking of penalty amounts to commodity groups is a viable option. MSHA questions the principle underlying this option. It is not apparent a one hundred dollar penalty necessarily has more serious adverse consequences (and therefore acts as a more effective incentive) to an operator whose product sells for five dollars per ton than to an operator whose product sells for 50 dollars per ton. MSHA believes that there are factors at least as critical as the selling price of the product which must be taken into account. To determine the actual effect of a monetary fine on a particular operation it would be necessary to evaluate such things as profitability of the operation, comparative capital expenditures, transportation costs, labor costs, and other market influences. When appropriate, MSHA already considers such factors under the existing regulation when applying the statutory criterion of the effect of the penalty on the operator's ability to continue in business. MSHA is interested in receiving further comment addressing these issues.

7. *Section 100.5 Special Assessments.* Under certain types of circumstances, an appropriate penalty assessment cannot be derived using the formula contained in § 100.3. The Office of Assessments may then determine the amount of the proposed penalty through the special assessment process. Generally, special assessments occur where the nature or seriousness of a violation is not fully addressed by using the formula. When a special assessment does occur, it is based upon the six statutory criteria and is supported by narrative findings. Mine operators cited for a specially assessed violation still retain all the conference, hearing, and appeal rights which exist for violations assessed under the formula system.

Some commenters believed that the rule should spell out the instances requiring special assessment with greater particularity. Other commenters were under the impression that once a violation fell within designated categories, a special assessment would be mandated. MSHA agrees that the categories considered under the special assessment provision, and the process of screening violations within those categories for a potential special assessment should be more clearly defined. Initially, it should be emphasized that neither the nature nor seriousness of a particular violation automatically initiates a special assessment. Under both the current regulation and the proposed rules, certain types of violations are first individually reviewed to determine whether a regular or special assessment is proper. When this review discloses that the violation can be appropriately addressed by the formula, it is returned for a regular assessment.

For the purpose of clarifying the categories of violations considered for a special assessment, MSHA proposes to require that an individual review to determine whether a violation should be specially assessed occur in the following instances:

(1) Significant and substantial violations at a mine that has been determined to have a pattern of violations;

(2) Violations involving fatalities and serious injuries;

(3) Violations involving an unwarrantable failure to comply with mandatory health and safety standards;

(4) Operation of a mine in the face of a closure order;

(5) Failure to permit an authorized representative of the Secretary to perform an inspection or investigation;

(6) Violations for which individuals are personally liable under the Act;

(7) Violations involving an imminent danger; or

(8) Violatons involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances.

The first six listed categories are already set out in the existing special assessment section (§ 100.4). The seventh and eighth categories of violations are also currently subject to special assessment as a matter of policy, but are not explicitly articulated in the existing § 100.4. Under the proposal, when the Office of Assessments elects to waive the use of the assessment formula for cases involving unique aggravating circumstances, the operator would be notified that a special assessment is contemplated and afforded an opportunity to submit additional information for consideration.

Several of the existing categories which are currently considered for special assessment have been deleted. Under the proposal, discrimination violations under section 105(c), failure to abate a violation within the prescribed period, and violations by designated independent contractors would not automatically be individually reviewed for a special assessment. MSHA believes that in most instances, other sufficient sanctions would exist either under the Act or the proposed rule for these classes of violations.

In addition to the proposed changes, MSHA has administratively reviewed the special assessment procedure. As a result, new emphasis has been placed on achieving greater consistency in the dollar amounts of specially assessed penalties and more details will be provided in the narrative findings.

III. Drafting Information

The principal persons responsible for drafting this proposed rule are Frank A. White, Mine Safety and Health Administration; and Inga A. Watkins and William B. Moran, Office of the Solicitor, Department of Labor.

IV. Executive Order 12044

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044 and the Department of Labor's final guidelines for implementing the Executive Order (44 FR 5570, January 28, 1979).

Dated: November 4, 1980.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

It is proposed to revise Subchapter P, Part 100 of Chapter I, Title 30 of the Code of Federal Regulations as set forth below:

SUBCHAPTER P—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

PART 100—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

Sec.

100.1 Scope and purpose.
100.2 Applicability.
100.3 Determination of penalty; regular assessment.
100.4 Determination of penalty; minumum assessment.
100.5 Determination of penalty amount special assessment.

100.6 Procedures for assessment of civil penalties; initial review and conferences.
100.7 Issuance of notice of proposed penalty; notice of contest.
100.8 Service.

Authority: Secs. 105, 110, 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164), and sec. 307 of the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. 95-164).

§ 100.1 Scope and purpose.

This proposed rule sets forth the criteria and procedures for the proposed assessment of civil penalties under sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Act). It is the purpose of these rules to provide a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations, and to maximize the incentives for mine operators to prevent and correct hazardous conditions.

§ 100.2 Applicability.

The criteria and procedures contained in this part would be applicable with respect to all initial reviews and proposed assessments issued on or after the effective date of these regulations. The Office of Assessments, Mine Safety and Health Administration, United States Department of Labor, shall review each citation and order and shall make proposed assessments of civil penalties.

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* The amount of the civil penalty proposed in a regular case shall be based upon the formula set forth in this section. The formula is based on the general criteria described in sections 105(b) and 110(i) of the Act. These criteria are as follows:

(1) The appropriateness of the penalty to the size of the business of the operator charged;

(2) The operator's history of previous violations;

(3) Whether the operator was negligent;

(4) The gravity of the violation;

(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(6) The effect of the penalty on the operator's ability to continue in business.

The penalty amount in a regular case shall be determined by first assigning the appropriate number of penalty points to the violation for each of the criteria by using the schedules set forth in paragraphs (b) through (f) of this section. The number of penalty points assigned for all criteria will then be totalled. This total point accumulation will be converted into a penalty amount by using the penalty conversion table in paragraph (g) of this section.

(b) The appropriateness of the penalty to the size of the operator's business. The appropriateness of the penalty to the size of the operator's business is calculated on both the size of the mine cited and the size of the controlling entity of which the mine is a part and may account for a maximim of 15 penalty points. The size of the mine is taken into account by selecting the appropriate number of penalty points from the table contained in paragraph (b)(1)(i) of this section in the case of a coal mine or paragraph (b)(1)(ii) of this section in the case of a metal/nonmetal mine. The size of the controlling entity is taken into account by selecting the appropriate number of penalty points from the table contained in paragraph (b)(2)(i) of this section in the case of a coal mine or paragraph (b)(2)(ii) of this section in the case of a metal/nonmetal mine. Where the operator is designated as an independent contractor, the size of the business is taken into account by selecting the appropriate number of penalty points from the table contained in paragraph (b)(3)(i) of this section.

(1)(i) Size of Coal Mine.

Annual tonnage of mine	Penalty points
Under 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 to 2 million	9
Over 2 million	10

(ii) Size of metal/nonmetal mine.

Annual hours worked at mine	Penalty points
Under 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

(2)(i) Size of controlling entity—coal mine.

Annual tonnage of controlling entity—coal mine	Penalty points
Under 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

(ii) Size of controlling entity—metal/nonmetal mine.

Annual hours worked—controlling entity—metal/nonmetal mine	Penalty points
Under 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

(3)(i) Size of independent contractor.

Annual hours worked at all mines	Penalty points
Under 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

As used in subparagraphs (1), (2), and (3) of this paragraph the terms "annual tonnage" and "annual hours worked" means tonnage produced and hours worked in the previous calendar year or in the case of a mine opened or owned less than one full calendar year the tonnage and hours worked prorated to an annual basis.

(c) *History of previous violations.* Previous history means all violations which have been finally adjudicated. Violations which receive the minimum assessment under § 100.4 and are timely paid are not included as part of the previous history. The history of previous violations may account for a maximum of 20 penalty points, which are derived from the following schedules:

(1) Average number of violations assessed per inspection day in the preceding 24 months:

Violations per inspection day	Penalty points
Under 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0.7	4
Over 0.7 to 0.9	6
Over 0.9 to 1.1	8
Over 1.1 to 1.3	10
Over 1.3 to 1.5	12
Over 1.5 to 1.7	14

Violations per inspection day	Penalty points
Over 1.7 to 1.9	16
Over 1.9 to 2.1	18
Over 2.1	20

(2) For independent contractors: average number of violations assessed per year in the preceding 24 months:

Number of violations at all mines	Penalty points
1 to 5	0
6 to 10	2
11 to 15	4
16 to 20	6
21 to 25	8
26 to 30	10
31 to 35	12
36 to 40	14
41 to 45	16
46 to 50	18
Over 50	20

(d) *Negligence.* Negligence is committed or omitted conduct which falls below a standard of care established by law to protect persons against the risks of harm. The standard of care established under the Act is that the operator of a mine owes a high degree of care to the miners. A mine operator is required to be on the alert for conditions and hazards in the mine which affect the safety or health of the employees and to take the steps necessary to correct or prevent such conditions or practices. For purposes of assessing a penalty under this part, failure to do so is negligence on the part of the operator. The degree of care required of an operator will vary with the circumstances. An operator's exercise of care should increase with the risk posed to miners by a mining activity. The Office of Assessments will evaluate the degree of care exercised by an operator based on the danger to miners which was known or could have been reasonably anticipated to be created by the circumstances under which each unsafe condition or practice occurred. In determining the number of points to be assigned to a violation, the Office of Assessments will consider whether the operator demonstrated the extent of care due in the particular circumstances. This criterion may account for a maximum of 25 penalty points, depending on the specific facts involved.

(i) If the operator could not have reasonably predicted or known of the violation or the violation occurred due to circumstances beyond the operator's control, no negligence points will be assigned.

(ii) If the operator failed to take reasonable measures to prevent or correct the condition or practice that caused the violation and which should have been known to exist; the violation will be assigned between 1–20 penalty points, depending on the gravity and the steps taken by the operator to prevent or correct the condition from occurring.

(iii) If the operator demonstrated a reckless disregard of a mandatory safety or health standard by causing the cited condition or practice or if the operator failed to correct an unsafe condition or practice which was known to exist; the violation will be assigned between 21–25 penalty points, depending on the gravity and the steps taken by the operator to prevent or correct the condition from occurring.

(e) *Gravity.* This criterion may contribute a maximum of 30 penalty points. The points will be derived from the following schedules:

(1) Violations of mandatory standards, except health standards involving exposure to toxic substances or hazardous physical agents.

(i) Likelihood of the occurence of the event against which a standard is directed may account for a maximum total of 10 penalty points using the listed definitions and schedules.

Likelihood of occurrence	Penalty points
No likelihood	0
Unlikely	2
Likely	5
Highly likely	7
Occurred	10

(ii) Severity of injury if it occurred or were to occur, using the listed definitions and the following schedule, may account for a maximum of 10 penalty points.

Severity of injury or illness normally expected	Penalty points
No lost work days	0
Lost work days or restricted duty	3
Permanently disabling	7
Fatal	10

Types of injury or illness expected if the event caused or could cause injury or illness are defined as follows:

No lost work days. All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.

Lost work days. Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.

Permanently disabling. Any injury or illness which results in the total or partial loss of use of any member or function of the body.

Fatal. Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.

(iii) Number of personnel potentially affected if event occurred or were to occur.

Number of persons potentially affected	Penalty points
0	0
1	1
2	2
3	4
4 to 5	6
6 to 9	8
More than 9	10

(2) Violations of mandatory health standards involving employee exposure to toxic substances or hazardous physical agents.

(i) Potential adverse health effects of toxic substances or harmful physical agents may account for a maximum of 10 penalty points.

Potential adverse health effects from exposure to toxic substances or harmful physical agents	Penalty points
High risk effect	7–10
Medium risk effects	4–6
Low risk effects	1–3

(ii) Magnitude of overexposure is measured by the extent by which the recorded concentration exceeded the threshold limit value for harmful physical agents or toxic substances.

Multiple of threshold limit value	Penalty points
Greater than 3 times the limit	8–10
Greater than 2 and up to 3 times the limit	5–7
Greater than one and up to 2 times the limit	2–4

(iii) Number of potentially overexposed personnel in work area where violation was measured:

Number of persons potentially affected	Penalty points
0	0
1	1
2	2
3	4
4 to 5	6
6 to 9	8
More than 9	10

(f) *Demonstrated good faith of the operator charged in attempting to achieve rapid compliance.* This criterion awards negative points for normal and rapid compliance efforts in achieving abatement, and can contribute a

maximum of 10 points as indicated in the following schedule and definitions:

Degree of good faith	Penalty points
Rapid	-10 to -4
Normal	-3
Lack of good faith	1 to 10

In determining the operator's good faith in attempting to achieve rapid compliance, the following definitions apply:

Rapid compliance. There is demonstrated evidence that the operator abated the violation before the time set by the inspector, either originally or as extended, or abated the violation within the time set and special efforts have been made to abate.

Normal compliance. The operator abated the violation by the time set by the inspector, either originally or as extended.

Lack of good faith. The operator has been untimely and has not shown diligence and effort in attempting to abate the violation.

(g) *Penalty conversion table.* The penalty conversion table shall be used to convert the accumulation of penalty points to the appropriate assessment.

Penalty Conversion Table

Points	Penalty
10 or less	$20
11	22
12	24
13	26
14	28
15	30
16	32
17	34
18	36
19	38
20	40
21	44
22	48
23	52
24	56
25	60
26	66
27	72
28	78
29	84
30	90
31	98
32	106
33	114
34	122
35	130
36	140
37	150
38	160
39	170
40	180
41	195
42	210
43	225
44	240
45	255
46	275
47	295
48	305
49	325
50	345
51	370
52	395
53	420

Penalty Conversion Table—Continued

Points	Penalty
54	445
55	470
56	500
57	530
58	560
59	590
60	620
61	655
62	690
63	725
64	760
65	800
66	840
67	880
68	920
69	960
70	1,000
71	1,050
72	1,100
73	1,150
74	1,200
75	1,250
76	1,300
77	1,400
78	1,500
79	1,600
80	1,700
81	1,900
82	2,100
83	2,300
84	2,500
85	2,700
86	3,000
87	3,400
88	3,800
89	4,200
90	4,600
91	5,000
92	5,500
93	6,000
94	6,500
95	7,000
96	7,500
97	8,000
98	8,500
99	9,000
100	10,000

(h) *The effect on the operator's ability to continue in business.* It is initially presumed that the operator's ability to continue in business will not be affected by the proposed assessment. The operator may submit information to the Office of Assessments concerning the business financial status to show that payment of the proposed assessment will affect the ability to continue in business. If the information provided by the operator indicates that the proposed assessment will adversely affect the ability to continue in business, the Office of Assessment may reduce the penalty.

§ 100.4 Determination of penalty; minimum assessment.

A minimum assessment of $20 shall be imposed as the civil penalty in a regular case where a violation is abated in good faith and:

(a) A total of four or fewer penalty points are assessed for gravity; or

(b) A total of zero penalty points for negligence and seven or fewer penalty points for gravity are assessed.

§ 100.5 Determination of penalty amount; special assessment.

The Office of Assessments may elect to waive in whole or in part the use of the assessment formula contained in § 100.3 or the minimum penalty assessment contained in § 100.4 if it determines that conditions surrounding the violation warrant such a waiver. Although an effective penalty can generally be derived from the formula in the usual case, some types of violations may be of such a nature or seriousness that it is not possible to arrive at an appropriate penalty by resorting only to the formula. Accordingly, the following categories will be individually reviewed to determine whether a special assessment should be made:

(a) Significant and substantial violations at a mine that has been determined to have a pattern of violations;

(b) Violations involving fatalities and serious injuries;

(c) Unwarrantable failure to comply with mandatory health and safety standards;

(d) Operation of a mine in the face of a closure order;

(e) Failure to permit an authorized representative of the Secretary to perform an inspection or investigation;

(f) Violations for which individuals are personally liable under the Act;

(g) Violations involving an imminent danger; and

(h) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances. When it is determined by the Office of Assessments that a special assessment is appropriate, such special assessments shall take into account the six criteria enumerated in § 100.3(a) and all findings shall be in narrative form.

§ 100.6 Procedures for assessment of civil penalties; initial review and conferences.

(a) All citations which have been abated and all closure orders, regardless of termination or abatement, will be promptly referred by MSHA to the Office of Assessments for a determination of the fact of the violation and the amount, if any, of the penalty to be proposed.

(b) The Office of Assessments shall make an initial review of the citation or order and shall immediately serve, by regular mail, a copy of the results of the initial review, including the formula computation made by the Office, upon the party to be charged and the miners or their representatives at the mine.

(c) Upon receipt of the results of the initial review, all parties shall have ten days within which to either request a

conference or to submit additional evidence for consideration. The Office of Assessments shall provide a return mailing card with the results of the initial review which will permit any party to: (1) Request a conference; (2) request to participate in and be notified of the time and place of a conference requested by any other party; or (3) submit additional facts. To request a conference, a party must either make reference on the mailing card or immediately contact the appropriate assessment office to indicate the date and time proposed for the requested conference. All conferences shall be held at the appropriate assessment field office unless that office agrees to another location.

(d) It is within the sole discretion of the Office of Assessments to conduct a conference or deny a request for a conference and, if a conference is to be conducted, to determine the nature of the conference.

(e) All conferences shall be conducted within 33 days of the service of the results of the initial review by the Office of Assessments unless it is not feasible to conduct a conference within that period and the party requesting a conference demonstrates to the Office a substantial likelihood that a conference will result in a suitable resolution of the issues involved in the case. However, under no circumstances may a conference be conducted or evidence considered later than 30 days after the issuance of a proposed penalty under § 100.7(a) or after the date the Office of Assessments receives a timely notice of contest under § 100.7(b).

(f)(1) The Office of Assessments will consider all relevant information submitted in a timely manner by all the parties with respect to the alleged violation. When the facts warrant a finding that no violation occurred, a penalty will not be proposed.

(2) If a conference is conducted, the parties may submit any additional relevant information relating to the alleged violation, either prior to or at the conference. To expedite the conference, the official assigned to the case may contact the parties to discuss the issues involved prior to the conference.

(g) With respect to those issues which are resolved either as the result of a conference or based upon information submitted to the Office of Assessments, payment of any amount agreed upon must be received by the Office within 30 days from the date of receipt of the proposed penalty by the party charged under § 100.7(b). Acceptance by the Office of Assessments of payment tendered by the party charged will close the case.

§ 100.7 Issuances of notice of proposed penalty; notice of contest.

(a) A notice of proposed penalty will be issued and served by certified mail upon the parties under the following circumstances:

(1) Upon the failure of any party to file a timely response to the results of the initial review;

(2) Upon the completion of a conference or upon review of timely submitted information for review by the Office of Assessments;

(3) Upon the expiration of 33 days from the service of the results of the initial review in a case in which no conference can be held within such 33 day period.

(b) Upon receipt of the notice of proposed penalty, the party charged shall have 30 days to notify the Office of Assessments in writing that it wishes to contest the proposed penalty. The Office shall provide a return mailing card with each notice of proposed penalty to allow the party charged to request a hearing before the Federal Mine Safety and Health Review Commission under section 105 of the Act. Such a request should be sent to the field assessment office listed on such notification. When the Office of Assessments receives the notice of contest, it shall immediately forward the case to the Office of the Solicitor, and shall immediately advise the Commission of such notice. No proposed penalty which has been contested before the Commission shall be compromised, mitigated or settled except with the approval of the Commission.

(c) The failure to contest the proposed penalty within 30 days of receipt of notice thereof shall result in the proposed penalty being deemed a final order of the Commission and not subject to review by any court or agency.

§ 100.8 Service.

(a) All operators are required by 30 CFR 41.11 (notification of legal identity) to file with the Mine Safety and Health Administration the name and address of record of the operator. All representatives of the miners are required by 30 CFR Part 40 to file with the Mine Safety and Health Administration the mailing address of the person or organization acting in a representative capacity. Initial findings and proposed penalty assessments delivered to those addresses shall constitute service.

(b) If any of the parties choose to have these documents mailed to a different address, the Office of Assessments must be notified in writing of the new address. Delivery to this address shall constitute service.

(c) Service for operators who fail to file under 30 CFR Part 41 will be upon the last known business address, as recorded with the Mine Safety and Health Administration.

[FR Doc. 80-34896 Filed 11-6-80; 8:45 am]
BILLING CODE 4510-43-M

federal register

Friday
November 7, 1980

Part XII

Department of Health and Human Services

Health Care Financing Administration

Alcoholism Services; Health Financing Research and Demonstration Grants; Special Solicitation

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Health Financing Research and Demonstration Grants; Special Solicitation; Alcoholism Services

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Final notice.

SUMMARY: This notice announces that grant funds are available for demonstration projects on the effectiveness of providing alcoholism services under the Medicare and Medicaid programs in free-standing residential and outpatient centers and halfway houses utilizing non-physician personnel. HCFA will fund approximately five grants to encourage States, non-profit provider consortia, and other non-profit organizations to study the feasibility of providing outpatient alcoholism services as effectively as in an inpatient hospital setting, and at lesser cost. HCFA offers these grants in conjunction with the National Institute on Alcohol Abuse and Alcoholism of the Department. This solicitation contains information about demonstration requirements, application procedures, and amount and duration of grant awards.

CLOSING DATE FOR APPLICATIONS: All grant applications must be received by 4:30 p.m., January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew Solarz, Health Care Financing Administration, Office of Research, Demonstration, and Statistics, Office of Demonstrations and Evaluations, Area 1–E–5, Oak Meadows Building, 6340 Security Boulevard, Baltimore, Maryland 21207, (301) 594–0397.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with HCFA's **Federal Register** notice of February 25, 1980 (45 FR 12362), which stated that special solicitations would be announced periodically.

Availability of Grants

A. General

This special solicitation announces the HHS initiative to fund demonstration projects to study the effectiveness of providing alcoholism services under the Medicare and Medicaid programs in settings which are less expensive than hospitals. The current statutes and policies governing these programs have encouraged inpatient hospital treatment of alcoholism, and discouraged potentially lower cost alternatives such as halfway houses and free-standing residential and outpatient centers.

In conjunction with the National Institute on Alcohol Abuse and Alcoholism, HCFA's Office of Research, Demonstrations and Statistics is seeking to fund projects which will encourage States, non-profit consortia, and other non-profit organizations to test the feasibility of providing alcoholism treatment through less expensive residential and outpatient services utilizing non-physician personnel (see General Policy Considerations below).

If an applicant proposes a project that would involve Medicaid recipients, the application must be developed in cooperation with the single State agency which administers the Medicaid program and with the State Alcoholism Authority. If a project would involve both Medicare beneficiaries and Medicaid recipients, the applicant must submit two applications, with the application for the Medicare portion of the project submitted directly to HCFA. Only the State Medicaid agency may apply for that portion of a project that involves Medicaid recipients. The State agency applications must be made under Section 1115(a) of the Social Security Act, which authorizes the Secretary to waive State Medicaid plan requirements and to reimburse cost no otherwise Federally matchable in order to enable State Medicaid agencies to carry out significant demonstration projects. For section 1115 projects, the States must share in the costs of the projects. Costs for Medicaid services must be shared on the basis of each State's medical assistance matching rate. In addition, States must share at least 5 percent of the administrative costs of projects.

All applicants must show compliance with State certification, licensing requirements, and areawide clearances. Applicants for projects under section 402(a) of the Social Security Amendments of 1967 must meet any qualifications specified in that section.

The eligibility criteria for this demonstration relate to: (1) The umbrella applicant; (2) treatment facilities included in the application; and (3) the geographical site where services will be provided. Since the grantees will have responsibility for coordination of the treatment facilities, we are interested in receiving applications from umbrella entities that have organizational experience with Medicare and Medicaid.

Typical applicants may include:

1. A state Alcoholism Authority representing a consortium of providers.
2. A State Medicaid agency that is willing to contract with local providers

either directly or through one of the other applicant types from this list.

3. A county or city alcoholism agency.

4. A consortium of providers with one major coordinating provider that will carry overall responsibility for organization and implementation of the project.

5. A State, county, or city governmental department that will assume responsibility for the overall management and coordination of the participating treatment facilities.

6. An academic or research institution that has interest and experience in alcoholism services development in the geographical area proposed for the demonstration.

7. A State, regional, county or city medical society or foundation that has a demonstrated knowledge of both the Medicare and Medicaid programs and alcoholism services providers in the geographical site.

8. A tribal or other non-profit organization, agency, or group providing services to a designated population of American Indians or Alaskan Natives.

9. A non-profit voluntary health agency.

We expect at least one application to show that the proposed site includes a substantial population of American Indians or Alaskan Natives. If the site has special treatment programs related to such a population, the applicant should show how these programs will be incorporated in the demonstration.

B. Authorities

The authorities for these grants are:

- Sections 1110 and 1115(a) of the Social Security Act.
- Section 402(a) of the Social Security Amendments of 1967 as amended by Section 222(b) of the Social Security Amendments of 1972.

C. Regulations

General policies and procedures that govern the administration of all HHS grants are located in 45 CFR Part 74. All applicants are urged to review the uniform grants requirements established in those regulations.

General Policy Considerations

As noted above, current statutes and policies governing the Medicare and Medicaid programs have encouraged alcoholism treatment in hospital inpatient units and discouraged lower cost alternative free-standing residential and outpatient services. It is the purpose of these demonstrations to encourage States, non-profit provider consortia, and other non-profit organizations to provide alcoholism treatment in the Medicare and Medicaid programs through effective but less expensive free-standing residential and outpatient services that utilize non-physician personnel.

The goals of this grant demonstration project may be summarized as follows:

a. To test the potential value of providing payment for alcoholism treatment services to Medicare beneficiaries and Medicaid recipients in free-standing inpatient and outpatient centers and halfway houses.

b. To evaluate the performance of non-physician personnel providing alcoholism treatment in the above settings.

c. To test means of developing the awareness and involvement of beneficiaries and recipients in alcoholism treatment services.

d. To assess the cost and effectiveness of these alcoholism treatment services as compared to: (1) Matched site and population cohorts not in the demonstration areas; (2) retrospective data; and (3) related studies.

e. To establish a basis for legislative, regulatory, and policy changes that will result in the most cost effective alcoholism treatment for Medicare beneficiaries and Medicaid recipients.

The Medicare and Medicaid programs constitute a potential major source of funding for treatment of alcoholic individuals. However, both programs contain restraints that limit the availability of treatment for alcoholism. For example, the Medicare program allows hospitals, skilled nursing homes, and home health agencies to be reimbursed as providers of services, but does not give provider status to free-standing outpatient or residential treatment facilities. Under Medicare, the primary coverage is for hospitalization and related care, and for physicians' and certain other medical services furnished to the ill. No specific provisions are made for the treatment of alcoholism. Consequently, coverage provided for alcoholism treatment services focuses on care in the traditional acute care institutional settings.

Because services for alcohol or drug abuse problems are not specifically mentioned in the Medicaid law, each State determines whether alcoholism treatment should be covered under its Medicaid program. A few States reimburse for care provided by non-physicians and some States recognize services at halfway houses. However, many State Medicaid programs do not actively support treatment and rehabilitation services for alcoholism.

This demonstration grant program will use a sample of sites and providers

designed to test, in five geographic sites, the effect of extending Medicare and Medicaid coverage for alcoholism treatment through the use of lower cost alternatives to present treatment providers. Alcoholism treatment will be covered and paid for under a uniform coverage schedule prescribed for all sites. The demonstrations will test as lower cost alternatives the use of the following types of providers in the Medicare and Medicaid programs: (1) Free-standing inpatient providers, (2) free-standing outpatient providers, and (3) halfway houses. The demonstrations will use existing alcoholism treatment providers that have the necessary resources to furnish basic alcoholism services and that have the potential for expanding their service capacity to the Medicaid or Medicare eligible population. We will not fund the development of new free-standing primary care providers in these demonstrations.

This will be a coordinated demonstration using common design and evaluation methods in all five sites. The selected grantees must be prepared to comply with uniform billing, accounting, and data gathering procedures, and participate in a common training program. This demonstration grant program is intended to operate for a maximum of 4 years. The first 6 to 9 months will be used to develop technical capacity for billing, make provider reimbursement arrangements, train grantee and provider personnel, and install the evaluation component of the project.

Each applicant must be able to act as an umbrella grantee for 12 to 18 providers in the geographic area. Each application must include a minimum of 12 treatment facilities in the following approximate ratio: *1* free-standing center to *2* halfway houses to *3* free-standing outpatient centers.

The uniform coverage schedule to be employed at all sites includes:

—Alcohol Detoxification Services—No Limit.

—Inpatient Alcoholism Treatment Services—Up to 30 days per calendar year, including care in a halfway house.

—Outpatient Alcoholism Treatment Services—Up to 45 visits per calendar year.

Depending on facility and staff capabilities and client need, halfway houses may furnish one or all of the above services to their residents.

Within its geographical test area, the demonstration project will seek to document the effect of this extended coverage on the costs of services, the impact on the services of other traditional health care providers reimbursed through Medicare and Medicaid, and the impact on the client population. The demonstrations are also expected to explore questions regarding program standards and techniques for developing the awareness of beneficiaries of the demonstration's treatment facilities.

Number and Size of Awards

Approximately five umbrella grantees will be selected, each grantee representing a different geographic location. As a total study population of approximately 75 treatment facilities is being sought, each umbrella grantee will represent at least 12 and no more than 18 facilities. These participating facilities must be of the types specified above (see General Policy Considerations).

Grant funds will cover administrative costs only. The Medicare and Medicaid programs will cover the allowed service costs as appropriate. For fiscal year 1981, anticipated funding includes up to a total of $1 million for administrative costs. Funding of applications recommended for approval is subject to the availability of funds.

Duration of Funding

This is a multiple year demonstration and will be funded up to a maximum of 4 years. However, we award grant funds for 1 year at a time. If the original grant is awarded as a multiple year project, we may continue a grant on a non-competing basis. After the initial year, continuation of funding will be contingent on the availability of future year funds, the ability of grantees to meet prior year project objectives, and the continued relevance of the project to HCFA programs. Application for continuation of funding must be made at least 3 months before the expiration of the grant period.

Waivers

It is possible to waive certain Federal statutes and regulations for the Medicare and the Medicaid programs to allow elements of service to be delivered and paid for that are normally not a part of these health care programs. Projects requesting waivers must define the waivers which are required, state the specific waiver language, discuss the impact of the waivers on program expenditures (i.e. estimate service costs with and without the waiver), state the effect on Federal, State, and local laws and discuss the impact on beneficiaries enrolled in the project. Both Federal and State regulations govern the Medicaid program. Therefore, when a project is planned that will require the waiver of

Medicaid regulations, the State Medicaid agency must be the grantee.

Section 1115 Projects

Under section 1115(a)(1) of the Social Security Act, compliance with statutory State Medicaid plan requirements may be waived to enable a State Medicaid agency to carry out a significant demonstration project which will further the objectives of the Medicaid program.

All requirements of the Social Security Act, the Code of Federal Regulations, and other issuances that pertain to the Title XIX categorical (formula grant) program are applicable to a project approved under section 1115, except as specifically waived.

A State Medicaid agency should give special attention to the preparation of the budget. These budgets are substantially more extensive than the budget for other grant applications (see HCFA-PG-11A, Instructions for Completion of Federal Assistance Application Form HCFA-PG-11).

Selection Procedures

A. General Criteria for Funding New Projects

The Director of ORDS determines which projects will be funded. These decisions are based on the recommendations of technical review panels and on the comments of other Department components and outside individuals or organizations. More specifically, the criteria employed in arriving at the award decision include:

1. The adequacy of the demonstration design, methods, data base(s), and the experience and competence of the personnel;
2. Whether there is a realistic expectation that the demonstration objectives can be achieved within the time specified;
3. Whether the proposed project methodology is precise and consistent with what is generally agreed to be the state of the art;
4. Whether the overall budget, the personnel resources to be used, and the facilities and equipment are appropriate for the proposed project;
5. The documentation of a commitment of the parties necessary to the success of the planned project; and
6. Whether results would be of value in other State settings or are of national importance.

B. Standard Specific Project Requirements

In addition to meeting the general criteria described above, and the particular requirements for this special solicitation that are described in the detailed guidelines distributed with application kits, the applications for grants must meet standard specific requirements as follows:

1. The project goals and objectives must be clearly stated and must be measurable.
2. The demonstration design, including the questions to be addressed, and the methods and the data to be used, must be explicitly described. The methodology must be well defined and scientifically valid.
3. The tasks and milestones must be clearly described and scheduled and must include a schedule of reports to be submitted to HCFA.
4. Data that are collected under a HCFA grant must be available to HCFA or its agents. However, the applicant must ensure the confidentiality of any personally identifiable information collected under the auspices of any HCFA grant. (See item 12 below for more information about confidentiality.)
5. The application must include the qualifications and experience of the personnel and demonstrate how their qualifications make the individuals capable of performing the tasks in the project. The application must also specify how the personnel are to be organized in the project, to whom they report and how they will be used to accomplish specific objectives or portions of the project.
6. The application must specify the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.
7. The budget must be developed in detail with justifications and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results. Applicants must directly share in the costs of the projects (see Application Procedures, Item (D), Grant Policies, below).

Funds will not be available for construction, remodeling, or the development of new providers. Funding will also not be available for project activities that take place before the applicant has received official notification of HCFA approval of the project.

8. Projects that require waivers (e.g., those under section 1115 of the Social Security Act and section 402(a) of the Social Security Amendments of 1967) must define the services, list the waivers, discuss the implications if such waivers are granted, state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project.

In addition, these types of applications must estimate the amount

of program and administrative expenditures that will occur under the waivers and compare these expenditures to those that currently occur in the programs. Particular emphasis must be given to this element.

9. Plans for utilization of the project's results must be discussed.

10. The application must assure the applicant's willingness to comply with the human subjects' regulations (45 CFR Part 46) by the inclusion of a completed form "Protection of Human Subjects" (HEW-596, Rev. 2-80, expected to be reprinted as HHS-596 when existing supplies run out). Because meeting this requirement may require substantial effort, applicants should obtain information about the details involved as early in the planning process as possible.

11. While Office of Management and Budget Circular No. A-95 review does not apply to this demonstration grant, all applicants must nevertheless determine whether review by the appropriate State and areawide clearinghouse is required. This review is designed to promote coordination of Federal and federally assisted programs and projects with each other and with State and local plans and programs.

12. The application must detail plans to protect the confidentiality of all information tending to identify individuals served or studied under the project. The plans must specify that such information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project, and that informed written consent of the individual must be obtained for any disclosure.

C. Other Requirements

When a project is completed, each applicant must submit a final report. The report must contain a project description, and must, at a minimum, include:

1. Identification of the project director, grant number, grantee, and title of the project;

2. A description of initial hypotheses and objectives, the study methodology and findings;

3. A list of the copies of publications resulting from the project;

4. Acknowledgement of the support received from HCFA and a disclaimer to the effect that the findings do not necessarily reflect policies of HCFA; and

5. An executive summary of the report in camera ready format.

Application Procedures

A. Application Forms and Kits

Standard application forms and guidance for the completion of the forms are available from: Health Care Financing Administration, Project Grants Branch, Area E-1, Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207, (301) 594-3342.

State Medicaid agencies must request the section 1115 application kit. All applicants must state that they need the application kit for the alcoholism demonstration.

B. Submitting Applications

When submitting the application, applicants must include a statement in the project title block that the application is in response to the special solicitation on alcoholism services. This designation must also be marked clearly on the outside of the package/envelope.

Applications should be addressed to the Projects Grants Branch at the address shown in A above.

C. Closing Date and Time

The closing date for grant applications under this special solicitation is January 15, 1981. The closing time is 4:30 p.m. Eastern Standard Time.

Applications that are mailed must be postmarked (first class mail) by the closing date and received by HCFA before the independent review team concludes its review. Because of the importance of the postmark, we encourage applicants to request the post office to provide a legible postmark. Applications that are hand-delivered must be received by the closing date and time.

D. Grant Policies

Projects are funded through a competitive process based on a choice of applications submitted in response to this notice. All grantees are expected to share directly in the costs of the projects. This sharing must be at least 5 percent of the total project cost or must be institutional cost sharing when the applicant has such cost sharing established with the Department of Health and Human Services.

For section 1115 projects, the amount the single State agency will be expected to provide generally must be at least 5 percent of special Federal project funds for administration costs. This amount cannot be in-kind.

Other policies, including grantee responsibilities, awarding and payment procedures, special provisions and assurances, are described in the

following documents that are included in the application kit:

—HCFA Grants Policy Handbook, DHEW Publication No. (HCFA) 79-04001 (Rev. 6/79).

—45 CFR Part 74, Administration of Grants.

Secs. 1110, 1115, 1875, Social Security Act (42 U.S.C. 1310, 1315, 1395ll); sec. 402(a), Social Security Amendments of 1967 (42 U.S.C. 1395(b-1))

(Catalog of Federal Domestic Assistance Program No. 13,766 Health Financing Research, Demonstrations and Experiments)

Dated: October 30, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 80-34771 Filed 11-6-80; 8:45 am]

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