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federal register

Tuesday
January 6, 1981

Highlights

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

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Highlights

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MEETINGS ANNOUNCED IN THIS ISSUE

CONSUMER SUBJECT LISTING

The following items have been identified by the issuing agency as documents of particular consumer interest. This listing highlights the broad subject area of consumer interest followed by the specific subject matter of the document, issuing agency, and document category.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 46, No. 3
Tuesday, January 6, 1981

Presidential Documents

Title 3—

The President

Proclamation 4812 of December 31, 1980

Proclamation To Terminate Proclamation No. 4600 of September 21, 1978, Implementing Certain Temporary Tariff Concessions

By the President of the United States of America

A Proclamation

1. On July 26, 1978, the President, pursuant to his authority in section 101(a) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2111(a)), entered into a temporary trade agreement with India. This agreement provided for temporary modifications in the rates of duty for certain products to be implemented in stages. The agreement further provided for its termination upon initial implementation of an overall agreement on tariffs pursuant to the Multilateral Trade Negotiations (MTN).

2. On September 21, 1978, the President issued Proclamation No. 4600 implementing the July 26 temporary trade agreement, which proclamation modified the Tariff Schedules of the United States (TSUS) by inserting the necessary rates of duty in the appendix thereto and provided for further staged reductions of such rates.

3. On January 1, 1980, the United States, by Proclamation No. 4707, of December 11, 1979, initially implemented its overall agreement on tariffs reached during the MTN as provided in Schedule XX to the Geneva (1979) Protocol to the General Agreement on Tariffs and Trade. Pursuant to section 125(e) of the Trade Act (19 U.S.C. 2135(e)), the tariff concessions granted in the temporary agreement have continued in force for a one-year period which will terminate at the close of December 31, 1980.

4. After complying with the requirements of section 125(f) of the Trade Act (19 U.S.C. 2135(f)), I have decided to terminate Proclamation No. 4600, pursuant to the authority of section 125(b) of the Trade Act (19 U.S.C. 2135(b)), effective January 1, 1981.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including Title I and section 604 of the Trade Act (19 U.S.C. 2483), do proclaim that:

(1) Proclamation No. 4600, identified in the second recital of this proclamation, is terminated at the close of December 31, 1980.

(2) Part 2C of the Appendix to the Tariff Schedules of the United States (TSUS) is deleted, with the result that articles presently subject to the column 1 rates of duty provided in part 2C of the Appendix to the TSUS shall be subject to the rates of duty established for such articles in schedules 1–7 of the TSUS by Proclamation No. 4707 of December 11, 1979. These rates shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1981.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

[FR Doc. 81-473
Filed 1-2-81; 3:07 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12258 of December 31, 1980

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

1–101. Each advisory committee listed below is continued until December 31, 1982.

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior).

(b) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(c) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation).

(d) President's Council on Physical Fitness and Sports; Executive Order No. 11562, as amended (Department of Health and Human Services).

(e) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services).

(f) Presidential Advisory Board on Ambassadorial Appointments; Executive Order No. 11970 (Department of State).

(g) Committee on Selection of Federal Judicial Officers; Executive Order No. 11992 (Department of Justice).

(h) President's Advisory Committee for Women; Executive Order No. 12050 (Department of Labor).

(i) United States Circuit Judge Nominating Commission; Executive Order No. 12059, as amended (Department of Justice).

(j) United States Tax Court Nominating Commission; Executive Order No. 12064 (Department of Treasury).

(k) Judicial Nominating Commission for the District of Puerto Rico; Executive Order No. 12084 (Department of Justice).

(l) President's Export Council; Executive Order No. 12131 (Department of Commerce).

(m) Peace Corps Advisory Council; Executive Order No. 12137 (Peace Corps).

(n) Advisory Committee on Small and Minority Business Ownership; Executive Order No. 12190 (Small Business Administration).

(o) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12195 (Department of Labor).

(p) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor).

1–102. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act which are applicable to the committees listed in Section 1–101 of this Order, except that of reporting annually to Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

1–103. The following Executive Orders, that established committees which have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12022, as amended, establishing the National Commission for the Review of Antitrust Laws and Procedures.

(b) Executive Order No. 12054, as amended, establishing the President's Commission on Foreign Language and International Studies.

(c) Executive Order No. 12061, as amended, establishing the Small Business Conference Commission.

(d) Executive Order No. 12063, establishing the United States Court of Military Appeals Nominating Commission.

(e) Executive Order No. 12078, as amended, establishing the President's Commission on World Hunger.

(f) Executive Order No. 12093, as amended, establishing the President's Commission on the Holocaust.

(g) Executive Order No. 12103, as amended, establishing the President's Commission on the Coal Industry.

(h) Executive Order No. 12130, establishing the President's Commission on the Accident at Three Mile Island.

(i) Executive Order No. 12157, establishing the President's Management Improvement Council.

(j) Executive Order No. 12195, establishing the the President's Commission on United States-Liberian Relations.

1–104. Executive Order No. 12110 is superseded.

1–105. This Order shall be effective December 31, 1980.

Jimmy Carter

THE WHITE HOUSE,
December 31, 1980.

[FR Doc. 81–474
Filed 1–2–81; 3:08 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12259 of December 31, 1980

Leadership and Coordination of Fair Housing in Federal Programs

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide under the leadership of the Secretary of Housing and Urban Development, in accordance with Section 808 of the Act of April 11, 1968, as amended (sometimes referred to as the Federal Fair Housing Act or as Title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3608, for the administration of all Federal programs and activities relating to housing and urban development in a manner affirmatively to further fair housing throughout the United States, it is hereby ordered as follows:

1–1. Administration of Programs and Activities Relating to Housing and Urban Development.

1–101. All programs and activities of Executive agencies, including agencies which exercise regulatory responsibility, relating to housing and urban development shall be administered in a manner affirmatively to further fair housing.

1–2. Responsibilities of Executive Agencies.

1–201. The authority and responsibility for administering the Federal Fair Housing Act is vested in the Secretary of Housing and Urban Development.

1–202. The head of each Executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing as required by Section 808 of the Act of April 11, 1968, as amended (Title VIII of the Civil Rights Act of 1968), and for cooperating with the Secretary of Housing and Urban Development who shall be responsible for exercising leadership in furthering the purposes of the Act. As used in this Order, the terms "programs and activities" include programs and activities operated, administered or undertaken by the Federal government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility.

1–203. In carrying out the responsibilities in this Order the head of each Executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development comply with this Order.

1–3. Specific Responsibilities.

1–301. In implementing the responsibilities under Section 1–2 the Secretary of Housing and Urban Development shall:

(a) Develop guidelines for determining the categories of programs and activities relating to housing and urban development which are operated, administered, undertaken, controlled or regulated by Executive agencies.

(b) Promulgate regulations regarding programs and activities of Executive agencies related to housing and urban development which shall:

(1) describe an institutionalized method for analyzing the impact of housing and urban development programs and activities in promoting the goal of fair housing;

(2) describe the responsibilities and obligations in assuring that programs and activities are administered and executed in a manner affirmatively to further fair housing; and

(3) describe the responsibilities and obligations of applicants, participants and other persons and entities involved in housing and urban development programs and activities affirmatively to further the goal of fair housing.

(c) Coordinate Executive agency implementation of the requirements of this Order and issue standards and procedures regarding the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing.

1–302. Upon publication of guidelines by the Secretary of Housing and Urban Development under Section 1–301(a), each Executive agency shall provide the Secretary with a description of all programs and activities relating to housing and urban development within its jurisdiction.

1–303. Within 180 days of the publication of final regulations by the Secretary of Housing and Urban Development under Section 1–301(a) the head of each Executive agency shall publish proposed regulations providing for the administration of programs and activities relating to housing and urban development in a manner affirmatively to further fair housing, consistent with the Secretary of Housing and Urban Development regulations, and with the standards and procedures issued pursuant to Section 1–301(c). As soon as practicable, each Executive agency shall issue its final regulations. All Executive agencies shall formally submit all such proposed and final regulations, and any related issuances or standards to the Secretary of Housing and Urban Development at least 30 days prior to public announcement.

1–304. The Secretary of Housing and Urban Development shall review regulations, standards and actions under Sections 1–302 and 1–303 to ensure conformity with the purposes of the Federal Fair Housing Act and consistency among the operations of the various Executive agencies and shall make any comments with respect thereto on a timely basis.

1–305. In addition to the regulations and guidelines described in Section 1–301, the Secretary of Housing and Urban Development shall implement the Secretary's authority and responsibility for administering the Federal Fair Housing Act by promulgating regulations describing the nature and scope of coverage and the conduct prohibited.

1–4. Cooperative Efforts.

1–401. The Secretary of Housing and Urban Development shall:

(a) Cooperate with, and render assistance to, the heads of all Executive agencies in the formulation of policies and procedures to implement this Order and to provide information and guidance on the affirmative administration of programs and activities relating to housing and urban development and the protection of rights accorded persons by the Federal Fair Housing Act; and

(b) initiate cooperative efforts, including the development of memoranda of understanding between Executive agencies designed to provide for consultation and the coordination of Federal efforts to further fair housing through the affirmative administration of programs and activities relating to housing and urban development.

1–402. In connection with carrying out functions under this Order the Secretary of Housing and Urban Development is authorized to request from any Executive agency such information and assistance deemed necessary. Each agency shall, to the extent permitted by law, furnish such information and assistance to the Secretary.

1–5. Administrative Enforcement.

1–501. Each Executive agency shall be responsible for enforcement of this Order and, to the extent permitted by law, shall cooperate and provide records, data and documentation in connection with any other agency's investigation of compliance with provisions of this Order.

1–502. If any Executive agency concludes that any person or entity (including any State or local public agency) applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this Order or any applicable rule, regulation or procedure issued or adopted pursuant to this Order, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation and persuasion. An Executive agency need not pursue informal resolution of matters where similar efforts made by another Executive agency have been unsuccessful. In event of failure of such informal means, the Executive agency, in conformity with rules, regulations, procedures or policies issued or adopted by it pursuant to Section 1–3 hereof, shall impose such sanctions as may be authorized by law. To the extent authorized by law, such sanctions may include:

(a) cancellation or termination of agreements or contracts with such person, entity, or State or local public agency;

(b) refusal to extend any further aid under any program or activity administered by it and affected by this Order until it is satisfied that the affected person, entity, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this Order;

(c) refusal to grant supervisory or regulatory approval to such person, entity, or State or local public agency under any program or activity administered by it which is affected by this Order or revoke such approval if previously given;

(d) any other action as may be appropriate under its governing laws.

1–503. Findings of any violation under Section 1–502 shall be promptly reported to the Secretary of Housing and Urban Development. The Secretary of Housing and Urban Development shall forward this information to all other Executive agencies.

1–504. Any Executive agency shall also consider invoking appropriate sanctions against any person or entity where any other Executive department or agency has initiated action against that person or entity pursuant to Section 1–502 of this Order.

1–505. Each Executive agency shall seek the advice of the Secretary of Housing and Urban Development in this regard prior to a decision to initiate actions to invoke sanctions. Each such decision and the reasons therefor, shall be documented and shall be provided to the Secretary of Housing and Urban Development in a timely manner.

1–6. General Provisions.

1–601. Nothing in this Order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

1–602. All provisions of regulations, guidelines and procedures proposed to be issued by Executive agencies pursuant to this Order which implement nondiscrimination requirements of laws covered by Executive Order No. 12250 shall be submitted to the Attorney General for review in accordance with that Executive Order. In addition, the Secretary will consult with the Attorney General regarding all regulations, guidelines and procedures proposed to be issued under Sections 1–301, 1–302 and 1–303 of this Order to assure consistency with coordinated Federal efforts to enforce nondiscrimination requirements in programs of Federal financial assistance pursuant to Executive Order No. 12250.

1–603. Nothing in this Order shall affect the authority and responsibility of the Attorney General to commence civil actions in cases involving a pattern or practice of discrimination or raising an issue of general public importance under the Federal Fair Housing Act.

1–604. (a) Part IV and Sections 501 and 503 of Executive Order No. 11063 are revoked. The activities and functions of the President's Commission on Equal Opportunity in Housing described in that Executive Order shall be performed by the Secretary of Housing and Urban Development.

(b) Sections 101 and 502(a) of Executive Order No. 11063 are revised to apply to discrimination because of "race, color, religion (creed), sex or national origin." All departments and agencies shall revise regulations, guidelines and procedures issued pursuant to Part II of Executive Order No. 11063 to reflect this amendment to coverage.

(c) Section 102 of Executive Order No. 11063 is revised by deleting the term "Housing and Home Finance Agency" and inserting in lieu thereof the term "Department of Housing and Urban Development."

1–605. Nothing in this Order shall affect any rquirement imposed under the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Home Mortgage Disclosure Act (12 U.S.C. 2901 *et seq.*) or the Community Reinvestment Act (12 U.S.C. 2810 *et seq.*).

1–7. Report.

1–701. The Secretary of Housing and Urban Development shall submit to the President an annual report commenting on the progress the Department of Housing and Urban Development and other Executive agencies have made in carrying out requirements and responsibilities under this Executive Order.

Jimmy Carter

THE WHITE HOUSE,
December 31, 1980.

[FR Doc. 81–475
Filed 1–2–81; 3:09 pm]
Billing code 3195–01–M

Editorial Note: The President's statement of Dec. 31, 1980, on signing Executive Order 12259, is printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 1).

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2851

Increase in Fees and Charges in Destination Markets

Correction

In FR Doc. 80-39732 appearing on page 84755 in the issue of Tuesday, December 23, 1980, on page 84756, first column, second line of the footnote at the bottom, "quality" should read "quantity".

BILLING CODE 1505-01-M

7 CFR Part 2858

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the definitions of "Whey" and "Dry Whey" in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. This amendment will conform the definitions of "Whey" and "Dry Whey" to those set forth in the U.S. Standards for Dry Whey.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Richard W. Webber, Chief, Dairy Standardization Branch, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7473. The impacts related to the change of definitions for "Whey" and "Dry Whey" were addressed in the Final Impact Statement prepared in conjunction with the final rule for U.S. Standards for Dry Whey. A copy of this impact is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

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

Background

Manufactured dairy products (butter, dry milks and milk products, and cheese) which are covered by U.S. grade standards must be manufactured in dairy plants which have been inspected and found to comply with the criteria established in 7 CFR 2858, subpart B, to be eligible for USDA grading service. Once a plan has been approved, products may be offered for official grading.

United States standards are provided to define a specific product and to delineate levels of quality for that product. On April 22, 1980, the final rule revising the United States Standards for Dry Whey was published in the **Federal Register** (45 FR 26944-26947). In part, the final rule revised the definitions for "whey" and "dry whey". This revision of the definitions created an inconsistency between two USDA documents. Therefore, the definitions of whey and dry whey in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service must be amended to conform to those set forth in the U.S. Standards for Dry Whey.

It does not appear that any additional relevant information would be made available to the Administrator by allowing opportunity for filing of public comments in this proceeding. Therefore, preliminary notice and public rulemaking procedures are found to be impracticable and contrary to the public interest, and good cause is found for making this document effective less than 30 days after publication in the **Federal Register.**

In consideration of the foregoing, 7 CFR Part 2858, Subpart B, § 2858.805(a) and (b) is revised to read as follows:

§ 2858.805 Meaning of words.

* * * * *

(a) Whey. "Whey" is the fluid obtained by separating the coagulum from milk, cream, and/or skim milk in cheesemaking. The acidity of the whey may be adjusted by the addition of safe and suitable pH adjusting ingredients. Salt drippings (moisture removed from cheese curd as a result of salting) shall not be collected for further processing as whey.

(b) Dry Whey. "Dry Whey" is the product resulting from drying fresh whey which has been pasteurized and to which nothing has been added as a preservative. It contains all constituents, except moisture, in the same relative proportions as in the whey.

* * * * *

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

Done at Washington, D.C., on: December 29, 1980.

Donald L. Houston,
Administrator, Food Safety and Quality Service.

[FR Doc. 81-227 Filed 1-2-81; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 319

Definitions and Standards of Identity or Composition for "Country," "Country Style" or "Dry Cured" Hams and Pork Shoulders

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice of stay of effectiveness.

SUMMARY: The Agency has been judicially enjoined from enforcing portions of a regulation concerning "Country," "Country Style," and "Dry Cured" hams and pork shoulders.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Director, Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On January 18, 1977, the Department promulgated final regulations under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) establishing definitions and standards of identity for meat food products labeled as "country ham", "country style ham", or "dry cured ham", and "country pork shoulder", "country style pork shoulder", or "dry

cured pork shoulder" (9 CFR 319.106). These regulations were challenged in the United States District Court for the Western District of Tennessee.

On July 21, 1980, the Court entered an Order declaring that the temperature and time period provisions contained in the regulations were not adequately supported by the record. On November 17, 1980, the Court made final its Order of July 21, 1980, and enjoined the Department from enforcing, implementing or otherwise giving effect to those portions of the regulations. *Tennessee Valley Hams Inc.* v. *Bergland*, C.A. 78–1103 (W.D. Tenn., 1980).

Therefore, the Department announces that the temperature and time period provisions of 9 CFR 319.106, paragraphs (c)(5) and (c)(6), have not been in effect since November 17, 1980, and will not be enforced pending future Agency action in the matter. However, ham and pork shoulders must continue to be prepared in compliance with all other provisions of 9 CFR 319.106 in order to be labeled "country ham," "country style ham," or "dry cured ham," and "country pork shoulder," "country style pork shoulder," or "dry cured pork shoulder."

Done at Washington, D.C., on December 29, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 81–229 Filed 1–5–81; 8:45 am]

BILLING CODE 3410–DM–M

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9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

Rate Increase for Inspection Service; Correction

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule—correction.

SUMMARY: This document corrects a final rule published on October 3, 1980, by the Food Safety and Quality Service (FSQS) increasing the rates for overtime inspection, identification, certification, and laboratory services. FSQS inadvertently failed to include the legal authority citation for the rulemaking; therefore, this document adds the authority citation.

FOR FURTHER INFORMATION CONTACT: June P. Blair, Director, Finance Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6653.

SUPPLEMENTARY INFORMATION:

Exemption From Executive Order 12044

This final rule had been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and had been determined to be exempt from those requirements. Dr. Donald L. Houston made this determination because the Executive Order does not apply to matters relating to Agency management.

Background

On October 3, 1980, the FSQS published a final rule in the **Federal Register** (45 FR 65520–65521) amending the Federal meat and poultry inspection regulations by increasing the fees relating to overtime and holiday inspection, identification, certification, or laboratory services rendered to operators of official meat or poultry establishments, importers, or exporters by the FSQS. These fees were revised to reflect increased costs associated with these programs in the upcoming fiscal year in conformity with the requirements of the Federal Pay Comparability Act of 1970.

However, the FSQS inadvertently failed to include the legal authority citation for the rule. Therefore, this document corrects that oversight.

Accordingly, the legal authority citations for the various sections are as follows:

1. Section 307.5(a) (9 CFR 307.5(a)):

(41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92)

2. Section 350.7(c) (9 CFR 350.7(c)):

(41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92)

3. Sections 351.8, 351.9(a), 354.101(b) and (c), 355.12, and 362.5(c) (9 CFR 351.8, 351.9(a), 354.101(b) and (c), 355.12, and 362.5(c)):

(60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92)

4. Section 381.38(a) (9 CFR 381.38(a)):

(71 Stat. 447, 448, as amended, 21 U.S.C. 463, 468; 7 CFR 2.15(a), 2.92)

Done at Washington, D.C., on: December 29, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 81–228 Filed 1–2–81; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR 385 and 399

Expansion of Foreign Policy Control

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: This rule expands foreign policy controls on computers exported to government consignees in South Africa and Namibia, by removing an existing exception.

DATE: This rule is effective as of January 1, 1981, but may be further revised in light of any comments received. Comments must be received by March 9, 1981.

ADDRESS: Written comments (six copies when possible) should be sent to: Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Daniel E. Cook, Assistant to the Director, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–4159.

SUPPLEMENTARY INFORMATION:

Substance of Regulatory Changes: In accordance with the authority contained in section 6 of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401, *et seq.*) the Secretary of Commerce is expanding the existing foreign policy control on the export of computers to South African and Namibian government consignees. The Secretary of Commerce in consultation with the Secretary of State has determined that this expansion of controls will further significantly the foreign policy of the United States.

Currently there are foreign policy controls on computers that exceed certain performance levels. Effective January 1, 1980, computers exported to South African or Namibian government officials will be subject to foreign policy controls regardless of their performance level.

Rulemaking Requirements

Section 13(a) of the Act exempts regulations promulgated under it from public participation in rulemaking procedures of the Administrative Procedure Act. However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, they

are issued in interim form and public comments are requested. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218–7 (44 FR 2082, January 9, 1979) and the International Trade Administration Administrative Instruction 1–6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

The period for submission of comments will close March 9, 1981. No comments received after the close of the comment period will be accepted or considered by the Department in the development of final regulations. Public comments which are accompanied by a request that part or all of the material be treated confidentially for whatever reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record. Communications from agencies of the United States government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Records in this facility pertaining to these regulations may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the Export Administration Regulations (15 CFR Part 368 *et seq.*) are amended as follows:

PART 385—SPECIAL COUNTRY POLICIES

Section 385.4(a)(9) is revised to read as follows:

§ 385.4 Country Group V.

(a) * * *

(9) A validated license is required for the export to government consignees of computers as defined in CCL entry 1565A. Applications for validated licenses will generally be considered favorably on a case by case basis for the export of computers that would not be used to support the South African policy of apartheid.

* * * * *

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

§ 399.1 Commodity control list; incorporation by reference.

* * * * *

Footnote 2 to 1565A in Supplement 1 to § 399.1 is revised to read as follows:

[2] Foreign policy export controls apply only to computer equipment destined for government consignees in the Republic of South Africa and Namibia.

(Secs. 6, and 13, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order 12214, 45 FR 29783 (May 6, 1980); Department Organization Order 10–3, 45 FR 6141 (January 25, 1980); International Trade Administration Organization and Function Order 41–1, 45 FR 11862 (February 22, 1980))

Issued in Washington, D.C., on December 31, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-40851 Filed 12-31-80; 5:06 pm]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 203

[Docket No. 79N-0186]

Prescription Drug Products That Require Patient Package Inserts; Cimetidine, Clofibrate, and Propoxyphene

Correction

In FR Doc. 80–36669, appearing on page 78514, in the issue of Tuesday, November 25, 1980, an incorrect telephone number was given in the paragraph **"FOR FURTHER INFORMATION CONTACT:"**. The telephone number now reading "301–433–4893" should have read "301–443–4893".

BILLING CODE 1505-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Chewable Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co., providing for safe and effective use of diethylcarbamazine chewable tablets for prevention of heartworm disease and control of ascarid infections in dogs.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, filed an NADA (120–327) providing for use of chewable tablets containing diethylcarbamazine equivalent to 60 milligrams of diethylcarbamizine citrate for dogs for preventing heartworm disease caused by *Dirofilaria immitis* and as an aid in the control of the ascarid *Toxocara canis*. The chewable tablet is similar to another tablet (nonchewable) that was reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) and published in the **Federal Register** of January 8, 1969 (34 FR 275). The NAS/NRC review concluded, and the agency concurred, that the drug is effective as an aid in treating ascarid infections in dogs and cats when administered at 25 to 50 milligrams per pound of body weight as a single dose with a repeat dose given after 10 to 20 days. Another product, diethylcarbamazine premix, is the subject of an NAS/NRC review published in the **Federal Register** of June 16, 1970 (35 FR 9869). The review concluded that the drug is probably effective, and FDA concluded it is effective, as an aid in the control and treatment of large roundworm (ascarid) infections in dogs when given as directed.

American Cyanamid submitted data from published literature using other diethylcarbamazine-containing drugs and new data from a controlled natural ascarid infection, a controlled artifical heartworm infection, and a palatability study to demonstrate that the new product is safe, effective, and palatable. The claim for heartworm disease is

granted based on the data and information in the published literature and the new study submitted. The agency granted a waiver from the requirements of 21 CFR 514.111(a)(5)(ii) for additional studies to provide substantial evidence of effectiveness. The claim for ascarid control is approved on the basis of the NAS/NRC reviews, the new study submitted, and the data and information in the published literature. The application is therefore approved and the regulations amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in 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, from 9 a.m. to 4 p.m., Monday through Friday.

The Director, Bureau of Veterinary Medicine, has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Director's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (21 CFR 25.1(f)(1)(ii)(*a*)), may be seen in the Dockets Management Branch (HFA–305), address above.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by redesignating § 520.620 as § 520.620a, and adding new §§ 520.620 and 520.620b to read as follows:

§ 520.620 Diethylcarbamazine oral dosage forms.

§ 520.620a Diethylcarbamazine.

(a) *Chemical name. N,N*-Diethyl-4-methyl-1-piperazine carboxamide.

(b) *Specifications.* Each pound of the drug contains 30 grams of diethylcarbamazine (as base).

(c) *Sponsor.* See No. 010042 in § 510.600(c) of this chapter.

(d) *Conditions of use.* (1) It is administered to dogs to aid in the continual control of large roundworms (*Toxocara canis)* and to aid in the prevention of heartworm disease (*Dirofilaria immitis).* In those areas where roundworms are suspected or known to be a problem, it is added to the daily diet. In those areas where heartworms are endemic, it is added to the daily diet at the beginning of the mosquito activity and treatment is continued throughout the mosquito season and for approximately 1 month thereafter.

(2) It is administered daily in meal or moist feeds as follows:

Weight of animal in pounds	Recommended amount per day	Dosage in milligrams
20	¼ level teaspoonful	32
50	½ level teaspoonful	70
100	1 level teaspoonful	149

(3) Dogs with established heartworm infections should not receive diethylcarbamazine until they have been converted to a negative status.

(4) For use only by or on the order of a licensed veterinarian.

§ 520.620b Diethylcarbamazine chewable tablets.

(a) *Specifications.* Each chewable tablet contains diethylcarbamazine equivalent to 60 milligrams of diethylcarbamazine citrate adsorbed on an inert resin base.

(b) *Sponsor.* See No. 010042 in § 510.600 of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 3 milligrams per pound of body weight daily.

(2) *Indications.* As an aid in the control of ascarid infections (*Toxocara canis*) and for the prevention of heartworm disease (*Dirofilaria immitis*) in dogs.

(3) *Limitations.* Do not use in dogs that may be harboring heartworms. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation is effective January 6, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 23, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-116 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the regulations to reflect a change of sponsor for a dichlorophene and toluene capsule product from Tutag Pharmaceuticals to Reid-Provident Laboratories, Inc. Tutag Pharmaceuticals filed a supplement to their new animal drug application (NADA) that provides for this change.

EFFECTIVE DATE: January 6, 1981

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Tutag Laboratories has filed a supplement to their new animal drug application for dichlorophene and toluene capsules (NADA 102–673) stating that as of April 25, 1980 all its rights in the NADA had been transferred to Reid-Provident Laboratories, Inc., 25 Fifth St. NW., Atlanta, GA 30308.

Under the Bureau of Veterinary Medicine's proposed policy regarding supplements to NADA's (December 23, 1977; 42 FR 64367) the intercorporate transfer of an NADA is a Category I change that does not require reevaluation of the safety and effectiveness data in the parent application.

The agency has determined pursuant to 21 CFR 25.24(d)(1) (proposed December 11, 1979; 44 FR 71742) 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 Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1); and numerically to paragraph(c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Reid-Provident Laboratories, Inc., 25 Fifth St. NW., Atlanta, GA 30308	000063

(2) * * *

Drug labeler code	Firm name and address
000063	Reid-Provident Laboratories, Inc., 25 Fifth St. NW., Atlanta, GA 30308

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.580 [Amended]

2. In Part 520, § 520.580(b)(2) is amended by deleting sponsor number "000124" and inserting in its place "000063".

Effective date. This amendment is effective January 6, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))

Dated: December 29, 1980.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 801-283 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone-Nifuroxime-Diperodon Hydrochloride Ear Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration amends the animal drug regulations to reflect the proper sponsor name for a new animal drug application providing for use of nitrofurazone-nifuroxime-diperodon hydrochloride ear solution for treating dogs.

EFFECTIVE DATE: November 23, 1979.

FOR FURTHER INFORMATION CONTACT: Robert S. Brigham, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 23, 1979 (44 FR 67113), the animal drug regulations were amended to reflect the change in the two sponsors, Norwich Pharmacal Co. and Eaton Labs. to Norwich-Eaton Pharmaceuticals, Division of Morton-Norwich Products, Inc. Although the regulations were amended to reflect this change, the amendments failed to include a revision of 21 CFR 524.1580a(b). This document corrects that omission.

§ 524.1580a [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 524.1580a *Nitrofurazone-nifuroxime-diperodon hydrochloride ear solution* is amended in paragraph (b) by deleting the phrase "No. 000035" and inserting in its place "No. 000149".

Effective date. November 23, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 29, 1980.

Leon C. Brunk,

Deputy Associate Director for Surveillance and Compliance.

[FR Doc. 81-281 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-80-902]

General; List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: March 2, 1981.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

§ 300.11. [Amended]

1. Paragraph (c) of § 300.11 is amended by adding the following names to the current list of attorneys-in-fact:

(c) * * *

Name and Region

Margaret G. Hitch, Los Angeles, California
Carmen I. Huertas, Los Angeles, California
Carol King, Los Angeles, California
Floyd McCutcheon, Los Angeles, California

(Section 309(d) of the National Housing Act, 12 U.S.C. 1723a(d), and section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., December 22, 1980.

Ronald P. Laurent,

President, Government National Mortgage Association.

[FR Doc. 81-323 Filed 1-5-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

29 CFR Part 2520

Reporting and Disclosure Under Title I of the Employee Retirement Income Security Act of 1974; Final Regulation Relating to Certain Simplified Employee Pensions

AGENCY: U.S. Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that prescribes an alternative method of compliance with the reporting and disclosure requirements of ERISA for certain simplified employee pensions other than those created by use of Internal Revenue Service Form 5305-SEP.

DATES: The effective date of the final regulation is February 6, 1981.

FOR FURTHER INFORMATION CONTACT: Charmain B. Gordon, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210 (202) 523-9593, or Robert Doyle, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-8515 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: On April 15, 1980, notice was published in the **Federal Register** (45 FR 25404) that the Department was adopting as a temporary regulation, and was considering a proposal to adopt as a final regulation, 29 CFR § 2520.104–49, under section 110 of the Act. The regulation prescribed an alternative method of compliance with the reporting and disclosure requirements of Part 1 of Title I of the Act (Part 1) for SEPs other than those created by use of IRS Form 5305–SEP, except in those cases where the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions will be made, and those IRAs are subject to internal provisions which prohibit withdrawals of funds by participants for any period of time.[1]

Three comments were received in response to the proposal. Upon consideration of the comments, the Department has determined to adopt the regulation in the form set forth herein.

A. Background

On September 25, 1979, the Department published in the **Federal Register** a notice of proposed rulemaking which described a proposed alternative method of compliance with the reporting and disclosure requirements of Part 1 for SEPs established by use of IRS Form 5305–SEP (Model SEPs) (44 FR 55205). Many of the comments on that proposed regulation indicated that Model SEPs were of limited utility to employers and requested that the Department provide an alternative method of compliance for SEPs other than Model SEPs. In the discussion of those comments in the preamble to the final regulation concerning Model SEPs (§ 2520.104–48 (45 FR 24866, April 11, 1980)), the Department noted that it believed that an alternative method of compliance might be appropriate for SEPs other than Model SEPs.[2] The Department therefore, published a proposed and temporary regulation § 2520.104–49 (45 FR 25404, April 15, 1980) containing an alternative method of compliance for certain SEPs other than Model SEPs. The proposal was made temporarily effective as of April 14, 1980 so that the alternative method of compliance would be available to employers who had established or wished to establish non-Model SEPs for calendar year 1979. Under the tax laws, such employers were entitled to make SEP contributions at any time until April 15, 1980. Although the regulation was made effective as of April 14, 1980, comments were solicited as to whether the temporary regulation should be adopted, with or without change, in final form.

B. Discussion of Comments

Three comments were received. One of the comments did not pertain to the regulation, but simply brought to the Department's attention certain administrative problems that have allegedly been encountered in administering SEPs. The other comments raised several points, which are discussed below.

(1) First, one commenter requested that the Department clarify that the requirements of section (a)(1) of the regulation would be satisfied if the SEP agreement itself was provided to participants. Section (a)(1) requires that specific information be furnished to employees regarding the SEP. That information includes the participaton requirements for the SEP; the allocation formula for the SEP; the name of an individual designated by the employer to furnish additional information regarding the SEP; and, under certain circumstances, a clear explanation of the terms of the IRA into which SEP contributions are made. In support of the suggestion that the SEP agreement be deemed to meet the disclosure requirements of (a)(1), the commenter noted that, under regulation 104–48, an employer using a Model SEP agreement provides specific information regarding the SEP to participants by simply furnishing them a copy of the completed Model SEP agreement.

Under sections 101(a) and 102(a)(1) of the Act, the administrator of any employee benefit plan must provide each participant covered under the plan a summary plan description that is "written in a manner calculated to be understood by the average plan participant". Regulation 104–48 permits the employer or other plan administrator to furnish participants a copy of the Model SEP agreement, rather than a summary thereof, because, in the Department's opinion, the Model SEP agreement is drafted in a manner calculated to be understood by the average plan participant. If a non-Model SEP agreement were drafted in a similar manner, the Department believes the non-Model SEP agreement could be used to satisfy the requirements of paragraphs (a)(1)(i) through (iii) of regulation 104–49. Since a SEP agreement would not ordinarily contain the information required in paragraph (a)(1)(iv), which requires specific information about the IRA, the agreement could not generally be used to meet the requirements of that paragraph. To clarify the regulation with respect to these matters, a new section (b)(1) has been added. The previous section (b) and section (c) have been redesignated accordingly.

(2) A commenter noted that the requirement in section (a)(1)(iii) of the regulation—that the name or title be given of an individual who is designated by the employer to provide additional information to participants concerning the SEP—has no parallel in the previously published Model SEP regulation. Although the commenter indicated that the requirement appeared to be a salutory one, the commenter objected that there was no reason to distinguish Model SEPs from non-Model SEPs in this regard. The commenter therefore argued that the requirement should be either eliminated from the non-Model SEP regulation, or added to the Model SEP regulation.

As discussed earlier, under regulation 104–48, an employer or other plan administrator must furnish participants a copy of the completed Model SEP agreement itself. This agreement necessarily contains the name of the person who signs the agreement on behalf of the employer. If the employer wishes to designate an individual for participants to contact other than, or in addition to, the individual signing the SEP agreement, the employer would, of course, be free to do so under the regulation.

In contrast to regulation 104–48, regulation 104–49 would not otherwise require that a document be provided which necessarily contains the name of any individual whom participants could contact. As a result, the Department

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[1] Non-Model SEPs which are subject to such prohibitions would, therefore, be subject to the reporting and disclosure requirements of Part 1. As the Department noted in the preamble to the proposed regulation, however, in the case of IRAs that are selected by an employer who establishes a SEP and that are subject to provisions that allow withdrawals but reduce earnings or impose other penalties, the SEP would be covered by this alternative method of compliance.

[2] Under section 110 of the Act, the Department may prescribe an alternative method for satisfying any requirement of Part 1 with respect to a pension plan or class of pension plans subject to that requirement if it determines:

(1) That the use of the alternative method is consistent with the purposes of Title I and that it provides adequate disclosure to participants and beneficiaries of the plan, and adequate reporting to the Department;

(2) That the application of that requirement would—

(A) increase the costs of the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or type of plan involved; and

(3) That the application of Part 1 would be adverse to the interests of plan participants in the aggregate.

believes it is appropriate to require, in the regulation relating to non-Model SEPs, the designation of an individual who could provide additional information.

(3) A commenter pointed out that the information required by paragraph (a)(1)(iv) might, in some cases, duplicate information provided to participants by the financial institution in which the participant's IRA is maintained. The commenter therefore suggested that the requirements of the paragraph should be satisfied if the financial institution in question provides the information specified therein. The Department believes that this comment has merit and, accordingly, a sentence has been added to the regulation in this regard.

(4) A commenter suggested that the disclosure requirements of sections (a)(1)(iv) and (a)(3) regarding the rate of return and other terms of the IRA into which SEP contributions are made should be consolidated and simplified. To achieve this, the commenter suggested that the two sections should be modified to require the employer or other plan administrator to state that "other IRAs * * * either may not be subject to such restrictions or may be subject to different restrictions or charges." Alternatively, the commenter proposed that a provision be added to the regulation indicating that paragraphs (a)(1)(iv) and (a)(3) would be satisfied if the participant were given a combined statement containing (1) the IRA's disclosure materials (which, pursuant to other federal regulations, may contain information on rates of return and restrictions on withdrawals), and (2) the sentence quoted above.

As to paragraph (a)(1)(iv) of the regulation, the Department does not believe that a general statement of the sort proposed by the commenter is an adequate substitute for the specific disclosure required by that paragraph. As to paragraph (a)(3), the commenter's proposed language fails to supply the information contained in subparagraphs (ii) and (iii) of that paragraph. The Department believes that this information is useful to participants and has therefore decided not to adopt the language proposed by the commenter.

With respect to the alternative proposal of the commenter, the Department has already noted above that the IRA's disclosure materials may, under some circumstances, be used to satisfy the requirements of paragraph (a)(iv). A general statement could, of course, be added to those materials to satisfy the requirements of paragraph (a)(3), although the statement proposed by the commenter would not be adequate for this purpose. However, it should be noted that there would be no need to add such a general statement to the IRA disclosure materials if the IRS Notice, discussed below, is supplied to participants, as the information contained in the Notice already contains this general information.

(5) Finally, one commenter requested that the regulation be clarified to state that an employer would not have to meet the disclosure requirements of paragraph (a)(1)(iv) of the regulation if the employer chose the institution in which IRA contributions were deposited (e.g. a savings and loan association), but left to the employee the choice as to which investment vehicle would be used at that institution (e.g. passbook account or certificate of deposit). As was noted above, section (a)(1)(iv) of the regulation requires specific information about the IRA to which employer contributions are made if the employer selects, recommends or substantially influences the choice of the IRA. In the Department's view, an employer would have to meet the disclosure requirements of paragraph (a)(1)(iv) of the regulation in the circumstances described by the commenter. However, as discussed above, in many cases the employer would be able to use the institution's existing disclosure materials for this purpose.

C. The IRS Notice

When regulation 104–49 was published on April 15, 1980, the Department indicated that the regulation had been developed in coordination with the IRS. The Department also noted that it anticipated publication by the IRS of a Notice containing information that would satisfy the requirements of paragraph (a)(2) of the regulation. In this regard, the information contained in the IRS Notice [3], in the Department's opinion, will meet the requirements not only of paragraph (a)(2), but also of paragraphs (a)(3), (a)(4) and (a)(5) of the alternative method of compliance.

In addition, we note that several changes have been made to paragraph (a)(6) of the regulation. Paragraph (a)(6)(ii) of the proposal, which required, in the case of a SEP that provides for integration with Social Security, that the administrator of the SEP furnish to the employee several examples of the effect integration would have on actual employer contributions under a SEP, has been modified. In place of the requirement that examples be included, the administrator of such a SEP will be required to furnish the employee in writing with a description of the effect that integration with Social Security would have on employer contributions under a SEP. In addition, paragraph (a)(6)(iii) has been added to make clear that an employee must be furnished with a copy of the integration formula itself. The Department believes that these revised disclosure requirements will be less burdensome for plan administrators than the requirements originally proposed, while providing adequate disclosure to plan participants.

It is the Department's opinion that the information contained in the Notice, which highlights the effect of integration with Social Security on employer contributions to SEPs, would satisfy the requirements of paragraph (a)(6)(ii), as modified.

D. Other Matters

The Department notes that the alternative method of compliance for non-Model SEPs relates solely to reporting and disclosure under Title I of the Act, and that nothing in the regulation relieves any person (including a fiduciary) from compliance with the fiduciary responsibility and other provisions of the Act.[4]

Pursuant to the requirements of section 110 of the Act, the Secretary makes the following determinations:

(1) that the use of the alternative method of compliance is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to participants and beneficiaries in the covered SEPs, and adequate reporting to the Secretary;

(2) that the application of the requirements of Part 1 would—

(A) increase the costs to the covered SEPs, or

(B) impose unreasonable administrative burdens with respect to the operation of such plans, having regard to the particular characteristics of those plans; and

(3) that the application of Part 1 would be adverse to the interests of participants in the covered SEPs in the aggregate.

E. Statuory Authority

The final regulation set forth below is adopted pursuant to sections 110 and

[3] Notice 81–1, I.R.B. 1981–2.

[4] If the assets of a SEP are used for the benefit of a party in interest or disqualified person with respect to that SEP (as defined in sections 3(14) of the Act and 4975(e)(2) of the Code) violations of sections 406 of the Act and 4975(c)(1) of the Code may occur. For example, if, in connection with the establishment and maintenance of a SEP, an employer directs its employees to open IRAs with a particular financial institution and in return for making SEP contributions to those IRAs the employer receives from that institution a loan or other benefits, such conduct would involve violations of sections 406(a)(1)(D) and 406(b) of the Act and 4975(c)(1) (D), (E) and (F) of the Code.

505 of the Act (Pub. L. 93–406, 88 Stat. 829, 851, 894, 29 U.S.C. 1030, 1135).

Accordingly, regulation 29 CFR 2520.104–49 is revised to read as follows:

§ 2520.104–49 Alternative method of compliance for certain simplified employee pensions.

Under the authority of section 110 of the Act, the provisions of this section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in Part 1 of Title I of the Act for a simplified employee pension (SEP) described in section 408(k) of the Internal Revenue Code of 1954 as amended, except for (1) a SEP that is created by proper use of Internal Revenue Service Form *5305–SEP*, or (2) a SEP in connection with which the employer who establishes or maintains the SEP selects, recommends or influences its employees to choose the IRAs into which employer contributions will be made and those IRAs are subject to provisions that prohibit withdrawal of funds by participants for any period of time.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter) or up to 90 days after the effective date of this regulation, whichever is later, the administrator of the SEP (generally the employer establishing or maintaining the SEP) shall furnish the employee in writing with:

(1) Specific information concerning the SEP, including:

(i) The requirements for employee participation in the SEP,

(ii) The formula to be used to allocate employer contributions made under the SEP to each participant's individual retirement account or annuity (IRA),

(iii) The name or title of the individual who is designated by the employer to provide additional information to participants concerning the SEP, and

(iv) If the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions under the SEP will be made, a clear explanation of the terms of those IRAs, such as the rate(s) of return and any restrictions on a participant's ability to roll over or withdraw funds from the IRAs, including restrictions that allow rollovers or withdrawals but reduce earnings of the IRAs or impose other penalties.

(2) General information concerning SEPs and IRAs, including a clear explanation of:

(i) What a SEP is and how it operates,

(ii) The statutory provisions prohibiting discrimination in favor of highly compensated employees,

(iii) A participant's right to receive contributions under a SEP-and the allowable sources of contributions to a SEP-related IRA (SEP–IRA),

(iv) The statutory limits on contributions to SEP–IRAs,

(v) The consequences of excess contributions to a SEP–IRA and how to avoid excess contributions,

(vi) A participant's rights with respect to contributions made under a SEP to his or her IRA(s),

(vii) How a participant must treat contributions to a SEP–IRA for tax purposes,

(viii) The statutory provisions concerning withdrawal of funds from a SEP–IRA and the consequences of a premature withdrawal, and

(ix) A participant's ability to roll over or transfer funds from a SEP–IRA to another IRA, SEP–IRA, or retirement bond, and how such a rollover or transfer may be effected without causing adverse tax consequences.

(3) A statement to the effect that:

(i) IRAs other than the IRA(s) into which employer contributions will be made under the SEP may provide different rates of return and may have different terms concerning, among other things, transfers and withdrawals of funds from the IRA(s),

(ii) In the event a participant is entitled to make a contribution or rollover to an IRA, such contribution or rollover can be made to an IRA other than the one into which employer contributions under the SEP are to be made, and

(iii) Depending on the terms of the IRA into which employer contributions are made, a participant may be able to make rollovers or transfers of funds from that IRA to another IRA.

(4) A description of the disclosure required by the Internal Revenue Service to be made to individuals for whose benefit an IRA is established by the financial institution or other person who sponsors the IRA(s) into which contributions will be made under the SEP.

(5) A statement that, in addition to the information provided to an employee at the time he or she becomes eligible to participate in a SEP, the administrator of the SEP must furnish each participant:

(i) Within 30 days of the effective date of any amendment to the terms of the SEP, a copy of the amendment and a clear written explanation of its effects, and

(ii) No later than the later of:

(A) January 31 of the year following the year for which a contribution is made,

(B) 30 days after a contribution is made, or

(C) 30 days after the effective date of this regulation

written notification of any employer contributions made under the SEP to that participant's IRA(s).

(6) In the case of a SEP that provides for integration with Social Security

(i) A statement that Social Security taxes paid by the employer on account of a participant will be considered as an employer contribution under the SEP to a participant's SEP–IRA for purposes of determining the amount contributed to the SEP–IRA(s) of a participant by the employer pursuant to the allocation formula,

(ii) A description of the effect that integration with Social Security would have on employer contributions under a SEP, and

(iii) The integration formula, which may constitute part of the allocation formula required by paragraph (a)(1)(ii) of this section.

(b)(1) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(6)(i) of this regulation may be met by furnishing the SEP agreement to participants, provided that the SEP agreement is written in a manner reasonably calculated to be understood by the average plan participant.

(2) The requirements of paragraph (a)(1)(iv) of this regulation may be met through disclosure materials furnished by the financial institution in which the participant's IRA is maintained, provided the materials contain the information specified in such paragraph.

(c) No later than the later of:

(1) January 31 of the year following the year for which a contribution is made,

(2) 30 days after a contribution is made, or

(3) 30 days after the effective date of this regulation

the administrator of the SEP shall notify a participant in the SEP in writing of any employer contributions made under the SEP to the participant's IRA(s).

(d) Within 30 days of the effective date of any amendment to the terms of the SEP, the administrator shall furnish each participant a copy of the amendment and a clear explanation in writing of its effect.

Signed at Washington, D.C. this 31st day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-328 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-29-M

29 CFR Part 2520

Regulation Relating to Reporting and Disclosure for Short Plan Years

AGENCY: U.S. Department of Labor.

ACTION: Adoption of final regulation.

SUMMARY: This document contains a regulation that, under certain circumstances, permits the administrator of an employee benefit plan incurring a plan year of seven or fewer months' duration to defer engaging an independent qualified public accountant and including an opinion rendered by such accountant in the annual report of the plan, as would otherwise be required under section 103 of the Employee Retirement Income Security Act of 1974 (the Act).

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: John Malagrin, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8684, or J. Scott Galloway, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8658 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: On August 26, 1980, the Department of Labor (the Department) published in the Federal Register (45 FR 56843) a proposed regulation which would permit the administrator of an employee benefit plan to defer the audit requirement for the first of two consecutive plan years, one of which is a short plan year of seven or fewer months duration, and to file an audited statement for that plan year when he files the annual report for the immediately following plan year, subject to certain conditions. One person commented to the Department with respect to the proposal.

One of the conditions included in the proposal was that the annual report for the second of two consecutive plan years must include a statement by the independent accountant identifying any material differences between the unaudited information contained in the annual report for the first of the two consecutive plan years and the audited financial information relating to that plan year contained in the annual report for the immediately following plan year. The commenter suggested that providing the statement of material differences was outside the scope of the duties of the independent accountant. The responsibility for the content of financial statements is generally imposed upon the plan administrator, whose statements are audited by an independent accountant. It appears that requiring the plan administrator, rather than the independent accountant, to supply the statement of material modifications will provide sufficient information to the Department, without increasing costs to the plan. Consequently, the regulation has been revised to remove the requirement that the independent accountant provide the statement of material differences.

The commenter also indicated that there may be confusion concerning the operation of the regulation in situations where the short plan year ends with the termination of the plan. Specifically, the commenter suggested that a plan administrator might assume that a short plan year in which the plan terminates is the year with respect to which the audit requirement is deferred, and might never file audited financial statements for that short plan year. In light of the language of the regulation, however, such an assumption would be erroneous.

29 CFR 2520.104-50(b) provides that "[a] plan administrator is not required to include the report of an independent qualified public accountant in the annual report for the first of two consecutive plan years, one of which is a short plan year," provided that, among other conditions, the annual report for the second of the plan years includes an accountant's report with respect to each of the two plan years. The operation of the regulation in a situation where a plan is terminating may be illustrated by the following example. A plan which has a calendar year plan year will be terminating on May 31, 1981. Pursuant to § 2520.104-50(a)(3), the period from January 1, 1981, through May 31, 1981, constitutes a short plan year. The plan year from January 1, 1980, through December 31, 1980, is the first of two consecutive plan years, one of which is a short plan year. Under the regulation, the plan administrator is not required to provide audited financial statements in the annual report for the plan year from January 1, 1980, through December 31, 1980, provided that, among other conditions, the annual report for the short plan year, January 1, 1981, through May 31, 1981, includes an accountant's report with respect to the plan year from January 1, 1980, through December 31, 1980. The audit requirement for a short plan year ending in the termination of the plan cannot be deferred under the regulation because, if the plan terminates, the year in which it terminates cannot be the first of two consecutive plan years.

An additional change without substantive effect has been made in the regulation for purposes of clarity.

The Department has determined that this proposed regulation is a significant regulation within the meaning of the Department's guidelines for improving government regulations (44 FR 5570, January 26, 1979). This regulation is effective upon its adoption because it grants an exemption from various reporting and disclosure requirements of Part 1.

With regard to pension plans, the Department has determined that the use of the deferral of the accountant's examination and report in connection with short plan years as specified in 29 CFR 2520.104-50 is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to participants and beneficiaries in such plans, and adequate reporting to the Secretary, and that application of the requirements of Title I of the Act regarding the accountant's examination and report without permitting the short plan year deferral would increase the costs to such plans, and would be adverse to the interests of plan participants in the aggregate. With regard to welfare plans, the Department finds that it would be inappropriate to apply the requirements of Title I of the Act regarding the accountant's examination and report to such plans without permitting the deferral of the accountant's examination and report in connection with short plan years, as specified in 29 CFR 2520.104-50.

Statutory Authority

The regulation set forth below is issued under the authority of sections 104, 110 and 505 of the Act [29 U.S.C. 1024, 1030, and 1135].

Regulation

In consideration of the matters discussed above, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding thereto a new § 2520.104-50, reading as follows:

§ 2520.104-50 Short plan years, deferral of accountant's examination and report.

(a) *Definition of "short plan year."* For purposes of this section, a short plan year is a plan year, as defined in section 3(39) of the Act, of seven or fewer months' duration, which occurs in the event that—(1) a plan is established or

commences operations; (2) a plan is merged or consolidated with another plan or plans; (3) a plan is terminated; or (4) the annual date on which the plan year begins is changed.

(b) *Deferral of accountant's report.* A plan administrator is not required to include the report of an independent qualified public accountant in the annual report for the first of two consecutive plan years, one of which is a short plan year, provided that the following conditions are satisfied:

(1) The annual report for the first of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with the requirements of section 103(b) of the Act and regulations promulgated thereunder;

(ii) An explanation why one of the two plan years is of seven or fewer months' duration; and

(iii) A statement that the annual report for the immediately following plan year will include a report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both of the two plan years.

(2) The annual report for the second of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with section 103(b) of the Act and regulations promulgated thereunder with respect to both plan years;

(ii) A report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both plan years; and

(iii) A statement identifying any material differences between the unaudited financial information relating to, and contained in the annual report for, the first of the two consecutive plan years and the audited financial information relating to that plan year contained in the annual report for the immediately following plan year.

(c) *Accountant's examination and report.* The examination by the accountant which serves as the basis for the portion of his report relating to the first of the two consecutive plan years may be conducted at the same time as the examination which serves as the basis for the portion of his report relating to the immediately following plan year. The report of the accountant shall be prepared in conformity with section 103(a)(3)(A) of the Act and regulations thereunder.

Signed at Washington, D.C., this 29th day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-40632 Filed 12-30-80; 12:25 pm]

BILLING CODE 4510-29-M

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29 CFR Part 2550

Maintenance of Indicia of Ownership of Plan Assets Outside Jurisdiction of the District Courts of the United States

AGENCY: Department of Labor.

ACTION: Adoption of Final Regulation.

SUMMARY: This document contains revisions to existing regulations under section 404(b) of the Employee Retirement Income Security Act of 1974 (ERISA), which prescribe conditions under which a fiduciary of an employee benefit plan is permitted to maintain the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States. The revisions broaden the circumstances under which the indicia of ownership of certain plan assets may be maintained by certain banks in the custody of specified foreign entities.

EFFECTIVE DATE: February 6, 1981.

FOR FURTHER INFORMATION CONTACT: J. Scott Galloway, Office of the Solicitor, U.S. Department of Labor, (202) 523-8658. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On August 5, 1980, the Department of Labor (the Department) published in the **Federal Register** (45 FR 51840) a notice of proposed rulemaking proposing certain amendments to 29 CFR 2550.404b-1.

Under section 404(b) of ERISA, a plan fiduciary is prohibited from maintaining the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States except as authorized by regulation. On October 4, 1977, the Department published regulation 404b-1 which specifies the circumstances under which a fiduciary of an employee benefit plan may maintain the indicia of ownership of plan assets abroad. The regulation provides that the indicia of ownership of certain types of plan asets may be held abroad if, among other things, the indicia of ownership are maintained by certain banks, brokers or dealers in the custody of an entity which has been designated by the U.S. Securities and Exchange Commission (the Commission) as a "satisfactory control location" under the Securities Exchange Act of 1934 (Exchange Act). The Commission's staff, however, has taken the position that the Commission designates a "satisfactory control location" only upon application by a broker or dealer registered under the Exchange Act. As a result, banks have been limited in their ability to utilize the Department's regulation in holding plan assets abroad.

The proposed revisions to the regulation would permit banks that satisfy specified criteria intended to ensure financial responsibility to maintain the indicia of ownership of plan assets in the custody of certain foreign entities which are supervised or regulated by a government agency or regulatory authority, under conditions designed to parallel the criteria for designating satisfactory control locations.

At the time the proposed revisions were published, the Department solicited comments from interested persons. Two comments were received. The Department has reviewed the comments, and has made changes in the final revisions where appropriate, as discussed below. The Department considers the final regulation to be "significant" within the meaning of Department of Labor guidelines (44 FR 5570, January 26, 1979) implementing Executive Order 12044 (43 FR 12661, March 23, 1978).

Discussion

Under the proposed revisions, the specified U.S. banks may maintain the custody of foreign securities only in a foreign bank or a foreign securities depository. One commenter requested that the revisions be modified to make clear that the specified banks may utilize the services of certain foreign clearing agencies. The commenter noted that under Rule 15c3-3,[1] adopted under the Exchange Act, the Commission may designate (and has in fact designated) not only foreign banks and foreign securities depositories, but also foreign clearing agencies as "satisfactory control locations." See Securities Exchange Act Release No. 10429 (October 12, 1973).

In light of this comment, the Department has decided to amend the revisions to include government regulated foreign clearing agencies which act as security depositories among the entities in which banks may maintain the indicia of ownership of plan assets held abroad.

The commenter also requested that the Department eliminate the requirement in the proposed revisions that the banks identify to a plan, at the time an annual report is submitted to the

[1] 17 CFR 240.15c3-3.

plan, (1) the foreign entities that have custody of the indicia of ownership of plan assets, and (2) the regulatory authority that supervises or regulates those foreign entities. The commenter argued that this reporting requirement was burdensome for such banks, and that the requirement would be of little benefit to plans since, in the commenter's opinion, most plan sponsors do not have the capability of evaluating the security safekeeping facilities of one foreign entity over another, nor would they be in a position to evaluate a foreign country's supervisory process. The commenter suggested, as an alternative to a reporting requirement, that the bank be required to provide to plan fiduciaries, on request, information concerning the foreign custodian. After consideration of the comment, the Department has decided to eliminate a specific reporting requirement but to adopt the suggestion of the commenter that the information be provided on request.

The other commenter suggested that the revisions include a requirement that the internal controls and procedures of the foreign custodial entity be subject to examination by auditors of the U.S. bank and representatives of U.S. government agencies. Under the Department's proposed revisions, a foreign entity selected by such bank must hold the indicia of ownership of plan assets as "agent" for the U.S. bank, and the U.S. bank is liable to the plan "to the same extent it would be if it retained physical possession of the indicia of ownership of the assets within the United States." In the Department's view, this provision regarding the U.S. bank's liability ensures that the U.S. bank will have an incentive to take appropriate precautions regarding the foreign entity's internal controls and procedures and makes it unnecessary for the Department to impose any further independent safeguards.

The commenter also suggested that some "elaboration" of the requirements of the regulation was needed with respect to situations where the foreign custodial entity chose to appoint a foreign sub-custodian. In the Department's view, such an appointment by the foreign custodial entity would meet the requirement of the revisions if the foreign entity having custody of the indicia of ownership of plan assets acts as agent of the U.S. bank and the other conditions of the regulation are satisfied.

Finally, the commenter inquired whether the bonding requirements of section 412 of ERISA would apply to a foreign entity that has custody of the indicia of ownership of plan assets. Section 412 provides that "[e]very fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan * * * shall be bonded * * *." Therefore, to the extent a person "handles" plan assets, that person must be bonded. Regulation 404b–1 has no effect on such bonding requirements.

Statutory Authority

The revisions set forth below are issued under the authority of section 505 of the Act (Pub L. 93–406, 88 Stat. 894, 29 U.S.C. 1135), and section 404(b) of the Act (Pub. L. 93–406, 88 Stat. 877, 29 U.S.C. 1104).

In consideration of the matters discussed above, regulation 29 CFR 2550.404b–1 is amended as follows:

(1) Revise the first clause of paragraph (a);

(2) Revise paragraph (a)(2)(ii)(B);

(3) Add a new paragraph (a)(2)(ii)(C); and

(4) Revise paragraph (c); to read as set forth below.

§ 2550.404b–1 Maintenance of the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States.

(a) No fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, unless: * * *

(2) * * *

(ii) * * *

(B) Maintained by a broker or dealer, described in paragraph (a)(2)(ii)(A) (*2*) or (*3*) of this section, in the custody of an entity designated by the Securities and Exchange Commission as a "satisfactory control location" with respect to such broker or dealer pursuant to Rule 15c3–3 under the Securities Exchange Act of 1934, provided that:

(*1*) Such entity holds the indicia of ownership as agent for the broker or dealer, and

(*2*) Such broker or dealer is liable to the plan to the same extent it would be if it retained the physical possession of the indicia of ownership pursuant to paragraph (a)(2)(ii)(A) of this section.

(C) Maintained by a bank described in paragraph (a)(2)(ii)(A)(*1*), in the custody of an entity that is a foreign securities depository, foreign clearing agency which acts as a securities depository, or foreign bank, which entity is supervised or regulated by a government agency or regulatory authority in the foreign jurisdiction having authority over such depositories, clearing agencies or banks, provided that:

(*1*) the foreign entity holds the indicia of ownership as agent for the bank;

(*2*) the bank is liable to the plan to the same extent it would be if it retained the physical possession of the indicia of ownership within the United States;

(*3*) the indicia of ownership are not subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign entity except for their safe custody or administration;

(*4*) beneficial ownership of the assets represented by the indicia of ownership is freely transferable without the payment of money or value other than for safe custody or administration; and

(*5*) upon request by the plan fiduciary who is responsible for the selection and retention of the bank, the bank identifies to such fiduciary the name, address and principal place of business of the foreign entity which acts as custodian for the plan pursuant to this paragraph (a)(2)(ii)(C), and the name and address of the governmental agency or other regulatory authority that supervises or regulates that foreign entity.

* * * * *

(c) For purposes of this regulation:

(1) the term "management and control" means the power to direct the acquisition or disposition through purchase, sale, pledging, or other means; and

(2) the term "depository" means any company, or agency or instrumentality of government, that acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates.

Signed at Washington, D.C. this 29th day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-40831 Filed 12-30-80 12:24 pm]

BILLING CODE 4510-29-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL 1718-6; Docket No. A-80-55]

Compliance With VOC Emission Limitations for Can Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy memorandum, correction.

SUMMARY: In FR Document 80-37988, appearing on page 80824 in the issue of Monday, December 8, 1980, the title as shown above is incorrect.

It should be corrected to read as follows:

Environmental Protection Agency

40 CFR Part 51

[AD-FRL-1694.3]

Compliance with VOC Emission Limitations for Can Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy memorandum.

FUR FURTHER INFORMATION CONTACT: Leo Stander, U.S. Environmental Protection Agency, (919) 541-5516.

Dated: December 29, 1980.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-287 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

Medicaid Program; Plans of Correction for Intermediate Care Facilities for the Mentally Retarded

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

ACTION: Final rule with comment period.

SUMMARY: This regulation amends 42 CFR 442.115 to authorize a State survey agency, in specified circumstances to certify an intermediate care facility for the mentally retarded for participation in the Medicaid program when the facility has not met the July 18, 1980 compliance deadline provided in 42 CFR 442.115(a). The regulation would permit plans to correct certain deficiencies by July 18, 1982 based on the length of time needed to complete the plan. It would also allow extensions beyond either the 1980 or 1982 deadline where, under limited circumstances, a delay has been caused by litigation.

We are publishing this regulation as a final rule because of the need to protect facilities from disruption of Federal funding where the criteria for an extension of the deadline are satisfied, including the assurance that the health and safety of the residents will not be jeopardized by the granting of an extension. However, we are providing a comment period and will make any further revisions we find necessary based upon comments we receive.

DATES: Effective on date of publication. To insure consideration, comments should be received by March 9, 1981.

ADDRESSES: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17082, Baltimore, MD 21235.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.; or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-80-FC. Comments will be available for public inspection, beginning approximately two weeks from today, in Room 309-G of the Department's Offices 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. (telephone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Dr. Wayne Smith, Health Care Financing Administration, Health Standards and Quality Bureau, Second Floor, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, MD 21207, (301) 594-7651.

SUPPLEMENTARY INFORMATION:

Background

In 1972, Congress passed legislation (Pub. L. 92-223) that, for the first time, provided coverage for services in intermediate care facilities for the mentally retarded (ICFs/MR) under the Medicaid program (42 U.S.C. 1396d). Interim and final standards to implement the ICF/MR program were published on January 17, 1974 (45 CFR 249.12 and 249.13 (1974) now 42 CFR Part 442 Subpart G). The interim standards gave facilities until March 1977 to achieve full compliance with all of the final standards.

The standards promulgated in 1974 were part of an effort to upgrade the quality and scope of services provided by institutions for the mentally retarded. The regulations emphasized the fundamental principles of the "habilitation process," namely individualized active treatment in minimally restrictive settings.

In developing the regulations, the Department received the views of numerous consumer, provider, and professional associations and State governments. In addition, the Department considered various court decisions which established the right of institutionalized individuals to active treatment and which set forth the details of an acceptable treatment regimen. The adoption of active treatment principles in the 1974 regulations was intended to give mentally retarded persons the type of care and services that would enable them to attain maximum independent living capabilities and to return to the community at the earliest possible time.

The 1974 regulations provided an important new direction for the treatment of the mentally retarded. The regulations also rendered many existing buildings unsuitable for the delivery of care without substantial renovation because of new physical environment requirements (e.g., stricter fire safety standards and bedrooms housing no more than four persons rather than large open wards). Many States planned to build new, less restrictive facilities rather than upgrade old buildings. Since nearly all ICFs/MR were State owned and operated, legislative appropriations were required for renovation and new construction. Other States decided to phase out parts of their institutions and to relocate residents in other settings.

Since the Department recognized that some institutions for retarded persons could not meet the new structural requirements or relocate patients within a one year survey cycle, the deadline for full compliance with the new requirements was set for March 1977. Facilities were allowed to participate in the new program under the interim regulations published at that time (45 CFR 249.12 (1974)).

As a result of serious problems experienced by most of the States participating in the ICF/MR program in meeting the March 1977 deadline, a coalition of State government and advocacy groups requested that the Department consider an extension of the deadline. Some States that were attempting to phase out certain beds and place the residents in alternative care settings did not want to renovate buildings which were no longer going to be used, but they found that alternative care settings were not developing rapidly enough to meet phase out goals.

After extensive consultation, the Department decided to extend the March 1977 deadline for meeting Life Safety Code and physical environment provisions. 42 CFR 442.113 was issued to provide that the State survey agency could certify an ICF/MR with deficiencies even though correction of the deficiencies under the facility plan of correction would take more than 12

months to complete. (Normally, under Federal regulations, deficiencies must be corrected within a 12-month period for a long-term care facility to qualify for certification.) Section 442.115 required that the plan provide for completion of corrections in Life Safety Code, living, dining and therapy areas by July 18, 1980. However, if at the time of the first survey after July 17, 1977, the facility was unable to develop a plan for completion of corrections by July 18, 1980, the State survey agency could request that the Secretary approve a plan to complete corrections (for construction/renovation and/or phase-out of beds) by July 18, 1982, if certain additional requirements were satisfied (42 CFR 442.115(b)). At that time, most of the uncorrected deficiencies involved failure to meet the limit of four residents per bedroom and Life Safety Code deficiencies that were certified by the State to be non-threatening to the residents' health and safety (42 CFR 442.105). The extensions to 1980 and 1982 did not apply to those provisions of the Life Safety Code which, if not followed, would result in conditions threatening the health and safety of the residents.

Current Situation

The majority of States responded to the 1977 regulation by moving forward with their construction, renovation, or phase-out programs. Most States have been able to complete their plans of correction prior to July 18, 1980. A recent survey reported almost $1 billion in expended or appropriated State funds since July 1977 for capital improvement in mental retardation facilities. Thirty-nine States reported that three-fourths of their expenditures for capital improvements were devoted to correcting ICF/MR deficiencies, indicating a strong commitment by most States to meet the ICF/MR regulations. *Trends in Capital Expenditures for Mental Retardation Facilities: A State by State Survey*, National Association of State Mental Retardation Program Directors (June 1980).

At the time of the 1977 revision to the regulations, a survey of the States indicated that about 35 percent of the facilities in the ICF/MR program could not meet the 1977 deadline. Initially it was estimated that the number of facilities that would not meet the 1980 deadline was less than 10 percent of the facilities participating in the ICF/MR program, i.e., approximately 80 facilities nationwide would not meet the deadline and had not requested an extension to 1982 under the provisions of § 442.115(b). However, we have since learned that some of these facilities have corrected their deficiencies. Thus approximately 36 facilities in 16 States with 11,000 beds are still affected by the passing of this deadline.

The reasons that facilities failed to meet the July 18, 1980 deadline have included construction delays due to strikes, court orders enjoining construction, absence of alternative treatment settings for patients in institutions scheduled to be phased out, and lack of adequate funds. In spite of the problems faced by the facilities that did not meet the July 18, 1980 deadline, the work remaining for many could be completed by July 18, 1982.

We believe that those facilities which have made progress toward the successful completion of their construction, renovation, or phase out programs should not be subject to termination of Federal funds. Thus, the regulations require completion of at least 25 percent of required construction or 25 percent of planned phase out. We believe that States which have failed to achieve this level of progress should not receive continued Federal participation for treatment in facilities that were found to be inappropriate in 1974.

An additional ground for approval of an extended plan of correction (which would permit continued certification) is contained in new paragraph (f). This provision permits a State survey agency to request that the Secretary authorize approval for plans of correction beyond July 18, 1980, or July 18, 1982, where a facility is unable to comply with its plan of correction by either date, as appropriate, and where the facility's inability to do so was caused by litigation. Approval for certification beyond July 18, 1980 or July 18, 1982 under this provision may be granted only if the United States, or any agency or Department thereof, was a party, an intervenor, or an *amicus curiae*, to the litigation and if the position advocated or supported by the United States caused or contributed to the delay in the completion of planned corrections. Under these circumstances, the plan of correction may be extended beyond the original deadline, but only to the extent of the delay caused by litigation, as determined by the Secretary. The Department expects that the plan of correction will also be revised where necessary to comply with the decision of the court in the litigation.

The reason for this provision is that a few facilities have been parties to litigation where the United States was involved and where the United States supported a position which had the effect of preventing the facility from going forward with its approved plan of correction. In these circumstances, the Department believes that it would be inconsistent with elemental concepts of fairness to terminate funding for a facility because of that facility's inability to comply with its plan of correction.

Provisions of the Regulation

The regulation will permit the State survey agency to request the Secretary to authorize approval of an extended plan of correction for a facility which was unable to complete all needed corrections by July 18, 1980. The facility must still meet the applicable provisions for correction plans in 42 CFR 442.115 (c) and (d). These provisions require timetables for all correction plans. For those plans which call for renovation, a showing that adequate financial resources are available must be in the plan. For plans calling for phase out, the plan must call for no new admissions to parts of facilities being closed and a description of methods to insure recipient's health and safety until the closing is completed. For corrections involving construction or renovation, it must also provide documentation from a supervising architect or contractor that the facility completed at least 25 percent of the required work covered by the plan of correction by July 18, 1980 and that construction will be completed by July 18, 1982. Moreover, if the plan of correction provides for phasing out all or part of a facility, the ICF/MR must provide documentation that the phase out program was at least 25 percent completed on July 18, 1980. The State survey agency must find that the facility can complete the phase out plan by July 18, 1982.

The facility must demonstrate that all continuing deficiencies covered by the plan of correction are directly related to the completion of construction, renovation or phasing out of beds. The provisions of 42 CFR 442.113(d), which require that the State survey agency conduct on-site surveys every six months to document the facility's progress toward meeting its correction timetables remain in force, as does 42 CFR 442.105(a) which requires an agency finding that the facility's deficiencies do not jeopardize the patient's health and safety, nor seriously limit the facility's capacity to give adequate care. The facility must be in compliance with all other certification requirements. If the facility meets these conditions, the State survey agency may certify the facility for periods not to exceed 12 months at one time.

Waiver of Proposed Rulemaking and Delayed Effective Date

We are publishing this amendment as a final regulation, effective upon publication. In the absence of this amendment, all facilities which failed to meet the July 18, 1980 deadline would be subject to termination of their provider agreements and their State Medicaid programs would be subject to disruption of Federal financial participation for the cost of those portions of facilities still out of compliance. The amendment relieves a restriction on a limited number of facilities which have made progress toward completion of their plans of correction and which are expected to complete corrections by July 1, 1982. At the same time the amendment protects the health and safety of the residents of these facilities. These facts constitute good cause for a finding that it would be in the public interest to waive the publication of a notice of proposed rulemaking and the requirement for a thirty day delay in the effective date of the amendment.

42 CFR 442.115 is amended by revising paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 442.115 Correction plans.

(a) The ICF/MR's plan required by § 442.113 must provide for completion of corrections by:

(1) July 18, 1980; or

(2) July 18, 1982, if authorized by the Secretary under paragraphs (b) or (e) of this section; or

(3) By the date approved by the Secretary, if authorized by the Secretary under paragraph (f) of this section.

* * * * *

(e) If an ICF/MR is unable to complete corrections required by the plan of correction by July 18, 1980 and it did not request an extension beyond that date under paragraph (b) of this section, the survey agency may request the Secretary to authorize approval for an extension of the facility's plan of correction to July 18, 1982 if—

(1) For corrections under paragraph (c) of this section, the facility provides documentation from the renovation project's supervising architect or contractor that required construction work was at least 25 percent completed by July 18, 1980 and will be complete by July 18, 1982;

(2) For corrections under paragraph (d) of this section, the facility provides documentation that the phase out program was at least 25 percent completed on July 18, 1980 and will be completed by July 18, 1982; and

(3) The survey agency finds that all continuing deficiencies covered by the plan of correction will be resolved by completion of the construction, renovation, or phase out of beds.

(f) If an ICF/MR is unable to complete corrections required by the plan of correction by July 18, 1980 or July 18, 1982, as authorized in paragraphs (a), (b) and (e) of this section, the survey agency may request the Secretary to authorize a plan of correction for an additional period of time if the delay was caused by litigation, provided that—

(1) The United States, or any agency or Department thereof, was party to the litigation, or was an intervenor in it, or participated as an *amicus curiae*; and

(2) The United States advocated a position which caused or contributed, in whole or in part, to the delay; and

(3) The request for an additional period of time to complete corrections under this provision does not exceed the amount of the delay resulting from the litigation, as determined by the Secretary.

Secs. 1102, 1905(c), and 1905(d) of the Social Security Act (42 U.S.C. 1302, 1396d(c), 1396d(d)).

Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program.

Dated: November 25, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: December 29, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-400 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-35-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. 1

[Docket No. FEMA PP-360]

Implementation of State Assistance Program for Training and Education in Emergency Management

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final Rule.

SUMMARY: This rule sets forth a description of the FEMA training and education assistance program to the States. The program functions through State Cooperative Agreements and is designed to further comprehensive emergency management training including emergency preparedness planning, hazard mitigation, and disaster response and recovery. In response to State and local expressed needs, FEMA was formed to coordinate and manage all disaster planning and response in one Agency. The combined training responsibilities of predecessor agencies are now being administered by the Training and Education Office of FEMA using the State Cooperative Agreements and Regional Support Contracts as the vehicle to meet individual State training needs. This rule defines the objectives and elements of the program, the funding approach, and the State application/proposal.

EFFECTIVE DATE: February 1, 1981.

FOR FURTHER INFORMATION CONTACT: Dave McLoughlin, Assistant Director for Training and Education, Federal Emergency Management Agency, 1725 I Street, N.W., Washington, D.C. 20472, Telephone: (202) 254-9556.

SUPPLEMENTARY INFORMATION: On September 9, 1980, the Assistant Director of Training and Education published in the **Federal Register** (Docket No. FEMA PP-360), a proposed amendment to Chapter I, Title 44 CFR by adding a new Part 360, entitled State Assistance Programs for Training and Education in Comprehensive Emergency Management. The amendment would provide for the use of State Cooperative Agreements to accomplish the following:

the design and delivery of training to meet emergency and disaster operational requirements; the presentation and management of training programs to disseminate emergency management concepts; to further intergovernmental operational response capability; to provide management development for emergency management staffs; to motivate the general public to practice emergency self-help; and to build self-confidence among public officials as to their capability to successfully manage crises.

The State Cooperative Agreements are intended as a vehicle for each State to plan, develop and present the training and education activities to meet the needs of State.

The proposed rule was open for public comment until September 30, 1980. Sixteen responses were received by that date. Fifteen of the 16 stated their opposition to the rule because of what was termed "the requirement for 75/25 and 50/50 funding of student expenses." Though specific figures for funding future years were *not* included in the proposed rule, and thus the comments were not pertinent to the rule, some reiteration of the points and note of the concerns should be made. Communications from the Department of Defense, State of Georgia, and the Division of Disaster and Emergency Services, Commonwealth of Kentucky state that the program is essentially a "Federal program" and therefore should be supported 100%. Congress has not

changed its attitude since the 1950 passage of the Civil Defense Act that civil preparedness, which includes training, was a joint responsibility. Thus training was always a shared expense program until 1977. Training monies provided by the Federal government are shared in order to provide an opportunity to improve personnel professional development, technical skills, planning and operations capability in all phases of mitigation preparedness, response and recovery in cases of attack on this country, and natural and manmade disasters.

On the same question of sharing the cost of training, the State of Missouri, Department of Public Safety, suggested encouragement of smaller community participation. It was their contention that the impact of shared costs would fall heaviest on smaller communities since employees had to take time away from their jobs for training. The State Cooperative Agreements will enable the State to bring the training to more rural communities however, which was not the case in the past.

Several others providing comments addressed policy questions not at issue in the proposed rule with respect to redivision of available funds from Regional Support Contracts to the States and on the insufficiency of Personnel and Administrative funds. Several submissions recommended reduction in the length of courses. This is a valid comment since many less than full time coordinators cannot absent themselves from their other positions for more than 1 week. Since the Career Development Courses are being rewritten, this point will be carefully considered in the development of new materials. This comment will be relayed to States for consideration in the development of their own training programs.

3. Two letters rate special comment, one of which was from the Division of Disaster Emergency Services, Texas Department of Public Safety.

a. The writer suggests that the "tone" of the proposed rule is misleading in that it suggests that State and local government had coordinated and approved the training program. The Assistant Director of Training and Education, in addition to his staff members, discussed and presented at State and local coordinators conferences, the basic concepts of the proposed rule. This opportunity for discussion lasted over 3 months. Nothing in the rule suggests that the details has been voted upon or that the drafting was completed in a partnership.

b. Radef training "has been taken away from the state program" according to the Texas letter. To the contrary; the money for Radef training has been moved from the Maintenance and Calibration to the State Cooperative Agreement.

4. Comments from the State of New York are in opposition to the provision that permanent positions may not be established on State staffs with State Cooperative Agreement funds. New York states that they now have a 100% Federally funded training and education staff member. This staff position, however is not funded by Training and Education funds from FEMA since no such positions exist in the 50 States with this office's agreement or approval. FEMA cannot therefore accommodate this recommendation.

Therefore, all local government concerns expressed with regard to this proposed rule can be accommodated within State training programs under the State Cooperative Agreement if the State so agrees. Since training is and has been considered a joint responsibility, no change in the policy to fund Training and Education staff at a State level is made. Other comments were not relevant to the proposed rule, but instead addressed a budget/program policy of T&E, FEMA.

A finding of Inapplicability of section 102(2) of the National Environmental Policy Act of 1969 still pertains.

As previously stated, there is no conflict with the President's Memorandum of November 16, 1979; since nothing in the regulation would affect or be affected by the small business sector.

Accordingly, Chapter I, Title 44 CFR is amended by adding Part 360, State Assistance Programs for Training and Education in Comprehensive Emergency Management as follows:

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Sec.

Authority: Reorganization Plan No. 3 (3 CFR 1978 comp. p. 329); Executive Order 12127 (44 FR 19367); Executive Order 12148 (44 FR 43239).

§ 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result is an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

§ 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and participant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) Government Conducted Courses:

Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

(i) Career Development Courses: Phases I, II, and III,

(ii) Radiological Officer and Instructor Courses,

(iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) Government and Recipient Conducted Courses:

Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

(i) Emergency Management Workshops,

(ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) Recipient Conducted Courses:

This element requires the greatest degree of sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

(i) Radiological Monitoring,

(ii) Emergency Operations Simulating Training,

(iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval. During FY 81 only, allowable cost will be funded at 100%. The projected program envisions a sharing of eligible costs in the future however.

§ 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

§ 360.4 Administrative procedures.

(a) *Award.*

Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in Section 360.2.

(b) *Period of Agreement.*

Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in Section 360.2(b) to give continuity to the total training and education program.

(c) *Submission Procedure.*

Each State applicant shall comply with the following procedures:

(1) *Issuance of a Request for Application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to Submit:* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application Package:* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting Agreements.*

Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

§ 360.5 General provisions for State Cooperative Agreement.

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

Dated: December 24, 1980.

John W. Macy, Jr.,

Director.

[FR Doc. 81-321 Filed 1-5-81; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Parts 59, 60 and 64

National Flood Insurance Program

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule amends the National Flood Insurance Program regulations concerning AO zones (shallow flooding zones), and adds regulations for AH zones (also shallow flooding zones), which are currently not mentioned in the regulations. These changes are necessary due to changed flood mapping methods which permit the Federal Insurance Administration (FIA) to determine base flood elevations for shallow flooding areas characterized by "ponding" flooding.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 755-5581.

SUPPLEMENTARY INFORMATION: The proposed rule to amend the National Flood Insurance Program (NFIP) regulations concerning AO zones (shallow flooding zones) and add regulations for AH zones (also shallow flooding zones) was published on September 9, 1980 (45 FR 59346) with request for comment. No comments were received during the comment period.

In this final rule, a conforming amendment is added which inadvertently was not included in the proposed rule. Section 64.3(a)(1) is amended to include the AH zone symbol as part of the list of zone symbols. Since this amendment is conforming and does not affect the substance of the proposed rule, notice and comment are not required.

A. Explanation of Rule Change

Under the authority contained in the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), the Federal Insurance Administration (FIA) amends §§ 59.1, 60.3, and 64 of Title 44 (formerly appearing at former §§ 1909.1, 1910.3 and 1914 of Title 24).

Originally, FIA only mapped one type of shallow flooding zone—the AO zone, where the average depth of flooding is one to three feet above local grade, where a clearly defined channel does not exist, where the flooding path is unpredictable, and where velocity flow may be evident. The earlier maps had no indication of flood depths for AO zones, but on more recent maps, the flooding depth in AO zones has been specifically indicated (e.g., AO (depth 2 feet) indicates a two foot flooding depth). Additionally, there are shallow flooding zones where FIA can determine base flood elevations relative to the National Geodetic Vertical Datum of 1929. This is an easier standard for rating and regulatory purposes. To avoid confusion between the shallow flooding zones with base flood elevations and those with an average depth of flooding above local grade, FIA has established the AH zone where base flood elevations are indicated.

Since the regulatory flood plain management standard in the AO zone will be relative to the highest adjacent grade to a proposed structure, "highest adjacent grade" is defined. Previously, AO zones were regulated relative to a depth number above the crown of the nearest street. This treatment assumed that all shallow flooding areas would be relatively flat, ponding areas, where elevating relative to the crown of the nearest street would provide an adequate protection level and a convenient reference point. However, this criterion is inadequate since many of the shallow flooding zones now being mapped are on slopes, where the nearest street may be well above or below the proposed construction site. For this reason, the protection level in AO zones will be relative to "highest adjacent grade," as defined in § 59.1 of the proposed rule change. This new standard will correspond to the mapping methodology, which determines the average depth of flooding over local grade.

The current definition of "area of shallow flooding" in Section 59.1 mentions a VO zone as one type of shallow flooding zone. FIA has never designated a VO zone. This zone may be used at some time in the future, after § 60.3 is amended to specify regulatory standards for the VO zone. Whether or not a shallow flooding area will be designated as an AH or AO zone depends on the rapidity of change in the water surface elevation relative to the topographical information available for the shallow flooding area. The following types of shallow flooding areas generally indicate where AH and AO zone designations will be used.

1) Flat, ponding areas, where shallow floodwaters accumulate, and little or no velocity flow is evident and a 10-year flood elevation does not occur or cannot be estimated. This type of shallow flooding area will normally be designated an AH zone.

2) Sloping areas, where shallow floodwaters flow in a sheet, maintaining a relatively constant average depth above local grade. Normally, this type of shallow flooding area will be designated as an AO zone, unless the topographical information is detailed enough and the slopes are small enough to determine base flood elevations relative to mean sea level and adequately present their location on a map.

3) Alluvial fan areas, where floodwaters flow out of confined paths in hilly or mountainous areas and spread over large areas of a valley in an unpredictable manner. Alluvial fan areas are normally found in arid regions of the western states. They will normally be designated AO zones. Alluvial fan areas are being studied in more detail by FIA and the findings may lead to separate regulation and rating of this hazard area.

AH zones will be regulated similarly to Zones AI-30, since both types of zones have base flood elevations. A flood protection level at the depth number above highest adjacent grade will be required for AO Zones. (A two foot flood protection level will be used if no depth number is indicated for the AO zone). Aside from this different protection standard, AO zones will be regulated similarly to AH and AI-30 zones.

In summary, the AO and AH zones will be used in the following situations:

1) The AO zones (with flood depths indicated) will be used primarily for sheet flow areas where the depth of flooding is from one to three feet, where a clearly defined channel does not exist, where the flooding path is unpredictable, where velocity flow may be evident, and where it is not cost effective to determine flood elevations relative to mean sea level. The regulatory flood plain management standard will be based on a flood depth number of one to three feet above adjacent grade.

2) The AH zone will be used primarily for areas of ponded water, or sheet flow over areas of very low slope, where the depth of flooding is from one to three feet, where a clearly defined channel does not exist, where the flooding path is unpredictable, where velocity flow is minimal, where the 10-year flood does not exist or cannot be calculated.

and where it is cost effective to determine flood elevatons relative to mean sea level. The regulatory flood plain management standard will be based on the base flood elevation.

B. Procedural Information.

This proposed rule does not have a substantial impact upon the quality of the environment. A finding to that effect is included in the formal docket file and is available for public inspection and copying at the above address.

PART 59—GENERAL PROVISIONS

1. Section 59.1 is revised to have the following definitions read as follows:

§ 59.1 [Amended]

* * * * *

"Area of shallow flooding" means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

* * * * *

"Area of special flood hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, AI-99, VO, or VI-30.

* * * * *

"Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, AI-99, AH, VO, VI-30, M or E.

* * * * *

2. Section 59.1 is further revised by adding a new definition—"Highest adjacent grade."

* * * * *

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

* * * * *

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

§ 60.3 [Amended]

3. Section 60.3(c) is revised to read as follows:

* * * * *

(c) When the Administrator has provided a notice of final flood elevations for one or more special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

* * * * *

4. Section 60.3(c)(7) is amended by inserting the words, "AH zones," between the words "unnumbered A zones" and "and AO zones."

5. Section 60.3(c)(2) and (3) are amended by inserting the words "and AH zones" between the words "Zones AI–30" and "on the community's FIRM," wherever they appear.

6. Section 60.3(c)(7) is revised to read as follows:

* * * * *

(c) * * *

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

* * * * *

7. Section 60.3(c)(8) is revised to read as follows:

* * * * *

(c) * * *

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

* * * * *

8. Section 60.3(c) is amended by adding a new subparagraph (11) to read as follows:

* * * * *

(c) * * *

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

* * * * *

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF FLOOD INSURANCE

§ 64.3 [Amended]

9. Section 64.3 is amended by adding the AH zone symbol to the list of zone symbols. The AH zone symbol follows the AO zone symbol and precedes the VI–30 zone symbol. The AH zone symbol is added as follows:

(a) * * *

(1) * * *

AH—Areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined.

* * * * *

(42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp. 329) and Executive Order 12127 (44 FR 19367)).

(Catalog of Federal Domestic Assistance Number 83.100 National Flood Insurance Program.)

Issued: December 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-322 Filed 1-5-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-5967]

Communities With Minimal Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the foreseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Areas.

Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flod Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with Minimal Flood Hazard Areas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or

Toll Free Line 800–424–8872, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the **Federal Register.**

The entry reads as follows:

§ 65.7 List of communities with minimal flood hazard areas.

State	County	Community name	Date of conversion to regular program
Montana	Lincoln	Town of Troy	Dec. 16, 1980.
New Jersey	Monmouth	Borough of Interlaken	Jan. 2, 1981.
Pennsylvania	Chester	Borough of Malvern	Jan. 16, 1981.
Pennsylvania	Montgomery	Borough of Narberth	Jan. 16, 1981.
Ohio	Knox	Village of Gambier	Jan. 30, 1981.
Pennsylvania	Bucks	Township of Hilltown	Jan. 30, 1981.

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

Issued: December 11, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81–331 Filed 1–5–81; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–5841]

National Flood Insurance Program; Final Flood Elevation Determination

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Removal of final rule.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the Township of Willistown, Chester County, Pennsylvania. This notice will serve to delete that publication. Following an engineering analysis and review, a revised notice of proposed flood elevation determination will be issued.

EFFECTIVE DATE: January 6, 1981.

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

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Insurance Administration has determined that the notice of final flood elevation determination for the Township of Willistown, Pennsylvania, published at 45 FR 79477, on December 1, 1980, should be removed. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

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

Issued: December 15, 1980.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 81–330 Filed 1–5–81; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 304

Federal Financial Participation; Availability and Rate of Federal Financial participation

AGENCY: Office of Child Support Enforcement (OCSE, HHS).

ACTION: Final Rule.

SUMMARY: This regulation provides for Federal financial participation (FFP) on a continuing basis for the cost of child support enforcement services provided by State IV–D agencies to individuals who are not eligible for assistance under the Aid to Families with Dependent Children program (AFDC). The regulation implements Section 301 of Public Law 96–272 which provides funding for all non-AFDC services provided on or after October 1, 1978. The statute makes no reference to a termination date, thus States will be able to receive 75 percent reimbursement for the cost of providing child support services to non-AFDC recipients on a permanent basis.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT: Justine Deegan, Room 1010, 6110 Executive Blvd., Rockville, MD 20852; (301) 443–5350.

SUPPLEMENTARY INFORMATION: Title IV–D of the Social Security Act requires each State to make child support enforcement services available to welfare receipients and those individuals not on welfare who request such services. When the Child Support Enforcement program was established in 1975, FFP for services to non-welfare recipients was provided for only one year, until June 30, 1976. Public Law 94–365 enacted in July 1976 extended FFP until June 30, 1977. Public Law 95–59, effective June 30, 1977, provided a 15 month extension until September 30, 1978.

Later, Public Law 96–178, signed by the President on January 2, 1980 provided FFP for services to non-welfare recipients for the period October 1, 1978 through March 31, 1980. Section 301 of Public Law 96–272 amends Section 455(a) of the Social Security Act retroactive to October 1, 1978. The amendment provides FFP for services to

non-welfare recipients on a continuing basis.

The Department finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), that there is good cause to dispense with public notice and comment with respect to this amendment. The change is a technical amendment which merely conforms the regulation to the amended statute. Further, this regulation imposes no new requirement upon the States, but rather provides FFP to the States for activities that have been and continue to be a part of the Child Support Enforcement program. Consequently, notice of proposed rulemaking would be impracticable and unnecessary. In addition, this amendment is effective immediately upon publication, retroactive to October 1, 1978, because it removes a restraint on Federal funding.

45 CFR 304.20 is amended by revising paragraph (a) as follows:

§ 304.20 Availability and rate of Federal financial participation.

(a) Federal financial participation at the 75 percent rate is available for:

(1) Necessary expenditures under the State title IV–D plan for the child support enforcement services and activities specified in this section and § 304.21 provided to individuals from whom an assignment of support rights has been obtained pursuant to § 232.11 of this title;

(2) Collection services pursuant to § 302.51(e)(1) of this chapter;

(3) Parent locator services for individuals eligible pursuant to § 302.33 of this title;

(4) Paternity and child support services under the State plan for individuals eligible pursuant to § 302.33 of this chapter.

* * * * *

(Section 1102 of the Social Security Act, (49 Stat. 647) and Section 455(a) of the Social Security Act 42 U.S.C. 655(a).) Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Note.—The Office of Child Support Enforcement has determined that this document does not require preparation of a Regulatory Analysis as prescribed by Executive Order 12044.

Dated: October 20, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: November 13, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-324 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-07-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[General Order 16; Amdt. 37]

Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The Commission's Rules of Practice and Procedure are amended to set out the procedures to be followed in complaint proceedings involving maritime labor agreements which provide for an assessment agreement. Initial decision in such a proceeding must be issued within eight months of filing of a complaint and a final decision of the Commission must be issued within one year of filing of a complaint. More stringent time periods for the filing of exceptions and replies are and established and provision is made that discovery procedures are to commence concurrently with the filing of a party's first pleading. These amendments are necessitated by passage of the "Maritime Labor Agreements Act of 1980" (Pub. L. 96–325).

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Washington, D.C. 20573 (202) 523–5725.

SUPPLMENTARY INFORMATION: The "Maritime Labor Agreements Act of 1980" (Pub. L. 96–325) amends the Shipping Act, 1916 to exempt collective bargaining and related agreements from regulation by the Federal Maritime Commission unless such agreements provide for an assessment agreement. Pub. L. 96–325 defines assessment agreements as those which provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hours basis regardless of the cargo handled or type of vessel or equipment utilized and irrespective of whether or not they are part of a collective bargaining agreement or are negotiated separately. Where a complaint is filed involving assessment agreements, the Commission must issue its final decision in the proceeding within one year of the filing of the complaint. Accordingly, it is necessary to prescribe time limitations and procedures relating to the conduct of such proceedings.

A new § 502.75 is established which provides that the initial decision in an assessment agreement proceeding will be issued within eight months of the date of filing of the complaint. Discovery will commence at the time of filing of a party's initial pleading. The time for filing of exceptions to the initial decision and replies thereto is reduced to 15 days for each filing. The time within which the Commission may review the initial decision in the absence of exceptions remains thirty days. Section 502.227 is amended to reflect these deviations from the general rules regarding the conduct of proceedings.

Therefore, pursuant to 5 U.S.C. 553 and sections 22 and 43 of the Shipping Act, 1916 (46 U.S.C. 821, 841a) Part 502 of Title 46, Code of Federal Regulations is amended in the following respects.

1. A new § 502.75 is added reading as follows:

§ 502.75 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under the fifth paragraph of Section 15 of the Shipping Act, 1916, the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued which date will be not more than eight months from the date the complaint was filed.

(b) Any party to a proceeding conducted under this section who desires to utilize the prehearing discovery procedures provided by Subpart L of this part shall commence doing so at the time it files its initial pleading, i.e., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113 of this part. Answers or objection to discovery requests shall be subject to the normal provisions set forth in Subpart L.

(c) Exceptions to the decision of the presiding officer, filed pursuant to § 502.227 (Rule 227) shall be filed no later than fifteen (15) days after date of service of the initial decision. Replies thereto shall be filed no later than fifteen (15) days after date of service of exceptions. In the absence of exceptions, the decision of the presiding officer shall be final within 30 days from the date of service unless within that period a determination to review is

made in accordance with the procedures outlined in § 502.227 of this part.

§ 502.227 [Amended]

2. Section 502.227(a) is revised insofar as the last sentence thereof shall read as follows:

(a) * * *

The time periods for filing exceptions and replies to exceptions, prescribed by this section shall not apply to proceedings conducted under §§ 502.67 and 502.75 of this part.

* * * * *

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81-369 Filed 1-5-81; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 46, No. 3
Tuesday, January 6, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 715

Actions in the Interest of the Employee

AGENCY: Office of Personnel Management.

ACTION: Proposed regulation.

SUMMARY: This document proposes a revision to the regulations governing voluntary actions and other nondisciplinary actions concerning employees. The title of these regulations, now "Nondisciplinary Separations, Demotions, and Furloughs" would be changed to reflect the actions covered in the proposed revision. Several actions and requirements now found in the FPM chapter would be incorporated into the body of the regulation, to accomplish OPM's aim of having all requirements in regulation.

DATE: Comments must be received on or before March 9, 1981.

ADDRESS: Send written comments to Workforce Effectiveness and Development Group, Office of Personnel Management, P.O. Box 14080, Washington, D.C. 20044, Attention: Employee Relations Branch.

FOR FURTHER INFORMATION CONTACT: Cynthia Field, 202–632–7778.

SUPPLEMENTARY INFORMATION: The current regulation, Part 715, covers only voluntary separations, despite the title. Other requirements concerning actions in the interest of the employee, e.g., voluntary retirements, or cancellation or correction of separations, suspensions, etc., are set forth in FPM chapter 715, FPM Supplement 831–1, etc. OPM believes it would be better to have these actions and provisions clearly set forth in one regulation. Certain other material which is currently found in FPM chapter 715 (for example, the fact that voluntary separations and reductions in grade and pay are by their nature actions not requiring adverse actions procedures) is more appropriate for inclusion in a revision to chapter 715, to be issued later. OPM plans to revise the chapter title and to provide guidance, information, and illustrative material, including applicable court decisions and opinions of the Merit Systems Protection Board on the question of voluntariness versus involuntariness of actions.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to revise 5 CFR Part 715 to read as follows:

PART 715—ACTIONS IN THE INTEREST OF THE EMPLOYEE

Sec.

Authority: 5 U.S.C. 1302, 3301, 3302, 7301.

PART 715— ACTIONS IN THE INTEREST OF THE EMPLOYEE

§ 715.101 Actions covered.

This part applies to the following actions:

(a) Separations or reductions in grade or pay requested by employees.

(b) Cancellation or correction of separations, reductions in grade or pay, suspensions, or furloughs in the interest of employees.

§ 715.102 Employees covered.

This part applies to employees in the Executive departments and independent establishments of the Federal Government, including Government-owned or controlled corporations, and in those portions of the legislative and judicial branches of the Federal Government having positions in the competitive service.

§ 715.103 Voluntary separation or reduction in grade or pay.

(a) *General.* An employee may submit:

(1) A resignation or an application for optional retirement or disability retirement, at any time, specify the effective date of the action, and have his or her reasons for the aciton entered in the employee's official records; or

(2) A request for reduction in grade or pay at any time, specify the effective date of the action (subject to the approval of agency management), and have his or her reasons for the action entered in the employee's official records.

(b) *Withdrawal of request for voluntary separation or reduction in grade or pay.* The agency may permit an employee to withdraw a resignation, a retirement application, or a request for reduction in grade or pay at any time before it has become effective. The agency may decline a request to withdraw a resignation or application for retirement, or a request for reduction in grade or pay only when the agency has a valid reason and explains that reason in writing to the employee. Valid reasons include, but are not limited to, the hiring of or the commitment to hire a replacement. If an applicaiton for retirement has been sent to OPM, the agency shall notify OPM immediately of the employee's withdrawal of the request. Once a voluntary separation or reduction in grade or pay action has been effected, the agency may not change it except as provided by § 715.104.

§ 715.104 Cancellation or correction of separations, reductions in grade or pay, suspensions, or furloughs.

(a) *Cancellation.* Any separation, reduction in grade or pay, suspension, or furlough may be cancelled at any time before it becomes effective. After the action is effected, however, it may not be canceled unless appropriate authority as defined in § 550.803(d) of 5 CFR exists for the cancellation, including:

(1) *Unjustified or unwarranted action.* The agency shall cancel a separation, reduction in grade or pay, suspension, or furlough when an appropriate authority determines that the action was unjustified or unwarranted.

(2) *Erroneous retirement.* The agency shall cancel an erroneous retirement and return the employee to duty or to a leave status, as appropriate.

When the agency cancels an action under paragraph (a)(1) or (a)(2) of this section, it shall make its determination regarding back pay under the provisions of section 5596 of Title 5, United States Code, and Subpart H of Part 550 of this chapter.

(b) *Correction.* The agency may withdraw any separation, reduction in grade or pay, suspension, or removal at any time before it becomes effective. Once it is effected, the agency may

correct such an action only when incorrectly processed initially, e.g.:

(1) *Transfer.* The agency may change a voluntary separation for the purpose of transfer or for appointment to another Federal agency to make the separation effective on the day before the transfer or appointment was actually effected.

(2) *Change in reason for action.* The agency may correct an erroneously described action by substituting a more appropriate description.

(5 U.S.C. 1302, 3301, 3302, 7301)

[FR Doc. 81-162 Filed 1-5-81; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A33]

Milk in the Southern Michigan Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the order provisions pertaining to supply plant pooling qualifications and the conditions under which milk may be diverted from one plant to another. Also, it recommends that handlers be allowed to subtract authorized deductions from partial payments to producers. This decision is based on industry proposals considered at a public hearing held March 25–26, 1980. The recommended changes are necessary to reflect current marketing conditions and to assure orderly marketing in the area.

DATE: Comments are due on or before January 21, 1981.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: This proposed action has been review under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not signficant." This decision constitues the Department's Draft Impact Analysis Statement for this proceeding.

Prior document in this proceeding:

Notice of Hearing: Issued February 28, 1980, published March 4, 1980 (45 FR 14047).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulatiang the handling of milk in the Southern Michigan marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decisions with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before January 21, 1981. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Flint, Michigan, on March 25–26, 1980, pursuant to notice thereof issued February 28, 1980 (45 FR 14047).

The material issues on the record of hearing relate to:

1. A second partial payment to producers.
2. Pool supply plant provisions.
3. Producer milk.
4. Payments to producers and to cooperative associations.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *A second partial payment to producers.*

The order should not be revised to provide for a second partial payment to producers.

The order now provides that handlers shall pay a partial payment to producers for milk delivered during the first 15 days of the month at not less than the Class III price for the preceding month. The payment to individual producers is made on or before the last day of the month. In the case of a cooperative association authorized to collect payments due its members, the partial payment is made to the cooperative on or before the second day prior to the end of the month.

The Michigan Milk Producers Association (MMPA) proposed that the order be revised to provide for two partial payments each month to producers and to cooperative associations. The rate of payment would be the Class III price for the preceding month (3.5 percent butterfat basis), plus 25 cents per hundredweight. For milk delivered during the first 10 days of the month, handlers would pay the first partial payment to cooperative associations by the 20th day of the month, and, as initially proposed, to individual producers by the 25th day of the month. At the hearing, proponent modified the second date to the 22nd instead of the 25th day of the month. For milk delivered during the 11th–20th days of the month, handlers would pay the second partial payment to cooperative associations by the last day of the month and, as initially proposed, to individual producers by the 5th day of the following month. At the hearing, proponent changed the 5th to the 2nd day of the following month.

Proponent's proposal was supported by Michigan Producers Dairy, a cooperative association supplying the market. Also, the President of the Michigan Farm Bureau supported the proposal in a post-hearing brief. The proposal was opposed by 11 handlers regulated by the order, and by the Independent Cooperative Milk Producers Association.

A proponent witness testified that the proposal is intended to reduce the credit extended to handlers by dairy farmers and to accelerate payment to them, thereby improving producers' cash flow. The witness also testified that with an additional partial payment farmers would probably lose less money than with only one partial payment in the event of handler insolvency. The witness testified that the interest cost to producers in extending credit to handlers may be actual interest for the money the farmer borrows to conduct his operation, or it may be an imputed interest cost for the money dairy farmers have tied up in the milk in the marketing system for which they have not yet been paid. The witness stated that over the years the money that dairy farmers have in the system, the interest cost of the money and their financial risk have increased substantially. In his view, this has tended to place an extremely high part of the cost of the milk marketing system on dairy farmers.

The witness testified further that in the Order 40 marketing area a very high

percentage of milk is sold to consumers through stores on a cash and carry basis. He stated that most of the milk received at a handler's processing plant is in the hands of consumers and paid for by them in 10 days. His view was that a highly efficient marketing system takes a bulky, very perishable product and moves it from cow to consumer in less than two weeks, and a large part of it within one week. Yet, farmers do not receive final payment for their milk until two to six weeks after the milk has been delivered to regulated handlers.

Two MMPA producers also testified in favor of the proposal. One testified that suppliers of production inputs have changed their credit policies over the past year (prior to the hearing) so that some merchants now are on a cash basis and others have reduced credit terms from the usual 30 days to 10 days on accounts for feed, supplies, machinery and other goods. The other producer testified that adoption of the proposal would create a better cash flow for dairy farmers and would reduce producers' financial risk. The financial risk referred to is the possibility that producers would not be paid in the event of handler insolvency.

Another MMPA witness testified that the additional partial payment, which would result in producers receiving three payments a month for their milk, is workable. He explained the procedural steps necessary for the additional payment and stated that, administratively, the cooperative is capable of paying producer members close to the handler date for making payments, and could do so if handlers made payment in good funds by the due date.

Four witnesses representing 11 handlers regulated by the order, and the representative of a producer cooperative association, testified against the proposal. One of the witnesses, who represented the 9 handlers, opposed the proposal primarily on the basis that: (1) handlers would be required to pay for milk prior to the time they could collect for products sold, and (2) a cash flow problem would be created for handlers, resulting in additional costs for consumers.

In a post-hearing brief, the attorney for the 9 handlers stated that: (1) there should not be an amendment of this significance without substantial additional study and coordination with other orders, and (2) a substantial question exists as to whether the Department is authorized to prescribe more expedited payment terms.

The witness for another handler opposed the proposal primarily on the basis that: (1) producer interest expenses, which are incorporated into Federal milk support prices, do not justify payment acceleration, (2) producer financial risk would not be reduced by the adoption of the proposal and may be more effectively resolved by a variety of less costly alternatives, (3) substantial costs to handlers and consumers would result, and (4) a disproportionate share of cash flow burdens would be shifted to handlers.

In a post-hearing brief, the handler's counsel stated that the chief economist of the Department had stated that dairy farmer income is rising faster than costs of production. Also, the counsel stated that since cash flow problems to producers, as well as to handlers, are not unique to the Southern Michigan market, any affirmative agency decision on the proposal, or its equivalent consideration elsewhere, should come only after studied analysis of its national impact.

Two other handler witnesses who testified in opposition to the proposal stated that some handlers wo sell fluid milk products to institutions, such as public schools, cannot reduce the time it presently takes to collect accounts.

A witness for a producer cooperative association opposed the proposal on the basis that a cash flow "squeeze" would fall hardest on small, independent milk dealers. The witness claimed that becuase of this a second partial payment would increase, not decrease, the exposure of producers to the risk of handler insolvency.

Before discussing the issue of whether a second partial payment should be provided for Order 40, it is appropriate to describe some of the characteristics of the Order 40 market. At the time the hearing was held, there were 28 handlers operating 42 pool plants regulated by the order. Five of these handlers were cooperative associations that operated 15 of the pool plants.

For 1979, the Order 40 market was supplied by 6,365 producers who delivered a monthly averge of 350 million pounds of milk to the market. The average production per farmer was 1,824 pounds per day. For the year, producers supplied about 4 billion pounds of milk. Of this, 53 percent was used in Class I fluid milk products, 7 percent was used in Class II (chiefly as cottage cheese) and 40 percent was used in Class III (chiefly as nonfat dry milk and condensed milk). About 54 percent of the Class I milk for the market was sold in the Detroit metropolitan area. The average order blend price for Order 40 producer milk pooled in 1979 was $11.73 per hundredweight (3.5 percent butterfat basis).

A witness for proponent entered an exhibit into evidence to indicate certain changes that have occurred with respect to Michigan dairy farms between 1958 and 1978, as compiled by Michigan State University. The number of cows per farm increased from 30 to 83, while production per cow increased from 9,715 pounds to 14,232 pounds. Milk sales from such farms increased from 288,000 pounds to 1.2 million pounds a year per farm. The dollar value of milk sales per farm increased from $10,036 to $124,000 while the average price of milk increased from $3.49 to $10.41 per hundredweight. This average price corresponds closely to the uniform prices of the present Order 40 and its predecessor orders for milk of 3.5 percent butterfat.

Total farm capitalization increased from $61,395 to $492,746. Cash income, increasingly from milk sales, went from $19,952 to $156,958, while cash exepnses increased from $11,865 to $104,412. Loan repayments increased from $3,000 to $33,224.

An evaluation of the hearing evidence introduced into the record on the proposal for a second partial payment leads to the conclusion that the proposal should not be adopted. Marketing conditions in the affected area are not such that it necessary to mandate more frequent payments to producers each month.

Although the Act expressly authorizes the setting of payment dates under an order, it does not specify how frequently handlers must pay producers. This is customarily established under an order on the basis of prevailing marketing conditions, including payment practices already existing in an area or new payment practices that handlers and producers may find mutually desirable. On this basis, the Southern Michigan order now provides for one partial payment and a final payment by handlers to producers each month.

Under the proposal being considered, handlers would be required each month to make a second partial payment to producers. While the proposal is supported by a large segment of the producers on the market, a number of producers in the area do not support the proposal. Also, objections to the proposal were voiced by many of the handlers in the market. Although some of the opposing arguments are of a questionable nature, it is evident, nevertheless, that there is a substantial difference of opinion among producers and handlers in the market as to whether a different payment arrangement between these parties is desirable. This places considerably more burden on proponents to show that

a second partial payment for milk is essential to the maintenance of orderly marketing in the Southern Michigan market and that the order must be changed to impose the additional payment requirement on regulated handlers. This showing was not made.

A principal argument by the proponent cooperative (MMPA) for more frequent payments was the need by producers for improving their cash flow; that is, obtaining payment for milk more quickly after producing it and delivering it to handlers. However, proponent did not establish any specific "cash flow" probelms applicalbe to a substantial number of Order 40 producers that would require an acceleration of payments to producers. In fact, the testimony ot two MMPA producers established that producers often are able to arrange payment schedules to correspond to the payment dates now provided by the order, that only some production items are bought on a cash-on-delivery basis (and then often at a discount rate), and that many items are bought on the basis of monthly payments with no cost or penalty imposed except for payment delinquency.

Furthermore, it is noted that the record established that produers are receiving increases in Class III prices which have occurred since the present partial payment provision was established for Order 40 in 1964. Such increases automatically enhance the amount of money paid out by handlers for the single partial payment. In 1974, the average Class III price was $6.80 per hundredweight. For the same year, the average uniform price was $8.13. The partial payment rate was 84 percent of the final payment rate of $8.13. In 1979, the average Class III price was $10.91 and the average uniform price was $11.73. The partial payment rate was 93 percent of the final uniform price. In this way, producers have automatically received larger partial payments to cover the cost of interest or other expenses.

Proponent claimed that there is a need for decreasing the interest cost and farm capitalization borne by Order 40 producers. However, the general data furnished by proponents do not point to specific instances of disorderly marketing conditions for such producers that necessitate changing the current payment schedule. In this connection, it is noted that contrary to proponent's claim that a higher proportion of producer cash flow goes to debt repayment than heretofore, the record evidence established that in 1978 a smaller proportion of producer cash flow went to debt repayment than in 1968. It is also noted that proponent did not establish that adoption of the proposal would have any substantial, practical effect on reducing interest costs incurred by Order 40 producers in their milk production operations. Much of the emphasis by proponent was on imputed interest costs that would be "discontinued" if the proposal were adopted. That is, if producers received payment for their milk sooner, the interest cost which they imputed to the value of the milk not paid for would no longer apply. As a practical matter, elimination of this imputed interest cost would not represent an actual savings for producers since the cost is not one that is actually being incurred.

The proponent claimed also that adoption of the proposal was needed to reduce the financial risk of producers that stems from the possibility that handler might declare bankruptcy with a large amount of money outstanding for milk delivered by producers during a month. Yet, the record reveals no major problems in this respect. While the adoption of the proposal would result in somewhat less money in the marketing system that could become involved in a possible handler default, the proposal is not the type that would guarantee producers agains financial loss resulting from handler default. There is no basis in the record for concluding that there is substantial concern on the part of producers and cooperative associations in this market about such risks in dealing with regulated handlers.

In taking all the foregoing findings into consideration, it must be concluded that the hearing record of this proceeding does not provide the basis for adopting the proposal for a second partial payment. Proponent did not demonstrate convincingly that disorderly marketing conditions prevail which imperatively require provision for a second partial payment. Accordingly, the proposal is denied.

2. *Pool supply plant provisions.* The pooling provisions for supply plants should be revised by reducing the shipping requirements for the months of October through March to 30 percent of the supply plant's, or supply plant unit's, receipts of producer milk and milk received from a cooperative association in its capacity as a bulk tank handler. Producer milk diverted from the supply plant, or unit of supply plants, to pool distributing plants also should be considered as qualifying shipments in fulfilling up to one-half of the 30 percent shipping requirement. Likewise, transfers of fluid milk products to distributing plants fully regulated under another Federal order should be considered as qualifying shipments for pooling a supply plant, or unit of supply plants, in an amount not to exceed the actual transfers of fluid milk products from the supply plant, or unit, to pool distributing plants. This latter change also should apply to the separate pooling requirements for supply plants operated by a cooperative association.

Presently, the pooling provisions for supply plants specify that during the months of October through March any supply plant, or unit of supply plants, shipping at least 40 percent of its receipts of producer milk and milk received from a cooperative association in its capacity as a bulk tank handler to pool distributing plants shall be a pool supply plant. During the remaining months of the year, the shipping percentage is 30 percent, except that a supply plant or unit that was pooled in each of the months of October through March has automatic pool plant status during the remaining months.

In addition, there are separate pooling requirements for supply plants operated by a cooperative association. These provisions allow milk delivered directly from member producers' farms to pool distributing plants by the cooperative association, or in combination with member producer milk of another cooperative association with which it has a marketing agreement, to be included as qualifying shipments to enable the cooperative's supply plant to meet the pooling requirements. These provisions pool a supply plant operated by a cooperative association if the cooperative delivers at least 50 percent of its members' producer milk, either directly from the farms or by transfer from the supply plant, to pool distributing plants. If the plant does not meet these pooling requirements during a month, it still retains its pool plant status for that month if at least one-half of its members' milk was delivered to pool distributing plants during the preceding 12 months. Further, a cooperative association that operates a plant located in the marketing area that has been a pool plant for 12 consecutive months, but which otherwise does not qualify, may qualify the plant as a pool supply plant if the cooperative has a marketing agreement with another cooperative association, and the total deliveries of milk to pool distributing plants by the two cooperatives combined, either directly from farms or by transfer from the plant, is not less than 50 percent of their combined member producer milk.

Michigan Milk Producers Association (MMPA) proposed that the shipping

percentage for pooling supply plants during the months of October through March be reduced to 30 percent in the interest of reducing needless fuel consumption and avoiding excessive transportation costs. Proponent's witness testified that the 40 percent shipping requirement is not necessary to assure that reserve supplies of milk will be made available to the fluid market. He claimed that the Southern Michigan market has operated with an effective shipping requirement of 30 percent for the past 2 years and there has been an adequate supply of milk available to distributing plants.

The proposal was supported by another cooperative association whose witness testified that milk production in the market is increasing, and Class I sales are declining. This has made it increasingly more difficult for some supply plants to remain qualified as pool plants under the present provisions. He said the proposal to reduce the shipping percentage for pooling supply plants would relieve the problem while continuing to curb "pool riding" abuses.

A handler who operates two pool supply plants and a pool distributing plant also supported the proposal. The handler's witness said that in the past 6 years the Class I utilization percentage of producer milk on the market has declined from nearly 64 percent in 1974 down to 53 percent in 1979. He stated that the order should be changed to provide pooling provisions that are responsive to this change. There was no opposition to the proposal.

Lowering the shipping percentage for pooling supply plants during the months of October through March from 40 to 30 percent, along with the other modifications described later, would allow supply plants to serve the fluid milk requirements of the market in an efficient manner without causing needless shipments of milk merely for the purpose of meeting the pooling requirements. The hearing record indicates that the market was adequately supplied with milk during the preceding 2 years when the effective shipping percentage, as a result of suspension actions, was 30 percent. Further, it indicates that with such a shipping percentage supply plants would continue to make adequate supplies available to pool distributing plants for fluid use.

During the six-year period of 1974 through 1979, receipts from producers increased nearly 14 percent while producer milk utilized in Class I outlets decreased more than 5 percent. For the months of October through March, when the present order specifies a 40 percent shipping percentage for pooling supply plants, receipts of producer milk increased nearly eleven percent from the October 1974–March 1975 period to the October 1978–March 1979 period while producer milk utilized as Class I milk declined 2.5 percent. Nothing in the hearing record would indicate a reversal of these trends in the future.

The increase in producer receipts and decline in Class I sales described in the previous paragraph caused producers to request a suspension of the 40 percent shipping percentage for the months of October through March in both the 1978–79 and 1979–80 periods. These suspensions resulted in an effective shipping percentage of 30 percent. The hearing evidence shows that the suspension for the 1979–80 period allowed proponent cooperative to reduce the qualifying shipments from its supply plant unit by 16¾ million pounds. At current transportation rates it would have cost a minimum of 25 cents per hundredweight to move this milk from a supply plant to the nearest bottling plant. If it had been necessary to transport this milk to Detroit, the cost would have been 37 cents per hundredweight. Consequently, lowering the shipping percentage saved between $41,875 and $61,975 in transportation charges. Further, if it had been necessary for proponent to ship the 16¾ million pounds of milk to distributing plants in order to maintain the pooling status of the supply plants in its unit, such shipments would have displaced an equivalent amount of direct delivered milk because distributing plants already were adequately supplied. This would have forced proponent to divert the displaced direct delivered milk to manufacturing plants which would have resulted in the hauling of milk additional miles and the consumption of more fuel. Thus, lowering the shipping percentage to 30 percent during the months of October through March would permit proponent's supply plants and all other supply plants under similar circumstances to continue serving the fluid milk needs of the market without causing a needless expenditure of money for the transportation of milk solely to qualify supply plants for pooling.

The companion pooling proposal of MMPA to include transfers to distributing plants fully regulated under other Federal orders as qualifying shipments for pooling a supply plant, including the similar change in the provisions for pooling plants operated by cooperative associations, also should be adopted. The qualifying credit for transfers to such plants, however, should be limited to an amount that is equal to the quantity of milk transferred by the supply plant to pool distributing plants. Transfers to other order distributing plants on the basis of agreed upon Class II or Class III classification should not be eligible for such credit.

Proponent's witness stated that in recent years bulk sales of milk to other order distributing plants have gained significant importance in the cooperative's total marketing program. The witness claimed that the absence of the proposed provision in the order creates a barrier that prevents adding more Class I sales to the Southern Michigan pool. Also, it was claimed that absent the provision, nearby deficit markets are forced to procure supplemental milk from more distant sources at higher transportation costs.

The proposal was supported by two cooperative associations and three handlers who operate pool distributing plants. The witness for one of these handlers testified that his company also operates a distributing plant regulated under the Ohio Valley order while the witness for another handler testified that his company also operates distributing plants regulated under both the Ohio Valley and Indiana orders. These two witnesses said that milk supplies from the Southern Michigan market are received at their respective plants in Ohio and Indiana and that the amount of such milk received at these plants probably will increase in the future.

A supply plant or unit of supply plants should be given credit for shipments to distributing plants regulated under other orders. This provision would help accommodate the orderly pooling of Grade A milk that is produced in the Southern Michigan market procurement area but not needed at local fluid milk outlets. As described previously, supplies of producer milk on the market are increasing while Class I sales are decreasing. Without such a provision, a supply plant operator serving the Southern Michigan market might be reluctant to supply milk to another market because of the necessity of supplying a minimum quantity of milk to distributing plants regulated under this order. This could occur even though these other orders would provide the most lucrative outlet for the milk. Further, such a provision could encourage supply plant operators to offer "spot" shipments of milk where needed.

As testified on the record, cooperatives have the opportunity to supply milk to distributing plants regulated under different orders. Such sales not only help the cooperative improve its returns but also tend to

improve the blend price payable to all producers who supply the Southern Michigan market. The availability of such milk also helps the handlers in the buying markets to obtain milk from the closest available source. During 1979 Class I utilization realized from such shipment amounted to 129 million pounds. This was substantially above the 1976 Class I sales to nonpool plants, which amounted to less than 6 million pounds. Further, the 129 million pounds in 1979 represented 5¾ percent of the total producer milk used in Class I and added 4½ cents to the producer blend price. Also, the testimony of two handlers' witnesses indicated that shipments to their distributing plants regulated under the Ohio Valley and Indiana orders from the Southern Michigan market probably will increase in the future. These handler witnesses said milk supplies in the Southern Michigan production area are located much closer to their distributing plants than are alternative supplies in Minnesota and Wisconsin.

Credit for shipments to other markets should be limited to the amount of milk delivered to distributing plants regulated under the Southern Michigan order to insure that adequate supplies of milk will be made available to distributing plants in this market. If no limit were provided on the credit for transfers to other markets, situations could arise where most of the milk associated with a supply plant being pooled on the Southern Michigan market would be moved to other markets. This could undermine the effectiveness of the Southern Michigan order in insuring an adequate supply of milk for fluid use within the market.

Only transfers to other markets that are not made on the basis of agreed upon Class II or Class III utilization should receive qualifying credit. When milk is transferred at agreed upon Class II or Class III utilization, it is surplus milk intended for use in manufacturing outlets. Such transferred milk should not receive credit as a shipment supplying a fluid market.

Several witnesses testified about the desirability of permitting the diversion of Southern Michigan producer milk direct from the producer's farm to distributing plants regulated under another order for Class I use and the dairy farmer retaining his producer status under the Southern Michigan order. These witnesses claimed that allowing such diversions would eliminate the needless hauling of producer milk to supply plants where it is received and then reloaded onto another truck for shipment to another order distributing plant.

This suggestion cannot be adopted on the basis of this hearing record because there was no proposal in the hearing notice to consider such an order amendment on the basis of this record. Furthermore, consideration of such a proposal would require a hearing that included several other Federal orders because any change would involve amendments to orders in both the shipping and receiving markets.

The proposal to allow up to one-half of the shipping requirements for pooling a supply plant to be met by the diversion of producer milk from the supply plant to pool distributing plants should be adopted. The proposal was made by a handler who operates two pool supply plants and a pool distributing plant. The handler's witness said the proposal is intended to promote economy and efficiency in the handling of milk by supply plant operators. The proposal was supported by another handler and there was no opposition to it.

Permitting supply plant operators to include as qualifying shipments producer milk diverted to pool distributing plants would promote the efficient handling of milk supplies and eliminate the hauling of producer milk to a supply plant for transfer to distributing plants solely for the purpose of helping the supply plant meet the pooling requirements. Proponent handler operates supply plants located at Pinconning and Clare, Michigan. Producer milk received at the Pinconning plant is used to supply a pool distributing plant located at Port Huron, Michigan, 130 miles southeast of Pinconning. Some of the producer milk received at the Pinconning plant is from dairy farms located in the Michigan counties of Sanilac, Huron and Tuscola. Milk from these dairy farms is delivered to a facility located at Verona, Michigan, where it is reloaded into over-the-road tankers and then delivered to the Pinconning supply plant. Verona is 98 highway miles east of Pinconning, directly across Saginaw Bay.

Presently, the hauler delivering milk from Verona to Pinconning travels 98 miles over to Pinconning and then 98 miles back. When the Verona milk is received in the Pinconning supply plant it loses its identity as producer milk. Thus, when this milk is loaded onto another truck and transported to the Port Huron distributing plant, it is considered a qualifying shipment for pooling the supply plant. The hauler at Pinconning drives 130 miles to Port Huron and 130 miles return. The total distance traveled by the 2 truckers combined is 456 miles.

Allowing diversions of producer milk to the Port Huron distributing plant to be considered as qualifying shipments from the Pinconning supply plant would reduce significantly the total miles traveled. The Verona reload facility is located 83 miles north of Port Huron. Thus, the hauler who would transport the milk from Verona to Port Huron would travel 83 miles down and 83 miles back, a round trip distance of 166 miles. This would be a reduction in total mileage of 290 miles (456 mile present minus 166 miles recommended) as compared to transporting the milk first to Pinconning. Also, the direct shipment of the milk from Verona to Port Huron would help preserve its quality by avoiding the pumping and storage of the milk at Pinconning.

The qualifying credits for diversions from a supply plant to pool distributing plants should be limited to one-half of the pooling requirements for the supply plant. This would insure that the supply plant actually is supplying the fluid needs of the Southern Michigan market. Further, it would prevent a Southern Michigan handler who operates a plant in a distant market from qualifying that plant for pooling on the Southern Michigan market based on direct delivery of producer milk by the handler to pool distributing plants without any demonstration that the distant plant has a bona-fide association with the Order 40 market.

3. *Producer milk.* (a) The order should be revised by reducing from 6 to 2 the number of days of production of a producer tht must be delivered to a pool plant each month in order to qualify the milk of that producer for diversion to a nonpool plant as producer milk. This revision was proposed by Independent Cooperative Milk Producers Associations which supplies milk to a pool distributing plant at Grand Rapids and diverts producer milk not needed for fluid use to a nonpool manufacturing plant located 80 miles north of Grand Rapids at Reed City, Michigan. Proponent's witness said that the purpose of the proposal is to reduce the transportation costs that are associated with the hauling of milk between these two cities.

The proposed change would promote the efficient handling of reserve supplies and reduce the hauling of milk to a pool solely to maintain its producer milk status. Proponent cooperative association is a regular supplier of milk to the fluid market. The cooperative has member producers whose farms are located in the Grand Rapids area and other member producers located in the

general vicinity of the Reed City manufacturing plant. Normally, the milk produced by members in the Grand Rapids area is sufficient to fill the fluid requirements of the Grand Rapids distributing plant. The milk produced in the reed City area is therefore diverted to the nearby nonpool plant for manufacturing. However, sufficient milk from the Reed City area is delivered to the Grand Rapids distributing plant to qualify the producers' milk for diversion to the nonpool manufacturing plant as producer milk. Since the Reed City milk is not needed at Grand Rapids, proponent diverts some of the milk in the Grand Rapids area to Reed City to make room in the Grand Rapids Plant for the milk delivered from Reed City. As a result, the proponent must make six round trips each month to deliver milk from the Reed city area to grand Rapids and, in addition, six round trips each month to divert milk from the Grand Rapids area to Reed City. The total mileage involved in this cross movement of milk is approximately 1,920 miles per month.

Requuiring only 2 days' production of a producer's milk each month to be received at a pool plant would lower the number of miles traveled by two-thirds. As provided herein, the total mileage each month would be only 640 miles, a reduction of 1,280 miles (1, 920 miles present minus 640 miles recommended). Thus, the reduction would result in a more economic movement of milk while assuring that the producers in the Reed City area continue their association with the Souther Michigan market.

The proposal was opposed by the Michigan Milk Producers Association whose witness testified that anything less than 6 days' production of a producer's milk that is delivered to a pool plant each month would not represent an adequate association with the fluid market. The witness also stated that the delivery of 6 days' production equates to a shipping requirement of 20 percent while 2 days would represent only a 6.5 percent shipping requirement. In the witness' view this is not compatible with the shipping requirements for pooling supply plants of 40 percent or the proposed 30 percent. The proposal also was opposed by two other cooperative associations in their post-hearing briefs.

It is true that 2 days represents only about 6.5 percent of the days in a month, and that for an individual producer whose milk is diverted to a nonpool plant the remaining days of the month his deliveries to a pool plant would equate to a 6.5 percent shipping requirement. However, this is not a valid comparision because the diversion limitations set forth in the order limit the total quantity of producer milk a cooperative association or pool plant handler may divert. The total quantity of milk that may be so diverted by such handlers may not exceed 60 percent of their receipts of producer milk during the months of October through March. Thus, 40 percent of their producer receipts must be delivered to pool plants. This is higher than the 30 percent shipping requirement for pooling supply plants that is recommended herein. Also, the producer milk provisions effectively limit diversions by a cooperative association of a handler to an appropriate level without the necessity of requiring excessive deliveries of milk from individual producers to pool plants merely for qualifying the milk for diversion to nonpool plants as producer milk.

(b) the producer milk definition should be revised to recognize the diversion of producer milk from one pool plant to another. Although such diversions are provided for in those sections of the order that deal with the classification provisions, the present producer milk definition does not specifically provide for them.

A handler who operates two suply plants and a distributing plant regulated by the Southern Michigan order proposed the revision. The Handler's witness stated that this change was needed to complement the handler's proposal to include as qualifying shipments for pooling a supply plant the diversions of milk from a supply plant to a pool distributing plant. There was no opposition to the proposal.

As set forth in another issue, up to one-half of the qualifying shipments for pooling a supply plant may be met by diversions of producer milk from the supply plant to pool distributing plants. As a result of that change, it is necessary to make a corollary change in the producer milk definition to accommodate the diversion of producer milk between pool plants. In doing so, it is necessary to distinguish between diversions of producer milk between pool plants and diversions of producer milk to nonpool plants. Certain limitations are necessary on diversions to nonpool plants to assure that the diverted milk is actually associated with the Southern Michigan market and available for the fluid market. No such limitations are necessary with respect to diversions between pool plants since the diverted milk would still be received at a pool plant and would be associated with the market.

(c) The producer milk definition also should be revised to establish a specific sequence to exclude from producer milk the quantity of milk that has been diverted to nonpool plants in excess of the diversion limits when the handler does not designate the dairy farmers whose milk shall not be producer milk. The present order excludes the days of production last diverted in determining which milk shall not be producer milk. However, it does not set forth any procedure for determining which day's milk shall be excluded first.

The handler who proposed recognizing diversions between pool plants in the producer milk section also proposed this revision. There was no opposition. The handler's witness said this proposal would provide an appropriate basis for determining which milk shall not be producer milk when it is overdiverted and the diverting handler does not designate the dairy farmers whose milk was overdiverted.

It is appropriate that the order provide a procedure for determining which diversions shall not be considered producer milk when milk diverted to nonpool plants exceeds the diversion limits prescribed by the order. The provisions of the accompanying order amendments achieve this objective. The provisions prescribe a specific procedure for excluding overdiverted milk from producer milk when a diverting handler does not designate whose milk shall not be producer milk. The procedure would exclude milk diverted on the last day of the month first; then, in sequence, milk diverted on the second-to-last day and so on in daily allotments until all of the overdiverted milk is accounted for.

4. *Payments to producers and to cooperative associations.* The order should be revised to allow handlers to subtract deducations authorized in writing by producers from their partial payments to such producers. Presently, handlers may substract authorized deductions only with respect to their final payments to producers each month.

A handler who operates two pool supply plants and a pool distributing plant proposed the revision. The handler's witness testified that allowing deductions on partial payments would provide producers with more balanced payments, give producers greater flexibility in using their business judgement on financial matters, and reduce disharmony between producers, their creditors and handlers when the monthly final payment to a producer is not adequate to satisfy all assignments. There was no opposition to the proposal.

Testimony on the record indicates that the average number of assignments per producer is seven. All producers on

the market have an assignment against their milk checks for hauling. Many producers also make assignments on behalf of their creditors and sometimes these assignments are larger than the amount of their final payment.

Proponent's witness testified that when the assignments against a producer's milk check are larger than the final payment, the handler does not pay all the assignments. He claimed that in such circumstances the creditor who did not get paid and the producer are upset because the handler didn't make the deduction even though the producer had requested the handler to do so. A witness representing another handler testified that with respect to assignments by a producer to the Farmers Home Administration, the handler is required to accept the assignment and has the responsibility for the payment, even if the handler fails to make the deduction from the producer's check. With respet to other assignments, this witness testified also that it creates bad feelings among creditors, producers and handlers when terms of the assignment are not followed.

Permitting handlers to substract authorized deductions when making both partial and final payments to producers would give producers greater flexibility in their business decisions and could help reduce the risk that some assignments against a producer's milk check would not be deducted because the final payment is not sufficient to cover all the assignments. Accordingly the proposal should be adopted. However, a producer's written authorization for a handler to deduct monies for payment to an assignee does not relieve the handler of his obligation to make full payment for milk received from producers by the date prescribed in the order. Thus, it is expected that the amounts deducted by handlers will be paid to assignees by the time partial payments are due individual producers. This is necessary to insure that all handlers are paying the minimum class prices for their producer milk by the dates required in the order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southern Michigan marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1040.7, (b) (1), (2) and (3) are revised, and a new paragraph (b)(5) is added to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) * * *

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section, subject to the following conditions:

(i) Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants; and

(ii) A supply plant that qualifies as a pool plant pursuant to this subparagraph in each of the months of October through March shall be a pool plant for the following months of April through September.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:

(i) Not less than one-half of its total member producers' milk in the current month or

(ii) Not less then one-half of its total member producers' milk for the second through the 13th preceding months, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the marketing area operated by a cooperative association, which plant has been a pool plant for 12 consecutive months but is not otherwise qualified under this paragraph, on meeting the following conditions:

(i) The cooperative has a marketing agreement with another cooperative whose members deliver at least 50 percent of their milk during the month directly to distributing plant(s) qualified under paragraph (a) of this section; and

(ii) The aggregate monthly quantity supplied by both such cooperatives to distributing plants by transfer from the cooperative's plant to plants described in paragraph (b)(5) of this section and by direct delivery from farms to plants qualified under paragraph (a) of this section is not less than 50 percent of the combined total of their member

producers' milk deliveries during the month. • • •

(5) Qualifying transfers from supply plants pursuant to this paragraph may be made to the following plants:

(i) Pool plants described in paragraph (a) of this section; and

(ii) Distributing plants fully regulated under other Federal orders except that credit for transfers to such plants shall be limited to the quantity of milk transferred from the supply plant to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed upon Class II or Class III utilization.

• • • • •

2. Section 1040.13 is revised to read as follows:

§ 1040.13 Producer milk.

"Producer milk" shall be the skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1040.9(c);

(c) Diverted by the operator of a pool plant to another pool plant; and

(d) Diverted by the operator of a pool pant or by a handler described in § 1040.9(b) to a nonpool plant, other than a producer-handler, subject to the following conditions:

(1) In any month that less than 2 days' production of a producer is delivered to a pool plant, the quantity of milk of the producer diverted during the month shall not be producer milk;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of October through March of the total quantity of producer milk for which it is the handler;

(3) Any milk diverted in excess of the limits described in paragraph (d)(2) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the total milk diverted on the last day of the month, then the second-to-the-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

(4) Milk which is subject to pooling under another order, shall not be producer milk.

3. Section 1040.73(d) is revised to read as follows:

§ 1040.73 Payments to producers and to cooperative associations.

• • • • •

(d) On or before the last day of each month for producer milk received during the first 15 days of the month at not less than the Class III milk price for the preceding month, less any proper deductions authorized in writing by the producer.

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

William T. Manley,

Acting Administrator.

[FR Doc. 81-313 filed 1-5-81; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Quality Service

9 CFR Parts 318 and 381

Use of Fumaric Acid in Meat and Poultry Products

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Federal meat inspection regulations and the poultry products inspection regulations to permit and set limits for the use of fumaric acid as a cure accelerator in cured comminuted meat and poultry products. The use of fumaric acid for this purpose would result in shorter preparation times and other production efficiencies.

DATE: Comments must be received on or before April 6, 1981.

ADDRESSES: 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. Robert G. Hibbert, (202) 447-6042.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Director, Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042. The Draft Impact Statement 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 rule has been reviewed under the USDA procedures established in Secretary's Memorandum Number 1955 to implement Executive Order 12044 and has been classified "not 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 amendment to the poultry products inspection regulations must make such request to Mr. Hibbert 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

The Administrator has been requested to approve the use of furmaric acid as a cure accelerator in cured comminuted meat and poultry products on a permanent basis. The proponents claim that fumaric acid accelerates color development in such products, which allows the use of higher cooking temperatures and correspondingly shorter preparation time. The proponents further claim that fumaric acid improves peelability of cooked sausages, which make automatic peeling machines more efficient. Results of tests conducted by the Meat and Poultry Inspection Program (MPI) in 1968 confirm these claims. Furthermore, data submitted to MPI in the same year by various processors using furmaric acid also supports the proponent's position.

The Food and Drug Administration currently allows the use of fumaric acid in food in its regulations (21 CFR 172.350) at a level not in excess of the amount reasonably required to accomplish the intended effect. Tests conducted by MPI have indicated that the use of fumaric acid as a cure accelerator in cured comminuted meat and poultry products can be permitted at a level not to exceed 0.065 percent (or 1 ounce per 100 pounds) of the weight of the meat and meat byproducts or poultry and poultry byproducts before processing.[1]

Options Considered.—The Department considered two options regarding this proposal.

[1] Copies of the test results may be obtained from the Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

1. Deny the use of fumaric acid in meat and poultry products.
2. Propose an amendment to the regulations to permit the use of fumaric acid as a cure accelerator in comminuted cured meat and poultry products.

Option 2 was selected to provide the industry with an additional cure accelerator.

Part 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

Accordingly, it is proposed to amend § 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) as follows:

§ 318.7 [Amended]

* * * * *

(c) * * *

(4) * * *

In that portion of the chart dealing with the "Class of substance" identified as "Curing accelerators; must be used only in combination with curing agents, the following information is added to the appropriate columns in alphabetical order:

Class of substance	Substance	Purpose	Products	Amount
Curing accelerators; must be used only in combination with curing agents.	Fumaric acid	To accelerate color fixing	Cured, comminuted meat or meat food product	0.065 percent (or 1 oz to 100 lb) of the weight of the meat or meat byproducts, before processing.

* * * * * * *

(Sec. 21, 34 Stat. 1264, 21 U.S.C. 621; 42 FR 35625, 35626, 35631)

Part 381—Poultry Products Inspection Regulations

Further, it is proposed to amend section 381.147(f)(3) of the Federal poultry products inspection regulations (9 CFR 381.147(f)(3)) to read as follows:

§ 381.147 [Amended]

(f)* * *

(3)* * *

* * * * * * *

In that portion of the chart dealing with the "Class of Substance" identified as "Curing accelerators; must be used only in combination with curing agents," the following information is added to the appropriate columns in alphabetical order:

Class of substance	Substance	Purpose	Products	Amount
Curing accelerators; must be used only in combination with curing agents.	Fumaric acid	To accelerate color fixing	Cured, comminuted poultry or poultry products.	0.065 percent (or 1 oz to 100 lb) of the weight of the poultry or poultry byproducts, before processing.

(Sec. 14, 71 Stat. 447, as amended, 21 U.S.C. 463; 42 FR 35625, 35626, 35631)

Done at Washington, D.C., on December 29, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 81-230 Filed 1-2-81; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-43]

Amendments to Propose Pricing Regulations

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Change in Hearing Schedule.

SUMMARY: On December 12, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a Notice of Proposed Rulemaking and Public Hearing (45 FR 84920, December 23, 1980) concerning amendments to the propane pricing regulations. The public hearing announced in that notice scheduled for January 7, 1981, is hereby changed.

DATES: Public Hearing Date: January 28, 1981. Requests to speak by January 20, 1981, 4:30 p.m.

ADDRESSES: Requests to speak should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-80-43, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3971.

Hearing location: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Karene Walker (Hearing Procedures), Department of Energy, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3971.

William L. Webb (Public Information), Department of Energy, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-4055.

Roger Miller (Office of Regulatory Policy), Department of Energy, Room 7121, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-4297.

Issued in Washington, D.C., December 30, 1980.

F. Scott Bush,

Assistant Administrator, Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81-367 Filed 1-5-81; 8:45 am]

BILLING CODE 6450-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release Nos. 33-6277, 34-17400, 35-21851, IC-11513; File No. S7-870]

Separate Reports of Other Accountants; Amendments to Proxy Rules and Regulation S-X

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission announces the proposal of rule amendments which would eliminate requirements for inclusion of separate reports of other accountants in annual reports to security holders when part of an examination of financial statements is made by an independent accountant other than the principal accountant of the registrant or when prior period financial statements are examined by a predecessor accountant. Also, amendments to Schedule 14A are proposed which would clarify when financial statements may be incorporated by reference into proxy or information statements from the annual report to security holders and under what circumstances financial statements in proxy or information statements may be omitted.

DATE: Comments should be received by the Commission on or before March 15, 1981. In addition, the release provides for the application of the proposed rules prior to effectiveness.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7-870. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Best, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2130).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing amendments to rules which would eliminate the requirements to include in annual reports to security holders separate reports of other accountants when part of an examination of financial statements is made by an independent accountant other than the principal accountant of the registrant or when prior period financial statements are examined by a predecessor accountant. In addition to the amendments proposed involving the separate reports of other accountants, the Commission is proposing amendments to Schedule 14A (Information Required in Proxy Statement) which would clarify when financial statements may be incorporated by reference from the annual report to security holders into a proxy or information statement and under what circumstances financial statements in a proxy or information statement may be omitted. Adoption of the proposed amendments contained in this release would result in amendments to Regulation S-X (17 CFR 210.2-05), Rule 14a-3 (17 CFR 240.14a-3), Schedule 14A (17 CFR 240.14a-101 et seq.) and Rule 14c-3 (17 CFR 240.14c-3).

Part of Examination Made By Other Independent Accountants

For various reasons, many companies engage more than one accounting firm for the performance of audit services. One firm may be engaged as the principal accountant to audit and report on the consolidated financial statements, while one or more other firms may be engaged to audit and report on the financial statements of one or more subsidiaries, divisions, branches, components, or investments included in the consolidated statements.

When part of an examination of financial statements is made by an independent accountant other than the principal accountant of a company, the principal accountant is required by generally accepted auditing standards to decide whether to make reference in his report to the work performed by the other accountant.[1] If the principal accountant decides to assume responsibility for the work of the other accountant insofar as the work relates to the principal accountant's expression of an opinion on the financial statements taken as a whole, no reference to the other accountant's examination is to be included under generally accepted auditing standards.[2] However, if the principal accountant chooses not to assume that responsibility but rather elects to rely on the work of the other accountant, his report, under generally accepted auditing standards, is required to make reference to the other accountant's work and indicate clearly the division of responsibility between himself and the other accountant.[3] Further, if the report of the other accountant contains a qualified opinion, the principal accountant must consider the nature and significance of the qualification, and, if material in relation to the financial statements he is reporting on, must include a qualification in his report.[4]

The separate report of the other accountant is not required under generally accepted auditing standards to accompany the report of the principal accountant. Regulation S-X (Rule 2-05), however, does require the separate report of the other accountant when the principal accountant elects to place reliance on the examination of the other accountant and makes reference to the other accountant in his report. The separate report has been required in filings principally to ensure complete documentation where the stated responsibility for a particular audit is shared with one or more other accountants.

In the past, because the audited financial statements in annual reports to security holders furnished pursuant to the proxy rules were only required to be in substantial compliance with Regulation S-X, many companies chose not to include the separate report of the other accountant even though it was otherwise required in filings with the Commission. Now, with the recent revision of the proxy rules requiring the audited financial statements in the annual report to security holders to comply with Regulation S-X, companies are faced with having to change past practice and expand their annual reports to include the separate reports of other accountants.

The Commission, which believes the annual report to security holders should be maintained as a readable and informative disclosure document, recognizes the need to carefully consider all disclosure requirements which impact the annual report so as to prevent the shareholder report from becoming too detailed and congested with data which may only be of interest to a limited segment of the public. In this connection the Commission has reconsidered the implications of requiring the separate report of other accountants in the annual shareholder report and considers that, given the current reporting obligations of the principal accountant imposed by generally accepted auditing standards, the incremental benefit accruing from the inclusion of the separate report of the other accountant in the annual report may be negligible.

[1] Section 543.03 of Codification of Statements on Auditing Standards, Numbers 1 to 26: AICPA.

[2] Id. at § 543.04.

[3] Id. at § 543.06 and .07.

[4] Id. at § 543.15.

Accordingly, the Commission is proposing an amendment to Regulation S-X which would eliminate the requirement to include such separate reports in annual reports to security holders furnished pursuant to the proxy rules. Under the proposal the separate reports of other accountants, however, would continue to be required in registration and reporting forms filed with the Commission. If a registrant elects to incorporate by reference the financial statements in its annual report for purposes of filing a Form 10-K, the separate reports of other accountants would be filed in Part II or in Part IV as financial statement schedules.

Report of Predecessor Accountant

In addition to reconsidering the implications of requiring separate reports of other accountants in annual reports to security holders when part of an examination of financial statements is made by one or more other accountants, the Commission has addressed the issue of presenting in the shareholder report the separate report of a predecessor accountant when audited financial statements of one or more prior periods are presented. Historically, when a company has experienced a change of independent accountants and comparative audited financial statements have been presented in response to reporting requirements of the Commission, separate accountant's reports from both the predecessor and successor accountants have been required covering the respective periods examined by each. Presentation of the predecessor accountant's report has been viewed as essential to a complete reporting package.

Although the requirement for inclusion of predecessor accountant reports has been widely observed in filings with the Commission, many registrants have in the past interpreted the rules as not requiring separate reports for purposes of preparing annual reports to security holders. These companies have included in their annual reports to security holders only the report of the successor accountant containing the disclosures required by generally accepted auditing standards.

Due to the confusion over the intent of the existing rules and the general need to be sensitive to the impact of disclosure requirements on the annual report to security holders, the Commission decided to reassess the importance of requiring the inclusion of separate predecessor accountant reports in other than forms filed with the Commission. Under current generally accepted auditing standards, the predecessor accountant's report need not accompany the successor's report as long as the successor accountant indicates in the scope paragraph of his report (a) that the financial statements of a prior period were examined by other accounts, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if the opinion was other than unqualified.[5]

Disclosure required of the successor accountant under generally accepted auditing standards appears to contain the ciritical details regarding the performance and results of the audit of a prior period and the Commission believes that such disclosure should be adequate for purposes of shareholder reporting. Accordingly, the Commission is proposing amendments to the proxy rules which would specify that for purposes of preparing annual reports to security holders inclusion of the separate report of a predecessor accountant is not required as long as the report of the successor accountant contains the disclosures required by generally accepted auditing standards.

It should be noted that registrants in preparing the annu al report to security holders would still be required to obtain from predecessor accountants a reissued report covering the prior period financial statements presented. In addition, the separate reports of predecessor accountants would continue to be required in registration and reporting forms filed with the Commission. If a registrant elects to incorporate by reference the financial statements in its annual report for purposes of a filing on Form 10-K, the separate report of a predecessor accountant would be filed in Part II or in Part IV as a financial statements schedule.

Proposed Amendments To Schedule 14A

In connection with the Commission's integrated disclosure program amendments to the Proxy rules were recently adopted [6] to facilitate the integration of disclosures in annual reports to security holders with disclosures required in registration and reporting forms filed with the Commission. As a consequence of certain of these revisions involving Schedule 14A of the General Rules and Regulations under the Securities Exchange Act of 1934 (17 CFR 240.14a-101), specific reference to certain reporting practices which were accepted in the past were removed. Since the time adoption of the revised rules, questions have been raised as to the Commission's continued acceptance of certain practices specifically provided for under the old rules.

Previous provisions of Item 15 of Schedule 14A specified that the proxy statement may incorporate by reference any financial statements contained in an annual report sent to security holders pursuant to § 240.14a-3 with respect to the same meeting as that to which the proxy statement relates, provided such financial statements substantially meet the requirements of the item. Under the revised rules it is not clear whether such incorporation by reference continues to be acceptable to the Commission. Accordingly, the Commission is proposing an amendment to Schedule 14A which would make clear that, as in the past, incorporation by reference of financial statements from the annual report to security holders to the proxy statement shall be accepted.

Additionally, under previous rules (Schedule 14A, Item 15) it was specified that the financial statements otherwise required in the proxy statement could be omitted if the plan as to merger, consolidation or acquisition involved only the issuer and one or more of its totally-held subsidiaries. This reference as to the ability to omit the financial statements in certain circumstances was also removed when the rules were revised. The proposed amendments would reinsert the clause as to exclusion of financial statements to make it clear that under these circumstances the Commission will accept the omission of financial statements.

Application of Proposed Rules Prior To Effectiveness

The Commission does not believe that the differential in disclosure which would result from the rule amendments proposed by this release would be significant. Therefore, the Commission will not object if registrants exclude predecessor and other accountants' reports from annual reports to security holders or follow the proposed rule amendments to Schedule 14A during the interim period between the date of this release and the effective date of final Commission action on the proposed rule amendments.

[5] Id. at § 505.12.

[6] Securities Act Release No. 6234 (September 2, 1980) [45 FR 63682]; Securities Act Release No. 6260 (November 13, 1980) [45 FR 76974].

Text of Proposed Amendments

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. Section 210.2-05 is proposed to be revised to read as follows:

§ 210.2-05 Examination of financial statements by more than one accountant.

If, with respect to the examination of the financial statements, part of the examination is made by an independent accountant other than the principal accountant and the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in his report, the separate report of the other accountant shall be filed. However, notwithstanding the provisions of this section, reports of other accountants which may otherwise be required in filings need not be presented in annual reports to security holders furnished pursuant to the proxy and information statement rules under the Securities Exchange Act of 1934 [§§ 240.14a-3 and 240.14c-3].

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

1. Section 240.14a-3 is proposed to be amended by revising paragraph (b)(1) to read as set forth below.

§ 240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A, and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note 1.—Information required by § 210.4-10(k)(1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4-10(k)(5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

Note 2.—If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders, provided the registrant has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Commission. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form 10-K, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

2. Section 240.14a-101 is proposed to be amended by revising Item 15 of Schedule 14A to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 15. Financial statements and supplementary data.

(a) If action is to be taken with respect to any matter specified in Items 12, 13, or 14 above, furnish the financial statements required by Regulation S-X and the supplementary financial information requested by Item 12 of Regulation S-K. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

(b) In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is the authorization or issuance of common stock otherwise than in an exchange, merger, consolidation, acquisition or similar transaction.

(c) Financial statements may be omitted with respect to a plan described in answer to Item 14(a) if the plan involves only the issuer and one or more of its totally-held subsidiaries.

(d) Notwithstanding the provisions of Regulation S-X, no schedules other than those prepared in accordance with Rules 12-15, 12-28 and 12-29 of that regulation need be furnished in the proxy statement. Parent company only financial statements are not required to be furnished unless necessary to make the financial statements not misleading.

(e) The proxy statement may incorporate by reference any financial statements contained in an annual report sent to security holder pursuant to § 240.14a-3 with respect to the same meeting as that to which the proxy statement relates, provided such financial statements substantially meet the requirements of this item.

(f) The financial statements of an acquired company not subject to the reporting provisions of the Exchange Act required to be furnished pursuant to Regulation S-X shall be certified to the extent practicable. However, if the proxy statement is to be included in a filing on Form S-14 and if any of the securities are to reoffered to the public by any person who is deemed to be an underwriter thereof, within the meaning of Rule 145(c), the financial statements of the acquired business must be certified for three years or must comply with the requirements of Securities Act Release No. 4950.

3. Section 240.14c-3 is proposed to be amended by revising paragraph (a)(1) to read as set forth below.

§ 240.14c-3 Annual report to be furnished security holders.

(a) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only

for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note 1.—Information required by § 210.4-10(k) (1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4-10(k) (5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

Note 2.—If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders provided the registrant has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Commission. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form 10-K, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

* * * * *

Request for Comments

All interested persons are invited to submit their views and comments on the foregoing in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before March 15, 1981. Such communications should refer to File S7-870 and will be available for public inspection and copying.

The Commission also solicits comments as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

Authority For Proposed Amendments

These amendments are proposed pursuant to authority in Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78*o*(d), 78w] of the Securities Exchange Act of 1934; and Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c) and 80a-37(a)] of the Investment Company Act of 1940.

By the Commission.

December 24, 1980.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-285 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Docket No. RM81-7]

Exemption From the Licensing Requirements of a Category of Small Hydroelectric Power Projects With an Installed Capacity of Five Megawatts or Less

Issued December 22, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking; Notice of Findings of No Significant Impact; Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to exempt from the licensing requirements of Part I of the Federal Power Act two categories of small hydroelectric power projects. One such category of these projects is characterized by a proposed installed capacity of 100 kilowatts or less and a second category of such projects is characterized by a proposed installed capacity of 5 megawatts or less and certain specified physical characteristics and environmental effects. The proposed rule constitutes a means of providing for exemption of a category of projects under section 408 of the Energy Security Act of 1980.

The proposed rule is designed to encourage the development of small hydropower facilities by providing a method of relieving them from certain regulatory requirements.

DATES: Written comments by February 13, 1981. Oral comment presentations and scoping meetings:

January 21, 1981, 10:00 a.m., Washington, D.C.
January 23, 1981, 10:00 a.m., Boston, MA.
January 27, 1981, 10:00 a.m., Denver, CO.
January 29, 1981, 10:00 a.m., San Francisco, CA.

ADDRESSES: Send comments to—Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

The hearings will be held at the following locations:

January 21, 1981, Federal Energy Regulatory Commission, 825 N. Capitol Street, Hearing Room A, Washington, D.C. 20426.
January 23, 1981, John W. McCormack Post Office and Court House, Room 208, Congress Street, Boston, MA 02109.
January 27, 1981, Holiday Inn, Cripple Creek Room, 1450 Glen Arm Place, Denver, CO 80202.
January 29, 1981, Holiday Inn/Civic Center, Gold Room A, B, and C, 50 Eight Street, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT:

Ronald A. Corso, Director, Division of Hydropower Licensing, Office of Electric Power Regulation, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 376-9171.
James J. Hoecker, Division of Regulatory Development, Office of the General Counsel, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357-9342.

The Federal Energy Regulatory Commission (Commission) proposes to exempt from the licensing requirements of Part I of the Federal Power Act (Act) two categories of small hydroelectric power projects that have been determined not to have a significant impact on the quality of the human environment. The proposed rule would implement in part section 408 of the Energy Security Act of 1980 (ESA).[1] Under the rule as proposed, the Commission would exempt from the licensing requirement of the Act any small hydroelectric power project that belongs in either of two categories with specified characteristics. Exemption of one category of projects would be effective on the date that the Commission receives a brief notice of exemption from licensing. Exemption of a second category would date from the effective date of the rule. This proposed rulemaking is the first exercise of the Commission's discretion under section 408(b) of the ESA to exempt "classes or categories" of projects.

I. Background

Title IV of the ESA, also known as "The Renewable Energy Resource Act of 1980," amends the Public Utility

[1] Pub. L. 96-294, 94 Stat. 611. Section 408 of the ESA amends, *inter alia*, sections 405 and 408 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. §§ 2705 and 2706).

Regulatory Policies Act of 1978 (PURPA) to authorize the Commission to exempt certain small hydroelectric power projects on a case-by-case basis or by class or category of such projects, from all or part of the requirements of Part I of the Act, including any licensing requirement.

Section 408 grants the Commission discretion to provide exemption under certain specified conditions. The proposed installed capacity of a project may not exceed 5 megawatts. To be exemptible, a project must utilize the water power potential of an existing dam, unless it is a project that will utilize a so-called "natural water feature" that does not require the creation of a dam or man-made impoundment. Such a natural water feature will commonly be an elevated lake or a waterway the topographical features of which permit diversion of some waters for purposes of power generation.

Section 408 also provides that certain environmental requirements apply to those projects that the Commission exempts from licensing. Those requirements include the National Environmental Policy Act of 1969, the Endangered Species Act, and the Fish and Wildlife Coordination Act and the related consultation provisions in section 30 of the Federal Power Act that apply to exemption of small conduit hydroelectric facilities.

On November 7, 1980, the Commission issued Order No. 106,[2] which establishes procedures for exempting from all or part of Part I of the Act any small hydroelectric power project having a proposed installed capacity of 5 megawatts or less by means of case-by-case analysis and determination of the advisability of exempting any project and the environmental impact of that action. The procedures set forth in Order No. 106 rely initially on the submission of an application for exemption by any person, if only Federal lands are involved, or by a person that holds all the necessary real property interests in non-Federal lands, if any non-Federal lands are involved. If the Commission does not explicitly act on an application for exemption from licensing within a specified time, absent a suspension of the time for action, the application is deemed granted.

The rule proposed in this docket exempts from licensing two categories of small hydroelectric power projects. The exemption of the first category of such projects, described in § 4.109(a) applies to any project with a proposed installed generating capacity of more than 100 kilowatts but not more than 5 megawatts and specific other characteristics and is made effective by submittal to the Commission of a notice of exemption from licensing by the same classes of persons who may file application for exemption from licensing under the newly promulgated case-by-case regulations. Projects within the second category, described in § 4.113(a), are made exempt by operation of the rule and may not exceed 100 kilowatts in installed capacity.

This generic exemption differs from Order No. 106 in several respects. Any small hydroelectric power project with a proposed installed capacity of 5 megawatts or less is exemptible under case-by-case method; only projects with specified characteristics, which the Commission finds will not significantly affect the quality of the human environment, are generically exempted.[3] The case-specific procedures address both exemption from licensing and exemption from provisions of Part I of the Act other than licensing; the generic exemption applies only to exemption from licensing. While the case-specific procedures will apply to projects that utilize for power generation either an existing dam or natural water feature, the proposed generic exemption of both categories of projects will apply only to projects at an existing dam. Finally, under the case-specific approach, the Commission is required to consider and act on each project separately; generic exemption is accomplished under the terms of the rule alone. It is estimated that at least 20% and perhaps as much as 75% of the developable small hydroelectric power projects 5 megawatts and less fall within the categories of projects covered by this exemption rule.

II. Summary of the Proposed Rules.

The proposed rule revises parts of the existing Subpart K of Part 4 to divide the exemption regulations into the existing case-specific exemption provisions (§§ 4.103 through 4.108) and the proposed generic exemption provisions (§§ 4.109 through 4.113). The applicability section (§ 4.101) and the definitions (§ 4.102) pertain to exemption of all small hydroelectric power projects under Subpart K. The general waiver provision in § 4.103(d) is applicable only to case-specific exemptions from licensing.

Section 4.109 sets forth a set of criteria under which a project may qualify for exemption from licensing as part of a class of exempt projects. Small hydroelectric power projects that utilize a natural water feature for electric power generation are not eligible for exemption as part of either category or projects more than 100 kilowatts described in § 4.109(a) or the projects of 100 kilowatts or less because little is now know about the probable physical charactertistics or environmental impact of those kinds of projects.

Section 4.109 also provides that projects of more than 100 kilowatts are exempted effective on the date that the Commission accepts for filing (see § 4.31(e)) a notice of exemption identifying both the project and the person developing it. The filing person must certify that the project meets the qualifications in § 4.109(a) and will not affect particular aspects of the environment. The certification requirements in § 4.112 (b) and (c) operate in conjunction with the criteria for exemption in § 4.109(a).

Exemption of any project of 100 kilowatts or less would be effective as of the effective date of the regulation, according to § 4.113(b). Neither the terms and conditions in § 4.111 nor the notice of exemption requirement in § 4.112 would apply to the projects exempted under § 4.113. With respect to the capacity that must be installed or increased at any exemptible site, under the terms of the statute, the effective date of the regulation will be considered the date of a notice of exemption or application for exemption for purposes of applying the definition of a small hydroelectric power project.

Section 4.110 provides limitations on the submittal of notices of exemption for exempted projects in order to establish fixed relationships among various persons who may seek to develop a site. These provisions are similar to the provisions in § 4.110, but adapted to the generic exemption context, and are proposed for the same kind of reasons explained in Docket No. RM80-65 for case-by-case exemptions. Section 4.110(a) states that a notice of exemption may not be filed under the rule if a permit or license is outstanding or a permit or license application has been filed, unless it is the permittee or licensee who files the notice of exemption. A permit or license applicant may file a notice of exemption if the project is eligible under § 4.109(a), the applicant is qualified under § 4.109(c) to

[2] 45 *Fed. Reg.* 76115, November 18, 1980. The final rule in Order No. 106 established Subpart K of Part 4 of the Commission's Regulations, which subpart would be revised and expanded by the proposed rule in this docket.

[3] The Commission will consider another rulemaking to exempt from licensing a category of small hydroelectric power projects that may have significant environmental impacts. This class of projects will be the subject of an Environmental Impact Statement. Any projects that do not qualify for generic exemption may be exemptible under the case-by-case approach.

file such notice, and no competing application for that project was filed during the entire period provided for protest and intervention in the notice of application. Upon filing of a notice of exemption, any outstanding permit is cancelled and any license is deemed terminated.

If a project is exempt under the rule, the Commission will not accept an application for license or preliminary permit according to both §§ 4.110(b) and 4.113(d). There are exceptions to this rule, however. If the developer of an exempted project of more than 100 kilowatts fails to get Federal approval or to begin construction on a timely basis, the Commission may revoke the exemption and accept a license application under the terms and conditions of § 4.111. License applications will also be accepted for any project 5 megawatts or less, if an applicant proposes to develop the project to an installed capacity of at least 7.5 megawatts, or if the applicant is the holder of any real property interests in non-Federal lands necessary to develop and operate the project and is a qualified applicant.

Section 4.11 sets forth standard terms and conditions of generic exemption for projects of 100 kilowatts or less that are exemptible under § 4.109(a). Conditions of the generic exemption are similar to those for case-specific exemption, except that under the proposed generic rule the owner of the exempted project must comply with any measures that fish and wildlife agencies require in the future as part of a migratory fish restoration program (Article 2). In addition, if a dam is more than 33 feet in height above streambed, impounds more than 2.5 million cubic meters of water, or is determined to have a high hazard potential, the project must have periodic safety inspections by an independent consultant and is subject to safety inspections and remedial measures that may be required by the Commission's Regional Engineer or other authorized representative, under the Commission's project safety regulations.[4]

Section 4.112 provides that any person with all of the real property interests in any non-Federal lands necessary to develop or operate the project must file a notice of exemption in order to make effective the exemption from licensing for a project of more than 100 kilowatts. (If only Federal lands are involved, any person may file a notice of exemption.) Copies of the notice of exemption must be served on the U.S. Fish and Wildlife Service, other relevant fish and wildlife agencies, the relevant state water resource agencies or EPA, and the relevant state Historical Preservation Officer. Section 4.112(b) would require the person submitting a notice of exemption under § 4.112 to obtain agency certification about compliance with water quality standards and the absence of existing fish passage at the dam but would permit, as an option, the filing party to certify that no historical site, endangered species, or critical habitat was threatened, based on field surveys and literature surveys by approved experts. Section 4.112 also requires a specific format for the notice of exemption, including specific certifications by the filing party on compliance with the qualifying conditions. That section also contains additional requirements for basic information important to the Commission's responsibilities for national water resource analysis, licensing of other non-exempt projects, and implementation of §§ 4.104 and 4.110 of Subpart K, as it is proposed to be amended.

Section 4.113 provides for exemption from licensing of any small hydroelectric power project with an installed capacity of 100 kilowatts or less, so-called "micro-hydro" projects, by operation of the regulation.

III. Notice of Finding of No Significant Impact and Notice of Intent To Prepare an Environmental Impact Statement

The Commission has prepared an Environmental Assessment (EA) of the exemption from the licensing requirements of the Act for the proposed category of small hydroelectric power projects pursuant to section 408 of the ESA. The Commission gives notice that, on the basis of the EA, it has determined that exempting from licensing that category of projects of more than 100 kilowatts and described in § 4.109(a) is not a major Federal action significantly affecting the quality of the human environment. The EA is incorporated by reference in the Finding of No Significant Impact. Projects in the category of small hydroelectric power projects described in § 4.109(a) of the proposed rule will have a proposed installed capacity of more than 100 kilowatts but not more than 5 megawatts, utilize for power generation the water power potential of an existing dam, and:

1. Not involve any change in the prevailing regime of storage and release of water from the impoundment;

2. Not divert water from the waterway for a distance of more than 300 feet from the toe of the dam to the point of discharge back into the waterway;

3. Not involve construction of any transmission line that has a design capacity of more than 69 kilovolts or is more than one mile long and located in a new right of way;

4. Not increase the normal maximum surface elevation of the impoundment as a result of repair or reconstruction of the existing dam;

5. Not cause a violation of applicable water quality standards;

6. Not involve construction on or alteration of any historic site;

7. Not involve construction in the vicinity of any endangered or threatened species or critical habitat as listed or designated in the regulation of the Department of the Interior; and

8. Have no significant existing upstream or downstream passage of fish at the site.

The Commission also believes that, based on its own experience,[5] a categorical exemption for all so-called "micro-hydroelectric" projects with a total proposed installed capacity of 100 kilowatts or less would not be a major Federal action significantly affecting the quality of the human environment. Because the EA does not directly address the impacts likely to occur from a category of small hydroelectric power projects delineated primarily by very small generating capacity, the Commission requests comment on the environmental consequences of an exemption from licensing for any project proposed to be developed to a capacity not to exceed 100 kilowatts, provided such project is not only part of a licensed water power project and utilizes an existing dam. This category of projects is exempted under proposed § 4.113. Exemption of such projects would differ from the exemption from licensing provided for the category described in § 4.109(a) in several respects:

(1) Because information regarding projects of such size is generally not important to other licensing proceedings or regional water resource management, a notice of exemption (§ 4.112) containing rudimentary data on the project need not be filed with the Commission, the exemption would date from the effective date of the rule.

(2) Environmental impacts, such as blockage of fish migration, dewatering, or effects on historic sites or water quality, are determined to be minimal. Generally, micro-hyrdo-electric projects are located on small streams and create

[4] This condition is written to relate to the Commission's new Regulations Governing the Safety of Water Power Projects and Project Works (Docket No. RM80-31). A final dam safety rule will be issued at about the same time as the proposed rule in this docket.

[5] For example, FERC Project Nos. 2907, 2987, 3017.

small impoundments. Aquatic resources and the flow regime of the stream are not affected by the presence of a project with such small capacity. Small streams that have sufficient gradient to facilitate hydropower development are less likely to have water quality problems. Because of the size of the stream and impoundment, related recreational development is normally very limited.

(3) The terms and conditions of exemption in § 4.111 would not apply to such projects.

In addition, the Commission solicits comment on what the practical and environmental consequences would be if it were to exempt from licensing projects of 100 kilowatts or less which utilize for electric power generation of a natural water feature without the need for a man-made dam and impoundment.

The Commission also gives notice that it intends to prepare an Environmental Impact Statement (EIS) evaluating the effects of exempting from licensing all or part of the remainder of projects that are potentially exemptible under section 408 of the ESA, but which do not conform to all the criteria listed in § 4.109(a) and § 4.113(a). Scoping meetings for the EIS will be combined with public meetings regarding the content of this rulemaking. Those meetings are discussed below.

The EA is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, and at its Regional Offices in Atlanta, Georgia, New York, New York, Chicago, Illinois, San Francisco, California, and Fort Worth, Texas.

IV. Comment Procedure

Persons interested in the proposed rule are invited to submit written views, comments, or suggestions in writing concerning all or part of the regulations proposed in this notice. Pursuant to the consultation requirements of section 408 of the ESA and section 30 of the Act, Fish and Wildlife agencies will also receive letters transmitting copies of this Notice of Proposed Rulemaking and the related Environmental Assessment. The Commission requests their comments on the proposed rule. All commenters should note the requests for comment in the notice of finding of no significant impact. The Commission will consider all comments before issuing a final rule.

An original and 14 copies of all comments must be filed with the Secretary not later than February 13, 1981, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Comments should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal may be addressed. Comments should reference Docket No. RM81–7 on the outside of the envelope and on all documents submitted to the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426 during regular business hours.

In addition to the written comment procedures, the Commission will hold public meetings for the purposes of receiving oral comments on the proposed rule and on the scope of the EIS to be prepared for a further category of projects that might be exempted from licensing. These meetings will also provide further opportunity for consultation with fish and wildlife agencies under the provisions of section 408 of the ESA and section 30 of the Act. The public will be afforded an opportunity to discuss the findings in the EA and to address environmental issues relating to expansion of the category of exempt facilities, the impacts of the proposed rule, and the range of topics that the EIS should cover. This time, place, and location of these public meetings are as follows:

January 21, Washington, D.C., Federal Energy Regulatory Commission, 825 N. Capitol Street, Washington, D.C. 20426, 10 a.m.

January 23, Boston, MA, John W. McCormack Post Office and Court House, Congress Street, Boston, MA 02109, 10 a.m.

January 27, Denver, CO, Holiday Inn, Cripple Creek Room, 1450 Glen Arm Place, Denver, CO 80202, 10 a.m.

January 29, San Francisco, CA, Holiday Inn/Civic Center, Gold Room A, B, and C, San Francisco, CA 94103, 10 a.m.

Agencies or members of the public wishing to participate with respect to the proposed rule or the scope of the EIS should notify the Secretary of the Commission at least 10 days prior to the date of the particular public meeting. Participants are asked to supply copies of any prepared presentations at the time of the meeting.

(Energy Security Act of 1980, Pub. L. 96–294, 94 Stat. 611; Federal Power Act, as amended, 16 U.S.C. 792–828c; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; and the Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352; E. O. 12009, 3 C.F.R. 142 (1978))

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

1. Part 4 is amended in the Table of Contents by revising the titles of §§ 4.101, 4.103, 4.104, and 4.106 and by adding to Subpart K the following section titles (§§ 4.109–4.113) to read as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

Subpart K—Exemptions of Small Hydroelectric Power Projects of 5 Megawatts or Less.

Sec.

4.101 Applicability.

* * * * *

4.103 General provisions for case-specific exemption.

4.104 Case specific exemption from licensing: relationships among applications, exemptions, permits, and licenses.

* * * * *

4.106 Standard terms and conditions of case-specific exemption from licensing.

* * * * *

4.109 General provisions for categorical exemption from licensing for certain projects with installed capacity of more than 100 kilowatts.

4.110 Categorical exemption from licensing for projects of more than 100 kilowatts: relationships among applications, exemptions, permits, licenses, and notices of exemption.

4.111 Standard terms and conditions of categorical exemption from licensing for projects of more then 100 kilowatts.

4.112 Notice of exemption from licensing for projects of more than 100 kilowatts.

4.113 General provisions for categorical exemption from licensing for certain projects with installed capacity of 100 kilowatts or less.

2. Subpart K of Part 4 is amended by revising § 4.101 and by revising the title and paragraphs (a) and (d) of § 4.103, to read as follows:

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less.

§ 4.101 Applicability.

(a) *General.* This subpart provides procedures for exemption on a case-specific or categorical basis from all or part of Part I of the Federal Power Act (Act), including licensing, for small hydroelectric power projects as defined in § 4.102.

(b) *Case-specific exemption.* The provisions of §§ 4.103 through 4.108 apply to:

(1) exemption of any small hydroelectric power project from

provisions of Part I of the Act other than licensing; and

(2) exemption of any small hydroelectric power project from licensing, except any project that has been exempted as part of a category of exemptible projects under §§ 4.109 through 4.112.

(c) *Categorical exemption of certain projects of more than 100 kilowatts.* The provisions of §§ 4.109 through 4.112 apply to exemption from licensing for any small hydroelectric power project which meets the criteria set forth in § 4.109(a) of this subpart. Such projects may be exempted by filing a notice of exemption from licensing.

(d) *Categorical exemption of certain projects of 100 kilowatts or less.* The provisions of § 4.113 apply to certain small hydroelectric power projects which have a proposed installed capacity of 100 kilowatts or less and which are categorically exempt from licensing by operation of this subpart.

* * * * *

§ 4.103 General provisions for case-specific exemption.

(a) *Exemptible projects.* Subject to the provisions of paragraphs (b) and (c) of this section and §§ 4.104 through 4.106, the Commission may exempt on a case-specific basis any small hydroelectric power project from all or part of Part I of the Act, including licensing. Applications for exemption for specific projects shall conform to the requirements of §§ 4.107 or 4.108, as applicable.

* * * * *

(d) *Waiver.* In applying for case-specific exemption from licensing, a qualified exemption applicant may petition under § 1.7 of this chapter for waiver of any specific provision of §§ 4.102 through 4.107. The Commission will grant a waiver only if consistent with section 408 of the Energy Security Act of 1980.

3. Subpart K of Part 4 is amended by adding §§ 4.109 through 4.113, to read as follow:

§ 4.109 General provisions for categorical exemption from licensing for certain projects with installed capacity of more than 100 kilowatts.

(a) *Exempted projects.* Subject to the provisions of §§ 4.110 and 4.111 and effective according to paragraph (b) of this section, the Commission exempts from the licensing requirements of Part I of the act any small hydroelectric power project which has a proposed installed capacity of more than 100 kilowatts and which:

(1) Utilizes for electric power generation only the water power potential of an existing dam;

(2) Does not entail any increase in the normal maximum surface elevation of the impoundment pursuant to repair or reconstruction of a dam;

(3) Does not entail, for the purpose of generating electric power, any change from the prevailing regime of storage and release of water from the impoundment;

(4) Does not entail diversion of water from the waterway for more than 300 feet from the toe of the dam to the point of discharge into the waterway;

(5) Does not entail construction of any primary transmission line which:

(i) Has a design capacity of more than 69 kilovolts (KV); or

(ii) Is more than one mile long and located on a new right-of-way;

(6) Utilizes only a dam at which there is no significant existing upstream or downstream passage of fish;

(7) Will not cause violation of applicable water quality standards established by the U.S. Environmental Protection Agency or any state in which the project is located;

(8) Does not entail any construction on or alteration of any site included in or eligible for inclusion in the National Register of Historic Places;

(9) Does not entail construction in the vicinity of any threatened or endangered species or critical habitat, listed or designated in the regulations of the U.S. Department of the Interior; and

(10) Is not only part of a licensed water power project.

(b) *Effective date of exemption.* Any small hydroelectric power project in the category of projects specified in paragraph (a) of this section is exempted from licensing as of the date that a notice of exemption from licensing for that project, complying with the provisions of § 4.112, is deemed accepted for filing.

(c) *Who may file a notice of exemption from licensing for Category A projects.*

(1) *Only Federal lands involved.* If only the rights to use or occupy Federal lands would be necessary to develop and operate a proposed small hydroelectric power project that meets the criteria of paragraph (a) of this section, any person may file a notice of exemption from licensing for that project under § 4.112.

(2) *Some non-Federal lands involved.* If real property interests in any non-Federal lands would be necessary to develop and operate a proposed small hydroelectric power project that meets the criteria of paragraph (a) of this section, any person who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may file a notice of exemption from licensing for that project under § 4.112.

§ 4.110 Categorical exemption from licensing for projects of more than 100 kilowatts: relationships among applications, exemptions, permits, licenses, and notices of exemption.

For purposes of categorical exemption from licensing under §§ 4.109 through 4.112, the Commission will treat preliminary permit and license applications, preliminary permits, license, exemptions from licensing, and applications for exemption from licensing that are related to any small hydroelectric power project described in § 4.109(a), as follows:

(a) *Limitations on submission and acceptance of notices of exemption.* (1) *Unexpired permit or license.* If there is an unexpired preliminary permit or license in effect for a project, the Commission will accept a notice of exemption from licensing for any project meeting the criteria of § 4.109(a) only if the person filing the notice is the permittee or licensee. If the notice of exemption is submitted by a permittee, the permit will be deemed cancelled. If the notice of exemption is filed by a licensee, the license will be deemed terminated.

(2) *Pending permit, license, or exemption application.*

(i) *General Rule.* Except as permitted under clause (ii), the Commission will not accept a notice of exemption from licensing for any project meeting the criteria of § 4.109(a) if a preliminary permit or license application for that project, or an application for exemption of that project from licensing, has been accepted for filing.

(ii) *Exceptions.* If an application for preliminary permit, license, or exemption from licensing has been accepted for filing for a project meeting the criteria of § 4.109(a), the Commission will accept a notice of exemption from licensing for that project, if:

(A) No competing application, whether for preliminary permit, license, or exemption from licensing, has been accepted for filing for that project;

(B) The last date for filing protests or petitions or petitions to intervene, prescribed in the public notice issued for the permit or license application under § 4.31(c)(2) of this chapter, has passed;

(C) No notice of intent to file a competing preliminary permit or license application for that project has been filed in accordance with § 4.33(b) of this chapter; and

(D) The person filing the notice of exemption is the applicant for preliminary permit, license, or exemption from licensing.

(iii) *Withdrawal of pending applications.* If a notice of exemption from licensing complying with § 4.112 is filed under clause (ii), any pending application for preliminary permit, license, or exemption from licensing will be deemed withdrawn.

(b) *Limitations on submissions and acceptance of permit or license applications.* (1) *General rule.* Except as permitted under subparagraph (2) or under § 4.111 (c) or (e), the Commission will not accept a preliminary permit or license application for any small hydroelectric power project that is exempt from licensing pursuant to § 4.109.

(2) *Exceptions.* (i) If a project is exempted from licensing pursuant to § 4.109, any qualified license applicant may submit a license application that proposes to develop at least 7.5 megawatts in any exempted project.

(ii) If a project is exempted from licensing pursuant to § 4.109 and real property interests in any non-Federal lands would be necessary to develop and operate the project, any person who is both a qualified license applicant and has any of the real property interests in such non-Federal lands may submit a license application for that project. If a license qpplication is submitted under this clause, any other qualified license applicant may submit a competing license application in accordance with § 4.33 of this part.

§ 4.111 Standard terms and conditions of categorical exemption from licensing for projects installed capacity of more than 100 kilowatts.

Any small hydroelectric power project exempted from licensing under § 4.198(a) is subject to the following standard terms and conditions:

(a) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a sutiable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any measures that any fish and wildlife agency may in the future prescribe as part of any migratory fish restoration program.

(c) *Article 3.* The Commission may accept a license application submitted by any qualified license applicant and revoke this exemption if actual construction or development of any proposed generating facilities has not begun within 18 months, or been completed within four years, from the effective date of this exemption. If an exemption is revoked, the Commission will not accept a subsequent notice of exemption from licensing or application for exemption for the project within two years of the revocation.

(d) *Article 4.* This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) *Article 5.* This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application submitted by an qualified license applicant and revoke this exemption if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the effective date of this exemption.

(f) *Article 6.* Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 CFR 12.30(b)(3) of this chapter, impounds more than 2,000 acre-feet of water, or has high hazard potential, as defined in 18 CFR 12.30(b)(2), is subject to the following provisions of 18 CFR Part 12:

(1) § 12.4(b)(2)(i), (ii), (iii)(B), (iv), and (v);

(2) § 12.4(c); and

(3) Subpart D.

(g) For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee, under the definitions in 18 CFR 13.3.

§ 4.112 Notice of exemption from licensing for projects with installed capacity of more than 100 kilowatts.

(a) *General requirement.*

Any person meeting the requirements specified in § 4.109(c) and filing a notice of exemption from licensing for any small hodroelectric power project under § 4.109(a) must submit:

(1) The original and 14 copies of the notice of exemption described in paragraph (c) of this section; and

(2) Proof of service of a copy of the notice of exemption on:

(i) The U.S. Fish and Wildlife Service and other fish and wildlife agencies;

(ii) The state Historic Preservation Officer for each state in which the project is located; and

(iii) The state water resource agency for each state in which the project is located or, if there are no applicable state water quality standards, the U.S. Environmental Protection Agency.

(b) *Certifications or surveys.* As a basis for certifying to the nature and effects of a small hydroelectric power project under paragraph (c)(4) of this section, a person filing a notice of exemption must:

(1) Obtain certification from the state water resource agency for each state in which the project is located or, if there are no applicable state water quality standards, from the U.S. Environmental Protection Agency, that the project will not cause a violation of any applicable water quality standards.

(2) Obtain certification from the U.S. Fish and Wildlife Service or the fish and wildlife agency for each state in which the project is located that there is no significant existing upstream or downstream passage of fish at any project dam;

(3) Either obtain certification from the state Historic Preservation Officer of each state in which the project is located or obtain an independent field survey and survey of the applicable literature, conducted by an archeologist approved by each applicable state Historic Preservation Officer, with respect to whether the project will entail construction on or alteration of sites included in or eligible for inclusion in the National History Register of Historic Places;

(4) Either obtain certification from the U.S. Fish and Wildlife Service or the state fish and wildlife agency for each state in which the project is located or obtain an independent field survey and survey of the applicable literature, conducted by a biologist approved by each applicable state fish and wildlife agency, with respect to whether the project entails any construction in the vicinity of any endangered or threatened species or critical habitat listed or designated in the regulations of the U.S. Department of the Interior.

(c) *Contents.* The notice of exemption from licensing required by this section must conform to the following format:

Before The Federal Energy Regulatory Commission. Notice of Exemption of Small Hydroelectric Power Project from Licensing.

(1) [Name of filing party or parties] notifies [notify] the Federal Energy Regulatory Commission that the [name of the project], a small hydroelectric power project as defined in 18 CFR 4.102, is exempt from licensing under the terms of 18 CFR 4.109 through 4.111. [If applicable: The project is currently licensed as FERC Project No. ———].

(2) The location of the project is:
[State or territory] ———
[County] ———
[Township or nearby town] ———
[River or stream] ———
[River basin] ———

(3) The exact name, business address, and telephone number of the filing party or parties are:

———

———

(4) The project includes the following features:

(i) *Dams:* [For each existing dam, identify the dam; state the date on which construction was completed and state both the dam's height above streambed and the gross storage capacity of the related impoundment as defined in 18 CFR 12.30].

(ii) *Powerplants:* [For each powerplant: identify the powerplant; state whether it is existing or proposed; state the hydraulic head; state the installed capacity in kilowatts and average annual generation in kilowatt-hours for any existing electric generating capacity; and state the proposed total installed capacity in kilowatts and the estimated average annual generation in kilowatt-hours for the proposed total installed capacity].

(iii) *Average stream flow:* The average annual streamflow is [ ] cubic feet per second.

(5) It is certified that [name of filing party or parties] has [have] complied with § 4.112(c) of the Commission's regulations and that the small hydroelectric power project conforms to the specifications set forth in § 4.109(a) of the Commission's regulations, including the following:

(i) The [each applicable state water resource agencies or U.S. Environmental Protection Agency] has [have] certified that the construction, operation, and maintenance of the project will not cause a violation of any applicable water quality standards.

(ii) The [U.S. Fish and Wildlife Service or each applicable state fish and wildlife agency] has [have] certified that there is no significant existing upstream or downstream migration of fish at any project dam.

(iii) The proposed small hydroelectric power project does not entail any construction on or alteration of any site that is included in or is eligible for inclusion in the National Register of Historic Places.

(iv) The proposed small hydroelectric power project does not entail construction in the vicinity of any threatened or endangered species or critical habitat listed or designated in the regulations of the U.S. Department of the Interior.

(6) [Signature of filing party or parties under § 1.15 of this chapter; subscription and verification under § 1.16 of this chapter].

§ 4.113 General provisions for categorical exemption from licensing for certain projects with installed capacity of 100 kilowatts or less.

(a) *Exemption.* The Commission categorically exempts from the licensing requirements of Part I of the Act, effective according to paragraph (b) of this section any small hydroelectric power project that:

(1) Utilizes for electric power generation only the water power potential of an existing dam;

(2) Has total proposed installed capacity of not more than 100 kilowatts; and

(3) Is not only part of a licensed water project.

(b) *Effective dates.* (1) *Exemption.* Any small hydroelectric power project meeting the criteria in paragraph (a) of this section is exempted from licensing as of the effective date of this section.

(2) *Proposed capacity.* For purposes of installing or increasing capacity in any project meeting the criteria in paragraph (a), under the definition of small hydroelectric power project in § 4.102(1), the effective date of this section is deemed to be the date of notice of exemption or application under this subpart.

(c) *Limitation on submissions and acceptance of permit or license applications.* For purposes of categorical exemption under this section, the Commission will treat preliminary permit and license applications, preliminary permits, licenses, and applications for exemptions from licensing that are related to a small hydroelectric power project described in § 4.113(a), as follows:

(1) *General rule.* Except as permitted under subparagraph (2), the Commission will not accept a preliminary permit or license application for any small hydroelectric power project that is exempted from licensing pursuant to § 4.113.

(2) *Exceptions.* (i) If a project is exempted from licensing pursuant to § 4.113, any qualified license applicant may submit a license application that proposes to develop at least 7.5 megawatts in any exempted project.

(ii) If a project is exempted from licensing pursuant to § 4.113 and real property interests in any non-Federal lands would be necessary to develop and operate the project, any person who is both a qualified license applicant and has any of those real property interests in non-Federal lands may submit a license application for that project. If a license application is submitted under this clause, any other qualified license applicant may submit a competing license application in accordance with § 4.33 of this part.

§ 4.102 [Amended]

4. Section 4.102(1) is amended by inserting after the words "after the date of" the words "notice of exemption or."

§ 4.104 [Amended]

5. Section 4.104 is amended by revising the title to read *"Case-specific exemption from licensing: relationships among applications, exemptions, permits and licenses."* and by deleting from the first sentence the words "this subpart" and substituting in lieu thereof the words "case-specific exemption under §§ 4.103 through 4.107".

§ 4.105 [Amended]

6. Section 4.105 is amended in the first sentence of paragraph (b)(6) by removing the words "In granting an exemption from licensing," and substituting in lieu thereof the words "In approving any application for exemption from licensing,".

7. Section 4.106 is amended by revising the title of the section, by revising the first sentence, and by revising the second sentence of paragraph (c) to read:

§ 4.106 Standard terms and conditions of case-specific exemption from licensing.

Any case-specific exemption from licensing granted for small hydroelectric power project is subject to the following standard terms and conditions:

* * * * *

(c) *Article 3.*

* * * * *

If an exemption is revoked, the Commission will not accept a subsequent application for exemption or a notice of exemption from licensing within two years of the revocation.

* * * * *

7. Section 375.308 is amended by revising paragraphs (n) and (o) to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(n) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale of facilities with respect to interlocking directorates, exemption applications of notices of exemption filed under Subparts J or K of Part 4 of this chapter, and applications filed under Part I of the Federal Power Act.

(o) Reject a rate filing, an application filed under Part I of the Federal Power Act, an application or other filing under section 405 of the Public Utility Regulatory Policy Act of 1978, or a non-

complying notice of exemption from licensing filed under §§ 4.109 through 4.112 of this chapter, unless accompanied by a request for waiver in conformity with § 1.14(a)(2) of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders.

* * * * *

[FR Doc. 81-00152 Filed 1-2-81; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CRF Part 436

[Docket No. 80N-0390]

Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs: Revised Standard Response Line Concentrations

Correction

In FR Doc. 80-36665, appearing on page 78162, in the issue of Tuesday, November 25, 1980, make the following corrections:

1. On pages 78162 and 78163, in the extreme right hand column in the heading of the tables, the word "mocrograms" should have read "micrograms".

2. On page 78163, first column, transfer

§ 436.106 Microbiological turbidimetric assay.

* * * * *

(a) * * *

to the preceeding page above the table.

3. On page 78163, first column, second complete paragraph, seventh line, the date reading "November 26, 1980", should have read "January 26, 1981".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 251

Business Practices on Indian Reservations Other Than the Navajo, Hopi or Zuni Reservations

December 18, 1980.

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

ACTION: Proposed rule.

SUMMARY: On April 25, 1980, the Bureau of Indian Affairs (BIA) published a notice of proposed rulemaking that would have amended the regulations governing Indian traders on most Indian reservations. 45 FR 27952. That proposal would have restricted application of the regulations to businesses located in isolated communities where there is an absence of competition. Most comments received were strongly opposed to the proposal and supportive of diligent enforcement of the trader regulations on all Indian reservations. In response to those comments the BIA is now proposing to modernize the trading regulations by adopting as its regulations the consumer protection statutes of the state where the business is located.

DATE: Comments must be received by no later than February 5, 1981.

ADDRESS: Written comments should be addressed to Eugene F. Suarez, Sr., Chief, Division of Law Enforcement Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Room 1342, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Eugene F. Suarez, Sr., Chief, Division of Law Enforcement Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Room 1342, Washington, D.C. 20245, telephone: (202) 343-5786.

SUPPLEMENTARY INFORMATION: The authority for issuing these regulations is contained in 25 U.S.C. 261, 262, and 264 and 209 DM 8.

Comments on the proposal published in April were received from tribal attorneys, tribal councils, and individual citizens as well as BIA field staff. Most commentators were opposed to the proposed rules and urged that the existing rules be enforced both because Indian reservation consumers need the protection of the federal government and because the failure of the federal government to regulate could result in permitting more state taxation of transactions involving Indians on Indian reservations.

This new proposal applies to all persons who engage in retail business on any Indian reservation other than the Navajo, Hopi or Zuni reservations. These proposed regulations make a violation of state laws governing retail businesses a violation of the Department's regulations. There are provisions exempting some reservations or parts of reservations from many requirements of the regulations when it is found that economic and social conditions in those areas make it unnecessary to impose such requirements in order to protect Indian consumers. Minimal licensing requirements are imposed in those areas to comply with federal statutes requiring the licensing of all businesses trading with Indians on an Indian reservation.

It is also proposed to repeal § 251.5 of the existing regulations governing trade by BIA employees with Indians because Congress has recently revised the law in that area. Pub. L. 96-277, 94 Stat. 544. New regulations on that subject will be promulgated separately.

This proposed rule may have a significant effect on a substantial number of "small entities" as that term is defined in Section 601 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601.

The primary author of this document is David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

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

It is proposed to revise 25 CFR Part 251 to read as follows:

PART 251—BUSINESS PRACTICES ON INDIAN RESERVATIONS OTHER THAN THE NAVAJO, HOPI OR ZUNI RESERVATIONS

Subpart A—Interpretation and Construction Guides

Sec.

Subpart B—Licensing Requirements and Procedures

Subpart C—General Business Practices

Subpart D—Enforcement Powers, Procedures and Remedies

Sec.

Authority: Sec. 5, Act of August 15, 1876 c. 289, 19 Stat. 200 (25 U.S.C. 261); Sec. 1, Act of March 3, 1901, c. 832, 31 Stat. 1066; Sec. 10, Act of March 3, 1903, c. 994, 32 Stat. 1009 (25 U.S.C. 262); 230 DM2.

Subpart A—Interpretation and Construction Guides

§ 251.1 Purpose.

The purpose of the regulations of this Part is to prescribe rules for the regulation of businesses on Indian reservations for the protection of Indian consumers as required by 25 U.S.C. §§ 261, 262, 263 and 264.

§ 251.2 Scope.

The regulations of this Part apply to all persons who engage in retail business on any Indian reservation with the exception of retail business on the Navajo, Hopi, and Zuni Reservations and with exception of any person who is a member of the tribe occupying the reservation where his or her business is located. These regulations do not apply to businesses wholly owned by the tribe occupying the reservation where the business is located. Retail business conducted on the Navajo, Hopi and Zuni Reservations is regulated under the provisions of Part 252 of this Title.

§ 251.3 Definitions.

For the purposes of this Part—

(a) "Firm" means a corporation or a partnership.

(b) "Gross receipts" include the following:

(1) All cash received from the conduct and operation of the licensee's business at the premises described in the application for license.

(2) Receipts from both wholesale and retail transactions.

(3) Receipts resulting from transactions concluded off the reservation that originate from the conduct and operation of the licensee's business on the reservation.

(4) The market value of all property taken in trade on the date when received and either held by the licensee for purposes other than resale or credited on any account in payment for merchandise.

(5) Proceeds from the sale of any goods bought from Indians regardless of where the sale takes place.

(6) Finance charge received on loans, but not the return of principal.

(c) "Peddler" means a person who offers goods for sale within the exterior boundaries of a reservation, but does not do business from a fixed location or site on a reservation.

(d) "Person" includes a natural person, a corporation, trust, estate, partnership, cooperative or association.

(e) "Reservation business" means a retail business operating from a fixed location on an Indian reservation that sells goods or services to Indians, buys goods from Indians, or makes consumer credit transactions with Indians and is not a bank, saving bank, trust company, savings or building and loan association operating under the laws of the United States or of the state in which the reservation is located.

(f) "Retail business" means a business that sells goods or services (other than medical or legal services) to the ultimate consumer of those goods or services.

§ 251.4 Interpretation and construction.

(a) "Area Director" refers to the Area Director of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(b) "Commissioner" refers to the Commissioner of Indian Affairs or a person to whom the Commissioner of Indian Affairs has delegated authority under this Part or under 25 U.S.C. 261, 262, 263, or 264.

(c) "Superintendent" refers to the Superintendent of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(d) "Tribe" refers to the tribe that has jurisdiction over the land on which a person does business or intends to do business with Indians.

Subpart B—Licensing Requirements and Procedures

§ 251.5 Reservation business license required.

(a) No person may own or lease a reservation business without a license issued under the provisions of this subpart.

(b) The applicant shall apply in writing on a form provided by the Commissioner setting forth the following:

(1) The full name and residence of the applicant.

(2) The firm name and the name of each member of the board of directors if the applicant is a firm.

(c) If the Commissioner believes such information is needed to protect Indian consumers, the applicant shall furnish the following information:

(1) The capital invested or to be invested and, of this, the amount of capital owned and the amount borrowed or to be borrowed.

(2) The name of the lender of any borrowed capital, the date due, the rate of interest to be paid, and the names of any endorsers and security.

(3) A copy of any contract or trade agreement whether oral or written with creditors or financing individuals or institutions, including any stipulations whereby financing fees are to be paid.

(d) Information that if released might adversely affect the competitive position of the applicant shall remain confidential.

§ 251.6 Approval or denial of license application.

(a) The Commissioner shall approve or deny each license application and notify the applicant no later than thirty (30) days after receipt of a completed application.

(b) The Commissioner may not deny a license to an applicant for the purpose of limiting competition.

(c) If the application is approved the license shall be issued on a form provided by the Commissioner.

(d) If the Commissioner denies the license application the applicant may appeal under the provisions of Part 2 of this Title no later than thirty (30) days after the date on which notice of denial of the application was received.

§ 251.7 License period for reservation businesses.

A license to operate a reservation business may not be issued unless the applicant has a right to use the land on which the business is to be conducted. If the land on which the business is to be conducted is held pursuant to a lease, the license period shall correspond to the period of the lease held by the licensee. If the lease is for a term greater than twenty-five (25) years, or if the land on which the business is to be conducted is held in fee by the licensee, the license period may not exceed twenty-five (25) years.

§ 251.8 Application for license renewal.

(a) An applicant for renewal of the license to trade shall file an application on a form provided by the Commissioner with the Area Director not less than three (3) months prior to the expiration of the existing license.

(b) The Commissioner may issue a temporary permit for three (3) months pending consideration of application for license renewal.

(c) Prior to expiration of the existing license or, if issued, the temporary

permit, the Commissioner shall approve or deny the application for license renewal and notify the applicant.

(d) If the Commissioner denies the application for renewal, the applicant may appeal under the provisions of Part 2 of this Title.

§ 251.9 License fees for reservation businesses.

(a) Prior to the issuance of an initial license, each licensee shall pay fifty dollars ($50).

(b) Each licensed business owner shall pay on or before January 10 of each year an annual license fee determined as follows based on the licensee's most recent annual report:

(1) If the licensee's gross receipts are less than one hundred thousand dollars ($100,000) for the year or the licensee has not yet been required to file its first annual report, the license fee is fifty dollars ($50).

(2) If the licensee's gross receipts for the year are at least one hundred thousand dollars ($100,000) but less than five hundred thousand dollars ($500,000) the fee is one hundred dollars ($100).

(3) If the licensee's gross receipts for the year are at least five hundred thousand dollars ($500,000) but less than seven hundred and fifty thousand dollars ($750,000), the fee is two hundred dollars ($200).

(4) If the licensee's gross receipts for the year are seven hundred fifty thousand dollars ($750,000) or more, the fee is three hundred dollars ($300).

(c) All fees are payable to the Area Director and shall be deposited to the credit of a subaccount of the account "Indian Monies, Proceeds of Labor" and shall be expended in the enforcement of the regulations of this Part.

§ 251.10 Tribal taxes and enforcement.

(a) The regulations in this Part do not preclude tribal governments from assessing and collecting such taxes as they may have authority to impose on reservation businesses.

(b) Nothing in the regulations of this Part may be construed to preclude tribal enforcement of tribal ordinances consistent with the regulations of this Part.

§ 251.11 Peddler's permits.

(a) No peddler may offer goods for sale within the exterior boundaries of a reservation without a peddler's permit. The permit shall state on its face the class of goods that may be offered for sale. No peddler may offer for sale any class of goods other than those listed on the face of the permit.

(b) The applicant shall apply for a permit in writing on a form provided by the Commissioner.

(c) Peddlers shall pay such fee and post such surety bond on a form provided by the Commissioner as the Commissioner requires. The surety bond required may not be more than ten thousand dollars ($10,000).

(d) Any surety on the bond of a peddler may be relieved of liability by complying with the provisions of § 251.24.

§ 251.12 Amusement company licenses.

(a) No person may operate a portable dance pavillion, mechanical amusement device such as a ferris wheel or carousel, or commercial games of skill within the exterior boundaries of a reservation without a license from the Commissioner.

(b) The licensee shall pay such fee as the Commissioner requires. The fee shall be not less than five dollars ($5) nor more than twenty-five dollars ($25) per unit.

(c) The applicant shall apply for a permit in writing on a form provided by the Commissioner.

(d) The licensee shall post a surety bond on a form provided by the Commissioner in an amount not exceeding ten thousand dollars ($10,000) and a personal injury and property damage liability bond of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) as may be required by the Commissioner.

(e) The provisions of this section do not apply to amusement companies where the contract between the tribe and the amusement company provides for the payment of a fee to the tribe and for the protection of the public against personal injury and property damage by bond in the amounts specified in paragraph (c) of this section.

(f) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 251.24.

§ 251.13 Bond requirement for a reservation business.

(a) An applicant for a license or renewal of a license to operate a reservation business shall at the time the application is submitted furnish a bond on a form provided by the Commissioner in the name of the applicant in such sum as the Commissioner may designate, with two (2) or more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6–13). The bond shall be for the same period covered by the license. No licensee may trade without a bond. Except as provided in paragraph (c) of this section no surety may be released from liability until the license expires.

(b) The bond shall be in favor of the United States for the benefit of the United States and any customer of the licensee who recovers a judgment for damages resulting from violation of any law or regulation affecting or relating to reservation businesses. Any customer who recovers such a judgment may bring suit on the bond in his or her name. The bond shall be conditioned on payment by the licensee of all judgments for damages resulting from violations of the regulations of this Part.

(c) Any surety on the bond of a licensed reservation business may be relieved from liabilities by complying with the provisions of § 251.25 of this Title.

Subpart C—General Business Practices

§ 251.14 Trade confined to premises.

The licensee shall confine all trade on the reservation to the premises specified in the license.

§ 251.15 Posting of license.

The licensee of a reservation business shall display its reservation business license in a prominent place where it is legible to customers.

§ 251.16 Credit at trader's risk.

Credit given Indians will be at the licensee's own risk, as no assistance will be given by Government officials in the collection of debts against Indians.

§ 251.17 Reservation business practices.

(a) Except as provided in subsection (b) of this section, each licensee or permittee must comply with all laws governing retail businesses of the state in which the licensee is doing business. A violation of such state laws or of applicable tribal laws governing retail businesses is a violation of the regulations of this Part.

(b) This section does not require any licensee to obtain a state license, pay state fees or obtain bond required by state laws.

(c) Any violation by a licensee of any federal law governing retail businesses is also a violation of the regulations of this Part.

Subpart D—Enforcement Powers, Procedures and Remedies

§ 251.18 Penalty and forfeiture of merchandise.

Any person who either resides as a reservation business owner within the exterior boundaries of a reservation or

introduces or attempts to introduce goods or to trade therein without a license or permit shall forfeit all merchandise offered for sale to the Indians or found in the person's possession and is liable to a penalty of five hundred dollars ($500). This section may be enforced by commencing an action in the appropriate United States District Court under the provisions of 28 U.S.C. § 1345.

§ 251.19 Revocation of license and lease and recovery on bond.

The reservation business owner is subject to revocation of license and tribal lease and recovery on the bond in whole or in part in the event of any violation of the regulations of the Part after a show cause proceeding according to the provisions of § 251.23.

§ 251.20 Cease and desist orders.

(a) If the Commissioner believes that violation of the regulations in this Part is occurring, the Commissioner may order the person believed to be in violation to show cause according to the provisions of § 251.23 why a cease and desist order should not be issued.

(b) If the person accused of the violations fails to show cause at the hearing why such an order should not issue, the Commissioner shall issue the order.

(c) A person subject to a cease and desist order issued under this section who violates the order is liable to revocation of license after a show cause proceeding according to the provisions of § 251.23 of this Part.

(d) The Commissioner may close any reservation business subject to the provisions of this Part that does not hold a valid license or temporary permit.

§ 251.21 Periodic review of performance.

(a) The Commissioner shall review licenses at ten (10) year intervals to determine whether or not the business is operating in accordance with these regulations and all other applicable laws and regulations.

(b) If, as a result of the review provided in paragraph (a) of this section, the Commissioner finds that the licensee has repeatedly violated these regulations, the Commissioner may order the licensee to show cause according to the provisions of § 251.23 why the licensee's license should not be revoked.

(c) If the licensee fails to show cause why the license should not be revoked, the Commissioner shall revoke the license.

§ 251.22 Price monitoring and control.

(a) A reservation business may not charge its customers unfair or unreasonable prices.

(b) To insure compliance with this section, the Commissioner shall annually perform audits as provided in § 251.25(b). In performing those audits the Commissioner may inspect all original books, records, and other evidences of the cost of doing business. In addition, at least once a year the Commissioner shall cause to be made a survey of the prices of flour, sugar, fresh eggs, lard, coffee, ground beef, bread, cheese, fresh milk, canned fruit, and such other goods as the Commissioner deems appropriate in all stores licensed under these regulations and in a representative number of similar stores located in communities immediately adjoining the reservations. The results of the survey shall be posted publicly, sent to each licensed business, and made available to the appropriate agency of the tribal government. Copies of the survey shall be available at the office of the Area Director.

(c) If the Commissioner finds that a reservation business is charging higher prices, especially for basic consumer commodities, than those charged on the average based on the studies conducted under the provisions of paragraph (b) of this section, the Commissioner may order the business owner to show cause under the provisions of § 251.23 why an order should not be issued to reduce prices. If the Commissioner determines that the prices charged by the business are not economically justified, based on all of the information, then the Commissioner may order the business to reduce its price on all items determined to be priced too high to a reasonable price as determined by the Commissioner, but in no event to a lower price than the cost of the item increased by a reasonable mark-up.

§ 251.23 Show cause procedures.

(a) When the Commissioner believes there has been a violation of this Part the Commissioner shall serve the licensee with written notice setting forth in detail the nature of the alleged violation and stating what remedial action the Commissioner proposes to take.

(b) The licensee shall have ten (10) days from the date of receipt of notice in which to show cause why the contemplated remedial action should not be ordered.

(c) If within the ten (10) day period the Commissioner determines that the violation may be corrected and the licensee agrees to take the necessary corrective measure, the licensee shall be given the opportunity to take the necessary corrective measures.

(d) If the licensee fails within a reasonable time to correct the violation or to show cause why the contemplated remedial action should not be ordered, the Commissioner shall order the appropriate remedial action.

(e) If the Commissioner orders remedial action the licensee may appeal under the provisions of Part 2 of this Title not later than thirty (30) days after the date on which the remedial action is ordered.

§ 251.24 Procedures to cancel liability on bond.

(a) Any surety who wishes to be relieved from liability arising on a bond issued under this Part shall file with the Commissioner a statement in writing setting forth the desire of the surety to be relieved of liability and the reasons therefor.

(b) The surety shall mail a copy of the statement by certified mail, return receipt requested, to the last known address of the licensee named in the bond.

(c) Twenty (20) days after the statement required in paragraph (b) of this section is mailed to the licensee and the statement required in paragraph (a) of this section is filed with the Commissioner, the surety is released from all liability thereafter arising on the bond.

(d) If the licensee does not have other bond sufficient to meet the requirements of this Part or has not executed and filed a new or substitute bond within twenty (20) days after the service of the statement, the Commissioner shall declare the license void.

(e) No surety is released from liability under the bond for claims which arose prior to the issuance of the Commissioner's order releasing the surety.

§ 251.25 Records, reports and obligations of reservation business owners.

(a) The Commissioner may, in consultation with interested persons and agencies, promulgate a model bookkeeping system for use in reservation businesses. Until such model bookkeeping system is promulgated, each business owner shall keep records in accordance with generally accepted accounting principles.

(b) Each reservation business owner shall file with the Area Director an annual report on or before April 15 in a form approved by the Commissioner. Reports shall be subject to a yearly audit. The reports shall contain the

names and respective interests of all persons participating in the business.

(c) The business owner or an employee shall record all sales and purchases whether for cash or credit. The owner or an employee shall supply the customer with a copy of the sales transaction containing a description of the article purchased or sold, the date of the transaction, and the price. A cash register receipt complies with this paragraph for grocery or dry goods purchases for cash.

(d) The licensee shall keep a duplicate copy of any writing required by paragraph (c) of this section for a period of not less than three (3) years and shall provide the customer or the customer's representative one copy of those writings upon request.

Subpart E—Limited Applicability on Some Reservations

§ 251.26 Provisions subject to exemption.

Reservations or portions of reservations identified in § 251.28 of this Part are exempt from the provisions of §§ 251.5(c), 251.9(b), 251.13, 251.21, 251.22, 251.24 and 251.25.

§ 251.27 Standards for partial exemptions.

(a) The Commissioner may revise the list of partially exempted areas in § 251.28 of this Part by adding areas to the list or deleting them from the list. Additional areas will be exempted only if the Commissioner finds that Indian consumers in the areas under consideration are adequately protected without requiring compliance with the provisions listed in § 251.26 of this Part. Listed areas will be deleted form the list only if the Commissioner finds that requiring compliance with the provisions listed in § 251.26 of this Part in such areas is necessary to provide adequate protection to Indian consumers in the areas under consideration.

(b) Such findings shall be based on factors including, but not limited to, the following:

(1) The degree of competition encountered by licensees in the area under consideration form other businesses both on and off the reservation.

(2) The ability of Indian consumers to shop at other businesses that provide similar goods or services either on or off the reservation.

(3) Whether or not the businesses in the area under consideration have engaged in the past in the types of abuses that the provisions of this Part seek to prevent.

(4) The percentage of the consumers served by the businesses in the affected area who are not Indian.

§ 251.28 Exempted reservations.

The following reservations or parts of reservations are exempt from those provisions listed in § 251.26 of this Part:

(a) All reservations in Nebraska.
(b) All reservations in North Dakota.
(c) All reservations in South Dakota except the Pine Ridge reservation.
(d) All reservations in New Mexico except:
(1) Acoma Pueblo.
(2) Cochiti Pueblo.
(3) Jemez Pueblo.
(4) Santa Domingo Pueblo.
(5) San Felipe Pueblo.
(6) Zia Pueblo.
(7) Ramah Reservation.
(e) All reservations in Colorado.
(f) All reservations in Oklahoma.
(g) All reservations in Kansas.
(h) All reservations in Montana.
(i) All reservations in Florida.
(j) The Cherokee Reservation in North Carolina.
(k) All reservations in Maine.
(l) The Choctaw Reservation in Mississippi.
(m) The Metlakatla Reservation in Alaska.
(n) All reservations in Minnesota except the Red Lake Reservation.
(o) All reservations in Wisconsin.
(p) The Sac and Fox Reservation in Iowa.
(q) All reservations in Arizona except:
(1) Papago Reservation.
(2) The Supai community on the Havasupai Reservation.
(3) The Peach Springs community on the Hualapai Reservation.
(4) Cibicue community on the White Mountain Apache Reservation.
(5) The Owyhee community on the Duck Valley Reservation.
(6) The fort McDermitt community on the Fort McDermitt Reservation.
(7) The Yomba community on the Yomba Reservation.
(r) All reservations in Utah except the Ouray, Randelett and White Rock communities of the Unitah and Ouray Reservation.
(s) All reservations in Washington except the Makah Reservation.
(t) All reservations in Oregon.
(u) All reservations in Idaho.
(v) All reservations in California.
(w) The Wind River Reservation in Wyoming.

Thomas W. Fredericks,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 81-294 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 59

Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: As required by Title II of the Privacy Protection Act of 1980 (Pub. L. 96-440, § 201, et seq., 42 U.S.C. 2000aa-11, et seq., these guidelines will govern the methods used by all federal officers and employees to obtain documentary materials in the possession of persons who are neither suspects in an offense nor closely related to such suspects. The primary purpose of these guidelines is to limit the use of search warrants to obtain documentary materials held by third parties when less intrusive but equally effective alternative means of obtaining such materials exist.

DATE: Comments must be submitted on or before February 5, 1981.

ADDRESS: Comments may be mailed to: The Assistant Attorney General, Criminal Division, United States Department of Justice, Room 2107 Main Justice, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT:

Mary Ellen Warlow, Criminal Division, United States Department of Justice, Room 2209 Main Justice, Washington, D.C. 20530, (202) 633-3645.

Accordingly, under the authority of Title II of the Privacy Protection Act of 1980, Pub. L. 96-440, § 201, et seq., 42 U.S.C. 2000aa-11, et seq., the Attorney General proposes to issue, as a new Part 59 to Title 28, Code of Federal Regulations, guidelines on methods of obtaining documentary materials held by third parties to read substantially as follows:

Dated: December 29, 1980.

Philip B. Heymann,

Assistant Attorney General, Criminal Division.

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

Sec.
59.1 Introduction.
59.2 Definitions.
59.3 Applicability.
59.4 Procedures.
59.5 Sanctions.

Authority: Title II of the Privacy Protection Act of 1980 (Pub. L. 96-440, § 201, et seq., 42 U.S.C. 2000aa-11, et seq.)

§ 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect agianst unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third partries unless reliance on alternative means would substantially jeopardize their avialability (e.g., by creating a risk of destruction, etc.) or usefulness (e.g., by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

§ 59.2 Definitions.

As used in this part—

(a) The term "attorney for the government" shall have the same meaning as is given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term "designee" of the Attorney General means any official of the Department of Justice at the level of Deputy Assistant Attorney General or above, who has been specifically designated by the Attorney General to approve search warrant applications governed by subsection 3(b) of this part.

(c) The term "disinterested third party" means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(d) The term "documentary materials" means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, *but does not include* materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed; and

(e) The term "law enforcement officer" shall have the same meaning as the term "federal law enforcement officer" as defined in Rule 41(h) of the Federal Rules of Criminal Procedure.

§ 59.3 Applicability.

(a) The guidelines set forth in this part apply, pursuant to Title II of the Privacy Protection Act of 1980 (Pub. L. 96–440, § 201, et seq., 42 U.S.C. 2000aa–11, et seq.), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to: (1) Audits, examinations, or regulatory or compliance inspections pursuant to federal statute or the terms of a federal contract;

(2) Governmental access to documentary materials for which valid consent has been obtained; or

(3) Methods of obtaining documentary materials whose location is known but which have been abandoned or which cannot be obtained through subpoena or request because they are in the possession of a person whose identity is unknown and cannot with reasonable effort be ascertained.

(c) The use of search and seizure to obtain documentary materials which are believed to be possessed for the purpose of disseminating to the public a book, newspaper, broadcast, or other form of public communication is subject, in addition to any limitations or requirements imposed by the guidelines, in this part to the limitations set out in Title I of the Privacy Protection Act of 1980 (Pub. L. 96–440, § 101, et seq., 42 U.S.C. 2000aa, et seq.).

§ 59.4 Procedures.

(a) *Provisions governing the use of search warrants generally.* (1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party unless it appears that the use of a subpoena, summons, request, or other less intrusive alternative means of obtaining the materials would substantially joepardize the availability or usefulness of the materials sought, and the application for the warrant has been authorized as provided in paragraph (2) below.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party unless the application for the warrant has been authorized by an attorney for the government. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of an attorney for the government, the application may be authorized by a supervisory law enforcement officer in the applicant's department or agency, if the appropriate United States Attorney is notified of the authorization and the basis for justifying such authorization under this part within 24 hours of the authorization.

(b) *Provisions governing the use of search warrants which may intrude upon professional, confidential relationships.* (1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party physician, lawyer, psychiatrist, or clergyman, under circumstances in which the materials sought, or other materials likely to be reviewed during the execution of the warrant, contain confidential information on patients or clients which was furnished for the purposes of professional counseling or treatment, unless—

(i) It appears that the use of a subpoena, summons, request, or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought;

(ii) Access to the documentary materials appears to be of substantial importance to the investigation or prosecution for which they are sought; and

(iii) The application for the warrant has been approved as provided in paragraph (2) below.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party physician, lawyer, psychiatrist, or clergyman under

the circumstances described in paragraph (1) above, unless, upon the recommendation of the United States Attorney, the Attorney General or his designee has authorized the application for the warrant. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of the Attorney General or his designee, the application may be authorized by the United States Attorney if the Attorney General or his designee is notified of the authorization and the basis for justifying such authorization under this part within 72 hours of the authorization.

(3) Whenever possible, a request for authorization by the Attorney General or his designee of a search warrant application pursuant to paragraph (2) above shall be made in writing and shall include:

(i) The application for the warrant; and

(ii) A brief description of the facts and circumstances advanced as the basis for recommending authorization of the application under this part.

If a request for authorization of the application is made orally or if, in an emergency situation, the application is authorized by the United States Attorney as provided in paragraph (2) above, a written record of the request including the materials specified in subparagraphs (i) and (ii) shall be transmitted to the Attorney General or his designee within 7 days. The Attorney General or his designee shall keep a record of the disposition of all requests for authorizations of search warrant applications made under this subsection (b).

(4) A search warrant authorized under paragraph (2) above shall be executed in such a manner as to minimize to the greatest extent practicable scrutiny of confidential materials.

(5) Although it is impossible to define the full range of additional doctor-like therapeutic or counseling relationships which involve the divulging of private information, the United States Attorney should determine whether a search for documentary materials held by other disinterested third party professionals involved in such relationships (e.g., psychologists or psychiatric social workers) would implicate the special privacy concerns which are addressed in this subsection. If the United States Attorney determines that such a search would require review of extremely confidential information furnished or retained for the purposes of professional counseling or treatment, the provisions of this subsection should be applied. Otherwise at a minimum, the requirements of subsection (a) must be met.

(c) *Considerations bearing on choice of methods.* In determining whether, as an alternative to the use of a search warrant, the use of a subpoena or other less intrusive means of obtaining documentary materials would substantially jeopardize the availability or usefulness of the materials sought, the following factors, among others, should be considered:

(1) Whether it appears that the use of a subpoena or other alternative which gives advance notice of the government's interest in obtaining the materials would be likely to result in the destruction, alteration, concealment, or transfer of the materials sought; considerations bearing on this issue may include:

(i) Whether a suspect has access to the materials sought;

(ii) Whether there is a close relationship of friendship, loyalty, or sympathy between the possessor of the materials and a suspect;

(iii) Whether the possessor of the materials is under the domination or control of a suspect;

(iv) Whether the possessor of the materials has an interest in preventing the disclosure of the materials to the government;

(v) Whether the possessor's willingness to comply with a subpoena or request by the government would be likely to subject him to intimidation or threats of reprisal;

(vi) Whether the possessor has previously acted to obstruct a criminal investigation or judicial proceeding or refused to comply with or acted in defiance of court orders; or

(vii) Whether the possessor has expressed an intent to destroy, conceal, alter, or transfer the materials;

(2) The immediacy of the government's need to obtain the materials; considerations bearing on this issue may include:

(i) Whether the immediate seizure of the materials is necessary to prevent injury to persons or property;

(ii) Whether the prompt seizure of the materials is necessary to preserve their evidentiary value; or

(iii) Whether delay in obtaining the materials would significantly jeopardize an ongoing investigation or prosecution.

The fact that the disinterested third party possessing the materials may have grounds to challenge a subpoena or other legal process is not in itself a legitimate basis for the use of a search warrant.

§ 59.5 Sanctions.

(a) Any federal officer or employee violating the guidelines set forth in this part shall be subject to appropriate administrative disciplinary action by the agency or department by which he is employed.

(b) Pursuant to section 202 of the Privacy Protection Act of 1980 (Pub. L. 96-440, § 202, 42 U.S.C. 2000aa-12), an issue relating to the compliance, or the failure to comply, with the guidelines set forth in this may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

[FR Doc. 81-314 Filed 1-5-81; 8:45 am]
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DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Part 2520

Summary Annual Report Furnished Participants and Beneficiaries of Employee Benefit Plans, Amendments and Corrections

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Department of Labor regulation governing the summary annual report (SAR) furnished participants and beneficiaries of certain employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). These amendments are necessary in order to accommodate the summary annual report requirements to the triennial filing system recently implemented for certain small employee benefit plans filing the annual report. The amendments will require small plans filing Form 5500-R to furnish a copy of that form to participants and beneficiaries in lieu of furnishing the summary annual report in those years for which the Form 5500-R is filed. The SAR requirements remain generally unchanged for plans filing Form 5500 and for small plans in those years for which the Form 5500-C or the Form 5500-K is filed. The document also contains several minor corrections to the regulation and the attached appendix.

DATES: The amendments, if adopted, would be effective 30 days after publication in the **Federal Register**; comments on these proposals must be submitted on or before March 9, 1981.

ADDRESSES: Written comments (preferably three copies) should be submitted to the Division of Reporting and disclosure, Pension and Welfare Benefit Programs, Room N-4508, Frances Perkins Department of Labor Building, Washington, D.C. 20216, Attention: Summary Annual Report Amendments. All comments should be clearly referenced to the section of the regulation to which they apply. All written comments will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III, Office of Reporting and Plan Standards, Division of Reporting and Disclosure, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-8665. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 104(b)(3) of ERISA and regulation section 2520.104b-10 require (except as provided in subsection (f) of the regulation) the administrator of an employee benefit plan to furnish annually to each participant of such plan and to each beneficiary receiving benefits under an employee pension benefit plan a summary annual report (SAR) which summarizes the information included in the annual report and which conforms to the requirements of the regulation as to form, style and content. The Department has recently implemented a new triennial reporting system beginning with the 1980 plan year under which small plans are required to file a detailed financial report (Forms 5500-C or 5500-K) only every third year, and a brief registration statement (Form 5500-R) in the two intervening years (45 FR 51446, August 1, 1980).

A number of persons who submitted comments on the proposal to adopt a triennial reporting system raised the question of the status of the SAR under such a system. It was suggested that the current required SAR forms would be incompatible with the information filed under the new system on Form 5500-R. The Department agrees that the present SAR requirements should be changed to accommodate the new Form 5500-R. The information that is to be included in the present SAR forms prescribed in section 2520.104b-10 is for the most part not contained on the 5500-R. Therefore, it would be inconsistent with objectives of the triennial system and burdensome to require small plans to prepare such information in those years in which they file the 5500-R

Accordingly, the proposed revisions would require the annual disclosure of such plan information as is consistent with the information reported that year to the Department on Form 5500-C, 5500-K or 5500-R. The proposed revisions would require administrators of small plans to distribute to participants and beneficiaries copies of the Form 5500-R itself in lieu of the present SAR form for those years for which form 5500-R is filed as an annual return. The revisions should make compliance with the SAR requirements convenient for small plans filing under the triennial reporting system, and also provide annual disclosure to plan participants and beneficiaries, as contemplated in the statute.

The Department has determined that these proposed amendments are "significant" within the meaning of Department of Labor guidelines (44 FR 5570, January 26, 1979) issued to implement Executive Order 12044 (43 FR 12661, March 24, 1978).

This regulation is proposed under the authority in sections 104, 109, 110 and 505 of ERISA (Pub. L. 93-406, 88 Stat. 847, 851, 894 (29 U.S.C. 1024, 1029, 1030, 1135)).

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

1. Paragraph (a), the introductory text of paragraphs (b), paragraph (d)(1) and (2), the first sentence of paragraph (e), paragraph (f)(3), and the Appendix are all revised; paragraph (c) (3) and (4) are amended.

§ 2520.104b-10 Summary Annual Report.

(a) *Oligation to furnish.* (1) Except as otherwise provided in this paragraph (a) and in paragraph (f) of this section, the administrator of any empoloyee benefit plan shall furnish annually to each participant of such plan and to each beneficiary receiving benefits under such plan a summary annual report conforming to the requirements of this section. Such furnishing of the summary annual report shall take place in accordance with the requirements of § 2520.104b-1 of this part.

(2) The administrator of any employee benefit plan filing Form 5500-R under § 2520.104-41 shall furnish to each participant of such plan and to each beneficiary receving benefits under such plan a copy of the Form 5500-R filed with the Department in place of the summary annual report referred to in subparagraph (a)(1). Such furnishing of the Form 5500-R shall take place in accordance with the requirements of § 2520.104b-1 of this part.

(3) Any Form 5500-R furnished in accordance with subparagraph (a)(2) shall be attached to a completed copy of the following notice:

Disclosure of Plan Information under ERISA

Attached is a copy of the Registration Statement (Form 5500-R) for (name of plan) for (period covered by this Registration Statement). The Registration Statement contains information about the plan and has been filed with the Internal Revenue Service under the Employee Retirement Income Security Act of 1974 (ERISA). Department of Labor regulations require a copy of the Form 5500-R to be furnished to you for the plan years for which the Form 5500-R is filed.

You also have the right to receive from the plan administrator (see item 2 on 5500-R), on request, a copy of Schedule A (Insurance Information) and Schedule B (Actuarial Information), which were filed with the attached Form 550-R. The charge to cover copying costs will be [$] for Schedules A and B, or [$] per page for any part thereof.

You also have the legally protected right to examine these documents at the main office of the plan (address, if different from 5500-R, item 2a), (at any other location where these documents are available for examination), and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, N-4677, Pension and Welfare Benefit Programs, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

[Note.—Inapplicable portions of this notice may be omitted.]

(b) *When to furnish.* Except as otherwise provided in this paragraph (b), the summary annual report required by subparagraph (a)(1) of this section, or the Form 5500-R and attached Notice required under subparagraphs (a)(2) and (a)3) of this section, shall be furnished to participants and beneficiaries within nine months after the close of the plan year.

(1) * * *

(2) * * *

(c) *Contents, Style and Format.* * * *

(3) *Form for Summary Annual Report Relating to Pension Plans.*

Your Rights to Additional Information

* * * * *

3. Fiduciary information, including transactions between the plan and parties-in-

interest (that is, persons who have certain relationships with the plan);

* * * * *

(4) *Form for Summary Annual Report Relating to Welfare Plans.*

* * * * *

Insurance Information

* * * * *

The total premiums paid for the plan year ending (date) were ($).

* * * * *

Your Rights to Additional Information

3. Fiduciary information, including transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);

* * * * *

(d) *Foreign languages.* In the case of either—

(1) A plan which covers fewer than 100 participants at the beginning of a plan year in which 25 percent or more of all plan participants are literate only in the same non-English language, or

(2) A plan which covers 100 or more participants in which 500 or more participants or 10 percent or more of all plan participants, whichever is less, are literate only in the same non-English language. The plan administrator for such plan shall provide these participants with an English-language summary annual report (or, if appropriate, copy of Form 5500–R) which prominently displays (or, to which has been attached) a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants. The notice offering assistance shall clearly set forth any procedures participants must follow to obtain such assistance.

(e) *Furnishing of additional documents to participants and beneficiaries.* A plan administrator shall promptly comply with any request by a participant or beneficiary for additional documents made in accordance with the procedures or rights described in subparagraph (a)(3) and paragraph (c) of this section. * * *

(f) *Exemptions.* * * *

(3) An apprenticeship or other training plan which meets the requirements of 29 CFR 2520.104–22; * * *

Signed at Washington, D.C., this 29th day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor Management Services Administration.

Appendix.—*The Summary Annual Report (SAR) Under ERISA*

[A cross-reference to the annual report]

A. Pension Plans

SAR item	Form 5500 line items	Form 5500-C line items	Form 5500-K line items
1. Funding arrangement	11	11	11.
2. Total plan expenses	14(l)	16(k)	13(d).
3. Administrative expenses	14(j) column b	16(i)	15(c)(i).
4. Benefits paid	14(h)	16(g)	13(e).
5. Other expenses	14(i) plus 14(k)	16(h) plus 16(j)	NA.
6. Total participants	7(f)	7(a)(iii)	7(b)(iii).
7. Value of plan assets (net):			
a. End of plan year	13(m) column b	15(l) column b	13(g).
b. Beginning of plan year	13(m) column a	15(l) column a	13(a).
8. Change in net assets	14(o)	16(n)	13(g) minus 13(a).
9. Total income	14(g)	16(f)	13(b) plus 13(c).
a. Employer contributions	14(a)(i)	16(a)(i)	13(b).
b. Employee contributions	14(a)(ii)	16(a)(ii)	13(b).
c. Change in sales of assets	14(e)(ii) column b	16(d) column b	NA.
d. Earnings from investments	14(d)(iv) column b	16(c) column b	NA.
10. Total insurance premiums	14(h)(ii) or Sched. A, Part II, item 5(b).	16(g)(i) or Sched. A, Pt. ii, 5(b).	Sched. A, Pt. II, item 5(b).
11. Fund deficiency:			
a. Defined benefit plans	Sched. B, item 8(d)	Sched. B, 8(d)	Sched. B, 8(d).
b. Defined contribution plans	21(b)(ii)	14(b)(iii)	19(b)(ii).

N.B. Plans filing form 5500–R distribute form 5500–R in lieu of the SAR.

B. Welfare Plans

SAR item	Form 5500 line items	Form 5500-C line items
1. Name of insurance carrier	Sched. A, Pt. 1, 2(a)	Sched. A, Pt. I, 2(a).
2. Total insurance premiums	Sched. A, Pt. III, Total of 8(c).	Sched. A, Pt. III, Total of 8(c).
3. Experienced-rated premiums	Sched. A, Pt. III, 9(a)(iv)	Sched. A, Pt. III, 9(a)(iv).
4. Experienced-rated claims	Sched. A, Pt. III, 9(b)(iv)	Sched. A, Pt. III, 9(b)(iv).
5. Value of plan assets (net):		
a. End of plan year	13(m), column b	15(l), column b.
b. Beginning of plan year	13(m), column a	15(l), column a.
6. Change in net assets	14(o)	16(n).
7. Total income	14(g)	16(f).
a. Employer contributions	14(a)(i)	16(a)(i).
b. Employee contributions	14(a)(ii)	16(a)(ii).
c. Change in sales of assets	14(e)(ii) column b	16(d) column b.
d. Earnings from investments	14(d)(iv) column b	16(c) column b.
8. Total plan expenses	14(l)	16(k).
9. Administrative expenses	14(j) column b	16(i).
10. Benefits paid	14(h)	16(g), column b.
11. Other expenses	14(i) plus 14(k)	16(h) plus 16(j).

N.B. Plans filing form 5500–R distribute form 5500–R in lieu of the SAR.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Surface Coal Mining and Reclamation and Enforcement Under Federal Program for Alabama

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

ACTION: Notice of intent to prepare Federal Program, Suspension of Alabama schedule for State program resubmission, and Notice of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) was advised by the State of Alabama of the existence of an injunction issued on November 12, 1980 by the Circuit Court of Walder County, Alabama, in Equity, enjoining the State from submitting or resubmitting a State program to the Department of the Interior. Accordingly, the Secretary of the Interior is temporarily suspending the Alabama schedule for resubmission and is initiating action to prepare a Federal program for the regulation of surface coal exploration, mining and reclamation on non-Federal and non-Indian lands in Alabama. The Federal program will not be implemented before December 15, 1981, unless the injunction

ends or is no longer determined effective under Section 503(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

In any event, Alabama will be given the opportunity to resubmit a state program before a Federal program is implemented. If Alabama does resubmit, the program will be reviewed in accordance with the Secretary's regulations. A Federal program will be implemented only if the State fails to resubmit, or if the resubmitted program is disapproved. Public comment is also being sought on the preparation of a Federal program for Alabama and on Alabama's actions under the interim program.

DATE: Public comments must be received by OSM by 5:00 p.m., February 5, 1081.

ADDRESS: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, OSM, State and Federal Programs 1951 Constitution Avenue, N.W., U.S. Department of the Interior, Washington, D.C. 202040, (202) 343–4225.

SUPPLEMENTARY INFORMATION: Under the Surface Mining control and Reclamation Act of 1077, A state which seeks to regulate surface coal mining and reclamation operations within its border may apply to the Secretary of the Interior for approval of a State program. In order for a program to be approved, a State must develop a program that contains laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. The Act says that once a State makes a program submission, the Secretary of the Interior has six months in which to consider the State's application. At the end of that six-month period, the Secretary has to decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary only partially or completely disapproves the State program submission, the State, under normal conditions, has sixty days to revise and resubmit its program. The statute then gives the Secretary sixty days to consider the resubmitted program and to make a final decision. If, after the end of this ten month period, the Secretary is unable to approve or conditionally approve the State program, he is required to promulgate a Federal program.

As announced in the October 16, 1980, Federal Register notice, 45 FR 68665, the Secretary of the Interior reviewed the State of Alabama's initial program submission and disapproved that program. Alabama had until December 15, 1980, to resubmit a revised program.

In a letter dated November 14, 1980, Ronald J. F. Reeves, Assistant Attorney General for the State of Alabama, Surface Mining Reclamation Commission, informed the Office of Surface Mining that the Alabama Surface Mining Reclamation Commission was enjoined on November 12, 1980, by the Circuit Court of Walker county, Alabama. In Equity, from submitting or resubmitting to the Office of Surface Mining a State program for the regulation of surface coal mining and reclamation operations. Alabama did not resubmit a program by the December 15, 1980, deadline.

Section 503(d) of the Surface Mining Control and Reclamation Act provides:

> . . . [T]he inability of State to take any action, the purpose of which is to prepare, submit or enforce a state program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result * * * in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Sections 503 and 504 shall again by fully applicable.

The Secretary has completed all the actions in the review of the Alabama State program that can be done without further participation by the State of Alabama. Because the Secretary of the Interior has received notification that the State of Alabama is enjoined from taking further formal action, the Secretary is temporarily suspending the State program approval process for Alabama as of November 12, 1980 (the date of the injunction), which was the 27th day of the 60 days that Alabama had for resubmission.

The effect of this action is that federal enforcement of the interim program requirements, e.g., two federal inspections per year of each mine or regulated facility, will continue until the injunction is lifted, expires, or is determined not to invoke the operation of Section 503(d). Since the Act allows the state access to its reserved portion of the Abandoned Mine Land Fund only after it has achieved regulatory primacy, Alabama's access to the Fund must be delayed. The amount currently reserved for Alabama is $7,478,293.65.

The Secretary has considered various options in rescheduling Alabama's state program approval process. First, because the 60 day resubmission period expired on December 15, 1980, and because the injunction gives Alabama more time than the 60 days normally allowed, Alabama could be required to resubmit its state program on the day the injunction is lifted. However, an immediate deadline for resubmission after the injunction is lifted appears abrupt and would ignore the fact that Alabama still had 33 days remaining in its 60-day resubmittal period when the injunction was issued. Second, Alabama could be given 60 days after the lifting of the injunction to resubmit its state program. However, 60 additional days appears excessive, because (1) Alabama has already had 27 days to develop its resubmission, (2) it would be unfair to other states which only had 60 days to resubmit and (3) the operation of the injunction has already given Alabama considerably more time than the normal 60 days to develop an acceptable program. Third, Alabama could be given the amount of time it had remaining to resubmit its program, 33 days. This would take into account the time Alabama already had for resubmission, would be fair to other states involved in the process, and would be a reasonable deadline for the state to meet.

The Secretary has chosen the third option. Beginning on November 12, 1981, or, if the injunction is lifted or determined to be ineffective before that date, then on the date when the injunction is lifted or determined ineffective, Alabama will have 33 days to resubmit an acceptable program. In any event, the deadline for Alabama's resubmission will not be later than December 15, 1981. The Secretary will make every effort to notify Alabama by letter prior to that date for resubmission in order to assist Alabama in meeting the deadline.

The legislative history of Section 503(d) indicates that its purpose is to avoid penalizing states which make good faith efforts to comply with the Act, but are prevented by court action from achieving full compliance. Where, however, attendant circumstances lead the Secretary to determine that an injunction does not invoke the operation of Section 503(d), or that the State has failed to make a good faith effort to comply with the Act, the Secretary will not suspend the statutory timetable for state programs beyond the date of such determination. The Secretary has not yet determined, at this time, whether Section 503(d) is applicable in Alabama. The Secretary is reviewing the circumstances under which the injunction was entered and the

jurisdictional competence of the state court to hear the matter. The Secretary believes that the delay and relief available under Section 503(d) is limited to those States which are seeking in good faith to prepare and adopt a permanent surface coal mining and reclamation program. Section 503 is not meant to be used as an artifice or device to avoid the requirements of the Surface Mining Act. Section 503(d) does not provide general authority to extend the statutory timetable established under that Act. Accordingly, the Secretary requests public comment on the issues bearing upon the applicability of Section 503(d) in Alabama. If, after review, the Secretary determines that Section 503(d) is inapplicable to Alabama under the circumstances, Alabama will have 33 days from the date of such determination within which to resubmit an acceptable state program. If it fails to do so, the Secretary will implement a Federal program for Alabama in accordance with Section 504 of the Act. Until a determination is made, the Secretary will presume that Section 503(d) applies, and thus will suspend the running of the resubmission period provided by Section 503(c). However, the Secretary expressly reserves the right to take appropriate action if he concludes that the circumstances surrounding the entry of the injunction warrant doing so.

Section 503(d) also requires a State which is subject to an injunction prohibiting resubmission of a state program to regulate surface coal mining and reclamation operations pursuant to Section 502 of the Act (the interim program) until such time as the injunction terminates or until one year after the injunction is entered, whichever comes first. The Secretary construes Section 503(d) of the Act to authorize implementation of a Federal program if a State fails to implement Section 502 during the term of an injunction. Thus, while the Secretary fully endorses the intent of Congress to have the State assume regulatory primacy under the Act, he also is required to implement a Federal program in cases where that becomes necessary because of a State's failure to carry out its responsibilities under Section 502.

Consequently, the Secretary is also examining the compliance by the State of Alabama with Section 502 of the Surface Mining Control and Reclamation Act and the interim program regulations issued by the Department of the Interior related to Section 502 (42 FR 62639, December 13, 1977). Within the next three months and after receipt of public comments and completion of this preliminary analysis, the Secretary will decide what further steps are necessary and should be taken. At that time, he may conclude that there is no basis for further examination because the State of Alabama is adequately enforcing the requirements of Section 502 of the Act; alternatively, he may decide that there is the need for a public hearing or additional public comment. If the Secretary ultimately determines there is a lack of compliance, he will recommence the State program review process after appropriate notice of Alabama.

One additional effect of the injunction, if it runs a full year, is to delay the permanent program in Alabama for a period of approximately eight to twelve months beyond that applicable to most other States in the country. In addition, If Alabama is ultimately unsuccessful in obtaining approval of its program, the Secretary will then have to adopt a Federal program for that State. This could cause an additional delay of six months or more if the process for adoption of the Federal program were delayed until after the injunction is lifted.

To reduce the potential delay in the application of the permanent surface coal mining reclamation program in Alabama if a federal program becomes necessary, the Secretary has decided to begin preparation of a Federal program for Alabama within the next three months. This action is considered necessary both to reduce the time during which the environmental objectives established by Congress are not fully achieved because a permanent program has not been implemented and to reduce the potential for competitive economic disadvantages among states because implementation of permanent programs in the different states are unlikely to be concurrent. The Secretary will not actually implement this program until Alabama either fails to meet the 33 day deadline to resubmit its program or resubmits but fails to obtain approval of its program.

In the meantime, the Secretary has instructed the Director of the Office of Surface Mining to make every effort during the period of the injunctions to accomplish the following: (1) work with the State toward correcting the remaining deficiencies in its proposed program to the extent the State can participate in such an effort, given the existence of the injunction; (2) ensure that the Federal enforcement program under Section 502 is diligently pursued in order to obtain compliance with the provisions of the Act and the interim program regulations; and (3) determine whether Alabama is adequately carrying out its responsibilities under Section 502 of the Act.

A major purpose of this notice is to seek public comment on preparing a Federal program in Alabama and to receive specific suggestions for how the Secretary of the Interior ought to adopt or modify the permanent program regulations to meet the local conditions in the State of Alabama. Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the topography, soils, climate and biological, chemical, geological, hydrological, agronomic and other physical conditions of the State involved. For important information, the reader is referred to "General Background on the Permanent Program" and "Criteria for Promulgating Federal programs" previously published in the **Federal Register** on May 16, 1980 (45 FR 32328). That notice explains how the Secretary will consider unique conditions in a State, how existing State laws will be considered, and what standards will be used in adopting regulations. The reader should also refer to the Secretary's decision concerning the Alabama program published in the **Federal Register** on October 16, 1980. (45 FR 68665 *et seq.*)

This action of proposing the preparation of a contingent Federal program for Alabama is not significant under the criteria of Executive Order 12044 and 43 CFR Part 14 and does not require preparation of regulatory analysis, nor is this action a major Federal action significantly effecting the environment under the National Environmental Policy Act.

Public Comment Period: The comment period announced in this notice will extend until [insert: 30 days after publication of this notice]. All written comments must be received at the address given above by 5:00 p.m. on the date.

Comments on the preparation of a Federal program received after that hour will not be considered in drafting the proposed Federal program; they will be considered to the extent applicable in subsequent actions under that program.

Dated: December 24, 1980.

Joseph W. Gorrell,

Acting Assistant Secretary, Energy and Minerals.

[FR Doc. 81-346 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Enforcement Evaluation and Development of Federal Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior.

ACTION: Extension of public comment period.

SUMMARY: OSM is extending the period for review and comment on the preparation of a Federal program for the regulation of surface coal mining and reclamation in the State of Indiana and on Indiana's performance under the interim regulatory program.

DATE: Written comments, data or other relevant information relating to Indiana's performance under the interim regulatory program must be received on or before 5:00 p.m., February 9, 1981, to be considered. comments concerning the preparation of a Federal program for the regulation of surface coal mining in Indiana must also be received on or before 5:00 p.m., February 9, 1981, in order to receive consideration.

ADDRESSES: Comments on Indiana's performance under the interim program and comments on the preparation of a Federal program for Indiana should be sent or hand-delivered to the Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, or to Edgar A. Imnoff, Regional Director, Office of Surface Mining, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, Indiana 42604.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, (202) 343–4225, or J.M. Furman, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204, (317) 269–2629.

SUPPLEMENTARY INFORMATION: On November 25, 1980, at 45 FR 78499–78500, the Assistant Secretary for Energy and Minerals, U.S. Department of the Interior, published notice of intent to initiate action to prepare a Federal program for the regulation of surface coal exploration, mining and reclamation on non-Federal and non-indian lands in Indiana and announced a public comment period which was to close at 5:00 p.m. on December 26, 1980. The notice solicited public comment on the preparation of a Federal program for Indiana and Indiana's actions in implementing the interim regulatory program. Since this publication, OSM has received several requests that the comment period be extended. In order to allow sufficient time for the public to comment on both the preparation of a Federal program and on Indiana's performance to date under the interim regulatory program, OSM is extending the comment period until 5:00 p.m. on February 9, 1981. Public comment focusing specifically on Indiana's actions under the interim program is particularly requested.

As indicated in the original notice soliciting public comment on Indiana's performance, OSM is considering the possibility of holding a hearing on the adequacy of Indiana's enforcement efforts. Any such hearing would be in addition to consideration of the written comments submitted in response to this notice.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

Dated: December 30, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

[FR Doc. 81-395 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 942

Surface Coal Mining and Reclamation and Enforcement Under Federal Program for Tennessee

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

ACTION: Notice of intent to prepare Federal Program, Suspension of Tennessee schedule for State program resubmission, and Notice of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) was advised by the State of Tennessee of the existence of an injunction issued on December 5, 1980, by the Chancery Court for Davidson County, Tennessee, enjoining the State from submitting or resubmitting a State program to the Department of the Interior. Accordingly, the Secretary of the Interior is temporarily suspending the Tennessee schedule for resubmission and is initiating action to prepare a Federal program for the regulation of surface coal exploration, mining and reclamation on non-Federal and non-Indian lands in Tennessee. The Federal program will not be implemented before December 9, 1981, unless the injunction ends or is no longer determined effective under Section 503(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* In any event, Tennessee will be given the opportunity to resubmit a state program before a Federal program is implemented. If Tennessee does resubmit, the program will be reviewed in accordance with the Secretary's regulations. A Federal program will be implemented only if the State fails to resubmit, or if the resubmitted program is disapproved. Public comment is also being sought on the preparation of a Federal program for Tennessee and on Tennessee's actions under the interim program.

DATE: Public comments must be received by OSM by 5:00 p.m., February 4, 1981.

ADDRESSES: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, OSM, State and Federal Programs, 1951 Constitution Avenue, N.W., U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–4225.

SUPPLEMENTARY INFORMATION: Under the Surface Mining Control and Reclamation Act of 1977, a State which seeks to regulate surface coal mining and reclamation operations within its border may apply to the Secretary of the Interior for approval of a State program. In order for a program to be approved, a State must develop a program that contains laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. The Act says that once a State makes a program submission, the Secretary of the Interior has six months in which to consider the State's application. At the end of that six-month period, the Secretary has to decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary only partially or completely disapproves the State program submission, the State, under normal conditions, has sixty days to revise and resubmit its program. The statute then gives the Secretary sixty days to consider the resubmitted program and to make a final decision. If, after the end of this ten month period, the Secretary is unable to approve or conditionally approve the State program, he is required to promulgate a Federal program.

As announced in the October 10, 1980, **Federal Register** notice 45 FR 67372, the

Secretary of the Interior reviewed the State of Tennessee's initial program submission and partially approved and partially disapproved that program. Tennessee has until December 9, 1980, to resubmit a revised program.

By telephone call on December 9, 1980, Terry Hill, of the Tennessee Division of Surface Mining, informed the Office of Surface Mining that the Tennessee Department of Conservation was enjoined on December 5, 1980, by the Chancery Court of Davidson County, Tennessee, from submitting to the Secretary of the Interior a State program for the regulation of surface coal mining and reclamation operations. The injunction by the Chancery Court allows the Tennessee Department of Conservation to request the Court to lift the injunction before March 4, 1981, if Tennessee is in a position to make a submission to the Secretary. It further allows any party to request lifting the injunction after March 4, 1981. Tennessee did not resubmit a program by the December 9, 1980, deadline.

Section 503(d) of the Surface Mining Control and Reclamation Act provides:

> * * * [T]he inability of State to take any action, the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result * * * in the imposition of a Federal program. Regulations of the surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Section 503 and 504 shall again be fully applicable.

The Secretary has completed all the actions in the review of the Tennessee State program that can be done without further participation by the State of Tennessee. Because the Secretary of the Interior has received notification that the State of Tennessee is enjoined from taking further formal action, the Secretary is temporarily suspending the State program approval process for Tennessee as of December 5, 1980, (the date of the injunction), which was the 56th day of the 60 days that Tennessee had for resubmission.

The effect of this action is that federal enforcement of the interim program requirements, e.g., two federal inspections per year of each mine or regulated facility, will continue until the injunction is lifted, expires, or is determined not to invoke the operation of Section 503(d). Since the Act allows the state access to its reserved portion of the Abandoned Mine Land Fund only after it has achieved regulatory primacy, Tennessee's access to the Fund must be delayed. The amount currently reserved for Tennessee is $3,054,085.91.

The Secretary has considered various options in rescheduling Tennessee's state program approval process. First, because the 60 day resubmission period expired on December 9, 1980, and because the injunction gives Tennessee more time than the 60 days normally allowed, Tennessee could be required to resubmit its state program on the day the injunction is lifted. However, an immediate deadline for resubmission after the injunction is lifted appears abrupt and would ignore the fact that Tennessee still had 4 days remaining in its 60-day resubmittal period when the injunction was issued. Second, Tennessee could be given 60 days after the lifting of the injunction to resubmit its state program. However, 60 additional days appears excessive, because (1) Tennessee has already had 56 days to develop its resubmission, (2) it would be unfair to other states which only had 60 days to resubmit and (3) the operation of the injunction has already given Tennessee considerably more time than the normal 60 days to develop an acceptable program. Third, Tennessee could be given the amount of time it had remaining to resubmit its program, 4 days. This would take into account the time Tennessee already had for resubmission, would be fair to other states involved in the process, and would be a reasonable deadline for the state to meet.

The Secretary has chosen the third option. Beginning on December 5, 1981, or, if the injunction is lifted or determined to be ineffective before that date, then on the date when the injunction is lifted or determined ineffective, Tennessee will have 4 days to resubmit an acceptable program. In any event, the deadline for Tennessee's resubmission will not be later than December 9, 1981. The Secretary will make every effort to notify Tennessee by letter prior to that date for resubmission in order to assist Tennessee in meeting the deadline.

The legislative history of Section 503(d) indicates that its purpose is to avoid penalizing states which make good faith efforts to comply with the Act but are prevented by court action from achieving full compliance. Where, however, attendant circumstances lead the Secretary to determine that an injunction does not invoke the operation of Section 503(d), or that the State has failed to make a good faith effort to comply with the Act, the Secretary will not suspend the statutory timetable for state programs beyond the date of such determination. The Secretary has not yet determined, at this time, whether Section 503(d) is applicable in Tennessee. The Secretary is reviewing the circumstances under which the injunction was entered and the jurisdictional competence of the state court to hear the matter. The Secretary believes that the delay and relief available under Section 503(d) is limited to those States which are seeking in good faith to prepare and adopt a permanent surface coal mining and reclamation program. Section 503 is not meant to be used as an artifice or device to avoid the requirements of the Surface Mining Act. Section 503(d) does not provide general authority to extend the statutory timetable established under that Act. Accordingly, the Secretary requests public comment on the issues bearing upon the applicability of Section 503(d) in Tennessee. If, after review, the Secretary determines that Section 503(d) is inapplicable to Tennessee under the circumstances, Tennessee will have 4 days from the date of such determination within which to resubmit an acceptable state program. If it fails to do so, the Secretary will implement a Federal program for Tennessee in accordance with Section 504 of the Act. Until a determination is made, the Secretary will presume that Section 503(d) applies, and thus will suspend the running of the resubmission period provided by Section 503(c). However, the Secretary expressly reserves the right to take appropriate action if he concludes that the circumstances surrounding the entry of the injunction warrant doing so.

Section 503(b) also requires a State which is subject to an injunction prohibiting resubmission of a state program to regulate surface coal mining and reclamation operations pursuant to Section 502 of the Act (the interim program) until such time as the injunction terminates or until one year after the injunction is entered, whichever comes first. The Secretary construes Section 503(d) of the Act to authorize implementation of a Federal program if a State fails to implement section 502 during the term of an injunction. Thus, while the Secretary fully endorses the intent of Congress to have the State assume regulatory primacy under the Act, he also is required to implement a Federal program in cases where that becomes necessary because of a State's failure to carry out its responsibilities under Section 502.

Consequently, the Secretary is also examining the compliance by the State

of Tennessee with Section 502 of the Surface Mining Control and Reclamation Act and the interim program regulations issued by the Department of the Interior related to Section 502 (42 FR 62639, December 13, 1977). Within the next three months and after receipt of public comments and completion of this preliminary analysis, the Secretary will decide what further steps are necessary and should be taken. At that time, he may conclude that there is no basis for further examination because the State of Tennessee is adequately enforcing the requirements of Section 502 of the Act; alternatively, he may decide that there is the need for a public hearing or additional public comment. If the Secretary ultimately determines there is a lack of compliance, he will recommence the State program review process after appropriate notice to Tennessee.

One additional effect of the injunction, if it runs a full year, is to delay the permanent program in Tennessee for a period of approximately eight to twelve months beyond that applicable to most other States in the country. In addition, if Tennessee is ultimately unsuccessful in obtaining approval of its program, the Secretary will then have to adopt a Federal program for that State. This could cause an additional delay of six months or more if the process for adoption of the Federal program were delayed until after the injunction is lifted.

To reduce the potential delay in the application of the permanent surface coal mining reclamation program in Tennessee if a federal program becomes necessary, the Secretary has decided to begin preparation of a Federal program for Tennessee within the next three months. This action is considered necessary both to reduce the time during which the environmental objectives established by Congress are not fully achieved because a permanent program has not been implemented and to reduce the potential for competitive economic disadvantages among states because implementation of permanent programs in the different states are unlikely to be concurrent. The Secretary will not actually implement this program until Tennessee either fails to meet the 4 day deadline to resubmit its program or resubmits but fails to obtain approval of its program.

In the meantime, the Secretary has instructed the Director of the Office of Surface Mining to make every effort during the period of the injunctions to accomplish the following: (1) work with the State toward correcting the remaining deficiencies in its proposed program to the extent the State can participate in such an effort, given the existence of the injunction; (2) ensure that the Federal enforcement program under Section 502 is diligently pursued in order to obtain compliance with the provisions of the Act and the interim program regulations; and (3) determine whether Tennessee is adequately carrying out its responsibilities under Section 502 of the Act.

A major purpose of this notice is to seek public comment on preparing a Federal program in Tennessee and to receive specific suggestions for how the Secretary of the Interior ought to adopt or modify the permanent program regulations to meet the local conditions in the State of Tennessee. Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the topography, soils, climate and biological, chemical, geological, hydrological, agronomic and other physical conditions of the State involved. For important information, the reader is referred to "General Background on the Permanent Program" and "Criteria for Promulgating Federal programs" previously published in the **Federal Register** on May 16, 1980 (45 FR 32328). That notice explains how the secretary will consider unique conditions in a State, how existing State laws will be considered, and what standards will be used in adopting regulations. The reader should also refer to the secretary's decision concerning the Tennessee program published in the **Federal Register** on October 10, 1980 (45 FR 67372 *et seq.*).

This action of proposing the preparation of a contingent Federal program for Alabama is not significant under the criteria of Executive Order 12044 and 43 CFR Part 14 and does not require preparation of regulatory analysis, nor is this action a major Federal action significantly effecting the environment under the National Environmental Policy Act.

Public Comment Period: The comment period announced in this notice will extend until February 5, 1981. All written comments must be received at the address given above by 5 p.m. on the date.

Comments on the preparation of a Federal program received after that hour will not be considered in drafting the proposed Federal program; they will be considered to the extent applicable in subsequent actions under that program.

Dated: December 29, 1980.

Joan Davenport,

Assistant Secretary, Energy and Minerals.

[FR Doc. 81-347 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

Surface Coal Mining and Reclamation and Enforcement in West Virginia: Review of State Program Submission

AGENCY: Office of Surface Mining, Interior.

ACTION: Extension of public comment period.

SUMMARY: OSM is extending the period for review and comment on the submission by West Virginia of a program for the regulation of surface coal mining and reclamation in the State.

DATES: Written comments, data or other relevant information relating to West Virginia's program submission must be received on or before 4:00 p.m., January 9, 1981, to be considered.

ADDRESSES: Comments on West Virginia's program submission should be sent or hand-delivered to the Office of Surface Mining, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Leonard, Public Affairs Officer, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301, (304) 342-8125.

SUPPLEMENTARY INFORMATION: On December 19, 1980, at 45 FR 83544, the Regional Director, Office of Surface Mining, U.S. Department of the Interior, published notice of the public hearing and the public comment period on the resubmitted West Virginia program. The comment period was slated to close at 4:00 p.m. on January 6, 1981. Since that publication, OSM has received requests from the West Virginia Coal Association and other members of the public to extend the comment period. In order to allow sufficient time for the public to comment on the resubmission of the West Virginia program, OSM is extending the comment period until 4:00 p.m. on January 9, 1981. This extension period is intended to compensate for the holidays that occurred during the original comment period.

As indicated in the original notice soliciting comments on the resubmission of West Virginia's program, the public hearing time and place will remain the same: that is, the public hearing will be held at 5:30 p.m. on January 5, 1981, at the Capitol Complex Conference Center,

Rooms A and B, 1900 Washington Street, East, Charleston, West Virginia.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

Dated: December 31, 1980.

Walter N. Heine,

Director Office of Surface Mining.

[FR Doc. 81-373 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

Bighorn Canyon National Recreation Area, Montana-Wyoming; Snowmobile Regulations

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: The proposed regulations are necessary to ensure the public the opportunity for motorized access to areas of the Recreation Area in winter that are accessible by wheeled vehicle in summer. These regulations are meant to provide for the preservation and enjoyment of Bighorn Canyon National Recreation Area in a way that is consistent with the snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior. In addition, these regulations have been designed to protect the resource and to provide for enhanced safety to the visiting public, while also providing opportunities for the public to enjoy ice fishing, by granting snowmobile access.

This will be accomplished by: (1) Restricting the use of snowmobiles to some unplowed roads in the South District of the Recreation Area that are open to motorized vehicles in the summer; (2) Describing in the regulations those routes which are open to snowmobiles; (3) Prescribing periods of snowmobile use which are consistent with the protection of natural resources and public safety; and (4) Providing for certain exceptions for emergency purposes or administrative uses.

DATES: Written comments, suggestions or objections will be accepted until March 9, 1981.

ADDRESS: Comments should be directed to: Superintendent, Bighorn Canyon National Recreation Area, P.O. Box 458, Fort Smith, Montana 59035.

FOR FURTHER INFORMATION CONTACT: Richard L. Lake, Chief Park Ranger, Bighorn Canyon National Recreation Area, Telephone: (406) 666-2412.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat and not adversely affect scenic, natural or aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive promulgated the regulations found at 36 CFR 2.34 on April 1, 1974, which closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

A Notice was published in the **Federal Register** of February 14, 1975 (40 FR 6797) designating a portion of the frozen surface of Bighorn Lake as a snowmobile area. The designated area was described as in the vicinity of Horseshoe Bend from the so-called "Narrows" on the south to the "Narrows" on the north as delineated by signs posted on the ice.

Although this area has remained as the designated snowmobile route, it has not been used since the winter of 1976–1977, due to unsafe ice conditions. These proposed rules will close the entire lake surface to snowmobile use for safety reasons.

The National Park Service Snowmobile Policy was published in the **Federal Register** of August 13, 1979 (44 FR 47412). The policy limits snowmobile use to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. The policy requires that designated snowmobile routes be promulgated as special regulations in the Code of Federal Regulations, Title 36, Part 1, Section 7. This proposal meets the criteria of the National Park Service Snowmobile Policy.

In the fall of 1979 an environmental assessment was prepared on alternatives for snowmobiles use in Bighorn Canyon NRA. Public response to the proposed snowmobile routes was invited by press release from the Superintendent. The response period was from October 1, 1979, through November 15, 1979. Written responses totaled 143 and were almost exclusively from individuals from the Cody, Wyoming, area, many affiliated with a snowmobile club in that community. Response was generally favorable to the proposed routes on existing roads along the lakeshore but in opposition to deletion of the old snowmobile route on the frozen lake surface at Horseshoe Bend. On February 7, 1980, a public meeting was held at the Recreation Area Visitor Center in Lovell, Wyoming, with a field trip conducted afterward at Horseshoe Bend. The meeting was attended by interested local persons, representatives of the Cody snowbobile organization and U.S. Senator Malcolm Wallop's Cody office manager, and the press. After the field trip to Horseshoe Bend where all interested parties were taken on the ice to view firsthand the extremely hazardous conditions, the consensus of the group was in full support of the proposal.

Review of Alternatives

An environmental assessment of alternatives was prepared for designation of snowmobile routes, and was approved by the Regional Director, Rocky Mountain Region, on September 19, 1979. Alternative A was identified as the preferred alternative. Limited numbers of these documents and maps showing the proposed routes are available by writing the Superintendent at the address previously noted. The alternatives developed in the Environmental Assessment are summarized below:

Alternative A: Designate routes for snowmobile access to Lakeshore fishing areas. Close former snowmobile route on iced over lake surface.

This alternative would designate approximately 6½ miles of unpaved, unplowed roads along the west shore of Bighorn Lake south of Horseshoe Bend, and approximately 3½ miles of similar road on the east shore. Such action would provide access to traditional ice fishing locations when show depth is such as to preclude wheeled vehicle travel. This alternative would further close old routes on the frozen lake surface in the Horseshoe Bend area because of the high hazard to visitor safety posed by open holes and pockets of thin ice cause by air bubbles from the lake bottom. Because all routes are over existing roads, disturbance to wildlife would be minimal and noise disturbance to other visitors would be negligible.

Alternative B: No Action. This alternative would effectively deny access to popular and traditional ice fishing areas during periods of deep snow. Distances are too great from the nearest plowed road for fishermen to

carry paraphenalia necessary to ice fish. There would be no impacts.

Alternative A, which was identified as the preferred alternative, has been selected and a Finding of No Significant Impacts from Alternative A was made on August 12, 1980. The designation of the snowmobile routes identified in Alternative A is the purpose of this proposed rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Richard W. Hougham, South District Ranger, Bighorn Canyon National Recreation Area, Richard L. Lake, Chief Park Ranger, Bighorn Canyon National Recreation Area.

Impact Analyis

The National Park Service has made a determination that the proposed regulations contained in this rulemaking are not significant, as that term is defined under Executive Order No. 12044 and 43 CFR, Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of those authorities.

Authority

Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); 245 DM 1 (44 FR 23384); and National Park Service Order No. 77 (38 FR 7478, as amended).

F. R. Holland, Jr.,

Acting Associate Director, Management and Operations.

In consideration of the foregoing, it is proposed to amend Part 7 of Title 36, Chapter I of the Code of Federal Regulations by adding paragraph (b) to § 7.92 to read as follows:

§ 7.92 Bighorn Canyon National Recreation Area.

* * * * *

(b) *Snowmobiles.* (1) Designated routes to be open to snowmobile use: On the west side of Bighorn Lake, beginning immediately east of the Wyoming Game and Fish Department Residence on the Pond 5 road northeast to the Kane Cemetery, North along the main traveled road past Mormon Point, Jim Creek, along the Big Fork Canal, crossing said canal and terminating on the south shore of Horseshoe Bend, and the marked lakeshore access roads leading off this main route to Mormon Point, north and south mouth of Jim Creek, South Narrows, and the lakeshore road between Mormon Point and the south mouth of Jim Creek. On the east side of Bighorn Lake beginning at the junction of U.S. Highway 14A and the John Blue road, northerly on the John Blue road to the first road to the left, on said road in a westerly direction to its terminus at the shoreline of Bighorn Lake. All frozen lake surfaces are closed to snowmobile use.

(2) On roads designated for snowmobile use only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated road or parking area is closed by snow depth to all other motor vehicle use by the public. These routes will be marked by signs, snow poles or other appropriate means.

The Superintendent shall determine the opening and closing dates for use of designated snowmobile routes each year. Routes will be open to snowmobile travel when they are considered to be safe for travel but not necessarily free of safety hazards. Snowmobiles may travel in these areas with the permission of the Superintendent, but at their own risk.

(3) Snowmobile use outside designated routes is prohibited. The prohibition shall not apply to (i) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, or (ii) emergency administrative travel by employees of the National Park Service or its contractors on concessioners.

[FR Doc. 81-280 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 7

Delaware Water Gap National Recreation Area; New Jersey and Pennsylvania; Snowmobile Route Designations

AGENCY: National Park Service.

ACTION: Proposed Rule.

SUMMARY: The proposed regulation set forth below is necessary to redesignate the snowmobiling route in Delaware Water Gap National Recreation Area (referred to hereafter as DWGNRA).

Present NPS management policy permits snowmobile trails only on properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Snowmobiling at DWGNRA has been restricted by special regulation to one designated trail which follows old woods roads and farming access roads that are maintained by the park as emergency access roadways. These roadways are not open to the public during non-snow periods. In a few places the trail crosses open agricultural fields linking these emergency roads together. Since this route has been affected by the revised NPS snowmobile policy, an environmental assessment of alternatives of snowmobile management policies, regulations and routes at DWGNRA has been completed and is available for public review.

DATES: Written comments, suggestions or objections will be accepted until February 5, 1981.

ADDRESSES: Comments should be directed to: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324.

FOR FURTHER INFORMATION CONTACT: James D. Arnott, Chief Park Ranger, Delaware Water Gap National Recreation Area, Telephone: (717) 588-6637.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural aesthetic values.

In response to Executive Order 11644, the Secretary of Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated 36 CFR 2.34 on April 1, 1974, which closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR 2.34, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1977 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. The snowmobiles must be consistent with the Park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives; and not disturb the wildlife or damage other park resources.

The policy further provides that, where permitted, snowmobiles shall be

confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the *Code of Federal Regulations.*

Snowmobile use began at Delaware Water Gap National Recreation Area in January 1971. The present snowmobile trail was designated by publication in the **Federal Register** on March 31, 1975 (40 FR 14313). The trail is described in 36 CFR 7.71(b). The trail met the requirements of Executive Order 11644 and the National Park Service general snowmobile regulations in 36 CFR 2.34. Since the trail was designated in 1975, it has been rerouted slightly to eliminate some steep sections and to make a road crossing safer. This change is reflected in this proposed special regulation.

On August 13, 1979, the National Park Service revised its snowmobile policy as noted above. This policy revision necessitated an environmental assessment of management alternatives to continue the snowmobile activity at DWGNRA.

The situation at DWGNRA is considerably different from other National Park Service areas. The roads at many other National Park Service areas primarily provide access for visitors into the park and can remain unplowed during the winter. The roads at DWGNRA that might be used for snowmobiling also provide access to residents and cannot be closed.

The National Park Service does not have jurisdiction over a sufficient number of roads in DWGNRA that would allow compliance with the current NPS policy. Additional lands would have to be acquired, and leases on houses and cabins would have to be terminated in order to have additional miles of snowmobile trail.

Before snowmobiling at DWGNRA can comply with NPS snowmobile policy, the state, counties and townships would have to abandon additional miles of road in the recreation area so that the National Park Service would be in a position to decide which roads will be used for snowmobiling. Therefore, it would be several years before snowmobiling at DWGNRA can comply with NPS policy.

The National Park Service has selected Alternative "B" of the Environmental Assessment approved by the Mid-Atlantic Regional Director on October 29, 1980, as a preferred alternative for snowmobile activity at DWGNRA.

This alternative supports the continuance of the snowmobile activity on a trail system that meets the intent and purpose of NPS policy but must be excepted due to circumstances unique to this recreation area.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Impact Analysis

The National Park Service has made a determination that the proposed regulation contained in this rulemaking is not significant, as that term is defined in 43 CFR Part 14, nor does it require the preparation of a regulatory analysis pursuant to the provisions of this authority. An environmental assessment has been prepared and is available at the address noted at the beginning of this rulemaking.

Drafting Information

The following individuals participated in the writing of this proposed regulation: Karl J. Theune and James D. Arnott, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania, John Karish, Pennsylvania State University, and Arvell Washington, Mid-Atlantic Regional Office, National Park Service.

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. § 3); 245 DM 1 (44 FR 23384); and National Park Service Order 77 (38 FR 7478), as amended.

F. R. Holland, Jr.,

Acting Associate Director, Managemnet and Operations.

In consideration of the foregoing, it is proposed to amend § 7.71 of Title 36, *Code of Federal Regulations*, by revising paragraph (b)(1) as follows:

§ 7.71 Delaware Water Gap National Recreation Area

* * * * *

(b) Designated Snowmobile Routes.

(1) A route in Middle Smithfield Township, Monroe County, Pennsylvania, bounded by the Delaware River on the east and Hidden Lake on the west. The route begins at the Smithfield Beach parking area and is in two loops. Loop One is a small trail approximately 3 miles long and follows the west bank of the Delaware River and closely parallels the east side of L.R. 45012 (commonly known as the River Road). Loop Two is approximately 6 miles long and begins at the northwest end of Loop One; It goes northeasterly between the Delaware River and River Road for about one mile until it crosses River Road; then southwesterly along the ridge which is south of Hidden Lake to a point opposite the west end of Hidden Lake, and then goes southeasterly until it returns to Loop One near River Road. Maps of the route are available at Smithfield Beach and at the office of the Superintendent. Both loops are marked by appropriate signs.

[FR Doc. 81-279 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 1720-4]

Approval and Promulgation of Implementation Plans; Kentucky: Public Notification and Participation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 127 of the Clean Air Act, Kentucky has submitted a revision to the State Implementation Plan (SIP) concerning provisions for public notification and awareness. EPA has reviewed this submittal and is today proposing approval of this revision.

DATE: To be considered, comments must be received on or before February 5, 1981.

ADDRESS: Written comments should be addressed to Denise W. Pack of EPA, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308. Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460

Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30308

Commonwealth of Kentucky, Department of Natural Resources and Environmental Protection, Office of the Secretary, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Denise W. Pack of EPA Region IV, Air Program Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308. Telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Section 127 of the Clean Air Act, as amended in 1977, requires States to submit a plan which will notify the public on a regular basis when National Primary Ambient Air Quality Standards are exceeded, and to encourage or provide opportunities for the public to participate in regulatory and other efforts to improve air quality. In addition, Section 127 requires the plan to include provisions for the enhancement of public awareness of air pollution preventive measures (40 CFR 51.286). The Commonwealth of Kentucky responded by preparing and formally submitting a revision to their State Implementation Plan. The plan includes provisions for public participation which encompasses informal meetings, responding to public inquires and utilization of public hearings. The plan revision also allows for public notification and enhancement of public awareness through methods of tape recorded messages, newspaper articles and press releases. Documents on criteria pollutants published by EPA will be used to inform the public on the health effects associated with air quality level above primary standards. This revision also provides for the daily and annual public notification of ambient primary pollutant standard exceedances by using the modified form of Pollutant Standard Index (PSI). Those exceedances not covered by the PSI will be reported annually to the public in the "Annual SLAMS Air Quality Information Report" which is sent to EPA on a yearly basis.

Proposed Action: After thorough review of this submittal, EPA has determined that Chapters 12.7 and 12.8 of the revised Kentucky SIP are consistent with the requirements of Section 127 of the Clean Air Act. EPA is therefore today proposing approval of the Kentucky submittal.

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

(Section 110 and 127 of the Clean Air Act (42 U.S.C. 7410 and 7427))

Dated: December 5, 1980.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that the proposal concerns efforts by one state to improve public participation in Clean Air Act activities. It will impose no significant economic impacts.

John A. Little,

Acting Regional Administrator.

[FR Doc. 81-335 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-3-FRL, 1716-7]

State of Maryland; Proposed Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The State of Maryland has submitted a proposed variance from the Maryland State Implementation Plan in the form of a Secretarial Order for the General Refractories Company of Baltimore County, Maryland.

The company has tried various means of complying with the no visable emission regulations and to date none has been found to be totally effective. This variance is being proposed to allow the company additional time to investigate new methods of bringing the facility into compliance with these regulations.

The variance would be effective for three (3) years from September 2, 1980 and applies to the regulation prohibiting visible emissions. During the three-year period visible emissions may not exceed 20% opacity.

DATE: Comments must be submitted on or before February 5, 1981.

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

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: Ben Mykijewycz.

Air Quality Programs, State of Maryland, O'Conor Office Building, 201 West Preston Street, Baltimore, MD 21203, ATTN: George Ferreri.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: Mr. Ray Cunningham, Air Programs Branch (3AH10), Air, Toxics & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: AH028MD.

FOR FURTHER INFORMATION CONTACT: Ben Mykijewycz (3AH11), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, telephone number (215) 597-8181.

SUPPLEMENTARY INFORMATION: On September 10, 1980, the Administrator of Air Quality Programs for the State of Maryland submitted to EPA, Region III, a proposed variance from the Maryland State Implementation Plan. The proposed variance consists of a Secretarial Order for the General Refractories Company of Baltimore County, Maryland. In his letter, the Administrator of Maryland Air Quality Programs certified that the Order was adopted in accordance with the public hearing and notice requirements of 40 CFR Part 51.4 and all relevant State procedural requirements and asked that EPA consider the Secretarial Order as a revision of the State Implementation Plan. The order consists of a variance for a period of three (3) years starting September 2, 1980, from the State regulations which prohibit visible emissions (COMAR 10.18.04.02A). During this period, visible emissions may not exceed 20% opacity.

Also during this three-year period, the company will continue to research further product and process changes in order to reduce or eliminate the visible emissions, and submit annual reports of the findings to Maryland. Then, if necessary, determinations will be made whether to extend the variance once the three-year period expires.

Since particulate emissions meet all applicable air quality regulations, and will not increase as a result of this revision, there is no need to revise those regulations.

A review of the submittal indicates that this variance will not result in a violation of either the ambient air quality standards or the PSD increments.

Therefore, it is the tentative decision of the Administrator to approve the proposed revision of the Maryland State Implementation Plan.

The public is invited to submit to the address stated above, comments on whether the General Refractories Company Secretarial Order should be approved as a revision of the Maryland State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination

whether it meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

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

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that the subject of this proposal only affects one entity.

(42 U.S.C. §§ 7401–642)

Dated: December 11, 1980.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 81-340 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4-FRL 1719-8]

Approval and Promulgation of Implementation Plans, Mississippi: Air Quality Surveillance Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to approve the air quality surveillance plan revision submitted by the State of Mississippi on November 7, 1979. The revision updates Mississippi's State Implementation Plan (SIP) to meet EPA requirements as set forth in 40 CFR Part 58, (44 FR 27558, May 10, 1979).

The revision includes commitment to: (1) update the monitoring network and to operate all State and Local Air Monitoring Stations (SLAMS) in accordance with the criteria established by Subpart B of 40 CFR Part 58; (2) site all SLAMS in accordance with the siting criteria contained in Appendix E to 40 CFR Part 58; (3) utilize reference or equivalent methods as defined by EPA in Section 50.1 of 40 CFR Part 50; (4) utilize the quality assurance procedures set forth in Appendix A to 40 CFR Part 58.

The State's Plan revision meets all EPA requirements including episode monitoring procedures and a provision for submitting annual reports to EPA. EPA therefore proposes to approve the plan revision.

The public is invited to submit written comments on this proposed action.

DATES: To be considered comments must be submitted on or before February 5, 1981.

ADDRESSES: Written comments should be addressed to Denise Pack of EPA Region IV's Air Programs Branch (See EPA Region IV address below). Copies of the material submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Mississippi Department of Natural Resources, Bureau of Pollution Control, Southport Mall, 2380 Highway 80 West, Jackson, Mississippi 39209

Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

For further information contact Denise Pack at the EPA Region IV address above or call 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) EPA promulgated ambient air quality monitoring and data reporting regulations. These regulations satisfy the requirements of Section 110(a)(2)(C) of the Clean Air Act by requiring ambient air quality monitoring and data reporting for purposes of State Implementation Plans (SIP). At the same time, EPA published guidance to the States regarding the information which must be adopted and submitted to EPA as a SIP revision which provides for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) to measure ambient concentrations of those pollutants for which standards have been established in 40 CFR Part 50. The State of Mississippi has responded by submitting to EPA on November 7, 1979 a plan for air quality surveillance. Their plan provides for the establishment of a SLAMS network and that such monitors will be properly sited and the data quality assured, the network will be reviewed annually for needed modifications, and the SLAMS network descriptions will be available for public inspection and will contain information such as location, operating schedule, and sampling and analysis method.

EPA is proposing to approve the air quality surveillance plan submitted by Mississippi. Written comments on EPA's proposal should be sent to EPA Region IV (address above).

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that the proposal relates only to air quality surveillance to be carried out by one state and will not cause any significant economic impacts.

(Section 110 of the Clean Air Act (42 U.S.C. 7407)

Dated: November 24, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 81-341 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4-FRL 1720-2]

Approval and Promulgation of Implementation Plans; Alabama: Proposed Plan Revision for VOC Compliance Schedules

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: After a public hearing on June 3, 1980, the Alabama Air Pollution Control Commission adopted alternative schedules of compliance under Parts 6.14 and 6.15 of the Commission's *Rules and Regulations* on June 24, 1980. The revision was formally submitted to EPA on July 3, 1980. Upon review of these schedules for volatile organic compounds (VOC) compliance, EPA today is proposing to approve the revision. The public is invited to submit written comments on this proposed action.

DATE: Comments must be submitted to EPA, Region IV on or before February 5, 1981.

ADDRESSES: The Alabama submittal may be examined during normal business hours at the following EPA offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Library, Enviromental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

In addition, the Alabama revision may be examined at the offices of the Alabama Air Pollution Control

Commission, Division of Air Pollution Control, 645 South McDonough Street, Montgomery, Alabama 36130. Comments should be addressed to Mr. Jerry Preston, EPA Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR MORE INFORAMTION CONTACT: Jerry Preston, EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: After a public hearing, the Alabama Air Pollution Control Commission adopted regulations on April 3, 1979 pertaining to control of volatile organic compounds (VOC) which apply statewide. After reviewing the submitted regulations, EPA on July 19, 1979, proposed conditional approval of the regulations and control strategies in the **Federal Register** (44 FR 41489). EPA proposed to conditionally approve two regulations concerning VOC control, contingent upon submittal of a revision by the State specifying source reporting requirements and compliance testing procedures. The State responded by submitting the appropriate information in order for EPA to approve Alabama's statewide VOC control plan.

On November 26, 1979, EPA fully approved Alabama's VOC strategies and regulations (44 FR 67376). It was EPA's interpretation of the Clean Air Act and relevant regulations that if alternative control strategies (i.e., compliance schedules) were allowed which were not part of the SIP approval process, then these individual alternative compliance schedules must undergo the full SIP revision process.

EPA received alternative compliance schedules from the Alabama Air Pollution Control Commission on July 3, 1980 for nine companies: 3–M Corporation, Guin, Alabama; Reynolds Metals, Listerhill, Alabama; Hunt Oil Company, Tuscaloosa, Alabama; Murphy Oil Company, Mobile, Alabama; Steel-Case, Athens, Alabama; Plantation Patterns, Texaco, Cities Service Company and Chevron, Birmingham, Alabama. For each of the above companies, except Reynolds Metals and 3-M Corporation, the State of Alabama approved alternative compliance schedules pursuant to Section 6.15.4 of their approved regulations. The companies given alternative compliance schedules pursuant to Section 6.15.4 will be in compliance with the Alabama VOC regulations by December 31, 1982.

The rules and regulations adopted by the Alabama Air Pollution Control Commission also contains a Section 6.15.6 which allows a source to apply for an alternative compliance schedule extending beyond December 31, 1982, if they are proposing to install innovative technology in controlling their emissions. Section 6.15.6 of the Alabama regulations provides for these exceptions to the categorical compliance schedule when certain criteria are met. These criteria are:

a. The source is located in an attainment or unclassifiable area,

b. The source is proposing to use innovative technologies, and

c. The extension will not interfere with further reasonable progress in attaining the National Ambient Air Quality Standard.

Reynolds Metal and 3–M Corporation have met the criteria set forth in 6.15.6 of the Alabama air pollution regulations. These sources have also demonstrated conservation of energy and cost implementation with their innovative technology proposal. These extended schedules, which show compliance by August 1985 (3–M) and December 1985 (Reynolds), have been thoroughly discussed and evaluated and do not prevent attainment of the ambient air quality standard by December 31, 1982.

Proposed Action: Based on the previous information, EPA is today proposing to approve the alternative compliance schedules for VOC emitting sources.

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.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that the federal action proposed only approves state actions and imposes no requirements on any entity.

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

Dated: December 3, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 81–342 Filed 1–5–81; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 60

[1579–1]

Standards of Performance for New Stationary Sources; Graphic Arts Industry: Publication Rotogravure Printing

Correction

In FR Doc. 80–33550 appearing on page 71538 in the issue of Tuesday, October 28, 1980, make the following changes:

Page	Column/¶/line	Item
71538	Col. 2, last ¶, line 3	"cpture" should be "capture".
71539	Col. 2, ¶ 2, line 3	"3 percent" should be "13 percent".
71541	Col. 1, ¶ 2, 2nd to last line	"of" should be "or".
	Col. 2, ¶ 3, line 18	"must" should be "much".
71543	Col. 3, ¶ 1, line 14	"Section III" should be "Section 111".
	Col. 3, last ¶, line 2	"form" should be "from".
	Col. 3, last ¶, line 7	"coal/fired" should be "coal-fired".
	Col. 3, last ¶, 2nd to last line	"MSPS" should be "NSPS".
71544	Col. 1, ¶ 1, line 10	"ov" should be "of".
	Col. 1, ¶ 2, line 9	"1,900 ppm" should be "1,900 ppm".
	Col. 3, last line	"studies" should be "studied".
71546	Col. 1, ¶ 1, line 7	"Compliance Provisions" should be all caps.
	Col. 1, ¶ 4, line 19	"a" should be "an".
	Col. 3, line 47	"tests" should be "test".
71548	Col. 2, ¶ 2, line 13	Insert the following after "test": "would be based on the same format and procedures as for the performance tests * * *".
	Col. 3, line 4	"costings" should be "coatings".
	Col. 3, ¶ 2, line 2	"separated" should be "separate"
71550	Col. 3, 5th line from bottom	"Addresses" should be all caps.
71551	Col. 1, line 3	"Addresses" should be all caps.
	Col. 1, ¶ 3, line 3	"of" should not be there.

Regulation		
71551	Col. 3, § 60.431	There should be an "s" on "Definition".
71552	Col. 1, § 60.430(b)	"October 28, 1980" should be inserted in "[date of publication * * *]".
	Col. 2, § 60.430(b), B_p, line 2	"or" should be "of".
	Col. 3, § 60.430(b), V_p, line 2	"such" should be "each".
71554	Col. 2, § 60.434 ¶ (c)(2), line 4	Insert: "control" after "pollution".
	Col. 3, § 60.434, ¶ (a)(5), line 1	"an" should be "An".

Page	Column/¶/line	Item
	Regulation —Continued	
71555	Col. 3, § 60.436(a), line 2	"60,432" should be "60.432".
71556	Col. 1, § 60.437, ¶ (c), line 2	"water borne" should be one word.
	Col. 2, ¶ 1.2, line 4	"BOC" should be "VOC".
	Col. 3, ¶ 2.2, line 5	"D_s" should be "D_s".
	Col. 3, ¶ 2.3, line 5	"D_s" should be "D_s".
	Col. 3, ¶ 3.1, line 5	"W_s" should be "W_s".

BILLING CODE 1505-01-M

40 CFR Part 61

[AD-FRL 1718-7]

National Emission Standards for Hazardous Air Pollutants; Test Methods; Revised Methods 106 and 107; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Corrections.

SUMMARY: The following corrections should be made to the National Emission Standards for Hazardous Air Pollutants in the **Federal Register** of 45 FR 76346, Tuesday, November 18, 1980.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. Roger Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

SUPPLEMENTARY INFORMATION: The following are the corrections: Page 76346.

1. First column: Change the date comments must be received by, to February 19, 1981.

2. First column: Delete the last paragraph, because this notice is a proposed rule.

3. Second column: Change the preamble to Appendix B to state: "It is proposed to amend 40 CFR 61 by revising Methods 106 and 107 of Appendix B as follows:"

Dated: December 29, 1980.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-268 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
42 CFR Part 36

Indian Health; Redesignation of Contract Health Service Delivery Area

AGENCY: Public Health Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment would provide for the redesignation of the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Penobscot Reservation in Maine. The Penobscot CHSDA currently comprises the Penobscot Reservation and Penobscot County. The redesignated CHSDA would comprise the current CHSDA as well as 12 additional counties in the State of Maine. The governing body of the Penobscot Nation has by resolution requested the Secretary to implement this redesignation in order to provide increased access to health care for greater numbers of Penobscot Indian people.

DATES: Written comments on the proposed rule must be received on or before February 5, 1981.

ADDRESS: Address written comments to: Mr. Richard J. McCloskey, Indian Health Service, Room 6A–20, 5600 Fishers Lane, Rockville, Maryland 20857. Any comments received will be available for public inspection at this address from 8:30 a.m. to 5:00 p.m. beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1116.

SUPPLEMENTARY INFORMATION: The IHS conducts program activities to discharge the Secretary's responsibilities for special Federal health service for American Indians and Alaska Natives. These activities are carried out with funds appropriated to IHS for the provision of health services to federally recognized Indians who live on or near a Federal Indian reservation.

On December 23, 1975, the United States Court of Appeals affirmed the decision in *Passamaquoddy* v. *Morton* (528 F.2d 370) and no petition for certiori was filed. The Court of Appeals held that the United States had a trust responsibility to the Passamaquoddy Tribe and the Penobscot Tribe of Maine.

Thus, it was felt that the Department had the responsibility to initiate action necessary to provide for the health care needs of these two tribes concomitant with similar actions of the Department of the Interior to provide human services to the tribes. Supplemental funding was requested for fiscal year 1977 and funds were subsequently approved by Congress to initiate health care delivery systems for the Penobscot and the Passamaquoddy tribes. The funding request for the Penobscot Nation was based on an estimated service population (using adjusted U.S. Census data) of 882 persons residing within the Penobscot Reservation, Penobscot County and Aroostook County.

Final regulations for IHS Contract Health Services were published in the **Federal Register** on August 4, 1978 43 FR 34650). The effect of the regulation at 42 CFR 36.22(a)(6) is to exclude Arrostook County from the CHSDA of the Penobscot Tribe. This is inconsistent with the congressional intent expressed by their approval of funding.

Moreover, the tribe has requested by Resolution Number 3–19–79 to expand their CHSDA to include the following counties in the State of Maine: Androscoggin, Aroostook, Cumberland, Hancock, Kennesbec, Lincoln, Oxford, Penobscot, Piscataquis, Somerset, Waldo, Washington, and York. The tribe has identified 1102 tribal members in the proposed 13 county CHSDA. Of these, an estimated 882 are currently within the funded scope of the IHS program. An estimated 418 reside on the reservation and 684 off-reservation. This represents an increase of 220 persons.

The regulations at 42 CFR 36.22(b) provide that redesignation of an area or community as appropriate for inclusion or exclusion in a CHSDA may be made by the Secretary, Department of Health and Human Services, but only after consultation with the tribal governing body or bodies of those reservations included within the CHSDA. The only reservation included within the current CHSDA, i.e., Penobscot County, is that of the Penobscot Tribe. The regulations also stipulate certain criteria which must be considered before any redesignation will be made. This criteria is as follows:

1. The number of Indians residing in the area proposed to be so included or excluded;

2. Whether the tribal governing body has determined that Indians residing in the area near the reservations are

socially and economically affiliated with the tribe;

3. The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

4. The level of funding which would be available for the provision of contract health services.

Additionally, 42 CFR 36.22(c) stipulates that any redesignation of a CHSDA must conform with the procedures of the Administrative Procedure Act (5 U.S.C. 553).

The additional counties proposed for inclusion in the CHSDA are contiguous with one another, and include the present CHSDA prescribed by the regulations. The proposed CHSDA represents the geographic land area held by the Penobscot Tribe to be their traditional tribal area.

The Tribe has determined that the additional population identified are socially and economically affiliated with the Tribe.

The level of funding currently available to provide eligible Indians contract health services is anticipated to be adequate to provide the same level of services to the eligible population in the redesignated CHSDA. Experience has shown a larger than expected percentage of the eligible Penobscot Indian population to have health insurance and other alternate resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations, the Secretary has decided to propose the following redesignation of the CHSDA of the Penobscot Tribe.

Dated: October 30, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: December 22, 1980.

Patricia Roberts Harris,

Secretary.

Subpart C—Contract Health Services

1. Paragraph (a)(6) is redesignated as paragraph (b) and a new paragraph (a)(6) is added as follows:

§ 36.22 Establishment of contract health service delivery areas.

(a) * * *

(6) The Contract Health Service Delivery Area for the reservation of the Penobscot Tribe of Maine shall comprise Androscoggin, Aroostook, Cumberland, Hancock, Kennesbec, Lincoln, Oxford, Penobscot, Piscataquis, Somerset, Waldo, Washington, and York Counties in the State of Maine.

* * * * *

2. Paragraph (b) is redesignated paragraph (c).

3. Paragraph 9c) is redesignated paragraph (d).

[FR Doc. 81-327 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5841]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Pennsylvania; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Towanda, Bradford County, Pennsylvania, previously published at 45 FR 42714 on June 25, 1980.

EFFECTIVE DATE: January 6, 1981.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Towanda, Bradford County, Pennsylvania, previously published at 45 FR 42714 on June 25, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

As a result of an editorial review it has been determined that the elevation for the location of Downstream Corporate Limits, under the Source of Flooding of Sugar Creek, was incorrectly listed as 762 feet (National Geodetic Vertical Datum). It should be amended to read 784 feet in elevation. The corresponding Flood Insurance Study (profile) and Flood Insurance Rate Map were correct as printed.

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

Issued: December 11, 1980.

Gloria M. Jimenez,

Federal Insurance Adminstrator.

[FR Doc. 81-329 Filed 1-5-81; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 301

Child Support Enforcement Program; Withholding of Advance Funds for Not Reporting

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 407 of Pub. L. 96-265, the Social Security Disability Amendments of 1980, prohibits advance payment of the Federal share of State child support enforcement expenses for a calendar quarter unless the State submits an expenditure report and a report of the amount of child support collected and disbursed for all calendar quarters, except the prior two. This proposed regulation implements this provision.

DATE: Consideration will be given to written comments and suggestions received by March 9, 1981.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Blvd., Rockville, Maryland 20852, ATTN: Policy Branch. Agencies and organizations are requested to submit comments in duplicate. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, Policy Branch, (301) 443-5350.

SUPPLEMENTARY INFORMATION:

Background

Child support enforcement regulations at 45 CFR 301.15 describe the procedures for making grants to IV-D agencies. Under these procedures, IV-D agencies estimate the funds they will need for the ensuing quarter to operate the program. Office of Child Support Enforcement (OCSE) regional and central offices review the State's estimate and the

central office computes the grant award after making any necessary adjustments to the estimate. The grant award computation form is transmitted to the IV–D agency and provides notification to the agency that it may draw the amount of the grant award as needed. In this way, IV–D agencies are able to obtain advances on the Federal share of IV–D expenditures for each quarter. The States use these advances for operating their IV–D programs during the period before their actual claims are submitted and processed for payment by OCSE.

Statutory Requirement

Section 407 of Pub. L. 96–265, enacted on June 9, 1980, prohibits the Department from paying a IV–D agency an advance for a quarter unless, for all quarters but the previous two, the agency has submitted full and complete expenditure reports and reports on the amount of child support collected and disbursed.

Reporting of Expenditures

45 CFR 301.15 requires IV–D agencies to file with OCSE a statement of quarterly expenditures and any necessary supporting schedules within 30 days of the end of each quarter. The form used for this purpose is the SRS–OA–41. Instructions for completing this form were issued in OCSE–AT–77–11, dated October 14, 1977, and updated in OCSE–AT–78–2, dated January 25, 1978. This statement is both a claim for expenditures incurred and an accounting of the disposition of the Federal funds granted for past periods. It also shows the Federal share of any recoupments of expenditures claimed in prior periods and of expenditures not properly subject to Federal financial participation (FFP).

Reporting of Collections and Distributions

45 CFR 302.15 includes requirements that IV–D agencies maintain records on amounts of child support collections and distributions, and make reports as required by the Secretary of the Department of Health and Human Services. The form used to report child support collections and distributions is the OCSE–4134. Instructions for completing this form were issued in OCSE–AT–78–21, dated November 8, 1978. This Action Transmittal requires IV–D agencies to report child support collections and disbursements on Form OCSE–4134 within 30 days of the end of each quarter.

Regulatory Requirement

To implement Section 407 of Pub. L. 96–265, we have added to the regulations a new 45 CFR 301.16, Withholding of advance funds for not reporting. This regulation provides that a State agency which fails to submit expenditure and collection reports for any quarter except the two most recent quarters cannot receive an advance of Federal funds for subsequent quarters. It does not, however, alter the existing requirements that such reports be submitted to OCSE within 30 days of the close of the reporting quarter. Rather, this new statutory provision and regulation imposes a penalty when failure to report persists for more than five months beyond this 30 day deadline.

Definition of Complete Report

Section 407 of Pub. L. 96–265 specifies that IV–D agency reports must be full and complete in order for the agency to receive advance FFP. It also specifies that the report shall be "in such form and manner and containing such information as the Secretary shall prescribe or require." We believe the statute leaves little to interpretation, however, and we have defined "complete" report for purposes of these regulations as a report in which all applicable line items of information are reported in accordance with OCSE instructions. These instructions are contained in OCSE–AT–77–11 and OCSE–AT–78–2 for the SRS–OA–41, Statement of Expenditures, and in OCSE–AT–78–21 for the OSCE–4134, Statement of Total AFDC and non-AFDC Child Support Collections. Under this definition, only line items that do not apply to a particular State may be left out of a report. If any applicable line items are not completed, the regional office will judge the entire report incomplete and disapprove it. If at the end of the second quarter following the quarter for which the report is due the State has not submitted a satisfactory report, the regional office will recommend to the central office that no funds be advanced to the State for the subsequent quarter.

Effective Date

Section 407(d) of Pub. L. 96–265 specifies that the provisions of Section 407 "shall be effective in the case of calendar quarters commencing on or after January 1, 1981." We believe this effective date clearly refers to the first quarter for which an advance might be withheld. Thus, to avoid having its advance funds withheld for the January through March 1981 quarter, each State must have submitted its collection and expenditure reports for all quarters through the quarter ending June 30, 1980. OCSE has issued interim instructions to the States to implement the provisions of Section 407 on this schedule. The standard for judging completeness of State collection and expenditure reports in the interim period is simply that the reports be submitted to OCSE. A more stringent standard, such as we propose at § 301.16(b), will not take effect until States have had an opportunity to comment on this notice and these regulations are published in final form. We propose, however, that after the standard is adopted, it would apply retroactively to the reporting quarter ending June 30, 1980, in order to meet the statutory effective date. OCSE is particularly interested in receiving comments on this proposed implementation schedule.

OMB Review

The Department is required to submit to the Office of Management and Budget for review and approval the proposed new 45 CFR 301.16, which deals with reporting requirements. The Department will submit this section to OMB.

45 CFR Part 301 is amended to read as follows:

1. In 45 CFR Part 301, the table of contents is revised to read as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

Authority: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

2. In 45 CFR Part 301, § 301.16 is added to read as follows:

§ 301.16 Withholding of advance funds for not reporting.

(a) No advance for any quarter will be made unless complete reports on expenditures and collections, as required by §§ 301.15 and 302.15 of this chapter, respectively, have been submitted to the Office by the IV–D agency for all quarters with the exception of the two quarters immediately preceding the quarter for which the advance is made.

(b) For purposes of this section, a complete statement or complete report means one in which all line items of information are reported in accordance with OCSE instructions.

Note.—The Office of Child Support Enforcement has determined this document does not require preparation of a Regulatory Analysis as described by Executive Order 12044.

(Section 1102 of the Social Security Act, 42 U.S.C. 1302 and Section 452(a) of the Social Security Act, 42 U.S.C. 652(a))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: October 3, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: December 29, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-326 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-07-M

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45 CFR Parts 302 and 303

Child Support Enforcement Program; Requests for Collection by the Secretary of the Treasury

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 402 of Pub. L. 96-265, the Social Security Disability Amendments of 1980. Section 402 provides authority to State child support agencies to use the Internal Revenue Service (IRS) to collect child support for families not receiving Aid to Families with Dependent Children (AFDC). In addition to making the change required by the statute, we are proposing minor modifications to streamline the process of IRS collection and are reorganizing and rewriting the regulations to make them clearer and easier to understand.

DATE: Consideration will be given to comments received by March 9, 1981.

ADDRESSES: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Blvd., Rockville, Maryland 20852. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's office at the address above.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks—(301) 443-5350.

SUPPLEMENTARY INFORMATION: Current regulations at 45 CFR 302.71 specify the requirements that IV-D agencies must meet in requesting OCSE to refer a case to the Secretary of the Treasury for collection of child support. Under these regulations, the IRS may be used only for collecting assigned support payments on behalf of families receiving AFDC.

This document would delete 45 CFR 302.71 and add a new 45 CFR 303.71 to implement section 402 of P.L. 96-265, which authorizes the use of the IRS collection mechanism for families not receiving AFDC, subject to the same requirements applicable to families receiving AFDC. We propose to take this opportunity to make other changes to the regulations to improve the IRS collection process and to remove the State plan requirement. These changes are discussed below.

Prior Collection Action by the Client or Client's Representative

45 CFR 302.71 requires that a case meet certain criteria before it may be referred to the Secretary of the Treasury for collection of support. One of the criteria is that the IV-D agency must have attempted collection through the State's own collection mechanisms. In the case of AFDC families, normally only the IV-D agency would have attempted collection. In the case of non-AFDC families, the client or client's representative may have tried to secure support before requesting the IV-D agency to take action.

To avoid duplication of effort in cases in which the client or client's representative has already attempted collection, the revised regulations at 45 CFR 303.71(c)(4) specify that the IV-D agency shall compare the prior actions taken with the State's own collection mechanisms. If the agency finds the prior actions to be comparable, the agency need not repeat them. The agency must assure, however, that reasonable efforts have been made by the agency itself, the client, or the client's representative to collect the support via the State's collection mechanisms. In describing the collection actions taken and their outcomes as required in the revised 45 CFR 303.71(e)(4), the agency must indicate that the appropriate collection mechanisms have been used.

Minimum Dollar Limit on Cases Referred to IRS

When these regulations were adopted on June 26, 1975, we could not anticipate the volume of requests for IRS collection or the average amounts of support owed. Because of our lack of data, we set the extremely low figure of $75 as the minimum amount to be referred to IRS for collection. It has since become apparent through discussions with IRS that the current minimum of $75 is unreasonably low, given the time and effort required of the IRS to take collection action on a child support claim. Our analysis of available data, shows that, as of March 1979, 87 percent of the cases active with IRS are for child support debts of over $2,000, 8 percent are for amounts between $1,000 and $2,000, and 5 percent are for amounts under $1,000. More recent data confirm that these figures have changed little, if a all, during recent months. Based on these figures, we have decided, in conjunction with the IRS, to propose raising to $2,000 the minimum debt that may be referred to IRS for collection. (See revised 45 CFR 303.71(c)(2).) We believe this figure to be a reasonable amount that will not disadvantage beneficiaries of services, or pose an unrealistic burden for the IRS. We are particularly interested in receiving comments on this, however, since the proposed change in amount is relatively large.

Verification of Child Support Debtor's Address and Last Place of Employment

The IRS has expressed concern that the child support debtor's last known address and place of employment be as current as possible.

The IRS begins its investigation by referring a case to a local IRS office based on these addresses. Out of date information can result in a loss of several weeks time while addresses are verified in an attempt to locate an individual. To assure up to date addresses, we propose that requests for IRS collection contain the source of this information and the date it was last verified. The revised regulations at 45 CFR 303.71(e)(1) also specify that the IV-D agency shall obtain a recent address from the Federal Parent Locator Service, if necessary, before sending forward a request for IRS collection. This procedure should result in faster processing of requests once they are received by the IRS.

Social Security Number Requirement

Current regulations at 45 CFR 302.71(a)(6)(i) require that requests for IRS collection contain the debtor's social security number if known. Since these regulations were published, we have learned from IRS that it is extremely difficult for them to locate an individual's records in their master files unless the social security number is available. Not only does this result in slow processing and inefficient use of IRS resources, but it creates problems with accurate case identification for persons with similar or the same names. Therefore, in 45 CFR 303.71(e)(1)(ii), we propose to require that all requests for IRS collection contain the debtor's

social security number. In cases in which the social security number is not known, it can be obtained from the Federal Parent Locator Service.

Intrastate Request For IRS Collection

In most cases, a State's collection mechanisms should be effective in collecting child support within the State. Unusual circumstances, such as a very large court backlog or an absent parent having assets in States other than the State residence, may prevent collection within the State through a State's own mechanisms. In 45 CFR 303.71(e)(4)(iii), we propose to require that, in these rare cases in which an intrastate collection is requested, the request must contain a description of the circumstances that prevented effective use of the State's own collection mechanisms.

Removal of State Plan Requirment

In addition to the above modifications to the regulations, we are proposing to remove the State plan requirement pertaining to requests for collection by the Secretary of the Treasury. We are proposing this as part of an overall strategy to remove unnecessary State plan requirements from our regulations. Under the proposed regulations, failure to comply would result in denial of the request for IRS collection.

OMB Review

The Department is required to submit to the Office of Management and Budget for review and approval the proposed new 45 CFR 303.71, which deals with reporting and recordkeeping requirements. The Department will submit this section to OMB.

§ 302.71 [Removed]

45 CFR 302.71 is removed and a new 45 CFR 303.71 is added to read as follows:

§ 303.71 Requests for collection by the Secretary of the Treasury.

(a) *Definition.* "State collection mechanisms" means a comprehensive set of written procedures developed to maximize effective collection action within the State.

(b) *Families eligible.* Subject to the criteria and procedures in this section, the IV–D agency may request the Secretary to certify the amount of a child support obligation to the Secretary of the Treasury for collection under section 6305 of the Internal Revenue Code of 1954. Requests may be made on behalf of families receiving AFDC who have made assignments under 45 CFR 232.11, and on behalf of families not receiving AFDC who apply under § 302.33.

(c) *Cases eligible.* For a case to be eligible for certification to the Secretary of the Treasury:

(1) There shall be a court order for support;

(2) The amount to be collected under the court order for support shall be at least $2,000;

(3) At least six months shall have elapsed since the last request for referral of the case to the Secretary of the Treasury; and

(4) The IV–D agency, the client, or the client's representative, shall have made reasonable efforts to collect the support through the State's own collection mechanisms. The agency need not repeat actions taken by the client or client's representative that the agency judges to be comparable to the State's collection mechanisms.

(d) *Procedures for submitting requests.* (1) The IV–D agency shall submit requests to the regional office using any forms the Office may require.

(2) The Director of the IV–D agency (or designee) shall sign requests for collection by the Secretary of the Treasury.

(e) *Criteria for acceptable requests.* The IV–D agency shall ensure that each request contains:

(1) Sufficient information to identify the child support debtor, including:

(i) The individual's name;

(ii) The individual's social security number;

(iii) The individual's last known address and place of employment, including the source of this information and the date it was last verified; if necessary, the IV–D agency shall obtain a recent address from the Federal Parent Locator Service.

(2) A copy of all court orders for support;

(3)(i) The amount owed under the court orders for support;

(ii) A statement of whether the amount is in lieu of, or in addition to, amounts previously referred to IRS for collection;

(4)(i) A statement that the agency, the client, or the client's representative, has made reasonable efforts to collect the amount owed using the State's own collection mechanisms;

(ii) A description of the actions taken, why they failed, and why further State action would be unproductive;

(iii) For requests for intrastate collection of support, a description of circumstances preventing use of the State collection mechanisms;

(5) The dates of any previous requests for referral of the case to the Secretary of the Treasury;

(6) A statement that the agency agrees to reimburse the United States for the costs of collection; and

(7)(i) A statement that the agency has reason to believe that the child support debtor has assets that the Secretary of the Treasury might levy to collect the support; and

(ii) A statement of the nature and location of the assets, if known.

(f) *Review of the request by the regional representative.* (1) The regional representative will review each request to determine whether it meets the requirements of paragraphs (b) through (e) of this section.

(2) If a request meets all requirements, the regional representative will promptly certify and transmit the request with a copy of all supporting documentation to the Secretary of the Treasury. At the same time, the regional representative will notify the IV–D agency of the transmittal.

(3)(i) If a request does not meet all requirements, the regional representative will attempt to correct the request in consultation with the agency.

(ii) If the request cannot be corrected through consultation, the regional representative will return it to the agency with an explanation of why the case was not certified.

(g) *Reporting changes in case status.* (1) If the Secretary of the Treasury is attempting to make a collection on a case, the IV–D agency shall report to the regional representative any change in the amount due, the nature or location of assets, or the address of the child support debtor.

(2) The regional representative will transmit the reported information to the Secretary of the Treasury.

Note.—The Office of Child Support Enforcement has determined that this document does not require preparation of a regulatory analysis as described by Executive Order 12044.

(Section 1102 of the Social Security Act (42 U.S.C. 1302) and Section 452(b) of the Social Security Act (42 U.S.C. 652(b).)

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: October 20, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: December 29, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-325 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-07-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1201, 1206, 1207, 1208, 1209, and 1210

[Docket No. 37465]

Business Entertainment Expenses

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is instituting a rulemaking proceeding to implement Section 33 of the Motor Carrier Act of 1980 and Section 215 of the Rail Act of 1980. This legislation makes it lawful for regulated carriers to engage in entertainment practices in obtaining new business to the extent that such practices are lawful in unregulated business. This proceeding establishes guidelines to distinguish between traditionally acceptable expenses and those which in the past would have constituted illegal rebates or discrimination but are now permitted under the provisions of these Acts. Comments are sought on a proper standard for unlawfulness under the revised Act.

DATES: Comments should be received on or before February 20, 1981.

ADDRESSES: Send comments with 10 copies, if possible, to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275–7448.

SUPPLEMENTARY INFORMATION: On July 1, 1980, the Motor Carrier Act of 1980 became law and on October 14, 1980, the Rail Act of 1980 became law. This legislation allows regulated carriers to engage in previously prohibited entertainment of customers or potential customers to the extent that such practices are lawful in unregulated industries. Prior to the enactment of this legislation certain business entertainment expenses would have constituted violations of the anti-rebating and anti-discrimination provisions of chapters 107, and 199 of title of 49 of the United States Code. Both of these Acts require the Commission to establish guidelines to distinguish between (1) sales-related expenses that have always been permissible and (2) those expenses that would have constituted illegal rebates or discrimination but are now permitted under the provisions of these Acts. The importance of this distinction is that only the former category of expenses can be included in the carriers' cost of service or the rate base.

While the new legislation will allow carriers to incur additional forms of business entertainment expenses, it is not the intent of this legislation that these expenses be passed on to the consumer. Section 10751 provides that these additional expenses shall not be taken into account in determining the cost of service or the rate base. Only those business entertainment expenses that previously were legal expenses under the Interstate Commerce Act are to be included in the cost of service or the rate base.

In implementating the provisions of the new legislation, we find it helpful to distinguish between those expenses that directly promote business and those that are more directly related to the convenience or comfort of the customer(s) than to the direct transaction of business. Direct promotion of a carrier emphasizes its ability to provide efficient, timely and competitive service. Such promotional activity involves: salespersons' salaries and travel expenses; advertising; promotional and educational materials; to conduct of symposia, shipper conferences and meetings; traffic-related functions; direct mail directories; incidental promotional materials such as road atlases, calendars, pens, scratchpads, pencils, and other materials of nominal value; business oriented lunches and dinners; public affairs programming and conferences; customer service calls; and sales promotion functions involving a number of shippers or customers. These have been and will continue to be included in operating expenses as part of the cost of service. Consequently, these expenses are recoverable through rates.

In contrast, ancillary entertainment expenses are not tied to promotion of a carrier's ability to provide good service. Rather, entertainment is geared to providing a pleasant setting in which to discuss business or to provide hospitality. It tends to be selective and preferential. Where particular entertainment outlays have been significant in amount, the Commission has successfully challenged the lawfulness of the practice under the discrimination and rebate provisions of the Act. See *Key Line* v. *United States*, 570 F.2d 97 (6th Cir., 1978).

Business entertainment expenses that were considered illegal rebates or discrimination prior to the adoption of these Acts include outlays for hunting and fishing trips; tickets to athletic contests, the theater, dances, or other entertainment or social events; intercity or recreational travel (whether provided through independent commercial sources or furnished by the carrier directly, including the use of carrier owned or leased vehicles, pleasure boats and airplanes); holiday parties and other social occasions; overnight accommodations and lodging; and gifts of substantial value. Though such business entertainment expenses are no longer to be viewed as prohibited rebates or discrimination, Congress has declared that the dollar amount of such expenses is not to be recovered in the rates charged customers.

The exemption applies only where the expense "would not be unlawful if incurred by a person or corporation not subject to the Commission's jurisdiction." Although Congress clearly intended a relaxation of the standard to be applied here, shaping a new standard is a difficult problem with regard to which we seek the comments of the interested parties.

One possible interpretation is that Congress intended for us to gauge the lawfulness of business entertainment, not with reference to existing precedent relating to the Interstate Commerce Act and the Elkins Act, but under criminal statutes of general applicability. Several states make commercial bribery a criminal offense.[1] See for example N.Y. Penn. Laws § 439. Typically under such laws, it is an offense for a supplier to give, and a purchasing agent to receive, either directly of indirectly, a commission, discount, gift, gratuity, or bonus. We could view carrier practices in states having commercial bribery statutes as still subject to the rebate and discrimination provisions of the transportation laws. One advantage of this standard is that the carriers are already subject to these commercial bribery laws to the extent that they do business in the various jurisdictions, so that compliance should not be an added burden. A serious disadvantage of this approach is that it would require us to apply different standards in different states. Under these circumstances it would be difficult for us to develop a coherent Federal transportation policy for enforcement concerning rebates and discrimination.

A second possible approach is for the Commission, using relevant state criminal and civil law as a guide, to craft its own uniform standard as to

[1] For a lising of state "commercial bribery" statutes, see 108 U. Pa. L. Reve. 848 (1969).

what practices are prohibited under the transportation laws.

A third approach would be to adopt specific regulations or guidelines developed by the Internal Revenue Service or the Federal Trade Commission. This standard has the advantage of being uniform and specific. In implementing these new statutory provisions we believe it is important to set out as specifically as possible what is allowed and what is forbidden under the revised Act.

The IRS has published regulations [2] concerning what kinds of entertainment and similar expenses are deductible for Federal income tax purposes. But these regulations were not drafted to identify unlawful practices; they were merely intended to identify business expenses which are not deductible. For this reason, these regulations do not appear to be an appropriate standard.

The FTC has considered commercial bribery to be "an unfair method of competition" in violation of the Federal Trade Commission Act.[3] (FTC enforces this provision by the use of cease and desist orders, not by criminal sanctions.)

We are issuing proposed accounting instructions to serve as guidelines for entertainment expenses. The public and the affected carriers are requested to study the proposed instructions concerning entertainment expenses and to submit their views and comments. We also request comments on what standard we should use to identify unlawful practices under the revised Act. After the comments are reviewed, the Commission will publish a final rule which will contain the final business entertainment expense guidelines in this matter. In their comments, the parties are encouraged to offer alternative approaches, and to augment or refine further the examples contained in the proposed accounting instruction.

This proposal does not significantly affect the quality of the human environment or energy consumption.

This proposal is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

James H. Bayne,

Acting Secretary.

Part 1201—RAILROAD COMPANIES, GENERAL INSTRUCTIONS 1-16 BUSINESS, ENTERTAINMENT EXPENSES [AMENDED]

Part 1206—COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS, INSTRUCTION 2-37 BUSINESS ENTERTAINMENT EXPENSES [AMENDED]

Part 1207—COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY, INSTRUCTION 36 BUSINESS ENTERTAINMENT EXPENSES [AMENDED]

Part 1208—MARIMIME CARRIERS, INSTRUCTION Q BUSINESS ENTERTAINMENT EXPENSES [AMENDED]

Part 1209—INLAND AND COASTAL WATERWAYS CARRIERS, INSTRUCTION 17 BUSINESS ENTERTAINMENT EXPENSES [AMENDED]

Part 1210—FREIGHT FORWARDERS, INSTRUCTION 12 BUSINESS ENTERTAINMENT EXPENSES [AMENDED]

We propose to amend 49 CFR Parts 1201, 1206, 1207, 1208, 1209, and 1210 by adding to each part the new instruction set forth below.

Expenses incurred in normal sales-related activities shall be accounted for as operating expenses even though customer entertainment may incidentally result from such activities. Sales-related activities are those that emphasize a carrier's ability to provide efficient, timely and competitive service. Such sales-related activities include outlays designed to promote new business as well as expenses incurred in maintaining existing business. This type of expense is to be included in the appropriate operating expense account as a part of the cost of providing transportation service. Examples of activities giving rise to this type of expense include the following:

(1) Salespersons' salaries and travel expenses, advertising, promotional and educational material;

(2) The conduct of shipper symposiums, conferences, meetings and traffic related functions;

(3) The use of direct mail solicitations, the publication and distribution of routing guides and service directories;

(4) Incidental promotional materials such as road atlases, calendars, pens, scratchpads, and other materials of nominal value;

(5) The conduct of business oriented lunches and dinners, public affairs programming, conferences and customer service calls;

(6) Sponsoring sales promotion functions involving a number of customers or potential customers.

Entertainment expenses that are not geared to the direct promotion of business and, as such, are not sales related, are not to be included in the cost of service but are to be accounted for as non-operating expenses. Examples of items to be treated as non-operating expenses would be:

(1) Recreational or resort entertainment, including, but not limited to, fishing, hunting, tennis, golfing, skiing or other sporting or recreational trips or outings;

(2) Expense paid transportation in any carrier owned, leased or furnished vehicles, planes, helicopters, boats, yachts, or other methods;

(3) Expense paid lodging in any carrier owned, leased or furnished motels, hotels, apartments, condominums, lodges, rooms and other places of overnight accommodation;

(4) Paid admission to any sporting, cultural, educational, recreational, or entertaining occurrence or event;

(5) Gifts such as athletic equipment, food, or liquor, beverages of all types, smoking materials, clothing and personal accessories;

(6) The furnishing of lunches, dinners, appetizers or beverages where there is no true business purpose;

(7) Social occasions such as holiday parties.

Note.—The examples listed above are intended as a guide to give carriers an indication of what will or will not be permitted to be recovered through the rate structure.

[FR Doc. 81-356 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

[2] Internal Revenue Code, Section 274, and Treasury Regulations, § 1.2745.

[3] If the lawfulness of business entertainment within industry generally were to be measured by federal agency standards, the Federal Trade Commission's continued listing (16 CFR 13.135) of commercial bribery as an unlawful trade practice would furnish a rationale for sharply limiting the scope of the 1980 exemption for entertainment outlays of regulated carriers.

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49 CFR Parts 1300, 1301, 1303, and 1305

[Docket No. 37517]

Reduction of the Notice Period for Filing Railroad Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rules.

SUMMARY: The Interstate Commerce Act, as amended by the "Staggers Rail Act of 1980," permits rail carriers to file increased rates or new rates on 20 days' notice and to file reduced rates on 10 days' notice. The Commission is revising its tariff filing regulations to reflect the new statutory time periods. These regulations presently require that a tariff containing new or changed rates, charges, classifications, rules, practices

or other provisions be filed with the commission at least 30 days prior to its effective date.

DATES: Comments are due January 26, 1981. Unless otherwise modified by the Commission, these rules will become effective upon publication in the **Federal Register.**

ADDRESS: Send Comments to Section of Tariffs, Bureau of Traffic, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William P. Geisenkotter; Phone: 202–275–7739.

SUPPLEMENTARY INFORMATION: Secton 216 of the "Staggers Rail Act of 1980" amended Section 10762 of Title 49, United States Code, concerning the notice period for filing rail tariff publications. As amended, Section 10762(c)(3) allows rail carriers to file new or increased rates on 20 days' notice and to file reduced rates on 10 days' notice.

The Commission's tariff publishing regulations applicable to rail carriers are shown at 49 CFR 1300, 1301, 1303 and 1305.

These regulations presently require that a tariff containing new or changed rates, charges, classifications, rules, practices or other provisions be filed with the Commission at least 30 days prior to its effective date.

This document amends the Commission's tariff publishing regulations to the extent necessary to conform to these changes. It also contains changes of a technical nature required to resolve potential ambiguities. For example, the Staggers Act mentions only rates. The Interstate Commerce Act and the tariff regulations also embrace charges, rules, classifications, practices and any other matter required to be published and filed in tariff format. The term "rates" as used in the Staggers Act will be construed to include the other factors mentioned above.

Changes resulting in neither increases nor reductions in rates or value of service are published in tariffs frequently. Such changes are required to be filled on not less than 30 days' notice and has been treated no differently than increases or reductions in the past. Now however, increases may be filed on 20 days' notice and reductions may be filed on 10 days' notice. Although the Staggers Act does not specifically address this issue, we feel no useful purpose is served by requiring the equivalent of editorial changes to be filed on longer notice than is required for increases and reductions. Such changes, which by definition do not change the rate or the level of service to the shipper, should be allowed to become effective on the shortest notice period permitted by the Act. For this reason the regulations are amended to provide specifically that changes in rail tariffs resulting in neither increases nor reductions may be filed on 10 days' notice.

In the past when tariff publications were filed on less than 30 days' notice, a notation citing the special permission or special tariff authority was required to be placed on the title page of the publication. Although the Staggers Act reduces the statutory filing period for rail publications, there may be instances where a still shorter notice period is desired or required. In such cases carriers may request special permission to file tariff publication on short notice. The standards upon which special permission applications are decided remain unchanged. Where the Commission finds cause exists for rates to be filed on short notice, we will continue to require the special permission or special tariff authority notation on all publications filed on less than statutory notice.

Additionally, to assist rail tariff users in identifying publications containing rates or provisions filed on less than 20 days' notice, the title page on such publications shall carry a notation stating that fact.

The Staggers Act requires "new" rates to be filed on 20 days' notice. However in the more than 100 years the railroads have operated, an extensive rate structure has evolved. Presently, there is almost always some rate published and in effect which would be applicable to a given shipment. Thus, a question raised by the Staggers Act is what constitutes a "new" rate? For example, if a carrier maintained a class rate applicable to a particular shipment and desired to publish a lower commodity rate to apply in its place, would the commodity rate be a reduction permitted to be filed on 10 days' notice or a "new" rate required to be filed on 20 days' notice?

To resolve this question we referred to Congress' statement of policy regarding regulation of the railroad industry found in Section 101 of the Staggers Act. It is stated that effective competition among railroads and with other modes, and the demand for service should be allowed, to the maximum extent possible, to establish reasonable rates for transportation by rail. To respond to the marketplace and competitive demands, Section 216 authorized carriers to raise or lower their rates on a shorter notice period than was previously required. In the example above, it seems that the carrier's downward adjustment of its rates is a response to those demands in an attempt to attract or retain the traffic. We believe this adjustment should be considered a reduction rather than a new rate and thus permitted to be filed on 10 days' notice. The term "new" rates should be reserved to apply in instances including but not limited to publication of a rate where, in connection with a particular shipment, the carrier had no rate applicable previously or where a charge is published to cover a service or privilege not offered previously by the carrier. We believe this interpretation conforms with Congress' intentions that shippers be able to benefit from lower charges on 10 days' notice.

We propose to rescind Rule 54 of our tariff publishing regulations. This rule requires that all tariff publications, once filed with the Commission, must be allowed to go into effect and requires that no change may be made in an effective tariff provision until it has been in effect for at least 30 days. It also requires that when a tariff provision is published subject to an expiration date, that date must be at least 30 days subsequent to the effective date of the provision. Rescission of this rule will allow matter which has been filed but has not become effective to be withdrawn without Commission approval. It will also allow a tariff provision to expire before it has been in effect for the statutory notice period. As long as the carrier gives the required notice of its proposed change, we believe it has complied with Section 10762 of the Act, as amended by the Staggers Act. Moreover, continuance of this regulation would lessen the carriers' ability to respond quickly to pricing demands of the marketplace, one of the goals the Staggers Act sought to achieve.

Various sections throughout Parts 1300, 1301, and 1303 refer to the "30-day notice" requirement. Where possible, this term has been changed to "statutory notice," thus maintaining the 30 day period for other carriers filing tariff under these parts. The remainder of the changes made in the regulations are not substantive in nature and merely update pertinent regulations by striking references to sections of the former Interstate Commerce Act and substituting references to the appropriate section of Subtitle IV of Title 49 of the U.S. Code, and by eliminating references to Tariff Circular No. 20, which has been replaced by 49 CFR 1300.

Accordingly, Chapter X of Title 49 of the Code of Federal Regulations would be amended as follows:

PART 1300—FREIGHT TARIFFS; RAILROADS, WATER CARRIERS, AND PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT AND CARRIERS JOINTLY THEREWITH

1. By revising § 1300.3(h) to read as follows:

§ 1300.3 Contents of title page.

* * * * *

(h) On every tariff or supplement in which all the rates, rules or regulations are made effective on less than statutory notice under authority of the Commission, notation that it is issued on —— days notice under the authority of ———— (here show the authority.) The title page of rail tariff publication filed on less than 20 days' notice shall carry a notation stating substantially as follows:

"This publication filed on less than 20 days' notice under authority of Section 10762 of the Interstate Commerce Act."

2. By revising § 1300.9(d)(3), (e)(11), and (h) as follows:

§ 1300.9 Amendments and supplements.

* * * * *

(d) * * *

(3) Matter brought forward without change from one supplement to another, must be designated "reissued" in distinctive type and, except as authorized in 1300.10(i), must show the original effective date and the number of the supplement or tariff from which it is reissued; or must be uniformly indicated by the letter T in a square when reissued from another tariff or from a supplement to another tariff and by numerals commencing with 1 in squares when reissued from a prior supplement to the same tariff, printed in distinctive type and shown in a conspicuous manner, and the explanation thereof must be made in the tariff or supplement in which the symbols are used.

Examples: "Reissued from ICC No. ——, or (Supplement No. —— to ICC No. ——), effective (date upon which item became effective in former tariff or supplement to another tariff ——. 19—— "; "1 Reissued from Supplement No. 1, effective ——, 19——," and so on numerically the figures of the symbols always representing the number of the supplement to the same tariff from which the reissued item is brought forward. If items in a tariff or supplement are made effective on dates other than the general effective date shown on the title page, reissue of such items may be indicated in later publications by showing a letter suffix or other symbol in later publications by showing a letter suffix or other symbol in connection with, and as a part of, the letter t or the numerals in squares as authorized in this paragraph. When the reissued item became effective in a supplement to another tariff, the ICC number of that tariff must also be given.

(e) * * *

(11) Changes must be indicated as required by 1300.2(a).

(h) *Supplement to tariff filed not yet effective.* After a tariff is filed on statutory notice canceling another tariff a supplement to the tariff to be so canceled may be issued effective before the general effective date of the new tariff. In such a case, and confined to additions or to changes in rates or provisions which were brought forward in the new tariff without change, a supplement making the same changes in or additions to both tariffs shall be issued as supplements both to the tariff in effect and to the tariff which will effect the cancellation, and be given both ICC numbers. In other words, the issue must be a supplement both to the old and the new tariffs and copies must be posted and filed accordingly. Only one supplement may be in effect at any time.

3. By substituting "statutory" for "30 days' " in the last sentence of § 1300.10(d)(1) and substituting "49 CFR 1300.10(i)" for "rule 10(i) of Tariff Circular No. 20" in the first sentence of § 1300.10(i)(2).

4. By substituting the word "statutory" for the phrase "30 days'" in the first sentence of § 1300.14(f) and by revising § 1300.14(a) to read as follows:

§ 1300.14 Statutory notice; additional procedure in filing tariffs.

(a) Except as otherwise authorized by the Commission, and except with regard to railroad contract rates filed under Section 10713 of the act (1300.300 of this part), the notice period for tariff publications shall be:

(1) 30 days' for tariffs issued by non-rail carriers;

(2) 20 days' for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service; and

(3) 10 days' for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.

§ 1300.54 [Removed]

5. By removing § 1300.54.

§ 1300.58 [Amended]

6. By making the following substitutions, additions and deletions in § 1300.58:

(a) Substitute "10762" for "6" in the title of § 1300.58 and in the first sentence of § 1300.58(a);

(b) Substitute the phrase "less than statutory notice" for the phrase "a notice of less than 30 days" in the third sentence of § 1300.58(a);

(c) Remove the phrase "Tariff Circular 20" in the second sentence of § 1300.58(b);

(d) Remove the phrase "sixth section" from the second sentence of § 1300.58(c) and substitute the word "statutory" for the phrase "30 days'" in the second sentence of § 1300.58(c);

(e) Remove the phrase "the sixth" from the last sentence of § 1300.58(c) and add "10762" after "section" in the same sentence;

(f) Remove the word "sixth" in the third sentence of § 1300.58(d) and add "10762" between "section" and "application" in the same sentence.

(g) Remove the phrase "Tariff Circular 20" in the second sentence of § 1300.58(e) and substitute "10762" for "6" in the first sentence under "Form of Application" in § 1300.58(e).

7. By substituting the word "statutory" for the phrase "30 days'" and substituting "10762" for "6" in the second sentence of § 1301.65(b).

PART 1303—PASSENGER SERVICE SCHEDULES: RAIL AND WATER CARRIERS

8. By reserving § 1303.11(g) and revising § 1303.11(f)(1) to read as follows:

§ 1303.11 Filing tariffs; rejections.

* * * * *

(f) *Period of Notice*

(1) Except as otherwise authorized by the Commission, and except with regard to contract rates filed under Section 10713 of the Act); the notice period for tariff publications shall be:

(i) 30 days' for tariffs issued by non-rail carriers;

(ii) 20 days' for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service; and

(iii) 10 days' for changes resulting in decreased rates or increased value of service, or changes resulting in neither increased nor reductions.

(g) [Reserved]

PART 1305—POSTING TARIFFS AT STATIONS

Part 1305—Posting Tariffs at Stations

9. By revising § 1305.5 to read as follows:

§ 1305.5 Time of posting.

Except as otherwise provided, each tariff shall be posted at least 30 days prior to its effective date. When the act authorizes or the Commission permits a

different notice period for filing, the tariff publication shall be posted at least that number of days before the effective date.

These proposed rules are promulgated under authority contained in Section 553 of the Administrative Procedure Act (5 U.S.C. 553) and Section 10762 of the Interstate Commerce Act (49 U.S.C. 10762).

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Dated: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-255 Filed 1-2-81; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 46, No. 3
Tuesday, January 6, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Wolverine Electric Cooperative, Inc., Big Rapids, Michigan; 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 $5,000,000 to Wolverine Electric Cooperative, Inc., (Wolverine) of Big Rapids, Michigan. This loan guarantee will provide financing for the purchase of a 0.63 pecent undivided ownership interest in the existing Campbell Unit No. 3, a coal-fired 770 MW generation unit, and a 7.22 percent undivided ownership interest in 10 miles of 345 kV transmission line constructed by Consumers Power Company.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. John N. Keen, Manager, Wolverine Electric Cooperative, Inc., P.O. Box 1133, Big Rapids, Michigan 49307.

In order to be considered, proposals must be submitted on or before February 5, 1981 to Mr. Keen. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Wolverine 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 29th day of December, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 81–270 Filed 1–5–81; 8:45 am]

BILLING CODE 3410–15–M

KBR Rural Public Power District; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact which concludes that there is not need for REA to prepare an environmental impact statement in connection with a proposed loan by REA for KBR Rural Public Power Disrict (KBR) of Ainsworth, Nebraska. The proposed loan will assist KBR in constructing approximately 72 km (45 miles) of 69 kV transmission line and two associated 69–7.2/12.5 kV distribution substations.

The 69 kV transmission line will tap into the existing Nebraska Public Power District (NPPD) Ainsworth-O'Neil 69 kV line at the junction of State Highway 183 and U.S. Highway 20 in Brown County, Nebraska, and extend north into the existing distribution substation at Springview, Keya Paha County, Nebraska, which will be rebuilt. The line will then extend east into the proposed distribution substation, to be called Mills Substation, in Keya Paha County, Nebraska. KBR has prepared a Borrower's Environmental Report (BER) concerning the proposed project. REA has reviewed the BER and determined that it represents an accurate assessment of the environmental impact of the project. REA has prepared an Environmental Assessment concerning the proposed project and its impacts.

Threatened and endangered species, important farmland, archaeological and historic sites, wetlands, flood plains and potential impacts of the project are adequately considered in the BER. REA's independent evaluation of the proposed project leads it to conclude that its proposed financial assistance for this project does not represent a major Federal action that will significantly affect the quality of the human environment. Based on this independent evaluation and a review of KBR's BER, a Finding of No Significant Impact was reached in accordance with Section IV.B and IV.D.1 of REA Bulletin 20–21:320–21, Part 1.

Various alternatives to the proposed transmission line and substation were reviewed by KBR and REA. The alternatives included no action, energy conservation, upgrading of existing facilities, routes, and an underground line. After reviewing these alternatives, REA determined that the proposed 69 kV transmission line and associated substations is the best alternative for providing power to existing and future KBR within the area.

Copies of REA's Finding of No Significant Impact and KBR's BER may be reviewed in the office of the Director, Distribution Systems Division, Room 3306, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250 and at the office of the cooperative, KBR Rural Public Power District, P.O. Box 187, Ainsworth, Nebraska 69210.

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 18th day of December 1980.

Robert W. Feragen,

Administrator.

[FR Doc. 81–150 Filed 1–5–81; 8:45 am]

BILLING CODE 3410–15–M

Office of the Secretary

1980 Wheat and Barley Crops: Determinations Regarding Proclamation of National Program Acreages

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Notice of Revision of National Program Acreages for 1980 Crops of Wheat and Barley.

SUMMARY: This notice is to announce revised national program acreages for

the 1980 crops of wheat and barley which were published on August 21, 1979, (44 FR 48999) for wheat and on January 8, 1980, (45 FR 1648) for barley. The national program acreages as orginally announced for the 1980 crops of wheat and barley were 70.0 and 7.9 million acres, respectively. This action is taken in accordance with applicable provisions of the Agricultural Act of 1949, as amended, which authorizes the Secretary of Agriculture to revise the national program acreages if he determines it necessary based upon the latest information.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013, telephone (202) 447–6688. The Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This Notice of Determination has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The title and number of the federal assistance programs that this notice applies to are: Title—Wheat Production Stabilization, Number 10.058, and Title—Feed Grains Production Stabilization, Number 10.056, as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, a review as established by OMB Circular A–95, was not used to assure that units of local government are informed of this action. The need for this notice is to revise the 1980-crop wheat and barley national program acreages, first proclaimed on August 15, 1979, and January 7, 1980, for the purpose of determining the national allocation factors for such commodities as authorized in Sections 105A(d)(1) and 107A(d)(1) of the Agricultural Act of 1949, as amended. These provisions authorize the Secretary to revise the national program acreages which he initially proclaimed for any crop year for the commodity for the purpose of determining the allocation factor if he determines that such revision is necessary based upon the latest available information. The Secretary has determined that the national program acreages for the 1980 crop of wheat and barley shall be revised based on the latest available information. It is essential that this decision be made effective as soon as possible since the revised national program acreages is required by Sections 105A(d)(1) and 107A(d)(1) of the Agricultural Act of 1949, as amended, to be proclaimed as soon as such decision is made. Therefore, it is impracticable and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. This notice of determination shall become effective January 5, 1981. Accordingly, the revised national program acreages for the 1980 crops of wheat and barley are determined to be the following:

Determinations

1. *Revised National Program Acreage for 1980-Crop Wheat.* It is hereby proclaimed that the revised national program acreage for the 1980 crop of wheat shall be 75.0 million acres. The revised national program acreage is based on the following data:

(a) Estimated Domestic use, 1980–81 (million bushels)	835
(b) Plus estimated exports, 1980–81 (million bushels)	1,525
(c) Minus estimated imports, 1980–81 (million bushels)	−2
(d) Plus adjustment for carryover (million bushels) [1]	170
(e) Divided by national weighted average farm program yield (bushels/acre)	33.7
(f) Equals: 1980 National Program Acreage (million acres)	/ 75.0

[1] An appropriate carryover level of U.S. wheat stocks has been determined to be equal to 6.6 percent of world consumption of wheat. Such consumption during the 1979–80 marketing year is estimated to be 442.4 million metric tons (MMT) (442.4 × .66 = 29.2 MMT × 36.74 (bushel conversion factor) = 1,073 million bushels (maximum level of U.S. carryover wheat stocks)). 1980–81 carryin wheat stocks were 903 million bushels resulting in a 170 million bushels stock adjustment.

2. *Revised National Program Acreage for 1980-Crop Barley.* It is hereby proclaimed that the final national program acreage for the 1980 crop of barley shall be 8.3 million acres. The revised national program acreage is based on the following data:

(a) Estimated domestic use 1980–81 (million bushels)	357
(b) Plus estimated exports, 1980–81 (million bushels)	75
(c) Minus estimated imports, 1980–81 (million bushels)	−10
(d) Minus adjustment for carryover (million bushels) [2]	−12
(e) Divided by national weighted average farm program yield (bushel/acre)	49.3
(f) Equals: 1980 National Program Acreage (million acres)	8.3

[2] An appropriate carryover level of U.S. feed grain stocks has been determined to be equal to 6.7 percent of world consumption of coarse grains. Such consumption during the 1979–80 marketing year is estimated to be 727.2 million metric tons (MMT) (727.2 × 0.067 = 48.7 MMT (maximum level of U.S. feed grain carryover stocks)). The barley component of the feed grain total has been determined to be 180 million bushels (8.9 MMT × 45.93 (bushel conversion factor). 1980–81 carryin barley stocks were 192 million resulting in 12 million stock adjustment.

Signed at Washington, D.C. on December 22, 1980.

Jim Williams,

Acting Secretary.

[FR Doc. 81–118 Filed 1–5–81; 8:45 am]

BILLING CODE 3410–05–M

Science and Education Administration

National Agricultural Research and Extension Users Advisory Board, Special Committee; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776) the Science and Education Administration announces the following meeting:

Name: Special Committee of the National Agricultural Research and Extension Users Advisory Board.
Date: January 16, 1981.
Time: 10:00 a.m.—2:00 p.m.
Place: Room 3056, South Agriculture Building, USDA, Washington, D.C.
Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contract person below.

Purpose: Representatives of the Board will be reviewing and discussing extension programs and policy with representatives of the Extension Committee on Organization and Policy.

Contact Person for Agenda and More Information: Dr. James M. Meyers, Executive Secretary of the Users Advisory Board; Science and Education Administration; U.S. Department of Agriculture; Washington, D.C. 20250; telephone 202–447–3684.

Done at Washington, D.C. this 19th day of December 1980.

James M. Meyers,

Acting Executive Director, National Agricultural Research and Extension Users Advisory Board

[FR Doc. 81–271 Filed 1–5–81; 8:45 am]

BILLING CODE 3410–03–M

Soil Conservation Service

Authorization of Federal Assistance in the Installation of Works of Improvement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of authorization of Federal assistance in the installation of works of improvement.

FOR FURTHER INFORMATION CONTACT:
Mr. Jesse L. Hicks, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Federal Building, Room 544, Raleigh, North Carolina 27611, telephone number (919) 755–4165.

NOTICE: Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1008) has been authorized for the Muddy Creek Watershed and the Limestone Creek Watershed, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects is applicable)

Dated: December 2, 1980.

David G. Unger,

Associate Chief.

[FR Doc. 81–297 Filed 1–5–81; 8:45 am]

BILLING CODE 3410–16–M

CHRYSLER CORPORATION LOAN GUARANTEE BOARD

Closed Board Meeting

The Chrysler Corporation Loan Guarantee Board will hold a meeting closed to the public on January 6, 1981 at 11:00 a.m., in Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C.

The Board expects to continue its discussion of Chrysler Corporation's new Operating and Financing Plans and related documents and its need for additional guarantees. The Board also expects to meet with representatives of Chrysler and its advisers and to receive the separate reactions of the United Auto Workers and Chrysler's lenders to the proposed cost reductions and other actions contemplated by Chrysler's new Operating and Financing Plans and related documents. The Board does not, however, expect to take any formal action at its January 6 meeting on Chrysler's December 23 application for an additional $400 million of guarantees.

Discussions of the above matters are closed to the public pursuant to applicable exemptions under the Government in the Sunshine Act. The discussions at the meeting will involve significant amounts of non-public financial and commercial information received from Chrysler Corporation, relating to anticipated profitability, market positions, capital expenditures and cost reduction actions.

An open meeting is likely to disclose (1) confidential commercial and financial information, which is exempt under 5 U.S.C. § 552b(c)(4); and (2) information the premature disclosure of which would be likely to significantly frustrate implementation of Board action, which is exempt under 5 U.S.C. 552b(c)(9)(B).

The meeting was closed pursuant to a unanimous vote of the Board taken on December 17, 1980 to close all Board meetings held during the thirty days after the Board's December 18, 1980 meeting at which the same subject matters are discussed.

Those persons expected to attend the meeting, or portions thereof, include the Board members, the Executive Director, General Counsel, and Secretary of the Board, and members of the respective staffs of each Board member. In addition, representatives of the UAW, Chrysler's lenders, and Chrysler and its advisers will attend portions of the meeting.

Those persons desiring further information should contact Bruce D. Bolander, Secretary of the Board, at (202) 566–2278.

This notice is given as a result of a court order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: January 2, 1981.

Bruce D. Bolander,

Secretary of the Board.

[FR Doc. 81–530 Filed 1–5–81; 11:34 am]

BILLING CODE 4810–27–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 170]

Resolution and Order Approving the Application of the Jacksonville Port Authority for a Foreign-Trade Zone in Jacksonville, Florida

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Jacksonville Port Authority, Jacksonville, Florida, filed with the Foreign-Trade Zones Board (the Board) on May 29, 1980, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Jacksonville, within the Jacksonville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Jacksonville, Florida

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Jacksonville Port Authority, a Florida public corporation, (the Grantee) has made application (filed May 29, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Jacksonville, within the Jacksonville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 64 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions,

and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 29th day of December 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Philip M. Klutznick,

Chairman and Executive Officer.

[FR Doc. 81-337 Filed 1-5-81; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton Textile Products From Republic of Singapore

December 30, 1980

AGENCY: Committee for the Implementation fo Textile Agreements.

ACTION: (1) Increasing the consultation level for cotton twill and sateen in Category 317, produced or manufactured in the Republic of Singapore and exported during the agreement year which began on January 1, 1980 and extends through December 31, 1980 to 14,740,272 square yards.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (FR 53506).)

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore, the consultation level established for cotton textile products in Category 317 is being increased to 14,740,272 square yards for the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: January 9, 1981.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 20, 1979, there was published in the **Federal Register** (44 FR 75440) a letter dated December 14, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Singapore, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below, in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the twelve-month level previously established for Category 317 to the designated amount.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1980

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: On December 14, 1979, the Chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980 of cotton, wool and man-made fiber textile products, produced or manufactured in Singapore, in certain specified categories, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 9, 1981 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 317, produced or manufactured in Singapore, in excess of 14,740,272 square yards.[2]

The actions taken with respect to the Government of Republic of Singapore and with respect to imports of cotton textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-247 Filed 1-5-81; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore which provide, in part, that: (1) within the aggregate and applicable group limits, specific limits and sublimits may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance; Changes in Per Diem Rates; Corection

In FR Doc. 80-38413 appearing at page 81644 in the issue of Thursday December 11, 1980, make the following corrections:

On page 81644, in the second column, in the Locality Chart under Puerto Rico "Ponce [2]" should have read "Ponce [4]".

In column 3, "Wake Island [1] should have read "Wake Island [2]".

BILLING CODE 3810-70-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following commitee meeting:

Name of Committee: Armed Forces Epidemiological Board.
Date of Meeting: 5 and 6 February 1981.
Time: 0900-1630 5 February, 0830-1400 6 February.
Place: Board of Regents Room, Third Floor, Building C of the Uniformed Services University of the Health Sciences, National Naval Medical Center, Bethesda, MD.

Proposed Agenda: Agenda items for the meeting include AFEB Task Force report on epidemiological method in clinical health delivery systems, reports on the preventive medicine activities of the Army, Navy and Air Force, present status of a vaccine for *N. gonorrhoea*, update on Navy asbestos program, and reports from AFEB subcommittees.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASC-AFEB, Room 2D455 Pentagon, Washington, DC 20310.

Dated: December, 18, 1980.

Charles W. Halverson,

Capt., MSC, USN, Executive Secretary.

[FR Doc. 81-286 Filed 1-5-81; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Rock River; Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft Environmental Impact Statement (EIS).

SUMMARY: Proposed action is provision of measures to reduce flooding and associated problems along the lower 14 miles of the Rock River from Green Rock, Illinois, to the confluence of the Rock and Mississippi Rivers.

A variety of structural and nonstructural protection measures were investigated during early planning phases for 37 designated study areas. Evaluation of these measures on environmental, economic, and technical criteria resulted in identification of several alternatives which will be studied further. The tentative Stage 3 alternatives are as follows:

a. A single levee, or a combination of levee segments, to protect the most densely developed portion of the project area.

b. Clearing a section of the Illinois and Mississippi Canal to pass high flows on the Rock River.

c. Floodproofing, raising access roads, constructing adjacent street as a levee, improved preparedness plans, no Federal action.

d. A combination of the above measures.

This study has been conducted as part of the Quad-Cities Urban Study for which a major public involvement effort has been made. The Bi-State Metropolitan Planning Commission is serving as the local coordinating agency for the study and is assisting the Corps of Engineers in the management of the study.

Policy, technical, and citizens committees have been formed to monitor the progress of the Urban Study. Subgroups composed of officials and residents representing the lower Rock River area have met to provide input to the study. A public meeting was held in August 1977 to discuss the problems and needs of the study area. A public workshop was held in May 1979 to discuss alternative solutions to flood problems. A public workshop and meeting was held in December 1979 to present the results of the preliminary studies.

Significant issues to be discussed in the draft EIS are the impacts associated with each of the plans, including floodplain development, effects on fish and wildlife habitat, effects on wetlands, and socio/economic effects.

It is anticipated that the draft EIS will be distributed for review and comment in July 1981.

For additional information concerning the proposed project and the draft EIS, please direct your correspondence to: District Engineer, U.S. Army Engineer District, Rock Island, ATTN: Planning Branch, Clock Tower Building, Rock Island, Illinois 61201.

Joseph F. Manzi, Jr.,

LTC, Corps of Engineers, Acting District Engineer.

[FR Doc. 80-388 Filed 1-5-81; 8:45 am]

BILLING CODE 3710-HV-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 80-CERT-039A]

Florida Power & Light Co.; An Amendment to a Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On December 18, 1980, Florida Power & Light Company (Florida Power), P.O. Box 529100, Miami, Florida 33152, filed an application with the Administrator of the Economic Regulatory Administration (ERA) for amendment to a recertification of an eligible use of natural gas (80-CERT-039, 45 FR 80866, December 8, 1980) to displace fuel oil at six of its power plants in Florida, pursuant to 10 CFR Part 595. Florida Power requested that its recertified volume of 75,000 Mcf per day be amended to state the volume on an annual basis of 27,375,000 Mcf per year (75,000 × 365), thereby removing the daily maximum volume restriction of 75,000 Mcf per day. The additional daily volumes of natural gas over 75,000 Mcf are to be used for oil displacement and the facilities for the transportation of the increased daily volumes will be available to Florida Power only during a limited period of time in the near future. The applicant requests that the amendment removing its daily maximum restrictions be authorized as soon as possible because every day of delay will reduce the amount of oil it can displace under its certificate. Furthermore, Florida Power requested that it be issued the amendment to the recertification prior to the 10-day public comment period required by 10 CFR Part 595.

By letter dated December 16, 1980, Florida Power requested Transcontinental Gas Pipeline Company, 2700 South Post Oak Road, P.O. Box 1396, Houston, Texas 77001:

and Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Tenneco Building, P.O. Box 2511, Houston, Texas 77001, be added as additional transporters for this recertification, as amended.

The ERA has reviewed Florida Power's application for amendment 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) and has determined that Florida Power's application satisfies the criteria enumerated in 10 CFR Part 595. We are therefore granting the amendment to the recertification and transmitting that amendment to the Federal Energy Regulatory Commission.

This amendment to a recertification is being issued without a 10-day public comment period prior to its authorization and is being made effective upon the date of issuance. The amendment to the recertification involves the displacement of volumes of predominantly imported fuel oil, and it is in the public interest to maximize the displacement of imported fuel oil. The application also states that Florida Power and the eligible seller are in a position to begin an immediate increase in the daily volumes of natural gas used to displace fuel oil and that pipeline capacity to accommodate the additional daily volumes is immediately available. Given the limited availability of the additional pipeline capacity, it is not in the public interest to lose permanently this limited opportunity to displace fuel oil while public comments are being solicited. Public comments will still be accepted by ERA on or before January 16, 1981. The Administrator can terminate a certification for good cause pursuant to 10 CFR 595.08.

More detailed information is contained in the application on file with the ERA and is available for public inspection at the Division of Natural Gas Docket Room, Room 7108, 2000 M Street NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Division of Natural Gas, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Albert F. Bass, on or before January 16, 1981.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Florida Power and any persons filing comments and will be published in the **Federal Register**.

Issued in Washington, D.C., on December 30, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration

[FR Doc. 81-398 Filed 1-5-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

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 Agreement for Cooperation Between the Government of the United States of America and the Government of the Commonwealth of Australia Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of a contract to accept approximately 660 kilograms of D_2O (heavy water) for upgrading, and replacement in kind. The D_2O is of United States origin. The replacement material is to be utilized by the Australian Atomic Energy Commission Research Establishment as moderator in a research reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material 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: December 31, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-399 Filed 1-5-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL 1720-8]

Science Advisory Board, Research Outlook Review Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Research Outlook Review Subcommittee of the Science Advisory Board will be held on January 22, 1981, beginning at 9:00 a.m. in the Hall of States A, Skyline Inn, South Capitol and I Streets, S.W., Washington, D.C.

This is the second meeting of this Research Outlook Review Subcommittee. The Environmental Research, Development and Demonstration Authorization Act of 1978 requires the Science Advisory Board to review and comment on the Agency's five-year plan for environmental research, development, and demonstration. The agenda includes an up-date on the status of the plan and consideration of the revised draft, *Research Outlook 1981*.

The meeting is open to the public. Because of the limited seating capacity of the meeting room, all members of the public desiring to attend must preregister no later than January 16, 1981, and receive a confirmed reservation from Dr. J. Frances Allen, Staff Officer, Science Advisory Board, or Ms. Anita Najera, 202-472-9444.

J. Frances Allen,

Acting Staff Director, Science Advisory Board.

December 29, 1980.

[FR Doc. 81-315 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-34-M

[OPTS-51140A; TSH-FRL 1720-3]

Voluntary Suspension of the Review Period for Certain Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before

manufacture or import commences. During that 90-day period EPA evaluates the potential health and environmental effects of the PMN chemical. This notice announces four voluntary suspensions of review periods by the submitters of PMN's P80–172, P80–182, P80–238 and P80–256 in response to the Agency's identification of significant concerns regarding the PMN chemicals.

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Chemical Control Division (TS–794), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, (202–426–3936).

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–447, 401 M Street, S.W. Washington, D.C. 20460, (202–755–8050).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA EPA is allowed 90 days (with extensions for "good cause" under section 5(c) for up to an additional 90 days) to evaluate the potential health and environmental effects of a PMN chemical. Several submitters of TSCA premanufacture notices have voluntarily suspended the tolling of their review periods when EPA's initial evaluation of the possible risks associated with their PMN chemical raised concerns which would best be examined outside of the rigid time limits imposed by the law. Absent a suspension, the Agency might have to proceed with issuance of an order for additional data under section 5(e), or control of the chemical under section 5(f) of TSCA since there would be insufficient time to review additional data or arguments regarding potential risks.

Section 5(e) of TSCA allows EPA to regulate a PMN chemical pending development of information by the submitter where the Agency determines that available information is insufficient to permit a reasoned evaluation of the chemical's health and environmental effects, and (1) the chemical may present an unreasonable risk, or (2) the chemical will be produced in substantial quantities with substantial environmental or substantial or significant human exposure. Alternatively, if the Agency determines that a chemical currently presents or will present an unreasonable risk to human health or the environment, it may move under section 5(f) to protect against such risk.

To date certain submitters have voluntarily suspended notice review periods because the company may volunteer either to investigate the Agency's concerns and provide appropriate testing or other data before the expiration of the review period, or the company may be willing to become subject to legally binding controls under section 5(e) or section 5(f). This notice announces four voluntary suspensions and, within the constraints of the TSCA confidential business information provisions of section 14, provides pertinent information regarding the individual notices.

P80–172

Manufacturer identity: Claimed confidential business information.

Chemical identity (generic): Polyisobutenyl succinic anhydride, reaction products with substituted phenol.

Notice received: July 16, 1980.

Date suspended: November 7, 1980.

EPA concerns: EPA is concerned about potential risks that the substance may pose to humans. Certain uses of the PMN substance can be expected to produce a highly toxic chemical. The carcinogenic and toxic properties of the substance expected to be generated are well established.

P80–182

Manufacturer identity: Claimed confidential business information.

Chemical identity (generic): Alkanedioic acids mixed alkanomines salt.

Notice received: July 23, 1980.

Date suspended: October 30, 1980.

EPA concerns: EPA is concerned about potential hazards that the substance may pose to human health. The expected use of the substance can be expected to generate a chemical known to be a carcinogen.

P80–238

Manufacturer identity: Claimed confidential business information.

Chemical identity (generic): Glycerine, 1-alkanoate, 3-substituted alkanoate.

Notice received: September 3, 1980.

Date suspended: November 7, 1980.

EPA concerns: EPA is concerned about worker safety during manufacture, processing and use.

P80–256

Manufacturer identity: Claimed confidential business information.

Chemical identity (generic) Methylaziridinylcarbonylimio oleyl triimido diisophorone poly (propylene glycol).

Notice received: September 18, 1980.

Date suspended: November 7, 1980.

EPA concerns: EPA is concerned about the potential for skin irritation and skin sensitization. The substance has also been identified as a possible carcinogen.

Dated: December 24, 1980.

Edward A. Klein,

Director, Chemical Control Division.

[FR Doc. 81–320 Filed 1–5–81; 8:45 am]

BILLING CODE 6560–31–M

[A–9–FRL 1720–6]

Nevada Power Co.; Issuance of PSD Permit

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to: Nevada Power Company, Las Vegas, Nevada. EPA project number NV 80–01.

SUPPLEMENTARY INFORMATION: Notice is heregy given that on September 11, 1980 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct the following equipment: gas/oil-fired 73.4 MW combustion turbine generator (Unit No. 8) at Nevada Power's Clark Generating Station located in East Las Vegas, Nevada.

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: 241 pounds/hour (1054 tons/year) sulfur dioxide and 304 pounds/hour (1331 tons/year) nitrogen oxides.

Best Available Control Technology (BACT) requirements include: for sulfur dioxide emissions, 0.25% sulfur No. 2 fuel oil; and for nitrogen oxides emissions, water injection, 0.340 lb/10^6 BTU.

Emission units	Pollutant	Averaging time	Increment consumed ($\mu g/m^3$)
Units 5, 6, 7, 8	SO_2	Annual	6.7
		24-hour	66.7
		3-hour	169.9

Air Quality Impact Modeling is required for NO_x and SO_2. Post construction ambient air monitoring will also be required for these pollutants. The source is subject to New Source Performance Standards.

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 March 9, 1981.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for

public inspection upon request; address requests to: Cecilia Dougherty, Permits Clerk, E–4–1, U.S. Environmental Protection Agency, Region IX, Permits Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556–3450.

Dated: December 29, 1980.

Carl C. Kohmert, Jr.,

Acting Director, Enforcement Division, Region IX.

[FR Doc. 81–317 Filed 1–5–81; 8:45 am]

BILLING CODE 6560–38–M

[A–9–FRL 1720–5]

Nevada Power Co.; Issuance of PSD Permit

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to: Nevada Power Company, Las Vegas, Nevada, EPA project number NV 79–03.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 3, 1980 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct one (1) 250 MW coal-fired steam turbine generator (Unit #4) and support facilities at the Reid Gardner Station near Moapa, Nevada.

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: 0.29 pounds/10^6 BTU SO_2, 0.5 pounds/10^6 BTU subbituminous coal NO_x, 0.6 pounds/10^6 BTU bituminous coal NO_x and 0.03 pounds/10^6 BTU particulate.

Best Available Control Technology (BACT) requirements include: for SO_2, wet scrubber, 85% efficiency; for NO_x, boiler design and operation; and for particulate, baghouse, 99.6% efficiency.

Impact of Proposed Reid Gardner Unit No. 4 on Maximum Allowable Increments ($\mu g/m_3$)

Pollutant	Averaging time	Maximum concentration	Maximum allowable increment
Sulfur dioxide	3-hour	114	512
	24-hour	68	91
	Annual	5	20
Particulate matter	24-hour	7	37
	Annual	1	19

Air Quality Impact Modeling is required for NO^x, SO^2 and TSP, and continuous monitoring of in-stack emissions is required for SO^2. The source is subject to New Source Performance Standards.

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 March 9, 1981.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecilia Dougherty, Permits Clerk, E–4–1, U.S. Environmental Protection Agency, Region IX, Permits Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556–3450.

Dated: December 29, 1980.

Carl C. Kohmert, Jr.,

Acting Director, Enforcement Division, Region IX.

[FR Doc. 81–316 Filed 1–5–81; 8:45 am]

BILLING CODE 6560–38–M

[A–9–FRL 1720–7]

Sunland Refining Corp.; Issuance of PSD Permit

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to: Sunland Refining Corporation, 1017 N. La Cienega Blvd., Los Angeles, California, EPA project number SJ 79–22.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 22, 1980 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval of a two phase modification of an existing refinery located at 1850 Coffee Road, Bakersfield, CA.

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: 58.6 tons/year NO_x.

Best Available Control Technology (BACT) requirements include: Prior to completion of Phase I, installation of low NO_x burners on existing heater B; prior to completion of Phase II, installation of non-catalytic ammonia injection on heater B; new heater A will have low NO_x burners and non-catalytic ammonia injection prior to completion of Phase II.

The source is subject to New Source Performance Standards.

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 March 9, 1981.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecilia Dougherty, Permits Clerk, E–4–1, U.S. Environmental Protection Agency, Region IX, Permits Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556–3450.

Dated: December 29, 1980.

Carl C. Kohmert, Jr.,

Acting Director, Enforcement Division, Region IX.

[FR Doc. 81–316 Filed 1–5–81; 8:45 am]

BILLING CODE 6560–38–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 48]

Common Carrier Public Mobile Services Information

By the Chief, Common Carrier Bureau.

Applications Accepted for Filing

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of the applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period, (309)(c) of the Communications Act.

In order for an application filed under Part 22 of the Commission's Rules to be considered mutually exculsive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of public notice listing the first prior filed application, (with which the subsequent application is in conflict), as having been accepted for filing.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Domestic Public Land Mobile Radio Service:

20587–CD–P–81 Southern Message Service, Inc. (New) C.P. for a new two-way facility to operate on 152.03 MHz located 3 miles NE of Natchitoches on highway 6, Natchitoches, LA.

20588–CD–P–81 Radio Communications, Inc., (KWB404) C.P. for additional facilities to operate on 158.61 MHz located 3350 Mountain View Drive, Anchorage, AK.
20589–CD–P–81 Port City Communications, Inc., (KUD204) C.P. to change antenna system, replace transmitter and relocate facilities to operate on 152.24 MHz located WSAQ(FM) Tower—32nd Street at LaPeer Avenue, Port Huron, MI.
20590–CD–P–81 Kelley's Radio Telephone, Inc., (KLF604) C.P. for additional facilities to operate on 454.100 MHz located 7228—156th S.E. Snohomish, WA.
20592–CD–P–81 Illinois Consolidated Telephone Company, (KKB532) C.P. for additional facilities to operate on 158.10 MHz located 120 West Water Street, Hillsboro, Illinois. (One-way)
20192–CD–P–81 C–W Tele-Communications, Inc., (WXR929) C.P. for additional facilities to operate on 454.175 MHz located at 955 Progress Road, Chambersburg, PA.
20586–CD–P–81 Empire Paging Corporation, (KAA209) C.P. for additional facilities to operate on 152.24 MHz located Corner of Westview and Beechwood Drives, Danbury, CT. (one-way)
20189–CD–P–81 Industrial Communications of Pecos, Inc., (KKJ454) C.P. to change antenna system and for additional facilities to operate on 2179.0 MHz (control) located 2203 West 3rd Street, Pecos, TX.
20593–CD–P–81 Total Availability Services, Inc., (KIY508) C.P. to change antenna system and replace transmitter to operate on 72.94 MHz located at Pan American Bank Building, 250 North Orange Avenue, Orlando, FL.
20593–CD–P–81 Radio Communications, Inc., (New) C.P. for a new facility to operate on 152.24 MHz located at Hump Road, Hagerstown, MD. (one-way)
20595–CD–P–81 William G. Bowles, Jr. d/b/a Mid-Missouri Mobilfone, (WSI723) C.P. for additional facilities to operate on 158.700 MHz located 2 miles N. of Hwy. 60 & 25 Jct. and .4 mile W on gravel road, Dester, MO.
20596–CD–P–3–81 Tri-Com Services, Inc., (New) C.P. for a new facility to operate on 454.175 MHz (Base) at Sunlight Peak, 8 mi West of Carbondale, CO. (and for additional facilities to operate on 454.300 MHz, (Repeater) and 459.300 MHz (Control) at Carbondale, CO.
20597–CD–P–2–81 Airsignal International, Inc., (New) C.P. for a new facility to operate on 454.075 and 454.225 MHz located at 2625 S. Atlantic Avenue, Daytona Beach Shores, FL.
20303–CD–P–81 Able Communications, Inc., (New) C.P. for a new facility to operate on 152.06 MHz located 0.3 mile east of Timmonsville City Center, Timmonsville, S.C.
20598–CD–P–2–81 Tri-Com Services, Inc., (New) C.P. for a new facility to operate on 454.225 MHz (Base) Located at Red Mountain, 2.7 miles North of Aspen, CO., and 459.025 MHz (Control) at 295 Neal Street, #52, Aspen, CO.

Informative

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding ExPart Presentations by reasons of potential electrical interference.

Texas 152.24 MHz

Mobile Phone of Texas, Inc. (New) 22126–CD–P–80.
Danny Ray Boyer d/b/a Central Mobilfone (New) 22597–CD–P–80.

Corrections:

20412–CD–P–01–81, Correct to add facilities 454.350 MHz. All other particulars to remain as reported on PN #46 dated 12–17–80.

[FR Doc. 81-272 Filed 1-5-81; 8:45 am]

BILLING CODE 6712-01-M

[PR Doc. Nos. 80-762 and 80-763]

Harold C. Graham; Applications for Renewal of Amateur Radio Station License WD8SEM and for General Class Operators Licenses and for Citizens Band Radio Station License, Designation Order

Adopted: December 15, 1980.
Released: December 31, 1980.

1. The Chief, Private Radio Bureau, has under consideration the applications of Harold C. Graham, 666 Virginia Avenue, Franklin, Ohio 45005, for renewal of license of station WD8SEM in the Amateur Radio Service and for a General Class Amateur Radio Operator's License. Also under consideration is Graham's application for a Citizens Band license.[1]

2. Information before the Commission indicates that on August 10, 1979, Graham made radio transmissions on the frequencies 27.485 MHz and 27.505 MHz. those frequencies were both assigned for use by the Industrial Radio Services. Graham did not possess a license authorizing the use of those frequencies.[2] Thus, the operation was apparently in violation of Section 301 of the Communications Act of 1934, as amended. Moreover, if the apparent operation of August 10, 1979, was under the color of authority of Graham's Amateur station license WD8SEM, the operation was in violation of the following Amateur Radio Service Rules: 97.7(e) (limitations of Novice Class license); 79.61(a) (authorized frequencies); 97.89(a)(3) (communication with unauthorized station); 97.121 (transmission of unassigned call sign); and 97.123 (transmission of unidentified radio signals).[3] The conduct described above calls into question Graham's qualifications to have his Amateur station license renewed, to receive a higher class Amateur Radio Service Operator's license, or to be granted a Citizens Band radio station license.

3. Section 309(e) of the Communications Act of 1934, as amended, provides that the Commission shall designate for hearing applications when it cannot find that the public interest would be served by a grant of the application. Accordingly, IT IS ORDERED, pursuant to Section 309(e) of the Communications Act and Sections 1.973(b) and 0.331 of the Commission's Rules, that Graham's application for renewal of the Amateur station license, his application for upgrade to Amateur General Class, and his application for a Citizens Band radio station license ARE DESIGNATED FOR HEARING on the issues specified below.

4. IT IS FURTHER ORDERED, That if Graham wants a hearing on the application matters, he must file a written request for a hearing within 20 days.[4] If a hearing is requested, the time, place, and Presiding Judge will be specified by a subsequent Order.

5. IT IS FURTHER ORDERED, That the matters at issue in this proceeding will be resolved upon the following issues:

(a) To determine whether there were transmissions on August 10, 1979, in violation of Section 301 of the Communications Act of 1934, as amended or Sections 97.7(e), 97.61(a), 97.89(a)(3), 97.121, and/or 97.123 of the Commission's Amateur Rules.

(b) To determine whether grant of the application for Amateur station license renewal, Amateur Operator's license upgrade, and/or Citizens Band radio station license would serve the public interest, convenience and necessity.

6. IT IS FURTHER ORDERED, That pursuant to Section 1.227 of the Rules, the application proceedings on the Amateur and Citizens Band application are consolidated for hearing.

7. IT IS FURTHER ORDERED, That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the licensee, Harold C. Graham, at his address of record as shown in the caption.

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[1] Graham's application for Novice Class renewal is superseded by his General Class applications and is hereby dismissed. However, inasmuch as Graham filed for renewal of his Novice Class license before its expiration, he has continuing operating authority.

[2] On the date in question, Graham was the licensee of Amateur radio station WD8SEM. Graham also held an Amateur Novice Class Operator's license.

[3] The August 10, 1979 operation was the subject of an Official Notice of Violation for the Amateur Radio Service mailed to Graham on December 31, 1979.

[4] The attached form should be used to request or waive hearing. It should be mailed to the FTC, Washington, D.C. 20554.

Chief, Private Radio Bureau.

Raymond A. Kowalski,

Chief, Compliance Division.

[FR Doc. 81-274 Filed 1-5-81; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 75; "MPS—Automatic Coordinate Conversion Systems"; Notice of 8th Meeting; Wednesday, January 21, 1981—9:00 a.m.; Conference Room 7426, Nassif (DOT) Building, 400 Seventh Street, S.W., at D Street, Washington, D.C.

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Discussion of draft of Minimum Performance Specifications.

Mortimer Rogoff, Chairman, SC-75, 4201 Cathedral Avenue, N.W., Apartment 91W, Washington, DC 20016, Phone: (202) 362-5462.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-273 Filed 1-5-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2076]

Expert Forwarding, Inc.; Order of Revocation

On November 24, 1980, Expert Forwarding, Inc., 17 Court Place, Naperville, IL 60540, requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2076.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977;

It is ordered, that Independent Ocean Freight Forwarder License No. 2076 issued to Expert Forwarding, Inc., be revoked effective November 24, 1980, without prejudice to reapplication for a license in the future.

It is further ordered that Independent Ocean Freight Forwarder License No. 2076 issued to Expert Forwarding, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Expert Forwarding, Inc.

Daniel J. Connors,

Director, Bureau of Certification and Licensing.

[FR Doc. 81-304 Filed 1-5-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-85]

Waipuna Trading Company, Inc. v. Matson Navigation Company, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Waipuna Trading Company, Inc. v. Matson Navigation Company, Inc. was served December 19, 1980. The complaint alleges that respondent has subjected it to payment of unreasonable and excessive freight charges in violation of section 18(a) of the Shipping Act, 1916 by virtue of assessing charges found by the Commission to be unreasonable in Docket 76-43, *Matson Navigation Company—Proposed Rate Increase in the United States Pacific/Hawaii Trade.*

This proceeding has been assigned to Administrative Law Judge Seymour Glanzer. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 81-303 Filed 1-5-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-86]

Newark Truck International v. Prudential Lines, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Newark Truck International against Prudential Lines Inc. was served December 19, 1980. Complainant alleges that it has been subjected to payment of rates for transportation in violation of section 18(b)(3) of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 81-302 Filed 1-5-81; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3929]

Lease Agreement Between Board of Commissioners of the Port of New Orleans and Coordinated Caribbean Transport, Inc.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on this agreement will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and that preparation of an environmental impact statement is not required. For a description of this agreement, please refer to 45 FR 74995 (November 13, 1980).

This Finding of No Significant Impact (FONSI) will become final within 20 days unless a petition for review is filed pursuant to 46 CFR 457.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal

Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-305 Filed 1-5-81; 8:45 am]

BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0324]

Adoption of Fee Schedules and Pricing Principles for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Adoption of Fee Schedules and Pricing Principles.

SUMMARY: The Monetary Control Act of 1980 (Title I of Public Law 96-221) requires that fees be set for Federal Reserve Bank services. The Board has adopted a set of pricing principles for Federal Reserve Bank services and has established implementation dates on which fees for each of the services will become effective. A schedule of fees has been adopted for wire transfer of funds, net settlement, and automated clearing house services. Fee schedules for the remaining services will be announced in advance of their implementation dates.

EFFECTIVE DATE: December 31, 1980. On that date, all depository institutions will be eligible to deposit local checks in Federal Reserve Regional Check Processing Centers ("RCPC's"). On January 29, 1981, the fee schedule for the initial Federal Reserve Bank services to be priced—wire transfer of funds and net settlement—will become effective.

FOR FURTHER INFORMATION CONTACT: Lorin S. Meeder, Assistant Director for Federal Reserve Bank Operations (202/452-2738); Earl G. Hamilton, Senior Operations Analyst (202/452-3878); David B. Humphrey, Section Chief (202/452-2556); Myron L. Kwast, Economist (202/452-2686); Paul P. Burik, Economist (202/452-2556); Gilbert T. Schwartz, Assistant General Counsel (202/452-3625); Lee S. Adams, Senior Attorney (202/452-3623); Daniel L. Rhoads, Attorney (202/452-3711).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Monetary Control Act of 1980 ("Act") (Title I of Public Law 96-221) requires that fees be set for Federal Reserve Bank services according to a set of pricing principles established by the Board. The Act provides that the Board shall begin putting into effect a schedule of fees not later than September 1, 1981. Services covered by the fee schedules are to be made available to all depository institutions. The Board, in accordance with the requirements of the Act, published proposed pricing principles and a schedule of fees for comment on August 28, 1980 (45 FR 58689). The period for public comment expired on October 31, 1980. After considering the more than 230 comments received from the public (primarily from depository institutions and financial institution trade groups), the Board has adopted revised pricing principles, set a series of implementation dates on which fee schedules for each of the services will become effective, and approved fee schedules for several of these services. In preparing the pricing principles and fee schedules, the Board has taken into account the objectives of fostering competition, improving the efficiency of the payments mechanism, and lowering costs of these services to society at large. At the same time, the Board is cognizant of, and concerned with, the continuing Federal Reserve responsibility and necessity for maintaining the integrity and reliability of the payments mechanism and providing an adequate level of service nationwide.

II. Background

The Act specifies that fees are to be set for the following Federal Reserve Bank services in accordance with the pricing principles adopted by the Board:

(1) currency and coin transportation and coin wrapping;
(2) check clearing and collection;
(3) wire transfer of funds;
(4) automated clearing house (ACH);
(5) net settlement;
(6) securities services;
(7) noncash collection;
(8) Federal Reserve float; and
(9) any new services the Federal Reserve System offers.

The legislative history of the Act indicates that Congress had two objectives in establishing a requirement that the Federal Reserve price the services it provides. First, Congress sought to encourage competition in order to assure provision of these services at the lowest cost to society. While intending to stimulate competition, Congress did not wish to precipitate the reemergence of undesirable banking practices—such as non-par banking or circuitous routing of checks—which the Federal Reserve System was designated to eliminate. Also, Congress was concerned with ensuring an adequate level of services nationwide. Consequently, it charged the Board with adopting pricing principles that "give due regard to competitive factors and the provision of an adequate level of such services nationwide". This objective is clearly established in the pricing principles established by the Act.

Second, Congress was concerned with the amount of revenue lost to the Treasury due to the reduction in the level of aggregate required reserves resulting from the implementation of the reserve requirement provisions of the Act. Pricing for Federal Reserve Bank services will generate revenue that will partially offset the revenue loss associated with reduced required reserves.

III. Pricing Principles

In its August proposal, the Board proposed eight principles as a framework for establishing fees for Federal Reserve Bank Services. Principles one through four were required by the Act while proposed principles five through eight were added by the Board to amplify its policies with respect to the establishment of fees for, and the provision of, System services. These four additional principles [1] evoked substantial comment. Many commentators expressed concern that those principles suggested that the Federal Reserve System might engage in unfair competition. The Board believes the concerns expressed by commentators represent a misunderstanding of Federal Reserve intentions, and has accordingly modified the additional nonstatutory principles to address those concerns. As a result, proposed Principles 5, 7, and 8 have been restated, and proposed Principle 6 has been eliminated.

Public comments expressed concern with Principle 5 because it suggested that the Federal Reserve might subsidize some services for long periods and/or systematically cross-subsidize one service from the revenue of another, to the possible detriment of private competitors offering the same service. In proposing that principle the Board intended simply to recognize that pricing of Federal Reserve services could result in significant volume losses for some

[1] The four nonstatutory principles proposed by the Board in August were:

Principle:

5. The fee schedule shall, over the long run, be set to recover total costs for all priced services.

6. Fees shall be structured so as to avoid undesirable disruptions in service and to facilitate an orderly transition to a pricing environment.

7. The fee schedule, as well as service levels, shall be administered flexibly in response to changing market conditions and user demands.

8. Fee and service level incentives may be established to improve the efficiency and capacity of the present payments system and to induce desirable longer run changes in the payments mechanism.

services. In the short run, this would imply large changes in unit costs since many services have a high proportion of fixed costs. If prices were immediately adjusted upward, further volume losses would result simply because insufficient time had elapsed for Reserve Banks to have adjusted their fixed costs. Thus, the Board believed it desirable for Reserve Banks to have the flexibility to maintain prices long enough to adjust fixed costs.[2] The Board has restated Principle 5 to clarify these intentions. The principle also specifies that the Board will announce any decision to set fees for a service below cost if such fees are established in the interest of providing an adequate level of services nationwide. In light of the restatement of Principle 5, the Board deleted proposed Principle 6 because it was no longer necessary.

With respect to proposed Principle 7, some commentators expressed concern that the word "flexibly", as used in the principle, implied that the Federal Reserve might price in a predatory fashion in order to maintain or increase its market share. In fact, this principle was proposed by the Board only to indicate that the Reserve Banks should be sensitive to the changing needs for services in particular markets. Consequently, the Board has revised this principle, now renumbered as Principle 6. This principle also states that advance notice will be provided where a Reserve Bank makes fee changes or significant service level changes in accordance with it.

Comments on proposed Principle 8 focused on concerns that the Federal Reserve might use what was termed "incentive pricing" either to undermine the competitive position of private sector providers of services or to create additional barriers to entry. In addition, commentators suggested that it was inappropriate for the Federal Reserve unilaterally to determine what long-run changes in the payments system are in the public interest.

The Board proposed Principle 8 for two reasons. First, the Board wished to recognize the desirability of inducing more efficient utilization of Federal Reserve services. For example, pricing to induce off-peak use of Federal Reserve payment services may be one way to accomplish this goal. Second, this principle was proposed to indicate that certain services, such as ACH, might be supported for a period of time to foster development of efficient new technologies that would benefit the public in the long run. Public comment will be sought when a fee below cost is proposed in order to induce desirable longer-run changes in the payments system, as already has been done with the proposed ACH fee schedules. Accordingly, the Board has revised this principle, now renumbered as Principle 7, in order to clarify its intention.

Thus, the Board has adopted the following pricing principles, which incorporate both the specific statutory requirements of the Monetary Control Act and provisions intended to fulfill its legislative intent:

1. All Federal Reserve Bank services covered by the fee schedule shall be priced explicitly.

2. All Federal Reserve Bank services covered by the fee schedule shall be available to nonmember depository institutions and such services shall be priced at the same fee schedule applicable to member banks, except that nonmembers shall be subject to any other terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks.

3. Over the long run, fees shall be established on the basis of all direct and indirect costs actually incurred in providing the Federal Reserve services priced, including interest on items credited prior to actual collection, overhead, and an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm, except that the pricing principles shall give due regard to competitive factors and the provision of an adequate level of such services nationwide.

4. Interest on items credited prior to collection shall be charged at the current rate applicable in the market for Federal funds.

5. The Board intends that fees be set so that revenues for major service categories match costs (inclusive of a private sector mark-up). During the initial start-up period, however, new operational requirements and variations in volume may temporarily change unit costs for some service categories. It is the System's intention to match revenues and costs as soon as possible and the Board will monitor the System's progress in meeting this goal by reviewing regular reports submitted by the Reserve Banks. If, in the interest of providing an adequate level of services nationwide, the Board determines to authorize a fee schedule for a service below cost, it will announce its decision.

6. Service arrangements and related fee schedules shall be responsive to the changing needs for services in particular markets. Advance notice will be given for changes in fees and significant changes in service arrangements to permit orderly adjustments by users and providers of similar services.

7. The structure of fees and service arrangements may be designed both to improve the efficient utilization of Federal Reserve services and to reflect desirable longer-run improvements in the nation's payments system. Public comment will be requested when changes in fees and service arrangements are proposed that would have significant longer-run effects on the nation's payments system.

IV. Price Determination

The Monetary Control Act of 1980 requires that "over the long run fees shall be established on the basis of all direct and indirect costs actually incurred in providing Federal Reserve services priced." The Federal Reserve's cost accounting system provides the basis for calculating the total cost of major services (e.g., checks, wire transfer).

A. Private Sector Adjustment Factor

The Monetary Control Act requires that Federal Reserve fees take into account imputed taxes and financing costs that would have been incurred had System services been provided by a private firm. The proposed fees that were published for comment in August, 1980 included a private sector mark-up of 12 percent. This mark-up reflected a middle course between alternative models based on a sample of twelve large banking organizations—one model using the average cost of all bank funds and the other using the average cost of banks' long-term debt and equity only. When considering this issue, the majority of the comments received stated that the 12 percent mark-up was too low. The Board recognizes that no definitive mark-up can be calculated for the Federal Reserve for at least two reasons. The first is that there are various private competitors, including large correspondent banks and independent bank service corporations, that now offer or would offer payments function services that resemble those supplied by the System, and the costs of these competitors differ. Second, once the type of competitor is selected, the appropriate tax rate, interest rates on debt, and rate of return on equity must be ascertained. Such information may not be explicitly provided in the available financial statements prepared by firms representative of the selected type of competitor and must be inferred in order to calculate a mark-up. Despite

[2] Of course, as specified by the Act, the Board will require that Reserve Banks reduce their budgets to reflect long-run reductions in service volumes.

the inherent limitations on the precision with which a definitive mark-up can be calculated for the Federal Reserve, the Board believes that the methodology that was developed and modified in response to public comments is consistent with the requirements of the Act.

Comments on the Board's August proposals cited five major reasons for the alleged under-estimation of the private sector adjustment factor, focusing on the private sector's tax and financing costs. First, the 12% private sector adjustment factor (PSAF) did not reflect the cost of funds to banks during 1980. Second, it was claimed that the procedure used to estimate the short-term cost of funds improperly accounted for deposit liabilities and therefore had a downward bias. Third, the use of a tax rate which included the tax benefits arising from holdings of State and local securities was challenged. Fourth, the assumed capital structure did not correspond to that of actual private sector suppliers. Fifth, it was alleged that a mark-up based on firms other than large banking organizations may be more appropriate. These concerns are considered in more detail in Appendix I.

The Board believes many of the views expressed in these comments have merit. Therefore, by employing a matched capital structure, updating the financing costs to third quarter 1980, revising the procedures used to compute the average interest rate on short-term funds, and increasing the effective tax rate, a mark-up of 15.4 percent was generated. The procedure involved in the computation of the markup is presented in Table 2 of Appendix I. Recognizing the imprecision inherent in any attempt to impute the financing costs incurred and taxes paid by private sector suppliers, and in order to give further consideration to private sector concerns, on this occasion, the Board elected to adopt 16 percent as the PSAF. The Board intends to review the PSAF annually and will adjust it as appropriate.

B. System Costs and 1981 Fee Schedule

A number of commentators expressed concern that the fees published by the System were not based on the actual full costs of providing services. Other commentators expressed the view that use of 1979 costs as a basis for prices to be imposed in 1981 was inappropriate. The fees published by the Board in August were based on estimates of 1980 full costs of providing services and a 12 percent private sector adjustment factor.[3] The derivation of full costs was based on the Federal Reserve's Planning and Control System (PACS), which establishes accounting standards for the System. That system provides for the allocation of all Reserve Bank expenses to the so-called "output" services performed by the Banks. The cost accounting principles and procedures used in PACS are described in detail in manuals that are available to the public. The proposed pricing procedures discused by the Board in August indicated that fees would be reviewed at least annually in light of estimated costs of services for the ensuing year, including a possible revision in the private sector adjustment factor. Consistent with this procedure, the fee schedules for wire transfer and net settlement have been adjusted to reflect estimated 1981 costs and a PSAF of 16 percent. These two services will be priced and made available to nonmembers in January, 1981. No adjusted fee schedules have been adopted for any of the other services except ACH. It is the Board's intention to publish the revised fee schedules for the remaining services well in advance of their implementation dates.

C. Development Costs

The fees for wire transfer and net settlement include a provision for the costs of developing a new communications system (FRCS–80). In using the PACS full cost as the basis for setting Federal Reserve fees, an issue has been raised regarding the appropriate treatment for pricing purposes of software development and associated outlays. While PACS accounting principles require that these costs be treated as current expenses, the Board believes, for the reasons enumerated below, that fees should be set to recover these costs over future periods.

The spreading of development costs would serve several objectives:

1. Wide short-term fluctuations in fees due only to the timing and scope of development efforts would be avoided. These fluctuations might result in destabilizing shifts in volume, depending on demand elasticities. Even without immediate shifts, a volatile pattern of fee changes is undesirable, as it impairs the ability of users of System services to project their costs.

2. Spreading development costs would provide a more equitable matching of those customers bearing the costs with those realizing the benefits of development efforts.

3. Development efforts, viewed from a managerial standpoint, are investments to improve future levels of service and operational efficiency. Requiring that the entire cost of such efforts be recovered in the year in which they are incurred would create a substantial barrier to future development efforts.

4. While in the private sector, product development costs are expensed as they are incurred for financial reporting purposes economic factors rather than accounting conventions determine the price-setting process.

To establish a policy for spreading development costs, the Board has decided that (a) its use be limited to cases in which development costs would have a material impact on unit costs; (b) when used, conservative time periods should be set for full cost recovery; (c) a financing factor, to be based on the marginal cost of long term capital, should be applied to the deferred portion of development costs; and (d) the System should announce the use of this technique when it is applied. In developing the wire transfer fee schedule, the Board has used this technique to incorporate FRCS–80 development costs.

D. Pricing to Improve Service Efficiency (Incentive Pricing)

The Board's August proposal contained references to additional pricing concepts being developed to use surcharges or discounts to affect customer behavior, and thus encourage more efficient utilization of resources in payment services. Such pricing concepts could result in smoothing check and wire transfer processing workloads and reductions in check and ACH return items. The Board plans to complete development of a detailed proposal for this type of pricing by spring of 1981 and, if adopted by the Board, may incorporate such concepts in 1982 fee schedules.

E. Billing Procudures

The August pricing proposal contained no details about the procedures for billing by Reserve Banks. Commentators, however, were of the view that billing procedures should be uniform across Federal Reserve offices. A recent survey indicated that Reserve Bank billing procedures being developed in accordance with current System guidelines were not as uniform as desired by commentators.

The Board expressed its desire for greater uniformity and requested the System's Conference of First Vice Presidents to develop a uniform billing

[3] However, an exception was provided for ACH fees and a ceiling was imposed on fees for remote endpoint cash shipments.

cycle, a standard interval between presentation of the bill and debiting the charges to the account of a depository institution, and a minimum standard for information that will be provided to depository institutions to describe the charges made. The Board plans to announce the details of the System's billing procedures by February 16, 1981. After that announcement, each Reserve Bank will begin as soon thereafter as operationally feasible to develop and test its billing procedures with member banks using check services and with nonmember institutions with a clearing or reserve account using RCPC services. Such testing should continue for at least two billling cycles prior to the actual levying of fees.[4]

F. Clearing Balances

The Monetary Control Act imposes Federal reserve requirements on all depository institutions with transaction accounts or non-personal time deposits. Nevertheless, a number of member and nonmember depository institutions will maintain zero or negligible required reserve balances with the Federal Reserve because of the lower reserve ratios established by the Act or because of the phase-in provisions. These institutions may want direct access to some or all Federal Reserve services. However, their reserve balances held at Federal Reserve Banks may be considered inadequate for clearing purposes. Consequently, the Board will provide two alternative methods whereby depository institutions maintaining zero or negligible required reserve balances with Federal Reserve Banks will be able to receive Federal Reserve Bank services directly, in accordance with the access provisions of the Act.

The first method is for a depository institution to arrange with a correspondent institution or with its reserve pass-through correspondent to post all of its Federal Reserve credits and charges arising from its use of System services to the correspondent institution's or pass-through correspondent's Federal Reserve account. Such arrangements must comply with the requirements of the Federal Reserve Bank involved. The second method is for the depository institution, regardless of whether or not its reserves are held through a pass-through correspondent, to establish a clearing balance with its Reserve Bank to which Federal Reserve credits and charges may be posted. If the depository institution chooses the clearing balance method, the following procedures would apply.

The need for as well as the size of the clearing balance will depend upon the need for balances to avoid frequent or large daylight and overnight overdrafts. This evaluation will be made on a case by case basis in accordance with national guidelines. The size of the clearing balance may be revised monthly to reflect changes in the level and timing of an institution's transactions and the incidence of daylight and/or overnight overdrafts.

The Board's August proposal suggested that required clearing balances receive earnings credits equal to the 91 day Treasury bill rate. Many commentators suggested that the earnings credit rate should be the Federal funds rate, noting that the Act required that float be priced at the Federal funds rate. They also pointed out that a Federal funds earnings rate would provide a greater incentive for institutions to maintain clearing balances at required levels.

For these reasons, the Board has determined that earnings credits will be granted on the lesser of the actual or required clearing balance at a rate equal to the weekly average Federal funds rate. These earnings credits are not transferable between depository institutions and can only be used to offset charges incurred by the use of System services. However, if during a particular billing period a depository institution receives earnings credits in excess of the charges it has incurred for System services, it may carry over the credits and apply them to System service charges incurred at any time in the subsequent 12 months. Any excess credits remaining at the conclusion of the 12 month period are forfeited.

For monetary control purposes, the required clearing balance level will be fixed in advance of the period during which the balance must be maintained and must be met on average during a statement week. Each depository institution with a required clearing balance will have to maintain a required weekly average total balance—required clearing balances plus, if applicable, required reserve balances. At the end of each maintenance period any balances held with a Federal Reserve office will first be allocated to the clearing balance requirement and the remainder will apply to the required reserve balance. Thus, if a depository institution holds an average total balance with a Federal Reserve office during the maintenance period that is less than the required balance—required clearing balances plus required reserve balances—the depository institution will be considered to be deficient in reserves. If the deficiency in average total balances is greater than required reserves, the remaining shortfall will be considered deficient clearing balances. If the maintained total balance exceeds the required balance, the institution will be considered to be holding excess reserves. However, in the case where a depository institution elects to pass through its required reserves and in addition maintains a required clearing balance directly with a Federal Reserve Office, the required clearing balance will be administered separately from the required reserve balance.

Required clearing balances will be subject to a 2 percent carry over provision (which also applies to required reserve balances), but deficiencies in excess of this carryover will be subject to a penalty rate. Clearing balance deficiencies from zero to twenty percent (after the application of carryover) will be penalized at a 2 percent annual rate while deficiencies in excess of 20 percent (after carryover) will be penalized at a 4 percent annual rate. The maintenance period for required clearing balances will correspond to the maintenance period for required reserve balances. Depository institutions are expected to meet their clearing and reserve balance requirements on a continuing basis. Federal Reserve Banks will meet with depository institutions that demonstrate an inability to maintain required balances or that incur repeated penalties to discuss how better to manage required total balances. Procedures regarding clearing balances will apply to all depository institutions as well as Federal Home Loan Banks.

G. Pricing Administration

The pricing proposals published for comment divided fees into those that would be administered locally and those that would be administered nationally. National fee schedules would be uniform throughout the System and are associated with services that are generally capital intensive and have similar long-run costs across Districts. National fee schedules were proposed for wire transfer, net settlement, ACH, and on-line securities transfer services. Fee schedules that vary by Federal Reserve District or office were proposed for services where there are significant cost differences across District (or across separate offices within the District) and/or where the market for that service is local in scope. District fees were proposed for coin wrapping, securities and noncash collection

[4] All nonmember depository institutions will have RCPC check services available to them beginning December 31, 1980. Nonmembers with a reserve or clearing account would obtain test bills for RCPC services during the test billing period.

services, while office fees were proposed for currency and coin shipping services. The Board proposed that Reserve Banks be given the option to set fees for check services on either a District or office basis.

It is contemplated that national price changes will be reviewed by the Conference of First Vice Presidents and local prices could be changed by each Reserve Bank. Any change in fees would be done in accordance with the pricing principles adopted by the Board. However, during the initial phases of pricing, it is anticipated that issues of service and pricing policy will arise that could have significance for the long-term role of the Federal Reserve in the payments mechanism. To deal with these issues during the implementation period, a Pricing Policy Committee, consisting of representatives from the Board and the Reserve Banks, has been established to review all major changes in fees and service levels.

V. Specific Services

A. Wire Transfer/Net Settlement

The proposed fee schedules published in August were based on 1979 actual costs adjusted for anticipated 1980 cost increases and a 12 percent private sector adjustment factor. These cost estimates have now been revised to reflect estimates of 1981 costs and volume as well as the recommended 16 percent private sector adjustment factor. In addition, the revised fee schedules include FRCS–80 development costs attributable to the wire transfer function, which have been allocated over the 10 year estimated useful life of this system. Off-line originator and telephone advice fees have been adjusted to reflect the increases in personnel and communications costs.

These adjustments result in a schedule for wire transfer fees as follows:

Fee Schedule—Wire Transfer

[Effective Jan. 29, 1981]

	Telephone advice	
	No	Yes
Originator on-line	$0.80	$2.60
Originator off-line	3.50	5.30
Receiver off-line		[1] 1.80

[1] Fees for advices requested by originators will become effective Mar. 26, 1981.

In the August proposal, telephone advices provided to off-line receivers were to be charged to the requesting party. Some commentators suggested that since the telephone advice primarily benefits the receiver, that party should bear the cost regardless of who requests the advice. The Board believes that the party requesting the service should bear the cost because that party is the one contracting with the Federal Reserve for the telephone advice.

Under present procedures the originator of a wire transfer may not know if the receiver is on-line or off-line. Consequently, the originator nay not know if a telephone advice is necessary. The Reserve Banks have prepared a directory for on-line originators that contains information to enable originators to select the appropriate message type code and thereby ascertain the cost associated with each transfer. In order to provide originators with time to modify their operations to be able to take account of such encoding, the Board determined that the fee for telephone advice requested by the originator will be delayed until March 26, 1981.

In some cases, originators of wire transfers do not request that telephone advices be made to the off-line receivers. Because the receivers are never certain when a wire transfer may be arriving, they may place a standing order with their Reserve Bank for telephone advice of all wire transfers that are not requested by the originator. In order to service such receivers of wire transfers, all Reserve Banks will offer standing order telephone advice service if sufficient demand should develop for this service. In these cases, the receiving institution will be charged for this service. Fees for the standing order telephone advice will go into effect on January 29, 1981.

The fees for net settlement services, in which a third party typically requests the Reserve Banks to post entries to reserve accounts as a result of clearing arrangements outside of the Federal Reserve, were proposed to be the same as the fees for wire transfer. Accordingly, the net settlement prices were adjusted in the same manner as wire transfer prices.

Fee Schedule—Net Settlement

[Effective Jan. 29, 1981]

Basic settlement charge per entry	$0.80
Surcharges:	
Settlement Originated Off-Line	2.70
Telephone advice requested	[1] 1.80

[1] Fees for advices requested by originators will become effective Mar. 26, 1981.

B. Check Clearing and Collection

Many commentators indicated that the introduction of pricing and open access, together with float reduction efforts, will significantly affect the evolution of the nation's payment systems, the pattern of customer relationships, and the role of Reserve Banks as providers of financial services. These commentators urged the Board to adopt a more deliberate schedule for instructing these charges in order to allow the private sector an opportunity to identify and evaluate service alternatives, to redefine pricing and marketing strategies, and to adjust to Reserve Bank billing arrangements.

In response to these comments, the Board has decided to delay pricing and full nonmember access to check clearing and collection services until August 1, 1981. However, in view of the December 31, 1980 effective date for NOW accounts for all depository institutions and in order to limit the impact of delaying nonmember access to check collection services, the Board has decided to authorize access to current RCPC arrangements without charge to all nonmember depository institutions. It should be noted that nonmember commercial banks currently are permitted to deposit local items in RCPC's.

Because they must be manually processed, return items contribute disproportionately to the System's total check clearing and collection costs—approximately one percent of all checks deposited for collection with the Federal Reserve are returned and account for eight percent of check clearing expenses. However, a separate charge for return items was not included in the original Board proposal because it was believed that such fees would probably not be sufficiently high to have a significant impact on the behavior of the paying institution or its customers. In addition, a separate fee for return items would add a further complication to the fee schedule and administration. Many commentators have argued that the failure to charge separately for return items, under a price schedule intended to recover all Federal Reserve costs, unfairly increases the fee for all non-returned checks. Thus, though a separate charge might not change the behavior of participants in the collection system, it would more equitably place the cost on the parties responsible for return items.

The Board has endorsed the concept of separate pricing for return items and will publish a proposal for comment during 1981, with the intent of implementing separate fees for return items in the 1982 pricing structure. In March 1981, the Board will publish a final fee schedule for check clearing and collection services to reflect estimated 1981 costs and a 16 percent private

sector adjustment factor. The check fee schedule for 1981 will be set to fully recover all costs, including return item processing costs. When return items are separately priced in 1982, other fees in the check schedule will be reduced.

C. ACH

Commercial ACH service fees published in August were based on mature volume costs, rather than on current costs. Commentators generally supported this decision as necessary to encourage the development of electronic funds transfer, provided that the Federal Reserve disclose the total costs associated with providing ACH services, define a mature volume environment, and set a specific deadline for pricing to recover full costs. Concern was expressed by some commentators that pricing at less than full cost could act as a barrier to possible new private sector ACH operations.

The Act provides that over the long run, fees should be based on total costs. proposed ACH prices are based on staff estimates of costs at an annual volume of approximately two billion items, which it is believed can be achieved in approximately five years. Maintaining prices at or near their current levels as volume increases and unit costs decline should result in a declining level of Federal Reserve support for each ACH item processed. Continuing this procedure in the future would enable the System to recover some or all of its development costs. The Board will review the fee schedule for ACH services on an annual basis to determine the appropriateness of continuing its ACH pricing policy.

The Board has considered the impact its ACH pricing policy may have on the development of private sector alternatives to the existing ACH network. It concluded that its pricing policy is in the public interest, will result in a more efficient payments mechanism in the long run and is consistent with the objectives of the Act. Most private commentators agreed with this position.

The August proposal stated that charges for all services will be levied against the party originating the transaction or requesting the service. There is general agreement that Federal reserve charges should be levied on the *originator* of an ACH *debit*. However, several commentators requested the Board to levy charges on the receiver of an ACH credit. The receiver is the party that, if the transaction were made by check rather than ACH, would incur the expense of sending the check for collection. To charge the originator of an ACH credit could discharge financial institutions from marketing ACH credit transactions. Since a depository institution is under no obligation to participate in an ACH arrangement, it can choose to avoid this cost by informing its depositors that the institution will not handle such transactions. Accordingly, the Board has determined that the charge for the processing of an ACH *credit* be imposed on the receiver. (No charge would be levied on the receiver of a U.S. government direct deposit credit; these items are handled by the Federal Reserve as part of its fiscal agency function.)

The Board's proposal provided that members of an ACH association could have charges for ACH services made either through the association or directly at the member's option. Comments from some ACH associations, including the National Automated Clearing House Association, requested the System to levy all ACH charges for association members through the association and not provide the opportunity for direct billing. These commentators noted a parallel in net settlement services where it was proposed that all charges would be made to the clearinghouse for its members. Associations also felt their own billing procedures would be simplified. The Board is of the view that the relationship between the System and the ACH association does not parallel the relationship established for net settlement services, since in the latter instance the service does not result in the processing of individual transactions. The Board believes that the issue of requiring ACH association members to receive charges for ACH services through the association should be resolved through private agreements. It would be inappropriate for the System to become involved in the enforcement of such private arrangements. Thus, charges for ACH services will be imposed through the ACH association if the association so requests, unless an individual member requests direct billing from the Reserve Bank.

In its comment, the New York Clearing House, which sponsors the New York Automated Clearing House Association (NYACH), stated that the proposed inter-ACH price did not give sufficient recognition of the processing performed by NYACH. Accordingly, NYACH requested that the Federal Reserve reimburse it for the reduction in Federal Reserve costs for items NYACH processes. The Board believes that the original pricing structure is still appropriate because users of the ACH are not being charged at full cost. The Board finds insufficient justification to reimburse NYACH at the present time because the revenues from ACH services will not cover Federal Reserve costs.

Access to, and pricing of, ACH services will commence on the same date as check collection services (August 1, 1981) using the following fee schedule published in the August proposal.

Fee Schedule—Automated Clearing House Services

[Effective Aug. 1, 1981]

Federal Reserve District	Intra-ACH debits originated and credits received (cents per item)	Inter-ACH debits originated and credits received (cents per item)
Boston	1.0	1.5
New York	0.3	1.2
Philadelphia	1.0	1.5
Cleveland	1.0	1.5
Richmond	1.0	1.5
Atlanta	1.0	1.5
Chicago	1.0	1.5
St. Louis	1.0	1.5
Minneapolis	1.0	1.5
Kansas City	1.0	1.5
Dallas	1.0	1.5
San Francisco	1.0	1.5

D. Cash Transportation and Coin Wrapping

The Board's proposed fee schedules for currency and coin services were the subject of substantial comment. Commentators expressed concern over the disparity of prices for services across and within districts. Concern was also expressed over the methodology used in establishing the various zones used to determine prices for delivery of coin and currency; in the opinion of some commentators, the zones appeared to be arbitrary. Questions were also raised concerning the proposed service levels. Commentators also expressed the opinion that the proposed prices and service levels could cause a deterioration in the quality of currency. Several commentators also were concerned that full cost recovery for these services would result in significant increases in charges for rural and remote endpoint deliveries as urban institutions drop the services.

The Board believes that the commentators have raised significant concerns with respect to the currency and coin fee schedules proposed in August. Therefore, the pricing of currency and coin delivery services will be reviewed. In order to provide an opportunity for public comment on a revised schedule, the pricing of coin and currency delivery and coin wrapping services will be delayed until January, 1982.

E. Purchase, Sale, Safekeeping, and Transfer of Securities

Only a few public comments were received on the Board's proposed fee schedule for securities services. Of those commenting, several suggested that the Treasury Department and various Federal agencies should absorb all or a portion of the costs of book-entry and secondary market transfer services offered by the Reserve Banks for Treasury and Federal agency securities.

The Treasury and various Federal agencies, which derive direct and indirect benefits from the Federal Reserve's book-entry and securities transfer services, reimburse the Reserve Banks for the expenses associated with issuing and paying book-entry securities. The aspects of these services that would be priced relate to secondary market activities—transactions between two private parties. Before the Federal Reserve offered book-entry arrangements, these transactions were handled by, and at the expense of, the parties involved. Thus, the direct benefits of the lower cost and more effective and secure services offered by the Federal Reserve for the safekeeping and transfer of these securities accrue to the users of the service. In this respect, the pricing structure provides a reasonable balance in the sharing of costs and benefits of the services between the public and private sectors.

The Board has adopted the proposed October, 1981 pricing for, and nonmember access to, securities services. A revised fee schedule will be developed, based on estimates of 1981 costs and a 16 percent private sector adjustment factor. These revised fees will be published in the first quarter of 1981.

The New York Federal Reserve Bank has for some time imposed a schedule of surcharges on securities transfers initiated by wire during peak hours. This procedure was implemented in an attempt to remedy computer capacity limitations at that Bank. The Board has authorized the New York Federal Reserve Bank to continue to apply a surcharge schedule, pending Board review of the general questions of incentive pricing in the Spring of 1981.

F. Noncash Collection Service

The proposed fee schedule for noncash collection published in August received no significant comment. The Board adopted the proposed October, 1981 pricing for and nonmember access to, this service. As in the case of securities, fees for noncash collection services prices will be based on 1981 cost estimates and a 16 percent private sector adjustment factor.

G. Float

The Federal Reserve's August pricing proposal suggested a three phase effort to reduce and/or price Federal Reserve float. Phase I would reduce float through operational improvements which would speed up the collection process and, thus, debit payor banks more promptly. Phase II would adjust availability schedules for depositing banks to reflect actual collection time more closely. Phase III would price any remaining float and incorporate this charge into the price of the service creating the float.

Commentators generally endorsed Phase I because payor banks and their customers will bear the greater burden of the cost of the loss of float while collecting banks will bear the lesser expense for operational improvements. A number of commentators requested the opportunity to comment on one proposed Phase I improvement, electronic check collection.

The main concern about the remainder of the Federal Reserve's float proposal centered on using fractional availability to adjust credit availability schedules to depositors. Most commentators opposed the use of fractional availability as being too complex and costly and inconsistent with general banking practice. A number of commentators also noted that Phases II and III, unlike Phase I, transfer the cost of float reduction and pricing to depositing banks.

As a result of these comments, further analysis is underway. This analysis will consider fractional availability and other float pricing alternatives such as charging the payor bank for float, expanding Phase I further to eliminate the need for Phase II, and the elimination of interterritory transportation float by the so-called "immediate advice of credit" approach. This analysis will also address the operational impact of various alternatives on the users of Federal Reserve services. Recommendations will be presented to the Board in 1981.

VI. Cost and Competitive Concerns of Member Banks

Almost all member bank commentators expressed their concern that the Board's proposed schedule for pricing might place them at a competitive disadvantage. They observe that they continue to bear a higher reserve burden than nonmember institutions for eight years, yet by the Fall of 1981 they would be on an equal basis with nonmembers with regard to access and charges for System services.[3] Many of these commentators noted that the Act does not require that pricing begin until September, 1981.

Table I shows Board staff estimates of the temporal pattern of member bank gains and losses resulting from the combination of reserve requirement reductions and pricing of Federal Reserve services under the Monetary Control Act. Line 1 indicates the likely increase in costs due to the pricing of Federal Reserve services and the reduction or pricing of Federal Reserve float. The extent to which service fee costs might be passed on to bank customers is not known and is not allowed for in the table. However, float reductions obtained through operational improvements—debiting accounts more promptly—are *not* included as a direct cost to member banks. These costs, about 50 percent of total float, will likely be absorbed by account holders at member banks who will find their accounts debited more promptly than before when cash letter presentment is expedited. Line 2 of the table indicates the gain to member banks from the reserve requirement reductions scheduled in the Act.

The net impact of these extra costs and revenues is shown in line 3. In the aggregate, member banks will experience positive net revenues under the Monetary Control Act. These aggregate figures, however, may mask possible negative net revenues for some member banks in some years. It is estimated that negative impacts, which appear to primarily affect medium size correspondent banks, would be substantially eliminated if member banks pass through only 50 percent of the direct cost of Federal Reserve priced services.

[3] In addition, access to System services by nonmembers may reduce member bank revenues from correspondent business. Pricing of Federal Reserve services, however, may improve a correspondent's competitive position, offset this effect, and increase correspondent revenues.

Table I.—*Projected Member Bank Costs and Revenues*[1]

[In millions of dollars]

	1981	1982	1983	1984	Total
1. Member bank cost of services and float	$199	$895	$996	$1,107	$3,197
2. Member bank revenues from reserve requirement reductions	590	1,112	1,736	2,275	5,713
3. Net impact (2-1)	391	217	740	1,168	2,516

[1] Uses 1980 deposit structure, 13% opportunity cost of reserves and float; 10% cost inflation rate for priced services (net of productivity improvements); 10% growth in float; 8% deposit growth rate (including NOW accounts); 1981 estimated service costs; a 16% mark-up; *new* pricing/access schedules; published float reduction goals; and current phase-down schedules for reserve requirements.

In evaluating the concerns of member banks, it was noted that Congress did not intend the Monetary Control Act to increase the burden on member banks.[5a] However, any significant delay in the pricing schedule either because of equity concerns or for any other reason, would increase the cost of the Act to the Treasury in 1981 beyond those estimates provided to the Congress. It would also delay nonmember bank access to important payment services. The same increased Treasury costs results would result if temporary price discounts or earnings credits on reserves were given to member banks to reduce their cost of services during a transition period.

The Board also noted that the delays in the implementation schedule, while adopted for operational reasons, will have the effect or reducing significantly the cost burdens on member banks in 1981. When considering the advisability of taking additional steps to reduce the relative burden of members, the following factors were evaluated: (1) the difficulty of identifying those specific member institutions liable to incur serious initial adverse impacts; (2) the operational complexity inherent in any remedy designed to ameliorate the actual incidence of these impacts; (3) the possibility that members initially adversely affected could offset these impacts by passing through to their customers the costs of Federal Reserve services; and (4) the consequent increases in Treasury costs. The Board concluded that the adoption of an additional delay in service access and pricing, a price discount policy for members, or earnings credits on member bank reserve balances is unwarranted at this time.

By order of the Board of Governors of the Federal Reserve System, December 30, 1980.

Theodore E. Allison,

Secretary of the Board.

Appendix I—The Private Sector Adjustment Factor (PSAF)

In accordance with the Monetary Control Act of 1980 the Federal Reserve is required to price its services to reflect its actual costs plus the financing and tax costs that a private sector supplier would incur. Since the System's cost accounting information does not include these private sector costs, it is necessary to derive an adjustment factor or mark-up to apply to the System's cost accounting data.

The first step in deriving the private sector adjustment factor requires a determination of the value (at historical cost) of the System's assets employed in the production of priced services. The value of assets used by the System to execute its central bank functions, supervisory and regulatory responsibilities, and duties as the Treasury's fiscal agent have been excluded. The composition of the asset base for priced services is shown in Table 1 and totals $284.9 million.

The capital structure is assumed to approximate that of large correspondent banks' payments function service operations. It is comprised of 45% debt (21% short-term and 24% long-term) and 55% equity. When the average tax and interest rates and the average rate of return on equity of the sample of large banking organizations are applied to this capital structure, a 15.4% private sector adjustment factor is derived.[6] Although the Board accepted the methodology used to derive the 15.4% mark-up, it adopted a 16.0% private sector adjustment factor. The Board decided that a rounding up of the PSAF was appropriate in this instance, after giving consideration to the inherently limited precision of the procedures used to derive the PSAF.

As indicated above, the Board proposed a 12% PSAF in August. Commentators asserted that a 12% PSAF substantially underestimated the tax and financing costs borne by the System's private sector competitors. The under-estimate was attributed to five major sources: (1) the failure to reflect 1980 cost of funds data, (2) the improper treatment of interest on deposits subject to Regulation Q, (3) the use of tax rate reflecting tax benefits not necessarily available to correspondent operations, (4) the use of a capital structure which did not coincide with that observed for private sector suppliers, and (5) the use of an alternative model for the computation of the PSAF (bank service corporations). These concerns are discussed below.

Use of 1980 Cost of Funds. The earlier 12 percent mark-up was based upon information published in the annual reports of 12 large banking organizations for year-end 1979.[7] These data were updated using financial reports for the third quarter of 1980. The average interest rates on all types of debt rose between year-end 1979 and the third quarter 1980, with the increase in the average interest rate on short-term bank funds being relatively large.[8] Using updated cost information, the proposed mark-up increased 0.8 of a percentage point to 12.8 percent.[9]

Low Cost of Short-term Bank Debt. A number of commentators felt that the average interest rate for short-term debt used in the August proposal (6.91 percent) was too low. They attributed this to a failure to recognize the effective, as opposed to the contractual, rate of interest paid on deposits subject to Regulation Q. They contended that deposits arising from payments function operations would typically earn an implicit rate of interest (in the form of services provided to depositors). In addition, the non-deposit components of short-term debt did not include interest paid on several categories of discount liabilities, such as acceptances, since such information cannot be identified on banks' financial reports. The interest rate paid on these liabilities is at a market rate. To the extent that banks' payments function operations require short-term financing from non-deposit sources, such financing would therefore be obtained at market rates.

[5a] For example, Senator Proxmire, during Senate consideration of the Monetary Control Act, said that:

It is not the intent of the legislation to provide access to Fed services immediately or without charge. To do so would put members at a competitive disadvantage since they are now holding reserves that are interest free, and those reserves will be gradually reduced over four years. Nonmember reserves will be phased-in over eight years, so the combination of that long phase-in period and the fee schedule will have to be taken into consideration. After the eight year period there will be no differences in reserves, nor should there be differences in access to Fed services, but until then it is likely that there will be differences. The final judgment on just what those differences will be is left to the Federal Reserve Board. 126 Cong. Rec. S 3167 (March 27, 1980).

[6] This PSAF is based upon a cost of capital of 16.8% as described in footnote 3 to Table 2.

[7] The financial reports of BankAmerica, Citicorp, Chase Manhattan, Manufacturers Hanover, J. P. Morgan, Chemical, Continental Illinois, Bankers Trust, First Chicago, Western Bancorporation, Security Pacific and Wells Fargo were used.

[8] Numerous commentators urged the adoption of mark-up based on the marginal tax rate, interest rates on debt, and rate of return on equity rather than the average rates. The Board believes that it would be inappropriate to use marginal costs because the mark-up is intended to impute the financing costs that the Federal Reserve itself would be incurring on its existing capital equipment as if it were a private business firm.

[9] Using data for the first three quarters of 1980, the average interest rates were 8.17% for short-term debt and 8.66% for long-term debt. The pre-tax average rate of return on equity was 20.3%.

In light of these arguments, the Board adopted a revised procedure for the calculation of the average interest rate on short-term debt. By deleting domestic demand deposits from the calculation of the average short-term interest rate, the revised procedure (in addition to updating to 1980) increase the average interest rate on short-term funds to 10.44 percent and raised the mark-up by an additional 0.7 of a percentage point to 13.5 percent.

Changing the Tax Rate. The tax rate used in the August proposal was 26 percent, the value-weighted average of the effective tax rates applicable to all of the operations of the 12 large banking organizations.

First, some confusion arose because the procedure employed to calculate the tax rate is not that typically used by accountants. Several different measures of tax rates have been developed. Accountants compute a firm's tax rate in any given year by dividing its tax *liability* by gross income. This procedure can be misleading from an economic standpoint. The tax liability associated with the gross income recognized in any year can be dichotomized into taxed paid (due) in that year and taxes which will not be remitted until another year. The latter component is known as deferred taxes. Deferred taxes should not be treated as a cost in the year they are declared. The 26 percent tax rate used in the August proposal was an average of *effective* tax rates, each computed by dividing taxes paid by gross income.

A second criticism of the 26 percent tax rate was that it exaggerated the tax benefits associated with correspondent operations. Commentators concentrated on the inclusion of tax benefits that banks derive from their portfolios of tax-exempt State and local government securities and other tax preferenced assets, such as leases. The commentators argued that tax exempts are not held in conjunction with, or as a result of their payments function service operations and the relevant tax rate is therefore substantially closer to 46 percent (the statutory Federal rate).

The Board accepted the concept that each function of a bank should be assumed to pay taxes at a rate that would be associated with the income and tax rate applicable to a particular bank operation. Publicly available financial reports provide little specific information on this matter. As a result of the uncertainty surrounding the effective tax rate appropriate to payments function operations, the Board's August proposal used an average effective tax rate reflecting the average effective tax rates of all operations undertaken by banks.

While the Board found merit with the commentators' concern that the average effective tax rate associated with payments function operations is higher than that of the bank as an integrated entity, the Board did not adopt an average rate for several reasons. First, the plant and equipment employed in these operations would yield two forms of tax benefits. To the extent that a faster depreciation schedule is used for tax purposes than for financial reporting, deferred taxes would arise. In addition, newly acquired plant and equipment may have qualified for investment credits. Not only would it be inappropriate to ignore these benefits, but it should be recognized that correspondent payment services are relatively capital intensive and would therefore provide a greater relative tax benefit to these organizations than to the bank as an integrated entity.

Other factors are related to the treatment of a particular function's earnings. If earnings from payments function services are reinvested in another function, but all revenues, costs, and tax benefits are passed back to the payments function operation, that operation can exploit the full range of tax benefits (including those from State and local securities, loan loss provisions, and leasing activities) available to the bank as an integrated entity. Economic theory provides some support for this position. To the extent that a bank achieves cost economies by integrating different operations, the costs (including taxes) of the individual operations are not additive. That is, the sum of the costs that each operation would independently incur is greater than the bank actually incurs because of its ability to exploit economies of offering diverse services. Where there are customer tie-ins between services, the cost of offering a package of services can be less than the cost of providing the same combination of services separately.

Cognizant of these factors and the difficulties involved with their accurate measurement, the Board decided to increase the effective tax rate to 34%. This estimate of the effective tax rate applicable to payments function operations was obtained by calculating the average effective tax rate on tax-equivalent income for the sample of twelve large banking organizations. The higher effective tax rate caused the pre-tax rate of return on equity to increase to 22.7 percent (based on the updated 1980 costs) and thereby caused the mark-up to increase by an additional 1.1 percentage points to 14.6 percent.

Underlying Capital Structure. The 12 percent mark-up was based on a capital structure midway between those underlying the two alternative mark-ups presented to the Board in August. The capital structure underlying both markups exhibited characteristics of the capital structure of twelve large banking organizations. The capital structure consistent with the lower mark-up replicated the average capital structure of the sample. Therefore, it was characterized by a very high proportion of short-term debt (assumed to include deposits) relative to the proportion of long-term debt and equity. The capital structure used to derive the higher mark-up was composed only of long term debt and equity. While not necessarily inappropriate, it was not obvious that the compromise capital structure would change in a systematic fashion as the composition of System assets devoted to the provision of priced services changed.

The Board adopted an alternative approach assuming that the System has a "matched" capital structure. With such a structure all of the System's "long-lived" assets are assumed to be financed with long-term debt and equity and all of the System's "short-lived" assets are assumed to be financed with short-term liabilities. Under this approach, the assumed Federal Reserve capital structure is dependent upon the composition of the System's assets devoted to the provision of services.[10] Compared to the capital structure assumed in the August proposal, the "matched" capital structure has a lower proportion of short-term debt and a higher proportion of long-term debt and equity. By employing a "matched" capital structure, updating the financing costs to third quarter 1980, revising the procedure used to compute the average interest rate on short-term funds, and increasing the effective tax rate, a markup of 15.4 percent was generated. The procedure involved in the computation of the mark-up is presented in Table 2. Recognizing the imprecision inherent in any attempt to impute the

[10] Federal Reserve buildings, furniture, equipment and other real estate were classified as "long-lived" and assumed to be financed by 30 percent long-term debt and 70 percent equity. These percentages were based upon 12 large banking organizations' composition of long-term debt or equity as a percent of long-term debt plus equity. Short-lived assets (difference and suspense accounts, net, and deferred charges) were assumed to be totally financed by short-term debt. With this approach, the assumed Federal Reserve capital structure becomes 21 percent short-term debt, 24 percent long-term debt, and 55 percent equity. Table 1 provides more detailed information regarding the System's assets devoted to the provision of priced services.

financing costs incurred and taxes paid by private sector suppliers, the Board rounded the private sector adjustment factor up to 16 percent.[11]

Table 1.—*Assets Employed in the Production of Priced Services*[1]

[Dollars in millions, 1979]

"Short-lived" assets:	
Difference and suspense act., Net[2]	$134.3
Deferred charges[3]	3.4
Total[4]	137.7
"Long-lived" assets:	
Bank premises, net	409.3
Furniture and equipment, net	85.1
Other real estate	27.4
Total	521.8
Total assets	659.5
Assets of priced services[5]: $659.5 (.432)	284.9
"Short-lived" assets	59.5
"Long-lived" assets	225.4

[1] Source: Board of Governors of the Federal Reserve System, *Annual Report*, 1979.

[2] The Difference and Suspense Account, Net figure in Table 1 is not equal to the net figure that can be computed from data presented on pp. 308-9 ($181.9 million) of the *Annual Report* for two reasons. First, the *Annual Report* figures refers only to year-end 1979. Since this value fluctuates month to month over the year, an average of the 12 month-end figures over 1979 (giving $292.0 million) was used. Second, the figure reported in Table 1 incorporates the estimated impact of an important accounting change made in 1980. This accounting change transferred some 54% of the net Difference and Suspense Account value to check float, where it more properly belongs. This 54% figure is based upon the average of check suspense items (net) to total suspense items (net) for the first three months of 1980 at all Reserve Banks. Thus, the Difference and Suspense Account, net figure shown in the Table was computed as $134.3 million = (1 − .54) $292.0 million.

[3] Deferred Charges are not separately reported in the *Annual Report*, but are included in the "All Other" figure on p. 308.

[4] A preliminary fee schedule for check and ACH services was forwarded to Congress in November 1978. At that time "Overdrafts" were included among the System assets to be financed. They are no longer treated in that manner because an institution incurring an overdraft can be required to maintain excess balances equal to the amount of the overdraft in the subsequent period in addition to being penalized at a rate of ten percent. Therefore such overdrafts are, in effect, "self-financing".

[5] Those assets which could be explicitly identified as supporting a nonpriced service are not included in Table 1. Other assets which supported both priced and nonpriced services required different treatment. The cost of priced services (less shipping expenses) represented 43.2% of total System costs (less note issue and shipping expenses). This ratio is applied to the total asset base of $659.5 million (which supports both priced and nonpriced services) to determine the value of assets allocable to the priced services alone. Shipping and note issue expenses represent "passed through" private sector or U.S. Treasury costs and are excluded from the ratio since little or no Federal Reserve assets are involved in their production.

Table 2.—*The Calculation of the Private Sector Adjustment Factor*

[Dollars in millions]

	Percent	
Capital structure: [1]		
Short-term debt	21	$59.5
Long-term debt	24	67.4
Equity	55	158.0
Asset base	100	284.9
Financing costs: [1]		
Short-term debt (at 10.44 percent)		$6.2
Long-term debt (at 8.66 percent)		5.8
Equity (at 22.7 percent, before taxes)		35.9
Total assumed financing and tax expenses		47.9
Cost of system services to be marked up		310.7
Private sector adjustment factor (percent) [2]		15.4

[1] Using the "matched" capital structure, it is assumed that all "short-lived" assets (valued at $59.5 million in Table 1) are financed exclusively with short-term debt and that all "long-lived" assets (valued at $225.4 million in Table 1) are financed with a combination of long-term debt and equity. The particular combination used, 30% long-term debt and 70% equity, was the average ratio of long-term debt to long-term debt plus equity for 1979 as well as the five year period from 1975 through 1979 for 12 large banking organizations.

[2] During the first 9 months of 1980 the 12 large banking organizations sampled paid an estimated average effective short-term interest rate of 10.44% and an average long-term interest rate of 8.6%. Their average after-tax rate of return on equity was 15.0%. The 34% effective tax rate was derived using year-end 1979 data due to the absence of an allocation of the tax liability into current and deferred categories and the absence of a report of the tax benefits derived from holdings of State and local securities in the financial reports for the third quarter of 1980. Using the 34% effective tax rate, an average pre-tax rate of return on equity of 22.7% was computed.

[3] The PSAF = (47.9/310.7) x 100. The average pre-tax cost of capital is .21(10.44%) + .24(8.66%) + .55(22.7%) = 16.8%.

[11] The Board rejected a mark-up of 20 percent that was based on bank service corporations' average cost of capital. Although several commentators advocated the adoption of such a model, data were available only for relatively small firms and these did not offer a mix of services comparable to that offered either by the Federal Reserve or large correspondent banks. A disproportionately large share of the processing performed by the firms in the sample involved local checks and the preparation of accounting statements as opposed to a wide range of payments services of a local and nonlocal nature.

Appendix II—Service Descriptions

A. Wire Transfer of Reserve Account Balances Service

Wire transfer services provide for the immediate movement of funds between any two depository institutions which maintain accounts with the Federal Reserve.

Five levels of services are available: (1) on-line origination of a transfer without telephone advice (notification) to the receiver, (2) on-line origination of a transfer with telephone advice to the receiver, (3) off-line origination without telephone advice to the receiver, (4) off-line origination with telephone advice to the receiver and (5) off-line receiver requesting telephone advice where none has been requested by the originator.

The most common wire transfer transaction is originated from an on-line terminal or computer at a depository institution and processed through the Federal Reserve's automated communication facilities with immediate settlement and transmission of an advice to the receiving depository institution's on-line terminal or computer. Off-line origination of a transfer allows depository institutions without on-line facilities to initiate wire transfers by telephone request to a Federal Reserve office. Except for initiation by telephone, off-line wire transfers are processed in the same manner as on-line transactions. Telephone notification to an off-line receiver provides information concerning funds credited to their accounts earlier than would otherwise occur.

The originator will be charged for the wire transfer services including a fee for telephone advice to an off-line receiver if requested by the originator. If the receiver has instructed the Reserve Bank office to provide telephone advice when none has been requested by the originator, the off-line receiver will be charged for the telephone advice. If the originator requests that telephone advice be provided to a receiver and the receiver has a standing order, the originator will be charged not the receiver.

B. Net Settlement Service

The net settlement service is the posting of debit and credit advices generated by a third party to accounts held on the books of the Federal Reserve.[12] The third party is typically a provider of financial services to depository institutions (e.g., a private sector clearing house, credit card associations, funds transfer system, etc.) who normally processes a large number of transactions among its member institutions. In addition to sorting, delivering or communicating data, the third-party maintains records of these transactions. At the end of a business day, the third party sums all transactions for each institution and delivers or transmits to the Federal Reserve the entries to effect settlement among the participating institutions. Charges for the net settlement service will be calculated based on the number of entries in each settlement and will be levied against either the third party ordering the settlement or each institution participating in the settlement.

C. Automated Clearing House Services

The ACH service is the clearing, settling and delivery of electronic payments. Fees for automated clearing house (ACH) service reflect costs based on an expected mature volume and are applicable at all Federal Reserve operated clearing and settlement facilities. These fees include receiving sorting, reconciling, settling and delivery of both debit and credit ACH transactions. The fee for the Federal Reserve Bank of New York reflects the local ACH processing done by the

[12] Gross settlement, that is, the posting of debits and credits associated with the direct use of other Federal Reserve services, is not charged for separately since its cost is of necessity included in the fee for each service.

private sector with only settlement and transportation provided by the Federal Reserve.

1. *Intra-ACH transactions*

Intra-ACH transactions are processed by only one Federal Reserve Bank ACH facility.

2. *Inter-ACH transactions*

Inter-ACH transactions are processed by at least two facilities.

[FR Doc. 81-278 Filed 1-5-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on December 24, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FMC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before January 26, 1981, 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 N.W., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Maritime Commission

FMC requests a clearance of a revision of the existing Commission General Order 13 (46 CFR 536), "Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States." Part 536 sets forth standards concerning the construction and manner of filing tariffs in the U.S. foreign commerce by waterborne common carriers. The revision request includes a requirement that common carriers notify the Commission in writing when a change occurs in operations, control or ownership which results in a majority portion of the interest being owned or controlled by a government under whose registry the vessels of the carrier are operated (46 CFR 536.14(c)). Also, controlled carriers are required to file a tariff supplement upon receipt of a tariff matter suspension order (46 CFR 536.11(g)(2)). It is estimated that compliance with the above revisions of General Order 13 will impose an annual industry burden of approximately 8 manhours for approximately 7 respondents.

FMC requests clearance of a revision of General Order 20 (46 CFR 540), Security for the Protection of the Public. The rules provide procedures whereby persons in the United States who arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security to meet liabilities for nonperformance of voyage, or for injury or death of passengers or other persons on voyages to or from U.S. ports. The Commission has amended section 540.9(j) of the General Order to raise the maximum amount of financial responsibility required of vessel owners, charterers or operators from $5,000,000 to $10,000,000. By raising the limits, the Commission anticipates that an increased percentage of certificants will qualify and maintain their performance certificates based upon their actual unearned passenger revenue (advance collections of fares) experience rather than submitting the $10,000,000 maximum. This, in turn, will require the reporting of such revenue to the Commission since unearned passenger revenue is the basis for determining the amount of coverage required. FMC estimates the incremental burden increase of this amendment to be eight certificants filing two reports per year at 4 manhours each.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-370 Filed 1-5-81; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

National Archives Advisory Council; Renewal

Renewal of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the renewal of the National Archives Advisory Council. The Administrator of General Services has determined that renewal of this advisory committee is in the public interest to ensure that the archival program is responsive to public needs and interests.

Designation. National Archives Advisory Council.

Purpose. The committee advises the Archivist of the United States on policies, procedures, programs, objectives, and other matters relating to the effectiveness of the National Archives and Records Service program.

Issued in Washington, D.C. on December 30, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-397 Filed 1-5-81; 8:45 am]

BILLING CODE 6820-26-M

Qualifications Review Panel; Renewal of Committee

Renewal of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the renewal of the Qualifications Review Panel for the Position of Director, Gerald R. Ford Library. The Administrator of General Services has determined that renewal of this ad hoc advisory committee is in the public interest.

Designation. Qualifications Review Panel for the Position of Director, Gerald R. Ford Library.

Purpose. The committee reviews the Personal Qualifications Statement (SF-171) of candidates for the position of Director of the Gerald R. Ford Library and recommends to the GSA Merit Selection Panel those applicants considered to be best qualified for referral to the Archivist of the United States for final selection.

Dated: December 30, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-396 Filed 1-5-81; 8:45 am]

BILLING CODE 6820-26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA-225-81-2000]

Fresh and Fresh Frozen Shellfish; Memorandum of Understanding With the Ministry of Agriculture and Fisheries, Government of New Zealand

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration has executed a memorandum of understanding with the New Zealand Ministry of Agriculture and Fisheries (MAF). The purpose of the understanding is to recognize the New Zealand MAF as the certifying authority for shellfish imported to the United States to assure that the shellfish are safe, wholesome, and meet the provisions of the National Shellfish Sanitation Program (NSSP) and requirements of the Federal Food, Drug, and Cosmetic Act.

DATE: The memorandum of understanding became effective October 30, 1980

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the **Federal Register** of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding agreements between FDA and others would be published in the **Federal Register** (see § 20.108(c) (21 CFR 20.108(c))), the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services, United States of America and the Ministry of Agriculture and Fisheries, Government of New Zealand

I. Purpose

The purpose of this MOU is to officially recognize the New Zealand Ministry of Agriculture and Fisheries (MAF) as the certifying authority for New Zealand shellfish shippers of fresh and fresh frozen shellfish imports destined for the U.S. market. This document also defines terms and describes the responsibilities of the MAF and FDA in the operation and management of the terms of this MOU in accordance with operational guidelines of the National Shellfish Sanitation Program (NSSP).

The New Zealand Ministry of Agriculture and Fisheries (MAF) and the Food and Drug Administration (FDA) of the Department of Health and Human Services of the United States of America affirm by this document their intention to cooperate in assuring that fresh and fresh frozen molluscan bivalves exported to the United States are safe, wholesome, and have been harvested, transported, processed and labeled in accordance with the provisions of the National Shellfish Sanitation Program (NSSP) and requirements of the Federal Food, Drug, and Cosmetic Act.

II. Background

Early in the last decade, the New Zealand Department of Marine initiated a shellfish culture program to augment natural production of two commercial species of shellfish, *Perna canaliculus* (greenlipped mussel) and *Crassostrea glomerata* (rock oyster).

Responsibilities for fishery development in New Zealand were transferred from the Department of Marine to the MAF in 1973. The MAF, in conjunction with the Department of Health and other agencies, has continued to develop a shellfish control program which could meet or exceed the recommendations of the NSSP. The New Zealand shellfish industry's interest in U.S. shellfish markets resulted in an MAF request for a shellfish evaluation mission in July 1979.

In response to this request, an evaluation of the New Zealand shellfish control program was conducted by a two-person FDA mission in November, 1979. The mission concluded that the New Zealand shellfish control program conforms, in general, to the guidelines of the NSSP and the Federal Food, Drug, and Cosmetic Act. In its final report to the MAF, the mission recommended that the FDA accept the New Zealand program through an MOU with the MAF.

III. Substance of Agreement

A. Terms

For purposes of this Memorandum, both parties agree to the following definitions:

1. *Lot.* A collection of primary containers or units of the same size, type, and style, produced under conditions as nearly uniform as possible, designated by a common container code or marking, and in any event, no more than a day's production.

2. *Central File.* The single location where shellfish control program information, data, and reports are stored and maintained.

3. *Bait Shellfish.* Shucked shellfish labeled and intended for bait use only; not for human consumption.

4. *Shellfish.* All edible species of molluscan bivalves except scallop species from the family Pectinidae. Only molluscan bivalves that are offered for entry into the United States as fresh or fresh frozen products are intended for coverage under this Memorandum of Understanding.

5. *Marine Biotoxins.* Natural toxins produced by marine dinoflagellates such as *Gonyaulax catenella, Gonyaulax tamarensis,* and *Gymnodinium breve* and concentrated by shellfish during the feeding process.

B. Information Exchange

Both parties agree to provide information concerning proposed changes in the following:

1. Methods and procedures for sampling.
2. Methods of analysis.
3. Methods of confirmation.
4. Administrative guidelines, tolerances, specification standards, and nomenclature.
5. Reference standards.
6. Inspectional procedures.
7. Proposed modification of existing Federal or local regulations.
8. Proposed new Federal regulations.
9. Proposed new legislation.
10. Proposed modifications to the National Shellfish Sanitation Program.

C. MAF Responsibilities

1. The MAF agrees to classify its shellfish harvesting waters in accordance with the procedures and standards set forth in the NSSP Manual of Operations. The MAF will assure that only fresh and fresh frozen shellfish harvested from areas which meet NSSP approved water quality and marine biotoxin standards and processed according to NSSP guidelines will be exported to the United States.

2. The MAF agrees to inspect harvesting, transporting, and processing operations of fresh and fresh frozen shellfish at sufficient frequency to assure compliance with NSSP sanitary control practices.

3. The MAF agrees to issue certifications only to those fresh and fresh frozen shellfish shipping firms that comply with NSSP recommended practices and to notify FDA of the name, location, and certification number of those firms on Form FD–3038b "Shellfish Certification." To cancel a firm's certification, the MAF will send to FDA a completed Form FD–3038c "Certification Cancellation."

4. The MAF agrees to require all containers of all lots of fresh and fresh frozen shellfish exported to the United States to be identified by lot number and certification number, together with all other information required by the Federal Food, Drug, and Cosmetic Act and Fair Packaging and Labeling Act.

5. The MAF agrees to facilitate joint FDA-MAF inspections of New Zealand's certified fresh and fresh frozen shellfish processing firms, approved growing waters and related harvesting and

handling practices. Such inspections will be made on an annual basis or at a frequency deemed appropriate to determine that the MAF shellfish sanitation control program is equivalent to NSSP recommended practices and that only safe and wholesome fresh and fresh frozen shellfish are exported to the United States.

6. MAF agrees to make travel arrangements for, and pay transportation expenses of, the FDA inspection team while the team is conducting inspections within New Zealand.

7. The MAF agrees to participate to the maximum extent possible in FDA's laboratory quality assurance programs. These may include:

a. Participation in the analysis of split samples of:

(i) Seawater or shellfish meats for indicator bacteria or pathogens.

(ii) Shellfish meats for heavy metals or other chemical or radionuclide contaminants as may be necessary.

b. The evaluation of new methods and procedures including reagents, media, or other materials and instruments, and equipment performance.

8. The MAF agrees to the establishment of a central office within New Zealand to collate and maintain a central file of laboratory results, including routine monitoring data and data from quality assurance programs. Standard formats for collecting and reporting data will be used.

9. MAF agrees to assure that if lots of shellfish are imported into the United States for use as bait, each container will be labeled, "Not for human use", and the contents will be decharacterized by use of a permanent colored dye.

10. MAF agrees that the delegation of responsibilities for shellfish control in New Zealand is as given below:

a. Promulgation and enforcement of regulations governing the growing, harvesting, processing, and shipment of fresh or fresh frozen shellfish produced by New Zealand for export to the United States is the sole responsibility of the MAF.

b. The principal government agency in the New Zealand shellfish program is the Ministry of Agriculture and Fisheries, with two divisions of this Ministry being directly involved: the Fisheries Management Division and the Meat Division. The responsibilities of the two divisions are set out in a Cooperative Agreement. Meat Division has the overall responsibility for coordination and administration of the New Zealand program.

c. The Public Health Division of the New Zealand Department of Health has direct involvement in the program. Its functions are the classification and continual monitoring of shellfish growing waters as stated in the Memorandum of Understanding between the Ministry of Agriculture and Fisheries and the Department of Health.

d. Laboratory analysis is carried out by Public Health Laboratories of the Department of Health and the Chemistry Division of the Department of Scientific and Industrial Research (DSIR).

e. Research related to the shellfish industry is conducted by Fisheries, the DSIR Fish Processing Unit and Massey University Fish Research Unit.

f. Liaison is maintained with the Fishing Industry Board and the Regional Water Boards.

D. FDA Responsibilities

1. FDA agrees to publish the names, locations and certification numbers of certified firms submitted by the MAF. These firms will appear in the monthly Interstate Certified Shellfish Shippers List.

2. Upon request FDA will provide limited training to technical personnel in laboratory procedures, classification of shellfish growing areas, plant inspection and administrative procedures subject to availability of funds for such purposes.

3. Whenever New Zealand shellfish are detained by FDA due to noncompliance with NSSP agreed upon practices or applicable laws or regulations, FDA will inform MAF of the reason or reasons for the detention. This information will include:

a. Commodity lot and certification number.

b. Name and address of the shipper.

c. Reason for the detention.

d. Sampling procedure.

e. Methods of analysis and confirmation.

f. Administrative guidelines.

4. FDA agrees to make travel arrangeemnts for, and pay round trip transportation expenses of, its inspection team between the United States and New Zealand. FDA will also pay all per diem of the inspection team.

E. National Shellfish Sanitation Program

Upon signing this agreement, the MAF becomes an active participating member of the NSSP. As a full member of the NSSP, the MAF may participate in national workshops, cooperative research programs, seminars, training courses, and other activities designed for the timely exchange of technical information, and provide assistance in the joint resolution of problems confronting the NSSP. The MAF may also:

1. Participate in a joint evaluation of the United States program as it pertains to shellfish exports to New Zealand.

2. Make recommendations for changes and improvements in NSSP guidelines, methods, and standards.

3. Be advised by FDA in the event a State or local food control official questions the certification, safety, or wholesomeness of New Zealand's imported shellfish. FDA will, if so informed, seek to determine the reason for the problem and inform the MAF of any action taken relative to State and local laws or regulations governing such shellfish imports.

References

1. U.S. Department of Health and Human Services, Public Health Service (PHS), National Shellfish Sanitation Program, Manual of Operations: Part I *Sanitation of Shellfish Growing Areas*, 1965 Revision; Part II *Sanitation of the Harvesting and Processing of Shellfish*, 1965 Revision; Part III *Public Health Service Appraisal of State Shellfish Sanitation Programs*, 1965 Revision, PHS Publication No. 33.

2. *Official Methods of Analysis*, 12th ed., Association of Official Analytical Chemists (AOAC), Box 540, Benjamin Franklin Station, Washington, DC 20044, 1975.

3. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Bureau of Foods, Fishery Technology Branch (HFF–217), 200 C St. SW., Washington, DC 20204.

4. Federal Food, Drug, and Cosmetic Act, United States Code, Title 21.

5. Fair Packaging and Labeling Act, Pub. L. 89–755, approved November 3, 1966.

6. American Public Health Association, "Recommended Procedures for the Examination of Seawater and Shellfish," 4th ed., 1970, APHA, Inc., 1015 18th St. NW., Washington, DC 20036.

7. Food and Drug Administration, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food" regulations, 21 CFR Part 110.

8. Food and Drug Administration, Definitions and Standards for Food, "Fish and Shellfish" regulations 21 CFR Part 161.

9. Cooperative Agreement between the Meat Division and Fisheries Management Division of the Ministry of Agriculture and Fisheries relative to the sanitary control of the shellfish industry.

10. Memorandum of Understanding between Ministry of Agriculture and Fisheries and Department of Health relative to the certification of export shellfish to the United States of America.

IV. Name and Address of Participating Agency

Ministry of Agriculture and Fisheries, P.O. Box 2298, Wellington, New Zealand.

V. Liaison Officers

The liaison officer for each party will be responsible for facilitating exchanges of information and expeditiously informing other interested parties within their respective countries on shellfish control problems requiring prompt attention. Each party agrees to provide notification of any changes in liaison officer appointments. Such notification shall constitute an amendment to, and not require a revision of, this agreement.

A. Liaison Officer for MAF: Mr. Peter Withers, Second Secretary, New Zealand Embassy, 37 Observatory Circle, NW., Washington, DC 20008.

B. Liaison Officer for FDA: Mr. Daniel A. Hunt, Assistant Chief, Fishery Technology Branch, Bureau of Foods, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

IV. Period of Agreement

This agreement when accepted by both parties, will have an effective period of performance from date of signature until terminated by either party. This agreement may be modified by mutual consent of both parties or may be terminated by either party upon a thirty day advance written notice to the other.

Approved and accepted for the Ministry of Agriculture and Fisheries:

M. L. Cameron,

Director-General of Agriculture & Fisheries, New Zealand.

Dated: October 30, 1980.

Approved and accepted for the Food and Drug Administration:

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs, United States of America.

Dated: October 14, 1980.

EFFECTIVE DATE: This memorandum of understanding became effective October 30, 1980.

Dated: December 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-00226 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-03-M

National Institutes of Health

National Library of Medicine; Meeting of the Board of Regents and the Extramural Programs and Lister Hill Center; National Medical Audiovisual Center Subcommittees

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 29-30, 1981, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the Extramural Programs Subcommittee of the Board of Regents and the Lister Hill Center and National Medical Audiovisual Center Subcommittee on the preceding day, January 28, 1981, from 2:00 to 5:00 p.m., in the 5th floor Conference Room of the Lister Hill Center Building, and from 2:00 to 5:00 p.m., in the 7th floor Conference Room of the Lister Hill Center Building, respectively.

The meeting of the Board will be open to the public from 9:00 a.m. to 4:00 p.m. on January 29 and from 9:00 a.m. to 2:00 p.m. on January 30 for administrative reports and program discussions. The entire meeting of the Lister Hill Center and National Medical Audiovisual Center Subcommittee will be open to the public for the review of the Computers-In-Medicine Training Grant Program assessment. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4), 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the entire meeting of the Extramural Programs Subcommittee on January 28 will be closed to the public, and the regular Board meeting on January 30 will be closed from 2:00 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, 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.

Dated: December 29, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 81-294 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-08-M

Meeting of National Advisory Dental Research Council, National Institute of Dental Research

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on January 29-30, 1981, in Conference Room 8, Building 31-C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to adjournment on January 30 for general discussion and program presentations. 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, United States Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on January 29 from 9:00 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Dorothy Costinett, Committee Management Assistant, National Institute of Dental Research, National Institutes of Health, Building 31-C, Room 2C36, Bethesda, Maryland 20205, (phone 301-496-2883) will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Programs Nos. 13.840—Caries Research, 13.841—Periodontal Diseases Research, 13.842—Craniofacial Anomalies Research, 13.843—Restorative Materials Research, 13.844—Pain Control and Behavioral Studies, 13.845—Dental Research Institutes, 13.878—Soft Tissue Stomatology and Nutrition Research, National Institutes of Health.)

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.

Dated: December 29, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 81-295 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-80-1051]

Privacy Act; Proposed New System of Records, Amendments to Existing Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed establishment of a new system of records, amendment to existing systems of records.

SUMMARY: The Department is giving notice that it intends to establish a new system of records which is subject to the Privacy Act of 1974, and that it intends to amend two existing systems of records subject to the Act.

EFFECTIVE DATE: This notice shall become effective on February 5, 1981, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202-557-0605. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The published notice describing HUD/DEPT-37, Personnel Travel System is written to cover records of official HUD employee travel, government driver permits, and parking applications in Headquarters and Field Offices. The published notice describing HUD/DEPT-54, Parking Permit Application Files is written to cover parking permits in Headquarters. The new system and the amendments to HUD/DEPT-37 and HUD/DEPT-54 will accomplish the following: Delete Government driver permits and parking applications from HUD/DEPT-37; establish a new sytem to cover HUD employees who have applied for or been issued Government driver permits; and alter HUD/DEPT-54 to cover parking permits both at Headquarters and Field Offices. The purpose of this proposal is to more accurately describe the character of the records by clarifying the fact that the records are maintained as three separate systems.

HUD/DEPT-37 is amended by deleting the words "applications for Federal vehicles driver permits, U.S. Government driver's licenses, driver's physical fitness forms, motor pool records, monthly motor vehicle use records, GSA vehicle mileage reports, applications for parking space" from Categories of Records in the System, and by deleting the words "driver's license information transmitted to Department of Transporation for verificaiton with National Driver Register" from Routine Uses of Records Maintained in the Sytem. HUD/DEPT-54 is amended by adding the words "and Field Offices" to System Location, by substituting the words "HUD and other employees who made application to park in HUD controlled parking" instead of the words "Headquarters and other Federal employees who made application to park at Headquarters location" in Categories of Individuals Covered by the System, and by conforming language in Notification Procedure, Record Access Procedure, and Contesting Record Procedure to the fact that the system exists in Headquarters and Field Offices. A report of intention to alter two Privacy Act Systems of records and establish one new system was filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget on November 10, 1980.

The prefatory statement containing General Routine Uses applicable to most of the Department's systems of records was published at 45 FR 67608 (October 10, 1980). Appendix A, which lists the addresses fo HUD's offices was published at 45 FR 67626 (October 10, 1980). A description of HUD/DEPT-37, Personnel Travel System was published at 45 FR 67616 (October 10, 1980). A description of HUD/Dept-54, Parking Permit Application Files was published at 45 FR 67619 (October 10, 1980). The new system (HUD/DEPT-68) and the amended systems are published below in their entirety.

(5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C. December 12, 1980.

Vincent J. Hearing,

Deputy Assistant Secretary for Administration.

HUD/DEPT-37

SYSTEM NAME:

Personnel Travel System.

SYSTEM LOCATION:

All Department offices maintain employee travel records. For a complete listing of offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

All travel records, including vouchers, requests, advances, receipts for requests, orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d) of the Department of Housing and Urban Development Act of 1965, P.L. 89-174; Budget and Accounting Act of 1950, 31 U.S.C. 66a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USERS:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to Treasury—for payment of vouchers; vouchers and receipts are available to GAO and GSA for audit purposes and vouchers are verified by private transporters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Almost always retrievably by name, occasionally by Social Security number.

SAFEGUARDS:

Lockable desks or file cabinets; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records.

RETENTION AND DISPOSAL:

Records are active and kept up-to-date. Files purged in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of record, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual and supervisors.

HUD/DEPT-54

SYSTEM NAME:

Parking Permit Application Files.

SYSTEM LOCATION:

Headquarters and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD employees and other individuals who made application to park in HUD-controlled space.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms that contain information about the vehicles owned by and addresses of the principal applicant and carpool members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Procedures Act of 1949 (P.L. 81-152, Sec. 201), 41 U.S.C. 231.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other Routine Uses: To parking management company—for billing purposes.

STORAGE:

8 inch by 5 inch card file.

RETRIEVABILITY:

Name and permit number.

SAFEGUARDS:

Lockable file cabinets.

RETENTION AND DISPOSAL:

(1) For individuals issued permits, as long as permits are valid; (2) for individuals on the waiting list, approximately 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of Administrative Services, AS, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Parking Permit Applicants.

HUD/DEPT-68

SYSTEM NAME:

HUD Government Motor Vehicle Operators Records.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD employees who are authorized to operate Government Motor Vehicles on official business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Form 47, Physical Fitness Inquiry for Motor Vehicle Operators and HUD Form 87, Drivers Past Performance Record. These forms include name, Social Security Number, physical fitness data, and driving performance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, 41 U.S.C. 231, Public Law 81-152, Sec. 201.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To Department of Transportation for verification with National Driver Register.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Desks; safes; locked file cabinets.

RETRIEVABILITY:

Name, Social Security Number.

SAFEGUARDS:

Locked files; limited access by authorized individuals.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with officially approved mandatory standards contained in HUD Handbooks 2225.6 and 2282.2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Facilities Operations Division, ASB, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORDS ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed regarding contesting record contents, contact the Privacy Act Office at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals, contact the HUD Departmental Privacy Appeals Officer, Officer of General Counsel, Department of Housing and Urban

Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals.

[FR Doc. 81-275 Filed 1-5-81; 8:45 am]

BILLING CODE 4210-01-M

Office of Environmental Quality

[Docket No. NI-39]

Intended Environmental Impact Statement; New York

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice: Unsafe Building Demolition and Seal-up Project, New York, New York. This Notice is required by the Council on Environmental Quality under its rules (40 CFR 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Issued at Washington, D.C., December 30, 1980.

Richard H. Broun,

Director, Office of Environmental Quality.

Appendix

EIS on Unsafe Building Demolition and Seal-up Project, New York, New York

The City of New York intends to prepare an EIS before requesting the Department of Housing and Urban Development to release Federal funds under Title I of the Housing and Community Development Act of 1974, to be used for the Unsafe Building Demolition and Seal-up Project in New York City. The purpose of this Notice is to solicit comments and recommendations from all interested persons, local, state and federal agencies regarding the issues to be addressed in depth in the Environmental Impact Statement.

Description. The Unsafe Building Demolition and Seal-up Project in New York City will provide approximately $19.7 million for the demolition or seal-up of buildings certified as unsafe, dangerous to life and health, or constituting a public nuisance in 59 community districts. After consultation with community planning boards, the City reviews each case to determine whether the building should be demolished or sealed. The work is performed by outside contractors on a bid basis. Approximately 2,195 buildings will be demolished and 1,150 buildings will be sealed-up. The proposed sites of the project are located througout the five boroughs of New York City. The completion date of the project is August 31, 1982.

The draft EIS will be published and distributed in the early part of 1981. It will analyze and describe, among other things, the project's location, its size and scope, and other pertinent features, its environmental and other impacts, and possible alternatives thereto. The draft EIS will also discuss mitigating measures that may be employed to minimize any adverse impacts.

Probable significant environmental impacts of the project are in the following areas: housing, community development and neighborhood integrity, public health and safety, and aesthetics. Minimal environmental impacts are expected on water quality, air quality, noise, demography, employment, land use, historical quality and energy.

Need. It has been determined that the request referred to above for the release of Federal funds will constitute an action significantly affecting the quality of the human environment. Therefore, the City of New York has determined to prepare a draft Environmental Impact Statement ("EIS"), in accordance with the National Environmental Policy Act of 1969 and applicable regulations.

Alternatives. The following alternatives to the project, as perceived at this point, will be considered: no action, an increased level of demolition, an increased level of seal-up, rehabilitation as an alternative, the City takeover of unsafe buildings, and changes in the Unsafe Building program procedures. The alternatives will be analyzed so as to enable the reader to evaluate the costs and benefits on a comparative basis. Institutional and financial constraints for the various alternatives will be delineated.

Scoping. No formal scoping meeting is anticipated for this project. It is the intent of this Notice to be considered a part of the process used for scoping the EIS. Any responses to this Notice will be used to help (1) determine significant environmental issues, and (2) identify data which the EIS should address.

Comments. Comments should be sent within 21 days following publication of this Notice in the **Federal Register** to Peter Taras, Director of Environmental Services, Room 9216C, City of New York, Department of Housing Preservation and Development, 100 Gold Street, New York, New York 10038. The telephone number is (212) 566-0348.

[FR Doc. 81-276 Filed 1-5-81; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. NI-38]

Intended Environmental Impact Statements; New Mexico and Hawaii

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for each of the following projects under HUD programs as described in the appendices of the Notice: Eagle Ranch, Bernalillo County, New Mexico; and Mililani Town Expansion, Waipo, Oahu, Hawaii. This Notice is required by the Council on Environmental Quality under its rules (40 CFR 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning a particular project to the specific person or address indicated in the appropriate part of the appendices.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

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

Francis G. Haas,

Deputy Director, Office of Environmental Quality.

Appendix

EIS on Eagle Ranch, Bernalillo County, New Mexico

The Dallas Area Office of the Department of Housing and Urban Development intends to prepare an Environmental Impact Statement for a proposed subdivision to be known as Eagle Ranch, located in Bernalillo County, New Mexico. The purpose of this Notice is to solicit comments and recommendations from all interested persons, local, State and Federal agencies regarding the issues to be addressed in depth in the Environmental Impact Statement.

Description: The Dale Ballamah Land Company, Incorporated, Managing Partner of Eagle Ranch, a joint venture, has filed an application with the Albuquerque Service Office for the Department of Housing and Urban Development to accept a subdivision for mortgage insurance under Section 203(b) of Title II of the National Housing Act of 1934, as amended. The proposed subdivision consists of 611 acres of land to be developed into approximately 2,000 single family residential lots and will be known as Eagle Ranch Subdivision. When fully developed, the proposed subdivision will provide housing for approximately 6,400 persons. In

addition to the residential area, the proposed development will include thirty acres for neighborhood commercial activity and a six acre park site. The Eagle Ranch Subdivision will be located east of the Paradise Hills Country Club. Bernalillo County has planning platting jurisdiction over the entire acreage. The City of Albuquerque shares jurisdiction with the County for the areas which are situated within three miles of its incorporated boundaries. The developer has requested an early start approval of 166 lots.

Need: Due to the size and scope of the total proposed project the Dallas Area Office has determined that an environmental impact statement will be prepared pursuant to Public Law 91–190, the National Environmental Policy Act of 1969.

Alternatives: The alternatives available to the Department are (1) accept the project as submitted, (2) accept the project with modifications, or (3) reject the project.

Scoping: No formal scoping meeting is anticipated for this project. It is the intent of this Notice to be considered a part of the process used for scoping the Environmental Impact Statement. Any responses to this Notice will be used to help (1) determine significant environmental issues, and (2) identify data which the EIS should address.

Contact: Comments should be sent within 21 days following publication of this Notice in the **Federal Register** to I. J. Ramsbottom, Environmental Officer, Dallas Area Office, Department of Housing and Urban Development, 2001 Bryan Tower, Dallas, Texas 75201. The commercial telephone number of this office is 214–767–8347 and the FTS number is 729–8347.

EIS on Mililani Town Expansion, Waipio, Oahu, Hawaii

The Honolulu Area Office, Honolulu, Hawaii, intends to prepare an Environmental Impact Statement for a portion of Mililani Town, Waipio, Oahu, Hawaii, a proposed development more fully described below. Interested individuals, governmental agencies, and private organizations are invited to submit information and comments which should be addressed in the EIS.

Description: Mililani Town, Inc., a subsidiary of Oceanic Properties Inc. proposes to develop a 476-acre project at Mililani Town, Oahu, Hawaii. The proposed project will provide approximately 2900 housing units at densities of 5 to 20 units per acre on approximately 289 acres of land. Approximately 46 acres is proposed for business/commercial; 6 acres for school; and 135 acres is proposed for open space and recreational uses. The proposed action is part of the planned development of Mililani Town which is master planned for a 3500-acre development with an estimated total population of 60,000. The current population is estimated at 22,000. Construction is underway on streets and utilities for the project that is scheduled for completion in 1985. The developer proposes to utilize HUD-assisted housing programs for multifamily projects and make available FHA mortgage insurance for individual home purchasers.

Need: It has been determined by the Honolulu Area Office that the proposed action is a major housing action and will have a significant impact on the human environment in accordance with 24 CFR Part 50. Major environmental issues currently perceived include the project's impact upon the Pearl Harbor Aquifer, loss of agricultural land; change in water quality resulting from increased runoff, erosion/sedimentation and urban runoff; change in air quality; increased traffic volume and higher ambient noise levels at the project's site.

Alternatives: Various alternatives that will be addressed include alternative land uses, alternative sites, alternative site designs and no project.

Scoping: No formal scoping meeting is anticipated for the proposed development. It is the intent that this notice be a part of the process for scoping the EIS and that it assist HUD to (1) determine significant environmental issues; (2) identify data which the EIS should address; and (3) identify cooperating agencies.

Contact: Comments should be forwarded within 21 days following publication in the **Federal Register** to Frank L. Johnson, HUD, Honolulu Area Office, Box 50007, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850.

[FR Doc. 81-277 Filed 1-5-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Grant Fund Distribution Formula

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Title II of the Indian Child Welfare Act of 1978 authorizes the Secretary of the Interior to make grants to Indian tribes and Indian organizations for establishment and operation of Indian child and family service programs.

In order to ensure insofar as possible that all applicants preliminarily approved in a competitive process, under the provisions of 25 CFR Part 23 application and selection criteria established by the Bureau of Indian Affairs, and thereafter approved for funding, receive a proportionate share of available grant funds, the distribution of these funds will be accomplished in accordance with the following formula: Each grant award not to exceed (a) a base amount of $25,000; and (b) an additional amount equal to the product resulting when the estimated unduplicated clientele percentage of the total unduplicated Indian client population to be served by the grant applicant is multiplied by the total amount of grant funds remaining after (a) above is accomplished for all grant applicants approved for funding. In this computation, the total unduplicated Indian client population figure will be based upon the best information available from all grant applications submitted to the Bureau of Indian Affairs and approved for funding, and other identifiable statistical resources when an applicant's client population is questioned.

The maximum allowable grant award to an individual applicant cannot exceed $250,000.

The maximum allowable grant award to a consortium cannot exceed $500,000. A consortium is eligible for an amount equal to the amount which the individual members of the consortium could receive if they applied individually, as long as that amount does not exceed the maximum allowable grant award to a consortium listed above.

If the grant applicant has requested less grant funds than would be provided under the above formula, the applicant approved for funding will be funded at the level specifically requested in the application.

Indian Child Welfare Act: Title II Grant Applications

The period for submitting grant applications is effective this date and will end February 9, 1981. In this regard, it is necessary that specific timeframes be established for submission of applications so that all applicants approved for funding under the provisions of 25 CFR Part 23 in a competitive review and ranking process can receive a proportionate share of available grant funds.

Application materials and related information may be obtained from Bureau of Indian Affairs offices nearest the applicant. Applications for this application period will be accepted in anticipation of appropriated funds for Title II purposes. All grant application approvals will be subject to availability of funds.

Applications must be received in the appropriate Bureau of Indian Affairs, Social Services Office, on or before 4:15 p.m. on the closing date of the application period, or sent by registered or certified mail not later than the closing date as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Service.

Thomas W. Fredericks,

Deputy Assistant Secretary, Indian Affairs.

December 18, 1980.

[FR Doc. 81-301 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-02-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before December 26, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by January 21, 1981.

Carol Shull,

Acting Chief, Registration Branch.

MASSACHUSETTS

Suffolk County

Boston, *Dorchester Heights*, Thomas Park

VERMONT

Lamoille County

Jeffersonville, *Cambridge Meetinghouse, Church St.*

[FR Doc. 81-185 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Appalachian Power Co.; Intent on Extension of Scoping Period on Environmental Impact Statement

On December 15, 1980, the National Park Service published in the **Federal Register** (**Federal Register**, Vol. 45, No. 242, pp. 82366, 82367) its intent to prepare an environmental impact statement for Appalachian Power Company's application for a right-of-way permit to cross the Blue Ridge Parkway in Virginia with a 765-kV transmission line. A period of twenty-one days was proposed to allow interested parties to submit suggestions on the scope of the environmental impact statement.

Notice is hereby given that the scoping period will be extended an additional fifteen (15) days. Comments on the scope of the environmental impact statement should be forwarded to the Regional Director, Southeast Region, National Parks Service, 75 Prince Street, S.W., Atlanta, Georgia, 30303, no later than January 20, 1981.

Dated: December 30, 1980.

Russell E. Dickenson,

Director.

[FR Doc. 81-306 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan; Golden Gate National Recreation Area; California

Pursuant to Section 102(2)(c) of the National Environmental Policy Act, the National Park Service has prepared a general management plan for Golden Gate National Recreation Area, California. After consideration of the alternatives and recommended actions presented in an environmental assessment, a Finding of No Significant Impact was determined and an environmental impact statement will not be prepared.

Copies of the plan and Finding of No Significant Impact are available at the following locations:

Western Regional Office, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, CA 94102.

Golden Gate National Recreation Area, Building 201, Fort Mason, CA 94123.

Dated: December 22, 1980.

Bruce M. Kilgore,

Associate Regional Director, Resource Management and Planning.

Dated: December 23, 1980.

Howard H. Chapman,

Regional Director, Western Regional Office.

[FR Doc. 81-311 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

Mineral King Comprehensive Management Plan; Sequoia and Kings Canyon National Park; California

Pursuant to Section 102(2)(c) of the National Environmental Policy Act, the National Park Service has prepared a comprehensive management plan for the Mineral King area of Sequoia and Kings Canyon National Parks, California. After consideration of the alternatives and recommended actions presented in an environmental assessment, a Finding of No Significant Impact was determined and an environmental impact statement will not be prepared.

Copies of the plan and Finding of No Significant Impact are available at the following locations:

Western Regional Office, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, CA 94102.

Sequoia and Kings Canyon National Parks, Three Rivers, CA 93271.

The Finding of No Significant Impact follows this notice.

Dated: December 22, 1980.

Bruce M. Kilgore,

Associate Regional Director, Resource Management and Planning.

Dated: December 23, 1980.

Howard H. Chapman,

Regional Director, Western Regional Office.

Mineral King Comprehensive Management Plan Sequoia National Park, California

Finding of No Significant Impact

In accordance with the provisions of the National Environmental Policy Act of 1969, and regulations of the Council of Environmental Quality 40 CFR 1508.9, an Environmental Assessment on the Comprehensive Management Plan for the Mineral King addition to Sequoia National Park was prepared. The Environmental Assessment analyzed four alternative strategies including a preferred alternative for the management, visitor use and attendant general development of Mineral King.

The alternatives were generated from a series of public workshops held in April, 1979 and by extensive consultation with agencies and individuals interested in Mineral King. The alternatives analyzed included: No Action; retaining the present character and traditional use patterns of the area; returning the Mineral King Valley to pristine conditions; and expanding use opportunities by developing the area as a major, year round attraction. The majority of the comments received on the four alternatives indicated a desire for little or no change to the existing environment. The preferred alternative reflects that attitude by directing only modest change to existing conditions.

The preferred alternative would provide park visitors an experience contrasting with more highly developed areas, by retaining the present character and patterns of use at Mineral King. A major feature is the eventual disposition of permittee cabins and private properties which will be governed by the enabling legislation (Pub. L. 95-625). The preferred alternative, therefore, directs long range actions for the use of these properties. The general intent of the long range action plan is to relocate those facilities inappropriately sited with respect to both sensitive resources and esthetic quality when sufficient land is available.

The Environmental Assessment was published in July of 1980 and received extensive public and agency review. Consultations were conducted with the U.S. Fish and Wildlife Service and the State Historic Preservation Officer. The consultations indicated that the preferred alternative presented no jeopardy to either endangered species or to cultural resources. Comments from the public and other agencies were generally favorable. One comment received from the California Department of Fish and Game concerned the impact on the Mineral King deer herd. A current monitoring program should provide further recommendations to mitigate any impact on the deer herd. Two responses received from Congressman Pashayan and the Far West Ski Association concerned the potential for

Nordique skiing. Due to significant avalanche activity and the concern for human safety, it was not considered appropriate to encourage additional winter use. Finally, the Mineral King Task Force of the Sierra Club desired an immediate removal of those developments in the subalpine environment of the Valley. This action will be undertaken as part of the long-range action plan but could not be accommodated in the short run due to the lack of suitable terrain.

Based on the analysis in the Environmental Assessment and the review, the project does not appear to be a major Federal action significantly affecting the human environment. Therefore, an Environmental Impact Statement will not be prepared for the Mineral King Comprehensive Management Plan.

Dated: October 17, 1980.

Approved:

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 81-312 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan for Capitol Reef National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Park Service is beginning the process of preparing a general management plan to guide visitor use and development in Capitol Reef National Park through the next 20 years. The plan will consider issues related to improving circulation, providing recreational facilities, relocating some existing facilities out of the flood plain, and expansion of the visitor center. It will also address the need for boundary changes, an interpretive program, and protection of the Fruita Historic District including management of the historical orchards. An option of not preparing the plans was considered, but was found to be unacceptable because of the need for direction in managing public use and development in the park. The planning process was begun in September 1980, with public workshops in the park and local area, and planning meetings with Government Agencies and private interest groups. The determination to prepare an environmental impact statement was a result of the scoping process, and on the basis that the area is a large national park, the original master plan for the area is rather outdated (1967), the need to address potential boundary modifications, and reevaluation of roadless areas which was not included in the 1974 Wilderness Recommendation. Additional comments on the scope of the plan and requests for information will be received for 30 days following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Derek O. Hambly, Superintendent, Capitol Reef National Park, Torrey, Utah 84775.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 81-300 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

Mormon Pioneer National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Mormon Pioneer National Historic Trail Advisory Council will be held beginning at 1 p.m., January 19, 1981, at the Hotel Utah, South Temple and Main Streets, Salt Lake City, Utah. The Advisory Council was established by Pub. L. 90-543 section 5 (d) as amended by Pub. L. 95-625, to consult with the Secretary of the Interior through the National Park Service on matters concerning the Trail, including selection of rights-of-way, markers and administration.

The members of the Council are:

C. Booth Wallentine, Chairman, Salt Lake City, Utah
Max Lieurance, Cheyenne, Wyoming
Jeff Sirmon, Ogden, Utah
Sherry Fisher, West Des Moines, Iowa
Joe Hart, Omaha, Nebraska
Emeric Huber, Casper, Wyoming
Glen M. Leonard, Salt Lake City, Utah
Melvin Smith, Salt Lake City, Utah
Stanley Kimball, Edwardsville, Illinois
Gene Bertagnoli, Salt Lake City, Utah
Gordon Wilson, Cheyenne, Wyoming
Norma Green, Casper, Wyoming
J. Leroy Kimball, Nauvoo, Illinois
Veronica Tiller, Salt Lake City, Utah
Ronald Coleman, Salt Lake City, Utah
John J. Nielson, Salt Lake City, Utah
Don Nelson, Cheyenne, Wyoming
F. T. Graham, Libertyville, Illinois

The matters to be discussed at this meeting include:

1. Role, organization and function of the Advisory Council
2. Purpose, overview and planning procedure for the Mormon Pioneer National Historic Trail
3. tandards for erection maintenance of trail markers
4. Trail rights-of-way selection
5. Administration of the trail

The meeting will be open to the public. However, facilities and space to accommdate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this matter, or who wish to submit written statements, may contact Karen Green, Council Manager, Rocky Mountain Region, National Park Service, P.O. Box 25287, Denver, Colorado 80225, area code 303, 234-5762.

Minutes of the meeting will be available for inspection four weeks after the meeting at the Rocky Mountain Regional Office.

Dated: December 29, 1980.

L. Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 81-299 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: January 23, 1981, 7:00 p.m.

ADDRESS: Arlington Hotel, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreation River, Drawer C, Narrowsburg, N.Y. 12764, (914/252-3947).

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include (1) implementation of section 704 of Pub. L. 95-625, and (2) new business.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreation River, Drawer C, Narrowsburg, N.Y. 12764. Minutes of the

meeting will be available for inspection four weeks after the meeting at the temporary headquarters of the Upper Delaware National Scenic and Recreational River at the above address.

Dated: December 22, 1980.

James W. Coleman Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 81-298 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 88F)]

Burlington Northern Inc; Abandonment Near Irene and Yankton in Yankton County, SD; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 24, 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 of a line of railroad known as the Irene to Yankton line extending from railroad milepost 187.07 near Irene, SD, to railroad milepost 208.8 near Yankton, SD, a distance of 21.73 miles, in Yankton County, SD. The operation of the Irene to Yankton line includes the use of trackage rights by BN over approximately 3.83 miles of track owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. These trackage rights were obtained by BN in 1976. At that time, BN abandoned 4.1 miles of track on the Irene to Yankton line (milepost 203.57 to milepost 207.67), and connected with a parallel stretch of Milwaukee line going into Yankton, SD. BN constructed connecting lines of 1,015 and 400 feet which provided it with access to the portion of Milwaukee line. Consequently, BN now will seek to abandon that portion of its own track still in operation from Irene to Yankton, including connecting lines with the Milwaukee, and to discontinue its trackage rights over a portion of Milwaukee line near Yankton, SD. A certificate of public convenience and necessity permitting abandonment was issued to the Burlington Northern Inc. Since no investigation was instituted, the requirement of Section 1121.38(b) 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 (Section 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 10 days from publication of this Notice. 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. 81-309 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 95F)]

Chicago and North Western Transportation Co.; Abandonment Between Lake Mills and Luverne, Ia; Findings

Notice is hereby given that pursuant to 49 U.S.C. 10903, an administratively final decision was issued by the Commission, Review Board Number 5 on December, 1980, stating that the public convenience and necessity permit the Chicago and North Western Transportation Company to abandon 47.3 miles of railroad between Lake Mills and Luverne, IA. The abandonment is subject to employee protective conditions in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

A certificate of abandonment will be issued to the Chicago and North Western Transportation Company on February 5, 1981, unless on or before January 21, 1981, the Commission further finds that:

(1) a financially responsible person, including a government entity, has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. 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, D.C. 20423, no later than January 16, 1981; and

(2) It is likely that such proffered assistance would:

(a) cover the difference between the revenues attributable to the rail line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) cover the acquisition cost of all or any portion of the rail line.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request made for the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after notice is published. When the Commission is notified that an assistance or acquisition and operating agreement is executed, it shall postpone the issuance of a certificate for the period of time the agreement (including any extensions or modifications) is in effect. Information and procedures about financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained in the statute as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-308 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No. 1)]

Southern Railway Exemption for Contract Tariff ICC-SOU-C-0001

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Subject to the prior written acceptance by Southern Railway Company of certain conditions, it is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e) and may file Southern Railway Contract Tariff ICC-SOU-C-0001 with an advanced effective date of January 1, 1981 on one day's notice. This

exemption may be revoked if protests are filed on or before January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Richard Felder (202) 275–7693 or Richard Schiefelbein (202) 275–0826.

SUPPLEMENTARY INFORMATION: A petition was filed by the Southern Railway Company (Southern) to exempt Southern Railway Contract Tariff ICC–SOU–C–0001 from the statutory requirement of 49 U.S.C. 10713(e) that contracts shall be effective on not less than 30 nor more than 60 days notice. Southern requests this exemption under 49 U.S.C. 10505 in order to advance the effective date of its contract and tariff to January 1, 1981 on one day's notice. The tariff provides for special equipment mileage allowances and charges on multi-level flat cars. It is meant to compensate the shipper for benefits in reducing empty mileage.

Southern claims that no protests are expected. Moreover, a mileage allowance in consideration of a reduction of empty miles in assigned cars should not impair Southern's common carrier obligation to provide service to other shippers and should enhance service by encouraging conservation of carrier resources. Finally, a January 1, 1981 effective date would simplify the annual and monthly accounting under the tariff. The petition for exemption shall be granted in part. Southern shall be given a provisional exemption, provided that it files with the Commission, prior to or simultaneously with the filing of its contract, its written acceptance of, and agreement to be bound by, the following condition:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding, on its own initiative or on complaint, to review this contract and to disapprove the contract during the periods specified in 49 U.S.C. 10713. Thus subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Furthermore, we shall consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed on or before January 21, 1981.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Dated: December 23, 1980.

By the Commission, Division 2, Commissioners Trantum, Gresham, and Gaskins.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–310 Filed 1–5–81; 8:45 am]

BILLING CODE 7035–01–M

Alaska Railroad Freight Rates Study—1980

AGENCY: Interstate Commerce Commission.

ACTION: Notice of study of Alaska rail rates conducted pursuant to Section 709 of Staggers Rail Act of 1980 and House Conference Report No. 98–1400.

SUMMARY: This is a study to determine whether Alaska Railroad Water/rail rates would, if such rates had been entered into after the effective date of the Staggers Act, have violated section 10701a(c)(1) as amended.

DATES: Documents to be filed and served according to the following schedule:

(1) Alaska Railroad to file statements and information within 45-days after publication of this notice;

(2) Any comments within 30-days thereafter;

(3) Alaska Railroad's reply within 10-days thereafter.

ADDRESS: Send an original and fifteen copies, of any comments to: Bureau of Accounts, Rm. 6133, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354.

SUPPLEMENTARY INFORMATION:

The Staggers Rail Act of 1980, section 709, and House Conference Report No. 98–1400 orders that this study be conducted. To meet the statutory six-month deadline, extensions of time cannot be granted, barring extraordinary circumstances. The deadline for completion of this study is April 1, 1981.

Any comments submitted should focus on the statutory standards provided in section 10701a(c)(1) as amended by the Staggers Act, including: whether and how Alaska Railroad's rates are "below a reasonable minimum" and "contribute to going concern value."

Parties are encouraged to consult the outstanding notice in Ex Parte No. 355, *Cost Standards for Railroad rates*, where preliminary views are expressed concerning the standards for determining when pricing is predatory.

The Alaska Railroad shall provide information according to the guidelines appended in this notice within the 45-days set out in the schedule.

Additionally, Alaska Railroad should make its working papers available for public inspection upon reasonable request. Copies of comments will be made available for public inspection at the Office of the Interstate Commerce Commission, 12th Street and Constitution Avenue, Washington, D.C., during regular business hours.

A copy of this notice shall be served on the Commission's Office of Special Counsel, the Governor of Alaska, Sealand Corporation, and Totem Ocean Trailer Express, Inc.

Decided: December 1, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

APPENDIX A—Guidelines for Developing Cost and Revenues

1. Respondent shall provide the direct and indirect variable costs-of-service (including cost of capital) for the subject traffic.

2. Direct variable costs are defined as those costs which vary directly with traffic volume.

3. Indirect variable costs are defined as those costs which vary indirectly with traffic volume.

4. Cost of capital is defined as the embedded rate of debt (the rate) times net investment. The rate should be computed separately for road property and equipment. The road property rate should be based on the total interest payments on road property debt, plus apportionment of interest payments not directly assignable to road property or equipment, divided by total outstanding road property debt, plus an apportionment of outstanding debt not directly assignable to road property or equipment. The equipment rate should be computed in a like manner using interest on equipment debt, equipment debt and an apportionment of interest and related debt not directly assignable to road property or equipment. Net investment is defined as the original cost of land and rights, road property, and equipment, including an allowance for working capital, material and supplies, less book depreciation and total depreciable property and book amortization on road property.

5. Respondent shall provide specific distribution keys (e.g. tons, ton-miles, direct) and rationale for the selection of such keys for

(a) The distribution of system expenses to cost centers, if applicable; and,

(b) the distribution of cost expenses to subject traffic; or

(c) the distribution of system expenses to subject traffic.

Note.—The traffic data (tons, ton-miles, etc.) should be shown for subject traffic and system.

6. Respondent shall provide supporting rationale for the estimation of variability factors.

7. Variability factors are defined as the ratio of variable expenses to total expenses. Such factors can represent a single account or a group of accounts.

8. If respondent develops unit costs, such costs should be applied to a representative movement or movements of the subject traffic.

9. If the tariff revenue is subject to a revenue division, the revenue divisions accruing to the ARR must be shown.

10. A comparison of the revenue and variable cost of the subject traffic must be shown at three levels:

(a) Revenue vs. Direct Variable Cost; and,

(b) Revenue vs. Direct plus Indirect Variable Cost

(c) Revenue vs. Direct plus Indirect Variable Cost plus Cost of Capital.

11. Cost and revenue data must represent the most recent 12 month period available (referred to as base year).

12. Base year data must be updated to the most current economic level.

[FR Doc. 81-307 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

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 services which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing 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 particular 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 petitioner'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 amendment will not be accepted after the date of this publication.*

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.

Findings

With the exception of those applications 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 regulation. 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, preliminarily 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 within 30 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 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 within 30 days after publication, or the application shall stand denied.

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.

Volume No. 387

Decided: Dec. 9, 1980.

By the Commission, Review Board Number 2. Chandler not participating.

MC 60014 (Sub-113F), filed March 29, 1979. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Transporting (1) *commodities*, the transportation of which, because of size or weight, requires the use of special equipment, (2) *lumber products*, and (3) *plywood building materials*, from Galveston, TX, to those points in the U.S. in and east of MT, WY, CO, and NM.

Volume No. 390

Decided: Dec. 17, 1980.

By the Commission, Review Board Number 1. Members Carleton, Joyce and Jones.

MC 26825 (Sub-37F), filed May 14, 1979. Applicant: ANDREWS VAN LINES, INC., P. O. Box 1609, Norfolk, NE 68701. Representative: J. Max Harding, P. O. Box 82028, Lincoln, NE 68501. Transporting (1) *fiberglass and plastic products* (except in bulk) from Lincoln, NE, to points in the U.S. (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), in the reverse direction, restricted to traffic originating at or destined to the facilities of Snyder Industries, Inc.

Agatha L. Mergenovich

Secretary.

[FR Doc. 81-389 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may be 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 February 20, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before March 9, 1981 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 and 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. OP3–115

Decided: Dec. 14, 1980.

By the Commission, Review Board Number 3, Members, Parker, Fortier and Hill. Member Fortier not participating.

MC 135185 (Sub-53F), filed December 4, 1980. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 66, South Bend, IN 46624. Representative: Jack B. Wolfe, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 145904 (Sub-2F), filed October 17, 1980. Applicant: EQUIPMENT SUPPLIERS, INC., 7736 W. 62nd Place, Summit, IL 60501. Representative: Stephen H. Loeb, 33 North LaSalle St., Suite 2027, Chicago, IL 60602. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 153005F, filed December 5, 1980. Applicant: MILES LANE, d.b.a. MILES LANE TRUCKING, 4822 S. Shenandoah Way, Aurora, CO 80015. Representative: Miles Lane (same address as applicant). Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone, and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S. (Member Fortier not participating).

Volume No. OP3–118

Decided: Dec. 12, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 153015F, filed December 1, 1980. Applicant: GATEWAY AIR CARGO, INC., Foot of Broad Street, Stratford, CT 06497. Representative: Bruce H. Rabinovitz, 1700 Pennsylvania Ave, N.W., Washington, DC 20006. Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3–120

Decided: Dec. 17, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not participating.

MC 123415 (Sub-20F), filed November 25, 1980. Applicant: JAMES STUFFO, INC., Cinnaminson Industrial Park, 2301 Garry Rd. (P.O. Box 45), Cinnaminson, NJ 08077. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd. & Cottman St., Jenkintown, PA 19046. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

Volume No. OP3–122

Decided: Dec. 17, 1980.

By the Commission, Review Board Number 1. Members Carleton, Joyce and Jones.

MC 152285 Sub-1F, filed December 10, 1980. Applicant: Applicant: PACKERLAND TRANSPORT INC., 2580 University Avenue, P.O. Box 1184, Green Bay, WI 54305. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 153144F, filed December 9, 1980. Applicant: INTERAMERICAN TRANSPORT SYSTEMS, INC., 22203 Dunwin Drive, Mississauga, Ontario, Canada LSL1X2. Representative: David A. Sutherlund, 1150 Connecticut Ave., NW, Suite 400, Washington, DC 20036. As a *broker* in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP3–126

Decided: December 23, 1980.

By the Commission, Review Board Number 1. Members Carleton, Joyce and Jones. Member Jones not participating.

MC 3114 (Sub-41F), filed December 16, 1980. Applicant: T. H. COMPTON, INC., R. F. D. #1, Berkeley Springs, WV 25411. Representative: Herbert Alan Dubin, 818 Connecticut Ave., N.W., Washington, DC 20006. Transporting *general commodities* except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 127834 (Sub-128F), filed December 15, 1980. Applicant: CHEROKEE HAULING & RIGGING, INC., Highway 85, East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L" Madisonville, KY 42431. 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 (a) Lanara, Hub, and Mentone, CA, (b) Sorrento, FL, (c) Roseville and Youngstown, IL, (d) Commerce, OK, (e) DeSoto and Nashville, NE, (f) Jordan, KY, and Spelter and Farnum, WV, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitue motor carrier for abandoned rail service.

MC 139615 (Sub-36F), filed December 16, 1980. Applicant: DRS TRANSPORT, INC., P.O. Box 29, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 141084 (Sub-21F), filed December 16, 1980. Applicant: NATIONAL FREIGHT LINES, INC., 13023 Arroyo St., P. O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner, (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U. S. Government, between points in the U.S.

MC 141175 (Sub-4F), filed December 16, 1980. Applicant: GARLEPIED TRANSFER, INC., 319 Butterworth St., Jefferson, LA 70181. Representative: G. H. Knapp, Jr. (same address as applicant). Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 141175 (Sub-5F), filed December 16, 1980. Applicant: GARLEPIED TRANSFER, INC., 319 Butterworth St., Jefferson, LA 70181. Representative: G. H. Knapp, Jr. (same address as applicant). As a broker in arranging for the transportation of *general commodities* (except household goods), between points in the U. S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-392 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or juridictional 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 by February 20, 1981 (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. OP3–114

Decided: December 12, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Fortier not participating.

MC 2095 (Sub-34F), filed December 1, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, Sabetha, KS 66534. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *iron and steel articles* (except oil field commodities as described in *T.E. Mercer and G.E. Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459 and earth drilling commodities as described in *Roy L. Jones, Inc. Extension-Earth Drilling*

Equipment, 103 M.C.C. 823), from points in Clinton and Lycoming Counties, PA, to points in WI, TN, MS, AR, MO, IA, NE, FL, KS, OK, TX, CO, and CA.

MC 12945 (Sub-2), filed December 4, 1980. Applicant: THE TOLEDO AUTOMOBILE CLUB, a corporation, 2271 Ashland Ave., Toledo, OH 43620. Representative: Keith D. Warner, 5732 W. Rowland Rd., Toledo, OH 43613. *Broker*, at Toledo, Defiance, and Bowling Green, OH, in arranging for the transportation of *passengers and their baggage* in charter operations, between points in OH, on the one hand, and, on the other, points in the U.S., including AK and HI.

MC 24784 (Sub-41F), filed December 4, 1980. Applicant: BARY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Transporting (1) *building, construction and roofing materials*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in Jackson County, MO, on the one hand, and, on the other, points in the U.S.

MC 52574 (Sub-63F), filed November 12, 1980. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th St., Irvington, NJ 07111. Representative: Edward F. Bowes, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *food or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in the U.S. (except AK and HI), under continuing contract(s) with S. B. Thomas, Inc., of Totowa, NJ.

MC 60014 (Sub-203F), filed December 2, 1980. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *stone*, between points in Darlington County, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 77424 (Sub-53F), filed October 22, 1980, previously published in **Federal Register** of November 14, 1980. Applicant: WENHAM TRANSPORTATION, INC., 3200 East 79th Street, Cleveland, OH 44104. Representative: James Johnson (same address as applicant). Transporting *automobile parts*, from Centralia, IL to points in MI and OH.

Note.—This republication clarifies the commodity description.

MC 105045 (Sub-157F), filed December 5, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania St., Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *transformers* and *electric switchgear*, (2) *parts* for the transformers and electric switchgear, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in Waukesha County, WI, on the one hand, and, on the other, points in the U.S.

MC 106674 (Sub-514F), filed December 5, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *air conditioning equipment*, and *furnaces* and (2) *parts and accessories* for the commodities named in (1) above, and (3) *materials, equipment and supplies* used in the manufacture, sale, and distribution of the commodities in (1) and (2) above, between Warren, Rutherford and Davidson Counties, TN, and Onondaga County, NY, on the one hand, and, on the other, those points in the U.S., in and east of ND, SD, NE, KS, OK, and TX.

MC 106674 (Sub-516F), filed December 5, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *zinc, and zinc slabs, non-ferrous metals, ores, chemicals, scraps and containers*, and (2) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Madison and St. Clair Counties, IL, Iron County, MO, Branch County, MI, Cuyahoga County, OH, Lee County, IA, Plaquemines County, LA, Allegany and Washington Counties, PA, Middlesex and Essex Counties, NY and Orangeburg, County, SC, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 107445 (Sub-39F), filed December 2, 1980. Applicant: UNDERWOOD MACHINERY TRANSPORT, INC., 940 W. Troy Ave., Indianapolis, IN 46203. Representative: K. Clay Smith, P.O. Box 33051, Indianapolis, IN 46203. Transporting (1) *machinery and supplies* for machinery, (2) *metal products*, and (3) *commodities* requiring the use of special equipment, between points in the U.S., under continuing contract(s) with Underwood Transfer Company, Inc., of Indianapolis, IN.

MC 107515 (Sub-1399F), filed December 1, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E. 5th Floor, Atlanta, GA 30326. Transporting *malt beverages*, and *materials, equipment and supplies* used in the production and distribution of malt beverages, between the facilities of the Stroh Brewery Company, at or near Detroit, MI and Perrysburg, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 107515 (Sub-1400), filed December 2, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *cosmetics and toiletries*, between points in Middlesex and Union Counties, NJ and Maricopa County, AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107515 (Sub-1401F), filed December 2, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting (1) *automotive and industrial batteries*, and (2) *materials, equipment and supplies* used in the production and distribution of the commodities in (1) above, between the facilities of ESB, Inc., a division of Exide Corporation, in the U.S., on the one hand, and, on the other, points in the U.S.

MC 119315 (Sub-34F), filed December 4, 1980. Applicant: FREIGHTWAY CORPORATION, 131 Matzinger Rd., Toledo, OH 43612. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, OH 43215. Transporting *containers and container ends*, between points in DuPage County, IL, on the one hand, and, on the other, points in Lucas County, OH.

MC 125335 (Sub-109F), filed December 3, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by wholesale and retail grocery stores and food business houses, between points in Franklin, Cumberland, Dauphin, York, and Adams Counties, PA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IA, IN, KS, KM, LA, MI, MN, MS, MO, NE, NC, ND, OH, OK, SC, SD, TN, TX, and WI.

MC 126714 (Sub-4F), filed December 3, 1980. Applicant: SOUTHWEST DELIVERY COMPANY, INC., P.O. Box 451, Vancouver, WA 98666. Representative: Earle V. White, 2400

S.W. Fourth Ave., Portland, OR 97201. Transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between points in Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Wasco, Washington, and Yamhill Counties, OR, on the one hand, and, on the other, those points in WA in and west of Whatcom, Skagit, Snohomish, King, Pierce, Lewis, and Skamania Counties, WA (except points in Clallam and Jefferson Counties, WA), and (b) between points in Cowlitz County, WA, on the one hand, and, on the other, those points in WA in and west of Whatcom, Skagit, Snohomish, King, Pierce, Lewis, and Skamania Counties, WA (except points in Clallam and Jefferson Counties, WA).

MC 129994 (Sub-50F), filed December 4, 1980. Applicant: RAY BETHERS TRUCKING, INC., 176 West Central Ave., Salt Lake City, UT 84107. Representative: Marilyn McNeil (same address as applicant). Transporting *iron and steel articles,* from the facilities of Nucor Steel Plant, at or near Plymouth, UT, to points in UT, AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 133194 (Sub-22F), filed November 28, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Rd., P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, SR. (same address as applicant). Transporting *dry goods, wearing apparel,* and *equipment* used in the manufacture of clothes, (1) between the facilities of Garan, Inc., at (a) Ozark, AR, and (b) Clinton, KY, (2) between the facilities of Garan, Inc., at (a) Clinton, KY, and (b) Ozark, AR, and (3) between the facilities of Garan, Inc., at Clinton, KY, and Memphis, TN.

MC 135154 (Sub-9F), filed November 29, 1980. Applicant: BADGER LINES, INC., 3109 W. Lisbon Avenue, Milwaukee, WI 53208. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Transporting (1) *such commodities* as are dealt in or used by manufacturers and distributors of glass containers and closures, between the facilities of Thatcher Glass Manufacturing Co., a division of Dart & Kraft, Inc., in Elmira, NY, on the one hand, and on the other, points in the U.S. (except AK and HI); and (2) *plastic and cellulose articles,* between points in Muscatine County, IA and Fayette County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136635 (Sub-44F), filed December 3, 1980. Applicant: WHITEFORD TRUCK LINE, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *iron and steel articles* and *aluminum articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Greenfield and Kingsbury, IN, on the one hand, and, on the other, points in MI, OH, PA, WV, NY, IL, and MO.

MC 140744 (Sub-18F), filed December 4, 1980. Applicant: ARTIC AIR TRANSPORT, INC., 853 West Main St., Mondovi, WI 54755. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. 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 Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Jackson, Juneau, LaCrosse, Lincoln, Marathon, Monroe, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempeleau, Vernon, Washburn and Wood Counties, WI; Anoka Carver, Chisago, Dakota, Dodge, Fillmore, Goodhue, Hennepin, Houston, Isanti, Kanabec, LeSueur, Mille Lacs, Mower, Olmsted, Pine, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona and Wright Counties, MN; and LaCrosse, WI, and Minneapolis MN.

MC 141175 (Sub-3F), filed December 2, 1980. Applicant: GARLEPIED TRANSFER, INC., 319 Butterworth St., Jefferson, LA 70181. Representative: G. H. Knapp, Jr. (same address as applicant). Transporting (1) *textile mill products,* (2) *apparel, or other finished textile products or knit apparel,* and (3) *lumber or wood products,* except furniture, as described in Items 22, 23, and 24, respectively, of the Standard Transportation Commodity Code Tariff (STCCT), (4) *pulp, paper, or allied products,* as described in Item 26 of STCCT, (5) *chemicals or allied products,* (6) *petroleum or coal products,* and (7) *rubber or miscellaneous plastic products,* as described in Items 28, 29, and 30, respectively, of STCCT, (8) *clay, concrete, glass or stone products,* and (9) *primary metal products,* including galvanized; except coating or other allied processing, and (10) *fabricated metal products,* except ordnance, as described in Item 32, 33, and 34, respectively, of STCCT, (11) *machinery, except* electrical, (12) *electrical machinery or equipment,* or supplies, and (13) *transportation equipment,* as described in Items 35, 36, and 37, respectively, of STCCT, (14) *miscellaneous products of manufacturing,* as described in Item 39 of STCCT, (15) *freight forwarder traffic,* as described in Item 44 of STCCT, and (16) *commodities having a* prior or subsequent movement by water, rail, or air, between points in TX, OK, AR, IA, MS, AL, FL, and GA.

MC 141464 (Sub-4F), filed December 2, 1980. Applicant: TOM SMITH TRUCKING COMPANY, A Corporation, 2277 N Locust Street, Canby, OR 97013. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201.Transporting (1) *paper, and paper products,* (2) *ink,* and (3) *materials, supplies and equipment* used in the manufacture and distribution of the commodities in (1) and (2), between points in the U.S. (except AK and HI), under continuing contract(s) with Western Kraft Paper Group, Williamette Industries, Inc., Beaverton, OR.

MC 146015 (Sub-11F), filed December 28, 1980. Applicant: MUMMA FREIGHT LINES, INC., 6495 Carlisle Pike, Mechanicsburg, PA 17055. Representative: Barry Weintraub, Suite 800, 8133 Leesburg Pike, Vienna, VA 22180. Transporting *prepared foods,* between points in the U.S. under continuing contract(s) with Nissin Foods (USA) Co., Inc., of Fort Lee, NJ.

MC 147415 (Sub-5F), filed November 20, 1980. Applicant: SKY CORPORATION, P.O. Box 838, Bismarck, ND 58502. Representative: Charles E. Johnson, P.O. Box 2578, Bismarck, ND 58502. Transporting (1) *lumber and lumber products,* (2) *wood products,* (3) *forest products,* and (4) *lumber.mill products,* (a) from points in CA, WA, OR, ID, MT, UT, CO, WY, and SD, to points in ND, SD, MN, MI, MO, WI, IA, NE, KS, and IL, and (b) from points in MN, IA, MI, WI, and SD, to points in CA, WA, OR, ID, MT, UT, CO, WY, SD, ND, and MN.

Note.—Issuance of this Certificate is subject to prior or coincidental cancellation, at applicant's written request of Permits No. MC–144378F, and MC–144378 Sub 4F, part (1).

MC 148235 (Sub-2F), filed December 2, 1980. Applicant: TAYLOR AND SONS TRUCKING, 101–48th St., S.E., Kentwood, MI 49508. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting (1) *new furniture and fixtures* and (2) *materials, equipment, and supplies* used in the manfacture and distribution of the commodities in (1), between points n the U.S. (except AK and HI), under

continuing contract(s) with Union City Mirror & Table Co., of Union City, NJ.

MC 150894 (Sub-1F), filed December 3, 1980. Applicant: RONALD R. CLARK, 226 Filbert, Wray, CO 80758. Representative: Ronald R. Clark (same address as applicant). Transporting *dry potash compounds, boron compounds,* and *liquid fertilizers,* in bulk, between points in the U.S. under continuing contract(s) with Consumers Coop, Inc., Bojac, Inc., and Pure Grow, Inc., all of Wray, CO.

MC 151985 (Sub-1F), filed December 2, 1980. Applicant: BRAVE TRANSPORT, INC., 3181 Bankhead Hwy., Atlanta, GA 30318. Representative: John C. Bach, 1400 Candler Bldg., Atlanta, GA 30043. Transporting (1) *steel coil and steel sheet,* (2) *aluminum coil and aluminum sheet,* and (3) *steel articles and aluminum articles,* between points in Cobb County, GA, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 152975F, filed December 2, 1980. Applicant: LEWIS LEASING COMPANY, A Corporation, P.O. Box 838, Pottstown, PA 19464. Representative: Theodore B. DeWalt (same address as applicant). Transporting *structural steel,* between points in the U.S., under continuing contract(s) with F. M. Weaver, Inc., Lansdale, PA.

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Decided: Dec. 11, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Fortier not participating.

MC 2934 (Sub-97F), filed November 17, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Indianapolis, IN 46032. Representative: W. G. Lowry (same address as applicant). Transporting *furniture* and *furniture parts,* from points in AL, GA, MS, NC, IN, and VA, to points in IL, IN, MI, MN, MO, NY, OH, PA, and WI.

MC 1445 (Sub-1F), filed December 4, 1980. Applicant: RAMON R. BIONE d.b.a BIONE TRUCK SERVICE, P.O. Box 96, Christopher, IL 62822. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *playground and exercise equipment,* (2) *outdoor grills and bar stools,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2), between points in Jackson, Perry and Williamson Counties, IL, on the one hand, and, on the other, points in AR, IA, LA, OK, MN, MO, and TX.

MC 15975 (Sub-41F), filed December 1, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting (1) *animal and poultry feeds,* and (2) *materials, supplies, and ingredients* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk), between Webb City, MO, and Portland, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 16334 (Sub-1F), filed December 8, 1980. Applicant: DEBRICK TRUCK LINE COMPANY, R.R. No. 2, Paola, KS 66071. Representative: D. L. DeBrick (same address as applicant). Transporting *clay pipe, tile, and flue linings,* between Pittsburg, KS, on the one hand, and, on the other, points in AR, IL, IA, NE, and TX.

MC 36255 (Sub-4F), filed November 15, 1980. Applicant: K & R DELIVERY, INC., 255 West Oakton St., Des Plaines, IL 60018. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in WI, IN, and MI, within 100 miles of Chicago, IL, including Chicago, IL and Madison, WI.

Note.—(A) Applicant intends to tack this authority with the requested authority to be acquired in MC–F–14403, which authorizes the transportation of general commodities, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between points within 50 miles of Palatine, IL, and (2) between points within 50 miles of Palatine, IL, on the one hand, and, on the other, points in IL. (B) Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request, of Certificate MC 36255.

MC 89684 (Sub-115F), filed December 1, 1980. Applicant: WYCOFF COMPANY, INC., P.O. Box 366, Salt Lake City, UT 84110. Representative: John J. Morrell (same address as applicant). Transporting *such commodities as are dealt in or used by mail order houses and retail stores* (except commodities in bulk), between Denver, CO, on the one hand, and, on the other, points in WY, ID, and UT, restricted to traffic originating at or destined to the facilities used by Montgomery Ward and Company, Inc.

MC 106074 (Sub-451F), filed December 8, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy 221, S. Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *textiles* and *textile products,* from Bryson City, NC, to points in CO, FL, IL, IN, IA, KS, MN, MO, NE, OK, SC, TX, and WI.

MC 106674 (Sub-515F), filed December 8, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *refractories,* and (2) *materials and supplies* used in the manufacture, distribution and installation of refractories, between the facilities of General Refractories Company, U.S. Refractories Division, located at or near Curtis Bay, MD, on the one hand, and, on the other, points in AL, DE, GA, IL, IN, KY, MD, MI, MS, NC, NJ, NY, OH, PA, SC, TN, VA, WI, and WV; (3) *board, wall or insulating materials,* and (4) *materials and supplies* used in the manufacture, distribution and installation of the commodities in (3) above, between the facilities of General Refractories Company, Grefco, Inc., a wholly-owned subsidiary, located at or near Jamesburg, NJ, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, MS, NH, NJ, NY, NC, OH, PA, SC, TN, VA, VT, WI, WV, and DC.

MC 106674 (Sub-517F), filed December 8, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *adhesives, cement compounds, caulking compounds, cleaning and polishing compounds, and solutions, emulsions, latex solutions, mastic material, sealing primer and solvents,* and (2) *materials, equipment, and supplies* used in the application of the commodities in (1), between Trenton, NJ, Conyers, GA, Rosemont and Elk Grove Village, IL, and Montebello, CA, on the one hand, and, on the other, points in the U.S.

MC 108375 (Sub-45F), filed December 4, 1980. Applicant: LEROY L. WADE & SON, INC., 10550 "I" St., Omaha, NE 68127. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting (1) *commodities,* the transportation of which, because of size or weight, requires the use of special equipment, and (2) *parts, materials, and supplies* incidental to the transportation of the commodities in (1) above, from points in IA, KS, and SD, to points in NE.

MC 114015 (Sub-33F), filed December 8, 1980. Applicant: HUSS, INC., Highway 47 West, P.O. Box 666, Chase City, VA 23924. Representative: Morton E. Kiel,

Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *steel articles, and materials, supplies and equipment* used in the manufacture, installation and distribution of steel articles, between points in the U.S., under continuing contract(s) with Guille Steel Products Company, Inc., of Virginia Beach, VA.

MC 115975 (Sub-44F), filed December 5, 1980. Applicant: C.B.W. TRANSPORT SERVICE, INC., P.O. Box 48, Wood River, IL 62095. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *petroleum or coal products*, and *chemicals or allied products*, as described in Items (29) and (28) respectively of the Standard Transportation Commodity Code, between points in the U.S., under continuing contract(s) with Shell Oil Company, Texaco, Inc., Mobil Oil Corporation, Exxon Corporation, and Motor Oils Refining Company.

MC 117384 (Sub-10F), filed December 8, 1980. Applicant: DAVIDSON BROTHERS, R.D. No. 3, Bellefonte, PA 16823. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *ferro alloys, desulphurizer compounds, and iron and steel purifiers*, between points in Lawrence County, PA, on the one hand, and, on the other, points in IL, IN, MI, and OH.

MC 119894 (Sub-21F), filed December 4, 1980. Applicant: BOWARD TRUCK LINE, INC., 100 Roesler Rd., Suite 200, Glen Burnie, MD 21061. Representative: M. Bruce Morgan (same address an applicant). Transporting (1) *paper, paper products, and paperboard products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of paper, paperboard products and paper products, between the facilities of Sonoco Products Company, at or near Hartsville, SC, on the one hand, and, on the other, points in NC, VA, TN, and GA.

MC 120835 (Sub-1F), filed December 3, 1980. Applicant: BRUCE G. Heady, d.b.a. COVELO TRANSPORTATION, 112 Orr Springs Rd., Ukiah, CA 94582. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518. 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 Alameda, Colusa, Contra Costa, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, Sacramento, San Francisco, San Joaquin, Santa Clara, Santa Cruz, Shasta, Solano, Stanislaus, Sonoma, and Trinity Counties, CA.

MC 121654 (Sub-42F), filed December 3, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., a corporation, P.O. Box 7438, Savannah, GA 31408. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers of pollution control equipment, between points in Clayton and Fulton Counties, GA, and Duval County, FL, on the one hand, and, on the other, points in the U.S.

MC 123065 (Sub-12F), filed December 4, 1980. Applicant: STX INC, d.b.a. SPOTSWOOD TRAIL EXPRESS, Redbone Rd., Chester Springs, PA 19425. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting *new furniture*, from points in Alexander, Burke, Caldwell, Catawba, Cumberland, Davidson, Graham, Guilford, Iredell, Lee, Orange, Randolph, Rutherford, and Surry Counties, NC, to points in CT, DE, MA, MD, MI, NJ, NY, OH, PA, RI, and DC.

Note.—Applicant relies on traffic studies rather than supporting shippers.

MC 127625 (Sub-40F), filed December 5, 1980. Applicant: SANTEE CEMENT CARRIERS, INC., P.O. Box 638, Holly Hill, SC 29059. Representative: Frank B. Hand, Jr., 521 South Cameron St., Winchester, VA 22601. Transporting *fly ash*, from points in Russell County, VA, to points in SC.

MC 134574 (Sub-45F), filed December 10, 1980. Applicant: FIGOL DISTRIBUTORS LIMITED, P.O. Box 6298, Station "C," Edmonton, Alberta, Canada T5B 4K6. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. Transporting *thermal carbon black*, from ports of entry on the international boundary line between the U.S. and Canada, to points in the U.S. (except AK and HI).

MC 138635 (Sub-122F), filed November 20, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), between New Orleans, LA, and points in Jefferson Parish, LA, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the facilities used by New Orleans Cold Storage & Warehouse Co., Ltd.

MC 145104 (Sub-3F), filed December 9, 1980. Applicant: MIL-CO TRUCKING, INC., 319 S. Main St., West Unity, OH 43750. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Williams, Fulton, Paulding, Definance, Henry, Lucas, Wood, Sandusky, Erie, Huron, Lorain, and Cuyahoga Counties, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 145505 (Sub-3F), filed December 5, 1980. Applicant: IRISH TRANSPORTATION, INC., 8007 South Meridian St., Indianapolis, IN 46227. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *motor vehicles*, over ¾ ton gross weight (except automobiles, truck-mounted and self-propelled mine, well and quarry-drilling equipment), in driveaway or truckaway movements, between points in Jefferson County, KY, Richland County, SC, and Denton County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146885(Sub-5F), filed December 2, 1980. Applicant: BEN CAPOBIANCO TRUCKING, INC., 5275 Talawanda Dr., Hamilton, OH 45014. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215.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 Cincinnati, OH, on the one hand, and, on the other, points in AZ, CA, CO, FL, ID, MT, NV, OR, TX, UT, OH, and WA.

MC 147454 (Sub-3F), filed December 4, 1980. Applicant: JAMES CONDOSTA, 807 Exeter Ave., W. Pittston, PA 18643. Representative: Joseph A. Keating, Jr., 121 South Main St., Taylor, PA 18517. Transporting *scrap iron and steel*, between points in NY, CT, RI, MA, NJ, PA, DE, VA, NC, SC, NH, KY, IN, IL, IA, OH, MI, WI, TN, MD, WV, TX, and DC.

MC 147805 (Sub-11F), filed December 5, 1980.Applicant: TERESI TRUCKING, INC., 900½ Victor Rd., P.O. Box 819, Lodi, CA 95240. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in AZ, CA, ID, NV, NM, OR, UT, and WA.

MC 149155 (Sub-8F), filed December 8, 1980. Applicant: JOHN PEPPER, d.b.a. MIDWEST CARTAGE COMPANY, P.O. Box 318, Atchison, KS 66002. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141.Transporting *non-exempt food or kindred products* as described in Items (20) of the Standard Transportation Commodity Code, between points in Buchanan County, MO, and York County, ME.

MC 150235 (Sub-2F), filed December 8, 1980. Applicant: POWELL TRUCKING COMPANY, INC., Route 3, Box 13, Sumrall, MS 39482. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Transporting *prestressing strand,* and *iron and steel articles,* between points in Cuyahoga County, OH, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, TN, and TX.

MC 150425 (Sub-3F), filed December 5, 1980. Applicant: TRANS–CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Transporting *cleaning compounds, textile softeners, foodstuffs, and toilet preparations,* between the facilities of Lever Brothers Co., at or near St. Louis, MO, on the one hand, and, on the other, points in TX, LA, MS, GA, TN, AR, NC, NY, NJ, MI, OH, and CA.

MC 150844 (Sub-1F), filed November 28, 1980. Applicant: WILLIAM J. KLEIN, P.O. Box 334, U.S. Hwy 422, Douglassville, PA 19518. Representative: Nicholas E. Chimicles, 1719 Packard Bldg., Philadelphia, PA 19102. Transporting *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in the townships of Amity, Colebrookdale, Caernarvon, Robeson, Exeter, Douglass, Earl, Union, Oley, East Coventry, North Coventry, South Coventry, Warwick, West Pottsgrove, Upper Pottsgrove, Lower Pottsgrove, and East Nantmeal, and the boroughs of Birdsboro, Elverson, and Pottstown, PA, and extending to points in the U.S. (except AK and HI).

MC 151605 (Sub-1F), filed November 26, 1980. Applicant: DONALD E. RODMAN, d.b.a. RODMAN TRUCK SERVICE, 1923 Southwest 15th St., Oklahoma City, OK 73148. Representative: R. H. Lawson, 2753 Northwest 22nd St., Oklahoma City, OK 73107. Transporting (1) *construction materials,* and (2) *clay brick,* between points in the U.S., under continuing contract(s) with Willard Wholesale Roofing Company, of Oklahoma City, OK, and Acme Brick Company, of Fort Worth, TX, and their subsidiaries, suppliers, and customers.

MC 151944 (Sub-1F), filed December 8, 1980. Applicant: JAMES H. POPPINGA (no street address), Chancellor, SD 57015. Representative: Claude Stewart, S.D. Transport Services, Inc., P.O. Box 480, Sioux Falls, SD 57101. Transporting *fertilizer,* from points in IA, MN, and NE to points in SD.

MC 152674 (Sub-1F), filed December 4, 1980. Applicant: MIDWEST EXPRESS, INC., P.O. Box 550, Miami, OK 74354. Representative: David Hunter, (same address as applicant). Transporting (1) *mops, brooms, and yarn,* and (2) *materials* used in the manufacture of the commodities in (1) above, between points in OK, NY, PA, CA, OH, IL, and TX, on the one hand, and, on the other, points in MA, KY, NC, SC, GA, AL, and MS.

MC 152674 (Sub-2F), filed December 4, 1980. Applicant: MIDWEST EXPRESS, INC., P.O. Box 550, Miami, OK 74354. Representative: David Hunter (same address as applicant). Transporting (1) *lawn mowers, garden tractors, and chain saws,* and (2) *parts and accessories* for the commodities in (1) above, between points in OK, on the one hand, and, on the other, points in AR, CO, CT, GA, IL, KY, OR, TN, and TX.

MC 153064F, filed December 8, 1980. Applicant: HAAS CARRIAGE, INC., 625 W. Utica St., Sellersburg, IN 47172. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *cabinets* and *materials, equipment, and supplies* used in the manufacture and distribution of cabinets, between points in the U.S., under continuing contract(s) with Haas Cabinet Co., Inc.

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Decided: December 12, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 8744 (Sub-16F), filed December 4, 1980. Applicant: CONSOLIDATED MOTOR EXPRESS, INC., 909 Grant St., Bluefield, WV 24701. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) (1) between points in Cabell and Wayne Counties, WV, and Kermit, WV, from points in Cabell and Wayne Counties over Interstate Hwy 64 to junction U.S. Hwy 52, and then over U.S. Hwy 52 to Kermit, and return over the same route, (2) between points in Cabell and Wayne Counties, WV, and Logan, WV, over WV Hwy 10, and (3) between points in Cabell and Wayne Counties, WV, and Madison, WV, from points in Cabell and Wayne Counties over WV Hwy 10 to junction WV Hwy 3, then over WV Hwy 3 to junction U.S. Hwy 119, and then over U.S. 119 to Madison, and return over the same route, serving in connection with routes (1), (2), and (3), all intermediate points and all off-route points in Lincoln and Putnam Counties, WV, Boyd and Lawrence Counties, KY, and Lawrence County, OH.

MC 111485 (Sub-30F), filed December 8,1980. Applicant: PASCHALL TRUCK LINES, INC., Route 4, Murray, KY 42071. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. Transporting *general commodities* (except household goods and classes A and B explosives), between points in St. Charles County, MO, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 115865 (Sub-6F), filed December 9, 1980. Applicant: QUIMBY TRUCKING, INC., P.O. Box 807, Hermiston, OR 97838. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *fertilizer and urea,* between points in OR and WA, on the one hand, and, on the other, points in WA, OR, ID, MT, UT, and NV.

MC 140665 (Sub-124F), filed December 4, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting (1) *batteries and parts for batteries,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by ESB, Incorporated.

MC 151034 (Sub-1F), filed October 21, 1980. Applicant: HENRY MONTGOMERY TRUCKING, 6401 East Broadway, Tampa, FL 33619. Representative: John W. McWhirter, Jr., P.O. Box 1364, Tampa, FL 33601. Transporting (1) *fruit juices, citrus products* and *citrus byproducts,* and (2) *non-alcoholic beverages* and *beverage preparations,* between points in the U.S., under continuing contract(s) with Tropicana Products, Inc., of Bradenton, FL.

MC 152544 (Sub-2F), filed December 9, 1980. Applicant: CYPRESS TRUCK LINES, INC., 1746 East Adams St., Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *general commodities* (except household

goods as defined by the Commission, classes A and B explosives, liquid and petroleum products and liquid chemicals, in bulk), between points in FL, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the facilities used by C & C Bulk Liquid Transfer, Inc.

MC 152544 (Sub-3F), filed December 9, 1980. Applicant: CYPRESS TRUCK LINES, INC., 1746 East Adams St., Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *plastic articles and steel articles*, from Crawfordsville, IN, and Alliance, OH, to Jacksonville, FL.

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Decided: Dec. 17, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Hill not participating.

MC 111485 (Sub-31F), filed December 8, 1980. Applicant: PASCHALL TRUCK LINES, INC., Route 4, Murray, KY 42071. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. Transporting (1) *electrical fuses, fuse plugs, cutouts, fuse holders*, and (2) *materials* used in the manufacture and distribution of the commodities in (1), between the facilities of Buseman Manufacturing Company, at or near St. Louis, MO, on the one hand, and, on the other, Elizabethtown, KY, Bristol, CT, Detroit, MI, and Cleveland, OH.

MC 112184 (Sub-73F), filed December 8, 1980. Applicant: THE MANFREDI MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. Transporting *liquid sugars* and *blends* of liquid sugars, between points in the U.S., under contract(s) with Cargill, Incorporated, at Dayton, OH.

MC 114045 (Sub-577F), filed December 8, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *food and kindred products*, from the facilities of Geo. A. Hormel & Co., in Rock County, WI, to points in NM, OK and TX.

MC 114274 (Sub-72F), filed December 8, 1980. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle St., Chicago, IL 60601. Transporting *confectionery*, from the facilities of M & M Mars, Inc., Division of Mars, Inc., at (a) Elizabethtown, PA, (b) Hackettstown, NJ and (c) Chicago, IL, to points in IL, IA, MN, MO, NE and KS.

MC 116915 (Sub-129F), filed December 8, 1980. Applicant: ECK MILLER TRANSPORTATION CORP., Rt. #1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting *iron and steel articles*, between the facilities of Jones & Laughlin Steel Corporation, at Pittsburgh and Aliquippa, PA, and Youngstown, OH, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, LA, MI, MS, MO, NC, OH, SC, TN, TX, WV, and WI.

MC 119894 (Sub-22F), filed December 8, 1980. Applicant: BOWARD TRUCK LINE, INC., 100 Roesler Rd., Suite 200, Glen Burnie, MD 21061. Representative: M. Bruce Morgan (same address as applicant). Transporting (1) *paper, paper products, paperboard products, pulpboard, and activated carbon*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) between points in GA, NC, SC, TN, VA, MD, and DC.

MC 120875 (Sub-2F), filed November 25, 1980. Applicant: OVERPECK TRUCKING COMPANY a corporation, 2520 Summit Ave., P.O. Box 14, Overpeck, OH 45055. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting *commodities in bulk*, between points in Butler County, OH, on the one hand, and, on the other, points in OH, IN, KY and MI. Condition: Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request of Certificate of Registration No. MC 120875 Sub 1.

MC 121424 (Sub-5F), filed December 8, 1980. Applicant: DAL-HAR DISTRIBUTION COMPANY, INC., 400 West Main Street, Dallas, TX 75208. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting (1) *primary metal products*, and *fabricated metal products*, and (2) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in TX, LA, AR, OK, NM, KS, and MO. Condition: Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration MC 121424 Sub 3.

MC 121664 (Sub-138F), filed December 4, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 46460. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. Transporting *building materials, equipment, and supplies*, between points in GA, on the one hand, and, on the other, points in KY, TN, AR, AL, and MS.

MC 123405 (Sub-82F), filed December 8, 1980. Applicant: FOOD TRANSPORT, INC., R.D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting *paper and paper products* (except commodities in bulk), from the facilities of Scott Paper Company, at or near Mobile, AL, to points in FL, VA, MD, DE, NJ, PA, NY, CT, and DC.

MC 127115 (Sub-22F), filed December 8, 1980. Applicant: MILLERS TRANSPORT, INC., 510 West 4th North, Hyrum, UT 84319. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. Transporting *equipment, materials and supplies* used in the manufacture and distribution of furniture, between points in the U.S., under continuing contract(s) with Van Waters & Rogers a Division of Univar, of Salt Lake City, UT.

MC 136774 (Sub-15F), filed December 8, 1980. Applicant: MC–MOR–HAN TRUCKING CO., INC., P.O. Box 368, Shullsburg, WI 53586. Representative: Donald B. Levine, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting *liquid corn sirup and blends* of liquid corn sirup, between points in Lee County, IA, and Cook County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136774 (Sub-16F), filed December 8, 1980. Applicant: MC–MOR–HAN TRUCKING CO., INC., P.O. Box 368, Shullsburg, WI 53586. Representative: Donald B. Levine, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting (1) *foodstuffs* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, (except commodities in bulk), between points in Champaign County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138635 (Sub-123F), filed December 8, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). Transporting *such commodities* as are dealt in or used by food business houses, between points in OH and SC, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, KY, LA, MA, MD, ME, MS, MT, NC, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WY, and DC, restricted to traffic originating at or destined to the facilities of Stouffer Foods Corporation.

MC 139244 (Sub-11F), filed December 8, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg.,

Springfield, IL 62701. Transporting *aluminum and plastic pipe and fittings*, between points in the U.S., under continuing contract(s) with Kroy Industries, Inc.

MC 144115 (Sub-5F), filed December 8, 1980. Applicant: DIVERSIFIED CARRIERS, INC., 903 Sixth Street NW., Rochester, MN 5501. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095. Transporting *non-exempt foodstuffs and kindred products*, and *materials equipment and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Kane-Miller Corp.

MC 144595 (Sub-5F), filed December 8, 1980. Applicant: ROBERT D. ANTHOLZ, d.b.a. PAWNEE GRAIN COMPANY, Route 3, Box 42, Pawnee City, NE 68420. Representative: Jack L. Schultz, P.O. Box 8208, Lincoln, NE 68501. Transporting *lumber, lumber mill products, and wooden products*, between points in the U.S. (except AK and HI), under continuing contracts(s) with Braun, Ray Bros. & Finley Co., of Omaha, NE. Condition: Issuance of a certficate is subject to prior or coincidental cancellation, at applicant's written request, of Certificate No. MC 144595 Subs 1 and 2.

MC 148275 (Sub-3F), filed December 8, 1980. Applicant: J. L. McCOY, INC., P.O. Box 525, Ravenswood, WV 26164. Representative: John M. Friedman, 3930 Putnam Ave., Hurricane, WV 25526. Transporting *fabricated metal products*, except ordnance as described in Item (34) of the Standard Transportation Commodity Code, between points in New Castle County, DE, Cook and Madison Counties, IL, Cuyahoga County, OH, and Jefferson County, AL, on the one hand, and, on the other, those points in the U.S. in and east of WI, IA, MO, AR, and LA.

MC 150484 (Sub-1F), filed December 2, 1980. Applicant: PATIO FREIGHT LINES, INC., 1251 E. Mission, Pomona, CA 91766. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. 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 Diamond International, Inc.

MC 152254 (Sub-1F), filed December 8, 1980. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting (1)*fiberglass, fiberglass products, and fiberglass materials*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with PPG Industries, Inc., of Pittsburgh, PA.

MC 153084F, filed December 8, 1980. Applicant: CROWN EXPRESS, INC. (a Missouri Corporation), 1222 West 12th St., Kansas City, MO 64101. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. 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 Kansas City, MO and Topeka, Lawrence, and Leavenworth, KS.

MC 153094F, filed December 8, 1980. Applicant: RONNEY L. ROGERS, d.b.a. ROGERS TRUCKING, Rt. L, B 1724, Clatskanie, OR 97016. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *bananas*, between Port Hueneme and Long Beach, CA, on the one hand, and, on the other, points in Pierce County, WA.

MC 153115F, filed December 8, 1980. Applicant: TRIPLE R TRUCKING CO., INC., Route 1, Register, GA 30452. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting *fertilizer*, from the facilities of Gold Kist Inc. in Effingham County, GA, to points in FL, NC, and SC.

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Decided: December 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 10345 (Sub-103F), filed December 10, 1980. Applicant: C & J COMMERCIAL DRIVEAWAY, INC., 2400 W. St. Joseph St., Lansing, MI 48901. Representative: Joseph Gracia, Suite 211—3221 W. Big Beaver Rd., Troy, MI 48084. Transporting *motor vehicles*, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by General Motors Corporation.

MC 59264 (Sub-74F), filed December 11, 1980. Applicant: SMITH & SOLOMON TRUCKING COMPANY, a corporation, How Lane, P.O.Box 2015, New Brunswick, NJ 08903. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in by chain grocers and food business houses (except commodities in bulk), from New York, and Hicksville, NY, Philadelphia, PA, Baltimore, MD, Bordentown, NJ, and Richmond, VA, to the Wakefern Food Corporation Distribution Center, at or near Wallkill (Orange County), NY.

MC 124774 (Sub-134F), filed December 10, 1980. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Road, Omaha, NE 68114. Transporting *such commodities* as are dealt in by chain grocery stores, from Chicago, IL and Kansas City, MO, to points in Douglas County, NE.

MC 125335 (Sub-110F), filed December 11, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), from points in Caster County, PA, to points in Fl, AL, GA, IA, IL, IN, KS, KY, MI, MN, MO, MS, NC, NE, OH, SC, SD, TN, and WI.

MC 134105 (Sub-551F), filed December 10, 1980. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossville Ave., Chattanooga, TN 37408. Representative: James E. Elgin (same address as applicant). Transporting *foodstuffs*, from the facilities used by Globe Products Company, Inc., at or near Clifton, NJ, to points in the U.S. (except AK and HI).

MC 146055 (Sub-11F), filed December 11, 1980. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114. Transporting *meats, and packinghouse products*, between points in Douglas County, NE and points in MI, OH, FL, WI, LI, MN, IA, MO, KS, TX, WA, OR, and CA.

MC 147474 (Sub-6F), filed December 10, 1980. Applicant: SOUTHWIRE COMPANY TRANSPORTATION DIVISION, 126 Fertilia St., Carrollton, GA 30119. Representative: Theodore M. Forbes, Jr., 4000 First National Bank Tower, Atlanta, GA 30303. Transporting *general commodities* (except those of unsual value, commodities in bulk, classes A and B explosives and household goods as defined by the Commission), from points in AL, AR, CT, DE, FL, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, MN, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI to points in AL, FL (on and west of U.S. Hwy 319 and 98), GA, SC and TN.

MC 149234 (Sub-3F), filed December 12, 1980. Applicant: RIVER VALLEY OIL

CO., INC., Box 526, Spring Green, WI 53588. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. Transporting (1) *glass, glass units,* and *parts and accessories* for glass and glass units, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between Spring Green, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151154 (Sub-1F), filed December 9, 1980. Applicant: LENERTZ, INC. OF IOWA, 1004 29th Street, Sioux City, IA 55104. Representative: Andrew R. Clark, 1600 TCF Tower, 121 South 8th Street, Minneapolis, MN 55402. Transporting *automotive parts and automotive accessories,* between points in the U.S., under a continuing contract(s) with Midwest Wholesale Tire of Mendota, MN.

MC 151324 (Sub-2F), filed December 11, 1980. Applicant: ALAN H. KRAMER, 2525 N.E. Stephens, Apt. 4, Roseburg, OR 97470. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting (1) *paper and paper articles,* between points in Douglas County, OR, on the one hand, and, on the other, points in ID and WA, and (2) *recycleable materials,* between points in CA, ID, and WA, on the one hand, and, on the other, points in OR.

MC 152404 (Sub-1F), filed December 10, 1980. Applicant: CHARLES DEL SORDO, dba, DEL SORDO TRUCKING, 7 Summer Street, Fairhaven, MA 02719. Representative: William F. Poole, 41 Bea Drive, North Kingstown, RI 02852. Transporting (1) *carpets, carpet pads, floor coverings,* and (2) *accessories* for the commodities in (1), between points in GA, NC, and SC, on the one hand, and, on the other, points in CT, MA, ME, NH, RI, and VT.

MC 153085F, filed December 10, 1980. Applicant: DUSTY BULLOCK, INC., Route 1, Box 207, Caryville, TN 37714. Representative: Peter A. Greene, 1920 N Street, N.W., Suite 700, Washington, DC 20036. Transporting *meats, meat products,* and *meat byproducts,* between points in Campbell County, TN, on the one hand, and, on the other, points in OH and IN.

Volume No. OP3–123

Decided: December 17, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not participating.

MC 2934 (Sub-96F), filed December 10, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant). Transporting (1) *home furnishings* and (2) *parts* for home furnishings, from Athens, TN, to those points in the U.S. in and east of IA, KS, MN, NE, OK, and TX.

MC 52574 (Sub-64F), filed December 11, 1980. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th St., Irvington, NJ 07111. Representative: Edward F. Bowes, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *new furniture* and *materials, equipment and supplies* used in the manufacture and distribution of new furniture, between points in the U.S., under continuing contract(s) with Harris Hub Company, Inc., of Harvey, IL, and Simmons Co., of Elizabeth, NJ.

MC 60014 (Sub-204F), filed December 9, 1980. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *metal articles, pipe and machinery,* between the facilities of Interpace Corp., at Columbia, SC, Hillsborough, NJ, Kansas City, KS, Lacoochee, FL, Perryman, MD, Romeo, MI, Solon, OH, South Beloit, IL, Wharton, NJ, Hudson, NY and Cape Charles, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 73165 (Sub-538F), filed December 8, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting *paper and wood products,* between points in Bibb County, GA, on the one hand, and, on the other, points in VA, NC, SC, GA, FL, AL, MS, LA, and TN.

MC 94635 (Sub-11F), filed December 11, 1980. Applicant: INTERSTATE SAND & GRAVEL TRANSPORTATION, INC., 717 Elmer Street, Vineland, NJ 08360. Representative: Terrence D. Jones, 2033, K Street, N.W., Washington, DC 20006. Transporting *commodities* in bulk, between points in the U.S. under continuing contract(s) with Glenshaw Glass Company, Inc., of Glenshaw, PA.

MC 107515 (Sub-1397F), filed November 20, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE, 5th Flood-Lenox Towers South, Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by retail department, variety or discount stores (except 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 Richway, a division of Federated Department Stores, Inc.

MC 107515 (Sub-1402F), filed December 10, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *general commodities* (except classes A and B explosives), between points in Fulton County, GA and Cabarrus and Mecklenburg Counties, NC, on the one hand, and, on the other, points in the U.S.

MC 114604 (Sub-119F), filed December 9, 1980. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, State Farmers Market No. 33, Forest Park, GA 30050. Representative: Jean E. Kesinger (same address as applicant). Transporting *such merchandise* as is dealt in or used by food business houses, between points in the U.S. (except AK and HI).

MC 115724 (Sub-11F), filed December 9, 1980. Applicant: J. W. PHILLIPS, INC., 4500 North Sewell, Suite 5, Oklahoma City, OK 73154. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with the Oklahoma Gas and Electric Company, of Oklahoma City, OK.

MC 120264 (Sub-2F), filed December 8, 1980. Applicant: L. R. TRUCKING, INC., 59 Norfolk Ave., Boston, MA 02119. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in MA, and (2) *foodstuffs,* between points in ME, NH, VT, MA, RI, CT, NY, NJ, and PA. Condition: Issuance of this Certificate is subject to prior or coincidental cancellation, at applicant's written request of Certificate of Registration No. MC 120264 (Sub-1).

MC 125764 (Sub-10F), filed December 9, 1980. Applicant: LILAC CITY EXPRESS, INC., P.O. Box 13133, Dishman, WA 99213. Representative: Donald A. Ericson, 708 Old National Bank Bldg., Spokane, WA 99201. Transporting *garnet sand,* between Fernwood, ID, on the one hand, and, on the other, points in the U.S.

MC 126574 (Sub-9F), filed December 8, 1980. Applicant: M. L. HATCHER PICKUP AND DELIVERY SERVICES,

INC., P.O. Box 7362, Greensboro, NC 27407. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting *hospital and medical supplies*, between points in Wake County, on the one hand, and, on the other, points in Bedford, Campbell, Floyd, Franklin, Halifax, Henry, Mecklenburg, Montgomery, Patrick, Pittsylvania, and Roanoke Counties, VA.

MC 126574 (Sub-10F), filed December 8, 1980. Applicant: M. L. HATCHER PICKUP AND DELIVERY SERVICES, INC., P.O. Box 7362, Greensboro, NC 27407. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting (1) *containers, container ends and closures*, (2) *such commodities* as are dealt in or used by manufacturers and distributors of containers, and (3) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities in (1) and (2), between points in Pittsylvania County, VA, on the one hand, and, on the other, points in GA, KY, NC, SC, and TN.

MC 129645 (Sub-85F), filed December 10, 1980. Applicant: SMEESTER BROS, INC., 1330 South Jackson Street, Iron Mountain, MI 49801. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting (1) *fabricated metal products*, except ordnance and (2) *machinery and supplies* as described in items 34 and 35 of the Standard Transportation Commodity Code, between points in AR, MI, NY, OH, and WI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 140665 (Sub-125F), filed December 10, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *non-exempt foods or kindred products*, as described in Item 20 of the Standard Transportion Commodity Code, between points in the U.S.

MC 143065 (Sub-1F), filed December 10, 1980. Applicant: WEATHERFORD TRANSIT, 1019 East Lake Drive, Hartsville, SC 29550. Representative: John M. Ballenger, Suite 400, Overland Bldg., 6121 Lincolnia Road, Alexandria, VA. As a *broker*, at Hartsville, SC, in arranging for the transportation of *passengers and their baggage*, beginning and ending at points in Chesterfield, Darlington, Dillon, Florence, Kershaw, Lancaster, Lee, Marion, Marlboro, Richmond, and Sumter Counties, SC, and extending to points in the U.S. (including AK and HI).

MC 145914 (Sub-14F), filed December 9, 1980. Applicant: COASTAL TRUCK LINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048.Transporting (1) *bakery goods* (except frozen), *ice cream cones, dishes, sandwich spreads, cheese spreads, peanuts, meal or bread crumbs*, and *snack foods*, and (2) *materials, equipment and supplies* used in the manufacture, distribution and sale of the commodities in (1), between points in the U.S., under continuing contract(s) with Nabisco, Inc., of East Hanover, NJ.

MC 147055 (Sub-3F), filed December 11, 1980. Applicant: CURTIS DENNIS EQUIPMENT, INC., dba C.D.E. EXPRESS, P.O. Box 2057, Heath, OH 43055. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge St., Dublin, OH 43017. Transporting *printed matter*, and *materials* used in the production of printed paper, between points in the U.S., under continuing contract(s) with Xerox Education Center of Columbus, OH, and W. C. National Mailing Corporation, of Groveport, OH.

MC 149235 (Sub-2F), filed December 9, 1980. Applicant: C. MAXWELL TRUCKING CO., INC., 9108 Reeds Dr., Overland Park, KS 66207. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. Transporting (1) *lubricating oils, greases, carbon, gum and sludge removing compounds, automotive filters, valves and valve parts, fender covers, brake fluids, compressor oils* and *antifreeze engine coolants*, and (2) *materials, equipment and supplies* used in the manufacture of the commodities named in (1), between points in the U.S. (except AK and HI).

Volume No. OP3–124

Decided: December 18, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 2934 (Sub-95F), filed December 10, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant). Transporting *micro-foam* and *materials and supplies* used in the manufacture and distribution of *micro-foam*, from Wurtland, KY, to points in AL, AR, FL, GA, IA, KS, LA, MN, MS, MO, NC, OK, SC, TN, TX, VA, and DC.

MC 113434 (Sub-158F), filed December 11, 1980. Applicant: GRA-BELL TRUCK LINE, INC., A5253—144th Ave., Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in IL, IN, IA, KY, MD, MI, MN, MO, NJ, NY, OH, PA, TN, VA, WV, WI, and DC. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of certificate in MC 113434 and related subs.

MC 125535 (Sub-23F), filed December 11, 1980. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, P.O Box 1746, Maryland Heights, MO 63043. Representative: Donald S. Helm (same address as applicant). Transporting (1) *tile, clay, earthenware, and china fixtures*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), under continuing contract(s) with American Lean Tile Compnay of Lansdale, PA.

MC 130784 (Sub-1F), filed December 11, 1980. Applicant: COSMOPOLITAN TRAVEL SERVICE, INC., 2224 W. Main St., P.O. Box 489, Waynesboro, VA 22980. Representative: Warren M. Evans (same address as applicant). As a *broker* at Waynesboro and Staunton, VA, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in the U.S.

MC 134105 (Sub-552F), filed December 10, 1980. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossville Ave., Chattanooga, TN 37408. Representative: James E. Elgin (same address as applicant). Transporting *foodstuffs* (except commodities in bulk, in tank vehicles) from the facilities used by Adams Packing Association, Inc., at or near Memphis, TN, to points in the U.S. (except AK and HI).

MC 141084 (Sub-20F), filed December 11, 1980. Applicant: NATIONAL FREIGHT LINES, INC., 13023 Arroyo St., P.O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner (same address as applicant). Transporting *general commodities* (except classes A and B explosives, used household goods, commodities in bulk, and those requiring special equipment), between points in the U.S.

Note.—Issuance of this certificate is subject to coincidental cancellation of permits in MC 141084 (Subs 5, 10F, and 15F).

MC 153124F, filed December 11, 1980. Applicant: COMPANIES TRANSPORT, INC., P.O. Box 186, Lincoln Park, NJ 07035. Representative: Michael A. Wargula, 2550 Main Place Tower, Buffalo, NY 14202. Transporting (1) *drugs, medical, surgical, and hospital supplies*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in

(1) above (except commodities in bulk), between points in the U.S., under continuing contract(s) with Becton-Dickinson and Company, of Rutherford, NJ.

MC 146725 (Sub-12F), filed November 20, 1980. Applicant: FREEPORT TRANSPORT, INC., P.O. Box 27327, Salt Lake City, UT 84125. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. 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.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-383 Filed 1-5-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-104-M]

Tenneco Oil; Petition for Modification of Application of Mandatory Safety Standard

Tenneco Oil, P.O. Box 1167, Green River, Wyoming 82935, has filed a petition to modify the application of 30 CFR 57.21-46 (crosscut intervals) to its Soda Ash Project located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows

1. Petitioner is presently sinking two shafts approximately 1,600 feet in depth.

2. Access to the ore body for mining purposes is estimated to occur about April 1, 1981. At that time mining will begin in a development stage which will allow the petitioner to connect the two shafts together to perform shaft station work.

3. As an alternate method to placing crosscuts not in excess of 100 feet between entries and between rooms, petitioner proposes to place crosscuts at intervals of up to 450 feet while driving two decline entries from the Westvaco #1 level (Bed #17) to the Duval #2 level (Bed #12). These declines will be on a 15% grade and will provide permanent access to the lower level. There will be approximately 120 feet between these levels when completed. Declines will be approximately 900 feet in length.

4. In support of this alternate method, petitioner proposes the following:

a. The declines will be driven with a drum type miner equipped with a constant methane monitoring system and only the operator will advance to the last permanent support while cutting;

b. The top will be supported by resin bolts placed on 4 foot centers and of sufficient length determined to adequately support the top;

c. An exhaust type auxiliary fan will be used to ventilate the declines and will provide a minimum 4,000 cubic feet per minute at the working face while machine is operating;

d. A minimum of 10,000 cubic feet per minute of air will be provided at the last open break utilized for this system and a fan will be placed to prevent recirculation of air. The location of the fan will be changed when necessary to maintain proper ventilation control;

e. This operation will be under the constant supervision of a certified person who will monitor the face for methane at hourly intervals. This person will also monitor the fan exhaust for methane content on an hourly basis while the machine is operating and record results of the findings in a log book located near the fan.

5. Petitioner states 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. These 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. All comments must be postmarked or received in that office on or before February 5, 1981. Copies of the petition are available for inspection at that address.

Dated December 22, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-376 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-1; Exemption Application No. D-1809]

Exemption From the Prohibitions for Certain Transactions Involving the Keebler Retirement Plan for Salaried and Certain Hourly Paid Employees of Keebler Co., Elmhurst, Illinois

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits: (1) the contribution of two improved parcels of real property (the Properties) to the Keebler Retirement Plan for Salaried and Certain Hourly Paid Employees (the Plan) by the Keebler Company (the Employer), a party in interest with respect to the Plan; (2) the lease of the Properties by the Plan to the Employer; and (3) a guarantee by the Employer to the Plan with respect to the future disposition of the Properties by the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of 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. (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 14, 1980, notice was published in the **Federal Register** (45 FR 75362) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested person to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to all interested persons as set forth in the notice of pendency. One public comment was received which was in favor of the exemption as proposed by the Department. No requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the contribution of the Properties by the Employer to the Plan provided that the federal income tax deductions taken by the Employer pursuant to the contributions do not exceed the fair market value of the Properties at the time of contribution; (2) the lease of the Properties by the Plan to the Employer provided that the terms of each lease are not less favorable to the plan than those obtainable in an arm's-length transaction with an unrelated party; and (3) a guarantee by the Employer to the Plan with respect to the future disposition of the Properties by the Plan.

The availability of this exemption is subject to the express condition 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 this exemption.

Signed at Washington, D.C., this 30th day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-319 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to the requirements of Pub. L. 95–602, the Consumer Price Index for All Urban Consumers rose by 12.6 percent between October 1979 and October 1980 from a level of 225.4 in October 1979 to a level of 253.9 in October 1980.

Signed at Washington, D.C., on the 30th day of December 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 81-375 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-23-M

[TA-W-11,340 and 11,341]

Anaconda Copper Co.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, investigations were initiated on October 14, 1980 in response to worker petitions received on October 6 and 8, 1980 which were filed by the Anaconda Metal Trades and the Carpenters Local Union, respectively, on behalf of workers and former workers of Anaconda Copper Company, Anaconda, Montana and Great Falls, Montana. The workers at both plants produce refined copper.

On October 7, 1980 petitions were filed on behalf of the same groups of workers (TA–W–11,275 and 11,276).

Since the identical groups of workers are the subject of ongoing investigations TA–W–11,275 and 11,276, new investigations would serve no purpose. Consequently, the investigations have been terminated.

Signed at Washington, D.C. this 24th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-377 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

Barker Engineering Corp., et al.; 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 January 16, 1981.

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 January 16, 1981.

The petitions filed in this case aare 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, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Barker Engineering Corp. (UAW)	Kenilworth, NJ	12-11-80	12-4-80	TA-W-11,945	Optical hardward.
Blackmer Pump (workers)	Grand Rapids, MI	12-15-80	12-8-80	TA-W-11,946	Pumps.
Bob Chandler Ford Sales, Inc. (company)	DeQueen, AR	12-9-80	12-4-80	TA-W-11,947	Car dealership.
Engelking Patterns, Inc. (workers)	Columbus, IN	12-15-80	12-5-80	TA-W-11,948	Pattern equipment.
Federated Metals Corp. (workers)	Trenton, NJ	12-15-80	12-10-80	TA-W-11,949	Metallic zinc dust.
Ford Tractor Operations, General Office (company).	Troy, MI	12-11-80	12-8-80	TA-W-11,950	Tractors.
Ford Tractor Operations, Northwestern District Sales Office (company).	Bloomington, MN	12-11-80	12-8-80	TA-W-11,951	Tractors.
Gastrans, Inc. (workers)	Stamford, CT	12-12-80	12-10-80	TA-W-11,952	Inspection of vessels.
Peninsular Steel Co. (workers)	Tonawanda, NY	12-12-80	12-9-80	TA-W-11,953	Cutting, burning, and grinding of steel.
Pivot Manufacturing (workers)	Detroit, MI	12-15-80	12-8-80	TA-W-11,954	Small auto parts.
The Hanna Furnace Corp. (USWA)	Buffalo, NY	12-15-80	12-11-80	TA-W-11,955	Merchant pig iron.
Walker Manufacturing, Division of Tenneco (workers).	Hebran, OH	12-15-80	12-10-80	TA-W-11,956	Converters, Y pipes, mufflers, complete exhaust systems.
Advance Glove Manufacturing Co. (ACTWU)	Detroit, MI	12-16-80	12-12-80	TA-W-11,957	Gloves.
Deem International, Inc., Bertsch & Co., Inc.	Cambridge City, IN	12-16-80	10-20-80	TA-W-11,958	Manufacturing bending rolls.
E. I. du Poht de Nemours & Co., Inc. (workers).	Chattanooga, TN	12-16-80	12-9-80	TA-W-11,959	Nylon textile products.
Interco-International Shoe Co. (ACTWU)	Batesville, AR	12-16-80	12-12-80	TA-W-11,960	Men's shoes.
M. G. Knitting Mills (company)	Miami, FL	12-17-80	12-8-80	TA-W-11,961	Velour and terry fabrics.
Melville Corp.—Metro Pants (workers)	New York, NY	12-17-80	12-10-80	TA-W-11,962	Men's pants.
Midland Ross Corp.—Bay City Foundry Division (workers).	Bay City, MI	12-16-80	12-11-80	TA-W-11,963	Manufacturing steel castings.
National Welding of Michigan (workers)	Lansing, MI	12-16-80	12-8-80	TA-W-11,964	Rebuild industrial press equipment.
R. Fox, Ltd. (company)	Belleville, IL	12-17-80	12-11-80	TA-W-11,965	Men's suits.
SKF Industries—Tyson Bearing Co. (USWA)	Massillon, OH	12-15-80	12-9-80	TA-W-11,966	Tapered roller bearings.
E. I. du Pont de Nemours & Co. (Old Hickory Union).	Old Hickory, TN	12-16-80	6-18-80	TA-W-11,967	Polyester fiber-dacron yarn and staple.
Hawley Coal Mining Corp., No. 10 Deep Mine Bradshaw (USWA).	McDowell County, WV	12-16-80	12-11-80	TA-W-11,968	Metallurgical coal.
Henmur Cut, Make & Trim, Inc. (ACTWU)	New York, NY	12-18-80	12-15-80	TA-W-11,969	Men's suits.
Kaye Coat Co. (workers)	Passaic, NJ	12-18-80	12-16-80	TA-W-11,970	Manufacturing ladies & girls coats.
Melville Corp., Metro Pants—Distribution Center (workers).	Bridgewater, VA	12-17-80	12-10-80	TA-W-11,971	Men's pants.
Melville Corp., Metro Pants—Bridgewater Plant (workers).	Bridgewater, VA	12-17-80	12-10-80	TA-W-11,972	Men's pants.
Melville Corp., Metro Pants—Harrisonburg Plant (workers).	Harrisonburg, VA	12-17-80	12-10-80	TA-W-11,973	Men's pants.
Nickoletta Fashions, Inc. (company)	Jersey City, NJ	12-16-80	12-10-80	TA-W-11,974	Ladies' coats.
Society Lingerie (ILGWU)	Michigan City, IN	12-17-80	12-11-80	TA-W-11,975	Ladies' sleepwear.
United States Steel, Cuyahoga Works (workers).	Cuyahoga Heights, OH	12-16-80	12-10-80	TA-W-11,976	Rods, wire, and cold.
W. E. Stephens Manufacturing Co., Inc. (workers).	Watertown, TN	12-18-80	12-11-80	TA-W-11,977	Ladies' and men's jeans.
Blue Ridge Shoe Co. (workers)	Aulander, NC	12-18-80	12-15-80	TA-W-11,978	Women's shoes.
Cornerstone Knitting Corp. (workers)	New York, NY	12-17-80	12-14-80	TA-W-11,979	Knitting suit accessories.
Lawrence Maid Footwear, Inc. (company)	Lawrence, MA	12-18-80	12-15-80	TA-W-11,980	Women's shoes.
Lincoln Fashions (ILGWU)	Orange, NJ	12-18-80	12-15-80	TA-W-11,981	Rainwear.
Nationwide Uniform Corp. (Teamsters)	Hodgenville, Ky	12-19-80	12-14-80	TA-W-11,982	Men's and ladies' uniforms.

[FR Doc. 81-378 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

Budd Co., Wheel and Brake Products Group, et al.; 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 December 22–24, 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 signigficant number of proportion of the workers in the workers' 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-8818 & 10,015; The Budd Company, Wheel and Brake Products Group, Ashland, OH and Clinton, MI.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,409; Rockwell International, Tupelo, MS.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of stationary wood power tools are negligible.

TA-W-8336; Flag Pattern and Model Co., Troy, MI.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8202; Mallory Timers Co., Camden, TN.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8434; Hoeganees Corp., Riverton, NJ.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8421; Boykins Narrow Fabrics Corp., Boykins, VA.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8341; Rite Industrial Models, Inc., Berkley, MI.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8626A, 8626C, 8626D, and 11,748; Olsonite Corp., Royal Molded Products, Newnan, GA, Plumbers Wood Works, Algoma, WI, American Plastics Products, Walled Lake, MI, and Olsonite Corp., Troy, MI.

Investigation revealed that criterion (3) has not been met. Surveyed customers did not increase import purchases while reducing purchases from the subject firm.

TA-W-10,563; Milwaukee Spring Co., Milwaukee, WI.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8764; AMF Voit, Inc., Santa Ana, CA.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,712; Monarch Textile Co., New York, NY.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of finished fabric did not increase as required for certification.

Affirmative Determinations

TA-W-8626; Olsonite Corp., Detroit, MI.

A certification was issued applicable to workers producing steering wheels who became separated from employment on or after May 5, 1979.

With respect to workers producing molded plastic parts and toilet seats, investigation revealed that criterion (3) has not been met. Surveyed customers did not increase import purchases while reducing purchases from the subject firm.

TA-W-8281 & 8282; Manufacturers Products Co., Troy, MI and Ferndale, MI.

A certification was issued covering workers producing gas tank straps and muffler shields who became totally or partially separated from employment on or after September 2, 1979.

With respect to workers producing shift assemblies and accelerator pedals, a survey of customers revealed that no customer imports of such products.

TA-W-8061; Park-Ohio Industries, Inc., Cleveland, OH.

A certification was issued covering all workers of the firm separated on or after September 1, 1979.

TA-W-8199; Bendix Corp., Green Island, NY.

A certification was issued covering all workers of the firm separated on or after April 29, 1979.

I hereby certify that the aforementioned determinations were issued during the period December 22-24, 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: December 29, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-379 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9565]

General Motors Corp., New Departure-Hyatt Bearings Division, Bristol, Connecticut; Negative Determination Regarding Application for Reconsideration

By letters of November 11 and 17, 1980, the union for the workers 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 of that company. The determination was published in the **Federal Register** on October 31, 1980, (45 FR 72362).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union claims that a substantial part of the Bristol, Connecticut plant's output of automotive bearing products is used in General Motors' vehicles which have been import-impacted. The union further claims that the Department made effort to create an appropriate subdivision within the plant for workers producing automotive parts for GM import-impacted vehicles.

The Department's review showed that the petition for workers at Bristol did not meet the "contributed importantly" test of the Trade Act of 1974. Average employment, as well as the value of production, adjusted for inflation, at Bristol increased in model year (MY) 1979 compared to MY 1978. The Department also found that the Bristol plant was not substantially integrated into the production of import-impacted

GM vehicles during the first 10 months of MY 1980, the period in which there were significant layoffs at the plant. Bristol's output consisted predominantly of bearings where a major portion are sold to customers unaffiliated with General Motors. The value of these outside sales, adjusted for inflation, increased in MY 1979 compared to MY 1978 and in the first three quarters of MY 1980 compared to the same period in MY 1979.

Upon further review and granting the union's claim that a substantial share of Bristol's total output in MY 1980 consisted of automotive bearings, the Department found that these products were not substantially integrated into the production of import-impacted GM vehicles since a major portion were sold to outside customers or used in the production of GM car lines which have not been import-impacted, i.e., subcompacts and front-wheel-drive mid-size types.

The Department was unable to create an appropriate subdivision by product within the plant since, among other things, the Bristol workers are not separately identifiable by product.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error 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 24th day of December 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-381 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,194]

Hawthorne Metal Products; 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 on behalf of workers and former workers of Hawthorne Metal Products, Royal Oak, Michigan. The workers produce metal auto parts.

On June 16, 1980, an investigation (TA-W-8766) was initiated on behalf of the same group of workers as TA-W-11,194.

Since the identical group of workers is the subject of the ongoing investigation TA-W-8766, a new investigation would serve no purpose. Consequently, the investigation (TA-W-11,194) has been terminated.

Signed at Washington, D.C. this 24th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-382 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8738]

Hoover Universal, Inc., Metal Seating Division; Negative Determination Regarding Application for Reconsideration

By letter postmarked October 31, 1980, the union for the workers 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 at the Vincennes, Indiana plant of Hoover Universal, Inc.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union claims that its workers at Hoover Universal's plant in Vincennes, Indiana should have been found eligible for trade adjustment assistance since workers at its sister plant in Cadiz, Kentucky, TA-W-8765 were found eligible by the Department.

The Department's review showed that the petition for workers at Hoover's Vincennes plant did not meet the "contributed importantly" test of the Trade Act. Customers surveyed by the Department reported that metal seat frames for pickup trucks and vans were purchased exclusively from domestic sources during the MY 1978-MY 1980 period. These customers which accounted for virtually all of the decline in sales at the Vincennes plant in MY 1979 to MY 1980 indicated that they had reduced purchases of metal seat frames of this type from the Vincennes plant while increasing purchases from other domestic suppliers of the same products.

The Department found that the Vincennes plant lost the contract for seat frames from one of its original equipment manufacturers (OEM) of pickup trucks. Although this OEM customer had increased purchases of imported metal seat frames for its automobiles and was a customer of the Cadiz plant also, it did not import metal seat frames for its pickup trucks. Virtually the entire decline in sales of metal seat frames in MY 1980 at Vincennes was the result of the loss of this contract. Production of metal seat frames and steel seating support wires for automobiles at the Vincennes plant increased in FY 1980 compared to FY 1979.

The Department found that workers at Hoover Universal in Cadiz met all the statutory criteria for group certification under the Trade Act. Customers of the Cadiz plant reported a significant increase of imported metal seat frames like or directly competitive with those produced at Cadiz whereas this was not the case at the vincennes plant.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error 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 24th day of December 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-384 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8061]

Park-Ohio Industries, Inc., Ohio Crankshaft Division; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on May 19, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Ohio Crankshaft Division of Park-Ohio

Industries, Incorporated, Cleveland, Ohio. The workers produce crankshafts and camshafts.

Preliminary data indicate that U.S. imports of crankshafts and camshafts increased in 1979 from 1978 and in the first five months of 1980 compared to the same period of 1979.

A survey conducted by the Department revealed that major surveyed customers which decreased purchases from the Ohio Crankshaft Division of Park-Ohio Industries, Incorporated in 1979 and the first five months of 1980 increased purchases of imported crankshafts and camshafts during the same period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with crankshafts and camshafts produced by the Ohio Crankshaft Division of Park-Ohio Industries, Incorporated, Cleveland, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Ohio Crankshaft Division of Park-Ohio Industries, Incorporated, Cleveland, Ohio who became totally or partially separated from employment on or after September 1, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of December 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 81-385 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-754]

A. O. Smith Corp. Automotive Division; Negative Determination Regarding Application for Reconsideration

By letter of November 7, 1980, the union 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 of that company. The determination was published in the **Federal Register** on October 10, 1980 (45 FR 67482).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union identified several customers of the A. O. Smith Corporation which it alleges have imported frames with at least one customer still importing frames.

The Department's review showed that the petition for workers at A. O. Smith's Milwaukee plant did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's customer survey showed that customers purchasing frames from the Milwaukee plant did not purchase imported auto frames in 1978, 1979 or 1980. Surveyed truck frame customers which decreased their purchases of truck frames from the Milwaukee plant indicated that they also decreased their purchases of imported truck frames during the period under investigation. All other major customers of truck frames did not purchase imported truck frames.

The Department's files further showed that its customer survey represented a major portion of A. O. Smith's sales in 1979 and 1980. The Department's notice was in error in stating that auto frame customers did not import competitive articles. In fact, the Department has learned that two of the original equipment manufacturers (OEM) in the auto industry imported frames. However, their purchases of imports decreased. The remaining OEM firm did not import and showed a decreased in-house production of frames in 1979 and in the first four months of 1980 compared to the same period in 1979. Of the two remaining firms which the union identified as frame purchasers, one accounted for less than two percent of A. O. Smith's 1979 and 1980 sales and only purchased from domestic sources, while the other did not purchase frames but only control arms. Control arms represented less than five percent of the Milwaukee plant's 1979 and 1980 sales.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error 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 22nd day of December 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 81-386 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,264]

Uniroyal, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1980 in response to a worker petition received on August 1, 1980 which was filed on behalf of workers and former workers producing synthetic rubber and rubber chemicals at the Geismar, Louisiana plant of Uniroyal, Incorporated.

In a letter dated November 26, 1980, the petitioner requested that the petition be withdrawn. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-387 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9646]

Gene Bell Chevrolet, Inc.; Detroit, Michigan; Negative Determination Regarding Application for Reconsideration

By letter of October 13, 1980, the former workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of Gene Bell Chevrolet, Inc., Detroit, Michigan. The determination was published in the **Federal Register** on September 9, 1980, (45 FR 59452).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The former workers claim that General Motors is the "workers' firm"

since it held a majority of the stock of Gene Bell Chevrolet when Gene Bell Chevrolet went out of business. The former workers also state that they are aware of two other General Motors dealerships in the area whose workers are receiving TRA benefits.

The Department's review showed that Gene Bell Chevrolet is engaged in selling and servicing General Motors Corporation cars in Detroit, Michigan and, as such, does not produce an article within the meaning of Section 222(3) of the Trade Act.

The Department notes from the case file that General Motors owned only a small percentage of the stock in Gene Bell Chevrolet at the time the dealership closed. It has been at least five years since General Motors owned a majority of the stock in the dealership. Since workers at Gene Bell Chevrolet do not produce an article, they may be certified only if General Motors Corporation is the "workers' firm" within the meaning of Section 222 of the Trade Act. General Motors may be determined to be the "workers' firm" if General Motors and Gene Bell Chevrolet are related by ownership or by a substantial degree of proprietary control, or if the workers are *de facto* employees of General Motors. General Motors is not the "workers' firm" under either test. In the period of potential coverage there was only an insignificant element of ownership or control between the firms. The workers also are not *de facto* employees of General Motors since all payroll transactions, personnel actions and employee benefits are under the control of Gene Bell Chevrolet. The mere fact that General Motors held a small percentage of Gene Bell Chevrolet's stock at the time the dealership closed and the fact that GMAC, a GM loan company, held all certificates of origin and titles of unsold cars and trucks is not sufficient in itself to support a determination that General Motors is the "workers' firm".

Concerning the certification of workers at Patmon Oldsmobile, TA-W-7269 and at Nate Myers Oldsmobile, TA-W-7797, the Department determined that General Motors was the "workers' firm" since General Motors held a majority of the stock of each dealership in the period of time when workers could have been covered by a certification, i.e. within one year prior to the date of their petition.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error 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 22nd day of December 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-00128 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-28-M

MINIMUM WAGE STUDY COMMISSION

Meeting

In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting:

Name: Minimum Wage Study Committee.
Date: Jan. 6, 7, 12, 13, 14, 15, and 16, 1981.
Time: 10:30 a.m. on Jan. 6 and 12; all other days at 9 a.m.
Place: Jan. 6 and 7, Room 2261 Rayburn House Office Building, Jan. 12-16 at 1430 K St. NW, Suite 700, Washington, D.C.

Original notification of this meeting appeared in the **Federal Regiser** of December 2, 1980.

Proposed agenda

1. Income Distribution: Drs. Behrman and Taubman contractors; Drs. Mason and Barth discussants
2. Noncompliance: in-house report from Stephen Welch and Brigitte Sellekaerts
3. Inflation: Drs. Nadiri and Wolff contractors; Drs. Van Adams and Sheldon discussants
4. Employment/Unemployment: progress report from Dr. Heckman
5. Inflation: Drs. Cox and Oaxaca contractors; Dr. E. Stromsdorfer contractor
6. Employment/Unemployment: Drs. Abowd and Killingsworth contractors; Drs. Barth and Johnson discussants
7. Youth Differential: in-house report from Dr. Charles Brown
8. Employment/Unemployment: Dr. Madden contractor; Drs. Vickery and Piore discussants
9. Conglomerate: in-house report from Brigitte Sellekaerts (final approval)
10. Demographics: in-house report from Dr. Curtis Gilroy (final approval)
11. Retail Trade Exemptions: in-house report from Dr. Conrad Fritsch (up-date)
12. Evolution of the FLSA: in-house report from Dr. Conrad Fritsch (final approval)
13. Overtime: Dr. Ehrenberg contractor; Dr. Siskind discussant
14. Employment/Unemployment: Drs. Lazear and Miller contractors; Drs. Perloff and Levitan discussants
15. Inflation: Dr. Farber contractor; Drs. Teper, Perna, Gordon and Gramlich discussants
16. Inflation/Indexation: Dr. Grossman contractor: Drs. Gramlich, Gordon, Blanchard, Bosworth, Azariadis and Lampman discussants
17. Employment/Unemployment: progress report from Dr. Monroe Berkowitz
18. Income Distribution: Drs. Loury and Datcher contractors: S. Ruttenberg and C. Cain discussants
19. Student Certification/Youth Differential: Drs. Freeman and Wise contractors; Drs. Fisher and Rosen discussants
20. Inflation: Dr. Pettengill contractor
21. Indexation: in-houe report from Brigitte Sellekaerts
22. Agricultural Exemptions: progress report from Dr. Holt contractor.

Next meeting of the Commission is scheduled for Monday and Tuesday, Februry 16 and 17, 1981

All communications regarding this Commission should be addressed to: Mr. Louis E. McConnell, Executive Director, 1430 K St. NW, Suite 500, Washington, DC 20005, telephone (202) 376-2450.

Louis E. McConnell,

Executive Director.

December 31, 1980.

[FR Doc. 81-374 Filed 1-5-81; 8:45 am]

BILLING CODE 4510-23-M

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Meeting

The Northern Mariana Islands Commission on Federal Laws, established pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241, 48 U.S.C. 1681 note), will meet on Monday, January 12, 1981, at 9:00 a.m., in Room 5160 of the main building of the U.S. Department of the Interior, 18th and C streets, N.W., Washington, D.C.

The purpose of the Commission is "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable an to what extent and in what manner."

The intended agenda for this meeting is (1) a review of the Commission's work to date, and (2) the establishment of priorities for the Commissions subsequent work.

A limited number of seats will be available to the public on first-come, first-serve basis. For further information about this meeting contact Daniel H. MacMeekin, Executive Director, Northern Mariana Islands Commission on Federal Laws, Washington, D.C. 20240, (202) 343-5617.

Dated: December 17, 1980.

James A. Joseph,

Chair, Northern Mariana Islands Commission on Federal Laws.

[FR Doc. 81-287 Filed 1-5-81; 8:45 am]

BILLING CODE 4310-93-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Electrical Power Systems; Meeting

The ACRS Subcommittee on the Electric Power Systems will hold a meeting at 8:30 a.m. on January 23, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss matters relating to instrument and control system failures which could initiate or exacerbate reactor accidents.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, January 23, 1981
8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 30, 1980.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-290 Filed 1-5-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on AC/DC Power Systems Reliability; Meeting

The ACRS Subcommittee on the AC-DC Power Systems Reliability will hold a meeting at 8:30 a.m. on January 22, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss the expected NRC report on DC power systems reliability and the NRC plans for future work.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, January 22, 1981
8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 30, 1980.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-291 Filed 1-5-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on January 14 and 15, 1981, in Albuquerque, NM. The Subcommittee will meet at 8:30 a.m. at the Albuquerque Inn (Phone: 505-247-3344), 2nd at Marquette Street, N.W., Albuquerque, NM. The Subcommittee will discuss the LOCA/ECCS advanced code development and experimental programs, and the experimental program at Sandia on Steam Explosions.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday and Thursday, January 14 and 15, 1981
8:30 a.m. until the conclusion of business each day.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 30, 1980.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-292 Filed 1-5-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on the Advanced Reactors will hold a meeting at 8:30 a.m. on January 20 and 21, 1981 in Chicago, IL. The Subcommittee will discuss matters relating to the development of LMFBR safety design criteria. Location of meeting room and lodging will be announced later.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday and Wednesday, January 20 and 21, 1981
8:30 a.m. until the conclusion of business each day.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 30, 1980.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-283 Filed 1-5-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Internal Control Circular; Proposed for Comment

AGENCY: Office of Management and Budget.

ACTION: Comment—Proposed OMB Circular, "Internal Control Systems."

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed OMB Circular concerning internal control policies of Federal agencies.

The proposed Circular is the product of an interagency task force composed of representatives of major Federal agencies, under the leadership of the Office of Management and Budget. The Circular is intended to provide policy guidance to Federal agencies on the development, implementation, and review of internal controls against theft, fraud, waste, and misuse of resources.

The Office of Management and Budget has, as yet, made no decisions with respect to the provisions of the proposed Circular. All interested parties are encouraged to make their views known.

Comments should be submitted in duplicate to the Financial Management Branch, Budget Review Division, Office of Management and Budget, 6002 New Executive Office Building, Washington, D.C. 20503. All comments should be received within 45 days following publication of this notice. The proposed OMB Circular is set forth below in its entirety.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Gribble, Financial Management Branch, telephone 202/395-4773.

TO OBTAIN A COPY OF THE PROPOSED CIRCULAR, CONTACT: Document Distribution Center, Office of Administration, G-236 New Executive Office Building, Washington, D.C. 20503, telephone 202/395-7332.

John J. Lordan,

Chief, Financial Management Branch.

Circular No. A—To the Heads of Executive Departments and Establishments

Subject: Internal Control Systems.

1. *Purpose.* This Circular prescribes policies and standards to be followed by executive agencies in adopting and maintaining internal control systems.

2. *Background.* Despite the efforts Federal agencies have made, there continue to be reports of numerous cases of theft, fraud, waste, and misuse of Government resources. Review of these cases consistently points to weaknesses in internal controls or to breakdowns in compliance with internal control systems. These systems need improvement to properly assist managers from the first line supervisor to the agency head in meeting their proper responsibility to safeguard resources—while efficiently and effectively conducting programs.

3. *Definitions.* For the purposes of this Circular, the following terms are defined:

a. *Agency*—Any department or independent establishment of the executive branch of the Federal Government.

b. *Agency Component*—A major organizational subdivision of the agency having a separate system of internal control.

c. *Internal Control*—The plan of organization, and all coordinate measures, adopted by an organization to safeguard resources, facilitate effective and efficient program management, assure compliance with law and policy guidance, and assure accurate, reliable and timely reports.

d. *Internal Control Directive*—A statement issued by an agency head to prescribe agency policies on internal control and to assign responsibilities. This document will guide the development, maintenance, and review of internal control systems.

e. *Internal Control System*—The overall plan of organization, procedures, and records of an organization prepared in compliance with agency's internal control directive.

f. *Internal Control Regulations*—Procedures, organization charts, instructions, manuals, etc., documenting the internal control system.

g. *Vulnerability Assessment and Risk Analysis*—A vulnerability assessment is a review of an agency component resulting in an estimate of susceptibility to theft, fraud, waste, or misuse of resources. A risk analysis is a more detailed evaluation intended to identify and measure the types of errors or problems that might affect a program or function. Its purpose is to determine the specific internal controls that are needed.

4. *Responsibility.* Each agency head will issue an internal control directive and submit it to OMB for approval no later than 180 days following the effective date of this Circular. In cases where an agency head requires the issuance of internal control regulations for components of the agency, the head of the agency shall ensure that such regulations are consistent with the agency directive.

Further, the agency head will ensure that vulnerability assessments and risk analyses are made for each agency component on a 5 year or shorter cycle.

Inspectors General or other audit officials will review internal control directives, systems, regulations, and compliance and provide advice to the agency head.

5. *Objectives of Internal Control.* The objectives of a system of internal control are to:

a. Safeguard resources against theft, fraud, waste, or misuse.

b. Facilitate accomplishment of Federal program objectives.

c. Assure compliance with laws, regulations, executive orders, and other legal requirements.

d. Assure compliance with policy and budget guidance from the President, the Congress, and agency management.

e. Assure the propriety of accounting records and the accuracy, timeliness, and usefulness of financial reports by

—preventing unauthorized financial transactions or access to resources;

—properly recording all financial transactions,
providing means for the timely detection of losses and accounting errors.

6. *Requirements for Agency Internal Control Directive.* The agency internal control directive will place specific internal control responsibilities on managers and prescribe requirements for the comprehensive internal control systems that managers will use to carry out their responsibilities. The agency directive will provide for the following as a minimum:

a. Establish an internal control committee or other appropriate means to oversee development, maintenance, review, and improvement of the agency's internal controls. This group must provide for coordination between program managers and financial systems staffs so that financial systems serve managers' needs for decisionmaking, control, and review—while providing for adequate internal control.

b. Assign responsibility for internal control to officials in each major operating component of the agency.

c. Provide that internal control responsibility and standards of performance be incorporated in each appropriate official's performance appraisal.

d. Provide a plan for vulnerability assessments and coordinated risk analyses on a recurring cycle of not more than 5 years. These reviews should identify agency programs and functions where internal control systems need either to be strengthened or streamlined in response to changes in the nature of the program, the magnitude of the resources involved, or recent experience with theft, fraud, waste, and misuse of resources. These reviews should draw on audit reports and other sources. A vulnerability assessment and risk analysis should also be made for each planned and newly authorized agency program.

e. Provide that the agency's regulations provide for each of the elements of internal control described in paragraph 7.

f. Establish administrative mechanisms to enforce internal control requirements. These mechnisms should include reports to the agency head on all significant internal control violations, and appropriate disciplinary actions for responsible individuals.

g. Provide for periodic internal audit to determine effectiveness of control systems.

h. Establish response mechanisms to address internal control system weaknesses disclosed by audit, discovered loss, or other means.

7. *Common Elements of Internal Control.* Six generally accepted elements of internal control must be included in any system dealing with acquisition, use, or accountability of Federal resources. Such systems include, as a minimum, agency planning, budgeting, accounting, revenue, expenditure, property, inventory, cash management, debt management and related ADP systems. The design of each system should consider the entire transaction cycle. Where transactions cross organizational or functional lines or when more than one system is involved, integrated controls must be established.

a. *Documentation.* Internal control procedures, policies, authorities and responsibilities must be clearly and adequately documented. Once documented they must be available to personnel involved in their execution. Documentation usually takes the form of operations manuals and organization charts which describe and depict the roles and responsibilities of all individuals involved in the control system. Proper documentation provides assurances that methods and responsibilities are clearly communicated, and is often a valuable tool in training new employees.

Documentation must also be provided for all financial transactions and for the custody of all resources.

b. *Separation of Duties.* No individual or small group of individuals should be in a position to control all aspects of a financial transaction. Responsibilities must be separated and tasks structured to preclude an individual from performing more than one "key" processing function or activity—such as authorizing, approving, certifying, accounting, disbursing, or keeping custody of resources.

c. *Supervision.* Qualified and continuous supervision is necessary to assure agency management that approved procedures are followed both to facilitate effective, efficient program management and to safeguard the resources of the agency.

d. *Security of Property and Records.* Physical security must be provided for accounting records, negotiable instruments or securities, and other resources of the agency. Procedures should be employed to ensure that appropriate recordkeeping and archive procedures exist and are followed.

e. *Internal Audit.* An internal audit or review function must continuously monitor policies, procedures, and practices related to financial transactions and custody of resources. Where appropriate, reviews should include examining and testing of transactions. Also, procedures should exist to assure followup of audit findings and recommendations, and to assure timely corrective action by management.

f. *Competency of Personnel.* Personnel should be competent, by education, training and experience, to execute the control responsibility to which they are assigned.

8. *Special Internal Control Guidelines.* In addition to providing for the basic elements of internal control in the body of this Circular, guidelines on various special aspects of internal control will be issued separately by OMB. (See Attachment for list of guidelines.) Agency Regulations should be revised on a cycle basis to incorporate the substance of each guideline as appropriate.

9. *Reporting.* Agencies will be required to include specific in formation on the progress of internal control systems reviews as part of their annual report to OMB on financial management improvement.

10. *Effective Date.* This Circular is effective on publication.

11. *Inquiries.* All questions or inquiries should be addressed to Financial Management Branch, Office of Management and Budget, telephone number 202/395–4773.

James T. McIntyre
Director

Attachment—Circular No. A–

List of Guidelines

A. Fund Control
B. Cash Management and Handling
C. Debt Collection
D. Certifying and Disbursing
E. Automated Data Processing
F. Procurement
G. Grants.

[FR Doc. 81–339 Filed 1–5–81; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11519, File No. 812–4790]

American Birthright Trust Management, Inc., et al.; Filing of Application and Order of Temporary Exemption Pending Determination

December 30, 1980.

In the matter of American Birthright Trust Management, Inc., Richard J. Sluggett, Richard S. Freedman, File No. 812–4790.

Notice is hereby given that American Birthright Trust Management, Inc. ("ABTM"), Richard J. Sluggett ("Sluggett") and Richard S. Freedman ("Freedman"), collectively referred to herein as "Applicants," have filed as application pursuant to Section 9(c) of the Investment Company Act of 1940, 15 U.S.C § 80a–1, *et seq.*, as amended (the "Act"), for an order granting them an exemption from the provisions of Section 9(a) of the Act, and a temporary exemption from Section 9(a) pending the Commission's determination of the application for a permanent exemption.

All interested persons are referred to the application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below.

On December 30, 1980, Applicants were named, with others, as defendants in Civil Action No. 80–*3306*, brought by the Commission in the United States District Court for the District of Columbia (the "action"). The Commission's Complaint alleged that ABTM, Sluggett and Freedman violated Section 17(a)(2) of the Securities Act of 1933 and Sections 15(c) and 20(a) of the Act, and that ABTM also violated Sections 36 (a) and (b) of the Act, in connection with the operation of two registered investment companies, American Birthright Trust and Tax-Managed Fund for Utility Shares

(collectively, the "Funds"). Without admitting or denying any allegations of violations, Applicants, on the same date the Complaint was filed, consented to the entry of a final judgment (the "Judgment") by the court. The judgment enjoins Applicants from engaging in acts or practices that would constitute violations of the statutory provisions cited above, and provides other remedial relief consented to by Applicants.

Section 9(a) of the Act, insofar as is pertinent here, disqualifies any person, or any company with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Applicants do not concede that the Judgment would disqualify them under Section 9(a) of the Act.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Applicants have submitted an application pursuant to Section 9(c) of the Act stating, *inter alia*, that:

(1) The prohibitions of Section 9(a) of the Act would be unduly and disproportionately severe as applied to them and that their conduct has not been such as to make it against the public interest or protection of investors to grant the requested exemption.

(2) The Commission's action presented complex and novel issues of law and fact related to the determination of investment advisory fees and other matters.

(3) Applicants acted in good faith in a manner they believed to be in the interests of the funds without challenge from the Commission prior to the commencement of the investigation which preceded the civil action referred to above.

(4) Prior to the judgment referred to above, no findings or judgment relating to violations of federal or state securities laws have ever been entered by any court against the Applicants.

(5) The prohibitions of Section 9(a) would unfairly deprive ABTM of its ability to act as investment adviser to and principal underwriter for the Funds and other investment companies (a line of business which ABTM has been successfully engaged in for the preceding 13 years), would unfairly deprive Sluggett of his ability to act as an officer and director of ABTM and the Funds (positions he has held since the inception of the Funds and through which he has managed the growth and development of the Funds) and of any other investment companies which may be advised by ABTM, and would unfairly deprive Freedman of his ability to act as an officer of ABTM (in which he holds a key position of responsibility for the Fund's operations), and as an officer or director of any investment companies which may be advised by ABTM.

(6) If the requested relief from Section 9(a) of the Act is not granted, the Funds and their shareholders, which have, throughout the Funds' existence, relied upon ABTM to provide investment advice and distribution, would be deprived of ABTM's services. The prohibitions of Section 9(a) could thus operate significantly to the detriment of the financial interests of the Funds and their shareholders who were not involved in the events that gave rise to the action.

(7) Applicants have never before applied for an exemption from the provisions of Section 9(a) of the Act.

(8) In consenting to a settlement of the Commission's action, Applicants have relied on an agreement by the staff of the Commission not to oppose an application for a permanent exemption from the provisions of Section 9(a) of the Act, based solely on the Judgment or the allegations in the Commission's Complaint, and on the Commission's agreement immediately to issue an order of temporary exemption from the provisions of Section 9(a) of the Act.

The Commission has considered the matter and without agreeing with all of the representations of the Applicants and in light of the relief granted by the court in the action described above, finds that:

(1) The prohibitions of Section 9(a) may be unduly or disproportionately severe as applied to Applicants and any investment companies for which ABTM may be an investment adviser; and

(2) In order to maintain the uninterrupted services provided by ABTM to the Funds, it is necessary and 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, that a temporary order be issued forthwith.

Accordingly, it is ordered that, pursuant to Section 9(c) of the Act, ABTM and its directors, officers and employees, including Richard J. Sluggett and Richard S. Freedman, as of the date of this Order, be and hereby are granted a temporary exemption from the prohibitions of Section 9(a) of the Act with respect to their affiliation with the Funds and any other investment companies for which ABTM may be an investment adviser, pending final determination by the Commission of the application for an order granting them an exemption from such prohibitions.

Notice is further given that any interested party may, not later than January 26, 1981, 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 of fact or law proposed to be controverted, or he may request that he be notified if the Commission should 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 (air mail if the person being served is located more than 500 miles from the point of mailing) upon Allan S. Mostoff, 888 17th Street, N.W., Washington, D.C. 20006. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued 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 notice of futher developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81–289 Filed 1–5–81; 8:45 am]

BILLING CODE 8010–01–M

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 24, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Gulf Canada Ltd., Common Stock, No Par Value (File No. 7-5797)
Aeronca, Inc., Common Stock, $1 Par Value (File No. 7-5798)
Allen Group (The), Common Stock, $1 Par Value (File No. 7-5799)
Blue Bell, Inc., Common Stock, $3.33 ⅓ Par Value (File No. 7-5800)
Canadian Occidental Petroleum Ltd., Common Stock, $1 Par Value (File No. 7-5801)
Downey Saving & Loan Association, Guarantee Stock, $.25 Par Value (File No. 7-5802)
Handelman Co., Common Stock, $1 Par Value (File No. 7-5803)
Hartfield-Zodys, Inc., Common Stock, $1 Par Value (File No. 7-5804)
Hawaiian Electric Co., Inc., Common Stock, $6 ⅔ Par Value (File No. 7-5805)
Hershey Oil Corp., Common Stock, $.10 Par Value (File No. 7-5806)
Horn & Hardart Co. (The), Common Stock, $1 Par Value (File No. 7-5807)
Hudson Bay Oil & Gas Co. Ltd., Common Stock, $2.50 Par Value (File No. 7-5808)
Interlake Inc., Common Stock, $1 Par Value (File No. 7-5809)
MCO Resources, Common Stock, $.01 Par Value (File No. 7-5810)
Mobile Home Industries, Inc., Common Stock, $1 Par Value (File No. 7-5811)
Morrison-Knudsen Co., Inc., Common Stock, $10 Par Value (File No. 7-5812)
Norris Industries Inc., Common Stock, $.50 Par Value (File No. 7-5813)
Rolm Corp., Common Stock, $.04 ½ Par Value (File No. 7-5814)
SPS Technologies Inc., Common Stock, $1 Par Value (File No. 7-5815)
United Park City Mines Co., Common Stock, $1 Par Value (File No. 7-5816)
Bow Valley Industries Ltd., Common Stock, No Par Value (File No. 7-5817)
Genrad, Inc., Common Stock, $1 Par Value (File No. 7-5818)
John Hancock Income Securities Corp., Capital Stock, $1 Par Value (File No. 7-5819)
John Hancock Investors, Inc., Common Stock, $1 Par Value (File No. 7-5820)
NVF Company, Common Stock, $1 Par Value (File No. 7-5821)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 19, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-286 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21858, 70-6474]

Columbia Gas System, Inc., et al., Proposal To Engage in Purification and Sale of Natural Gas Byproduct

December 29, 1980.

In the matter of the Columbia Gas System, Inc., Columbia Hydrocarbon Corporation, 20 Montchanin Road, Wilmington, Delaware and Columbia Gas Transmission Corporation, 1700 Mac Corkle Avenue, S.E., Charleston, West Virginia 25314 (70-6474).

Notice is hereby given that the Columbia Gas System, Inc. ("Columbia"), a registered holding company, and two of its wholly-owned subsidiary companies, Columbia Hydrocarbon Corporation ("Hydrocarbon") and Columbia Gas Transmission Corporation ("Transmission") have filed an application and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9 and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposal transaction.

Hydrocarbon was formed in 1957 pursuant to an Order and Findings and Opinion of the Commission dated Novermber 27, 1957 (HCAR No. 13610) for the purpose of fractionating, storing and selling the heavier hydrocarbons which had to be extracted from the System's Appalachian natural gas streams in order for that natural gas to be marketable. The fractionation process also produced marketable hydrocarbon by-products of the natural gas stream. The order of November 27, 1957 permitted the marketing of such by-products. Hydrocarbon now proposes to purify and market carbon dioxide ("CO_2"), another by-product of the System's natural gas streams. Hydrocarbon proposes to produce and sell food grade CO_2 as well as sell unpurified CO_2.

Transmission is engaged primarily in the long-distance transmission of natural gas from the production sources to various affiliated and nonaffiliated distribution companies. Trasmission also engages in gas production activities in Appalachia. Included among Transmission's Appalachina projects is a project to obtain natural gas from the Tuscarora (Clinton) formation in the Indian Creek Field in Kanawha County, West Virginia. The natural gas from the Indian Creek Field is 35% methane and 65% CO_2. The CO_2 must be separated from the methane before the methane can be sold. It is proposed the the CO_2 be sold to Hydrcarbon. The purchase price for the CO_2 will be based on the price which Columbia LNG Corporation, another Columbia subsidiary, received for the naturally occurring CO_2 by-product of its Green Springs reforming plant, reduced to reflect the fact that the Green Springs gas is purified CO_2, while the CO_2 to be sold by Transmission to Hydrocarbon is unpurified. It is stated that the Columbia LNG Corporation contract was negotiated with a non-affiliated third party in an arm's length transaction and is therefore representative of fair market value of purified CO_2. It is further stated that there is no source of unpurified CO_2 in the area upon which to base a price.

Hydrocarbon proposes to market the CO_2 in a three-part program. First, approximately 60% of the CO_2 Hydrocarbon receives from Transmission will be purified and sold as "food grade" quality CO_2. Five potential customers for the purified CO_2 have been identified to date. Hydrocarbon will construct an 8-mile pipeline from the Indian Creek Field separation plant to a proposed CO_2 purification plant to be located in Marmet, West Virginia. Storage facitlites will also be constructed. The total estimated cost of the pipleine, purification plant and storage facilities is approximately $13 million. By an order dated May 28, 1980 (HCAR No. 21593) the Commission authorized Hydrocarbon to issue to Columbia $3,450,000 in debt and $650,000 in common stock related to the financing of the CO_2 plant. Amounts related to the project for the 1981 year will be included in the Columbia System's 1981

intrasystem financing program. Second, it is planned that the portion of the CO_2 which will not be purified will be liquefied and sold for use in enhanced oil recovery. Due to higher incentive prices for tertiary oil, a potential market for unpurified CO_2 for use in enhanced oil recovery is developing. The unpurified CO_2 would be liquefied and trucked to the oil fields. Third, purified CO_2 vapor may be sold to a nearby industrial plant. That sale also would be at the tailgate of the purification facility so that no additional cost would be incurred by Hydrocarbon.

It is stated that the product-handling and marketing techniques for the CO_2 by-product are essentially the same as those for the by-products presently processed by Hydrocarbon. The fractionation and purification of the CO_2 is similar to that involved in preparing heavier hydrocarbons for sale. Also, CO_2 is marketed by tank truck and tank car just as heavier hydrocarbons are marketed.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,800. It is stated that, in the opinion of counsel for the applicants, no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 22, 1981, 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 applicants 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, as amended or as it may be further amended, may be granted 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 therof 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-348 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21859; 70-6099]

General Public Utilities Corp.; Proposal To Extend Time Period During Which Short-Term Borrowings May be Made

December 29, 1980.

In the matter of General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 (70-6099).

Notice is hereby given that General Public Utilities, Inc. ("GPU"), a registered holding company, has filed a post-effective amendment to an application previously filed with this Commission 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 amended application, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 31 (HCAR No. 21375), the Commission granted GPU authority to issue or renew, from time to time until December 31, 1980, its unsecured promissory notes maturing not more than nine months after the date of issue, evidencing short-term bank borrowings, provided that the aggregate principal amount of such unsecured promissory notes outstanding at any one time, when added to GPU's borrowings outstanding under the GPU System Revolving Credit Agreement, shall not exceed $150,000,000.

By order dated June 19, 1979 (HCAR No. 21107) the Commission authorized GPU to issue, sell and renew from time to time through October 1, 1981, its promissory notes (having a maturity of not more than six months from the date of issue) pursuant to the GPU System Revolving Credit Agreement dated as of June 15, 1979, with a syndicate of commercial banks. The Commission's order, among other things, authorizes GPU to incur indebtedness under the Agreement up to an amount which, when added to its other outstanding short-term borrowings would not in the aggregate exceed $150,000,000. Borrowings under the Agreement are secured by the guarantee of GPU, by the common stock of GPU's subsidiaries, and in the cases of Jersey Central Power & Light and Metropolitan Edison by certain other collateral.

GPU now requests that the period during which it may issue, sell and renew its unsecured promissory notes be extended to October 1, 1981. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged. GPU states that this extension of its existing authority is necessary so that it may have the flexibility to borrow under both unsecured credit lines and the GPU System Revolving Credit Agreement since from time to time it may be less costly and more expeditious to borrow pursuant to unsecured credit lines.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 22, 1981, 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 at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from suchs 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-349 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21860; 70-6098]

Jersey Central Power and Light Co.; Proposal To Extend Time Period During Which Short-Term Borrowings May Be Made

December 29, 1980.

In the matter of Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960 (70-6098).

Notice is hereby given that Jersey Central Power & Light Company ("JCP&L"), an electric utility subsidiary of General Public Utilities Inc. ("GPU"), a registered holding company, has filed a post-effective amendment to an application previously filed with this Commission 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 amended application, which is summarized below, for a complete statement of the proposed transaction.

By order dated June 2, 1980 (HCAR No. 21604), the Commission granted JCP&L authority to issue or renew, from time to time until December 31, 1980, its unsecured promissory notes maturing not more than nine months after the date of issue, evidencing short-term bank borrowings, provided that the aggregate principal amount of such unsecured promissory notes outstanding under the GPU System Revolving Credit Agreement, shall not exceed the lesser of (a) $160,000,000 or (b) the amount permitted by JCP&L's Charter.

By orders dated June 19, 1979 (HCAR No. 21107) and August 18, 1980 (HCAR No. 21681) the Commission authorized JCP&L to issue, sell and renew from time to time through October 1, 1981, its promissory notes (having a maturity of not more than six months from date of issue) pursuant to the GPU System Revolving Credit Agreement dated as of June 15, 1979, as amended, with a syndicate of commercial banks. The Commission's orders, among other things, authorize JCP&L to incur indebtedness under the Agreement up to an amount which, when added to its other outstanding short-term borrowings, would not in the aggregate exceed the lesser of (a) $160,000,000 or (b) the amount permitted by JCP&L's Charter. Borrowings under the Agreement are secured by the guarantee of GPU, by the common stock of GPU's subsidiaries, and in the cases of Jersey Central Power & Light and Metropolitan Edison by certain other collateral.

JCP&L now requests that the period during which it may issue, sell and renew its unsecured promissory notes be extended to October 1, 1981. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged. JCP&L states that this extension of its exisiting authority is necessary so that it may continue to have the flexibility to borrow under both unsecured credit lines and the GPU System Revolving Credit Agreement since from time to time it may be less costly and more expeditious to borrow pursuant to unsecured credit lines.

A statement of the fees, commissions and expenses to be incurred in connection with proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 22, 1981, 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 at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-351- Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21856; 70-6283]

Metropolitan Edison Co., Proposal To Extend Time Period During Which Short-Term Borrowings May Be Made

December 29, 1980.

In the matter of Metropolitan Edison Company, 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605 (70-6283).

Notice is hereby given that Metropolitan Edison Company ("Met-Ed"), an electric utility subsidiary of General Public Utilities Inc. ("GPU"), a registered holding company, has filed a post-effective amendment to an application previously filed with this Commission 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 amended application, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 28, 1979 (HCAR No. 21368), the Commission granted Met-Ed authority to issue or renew, from time to time until December 31, 1980, its unsecured promissory notes maturing not more than nine months after the date of issue, evidencing short-term bank borrowings, provided that the aggregate principal amount of such unsecured promissory notes outstanding at any one time, when added to Met-Ed's borrowings outstanding under the GPU System Revolving Credit Agreement, shall not exceed the lesser of (a) $125,000,000 or (b) the amount permitted by Met-Ed's Articles of Incorporation.

By orders dated June 19, 1979 (HCAR No. 21107) and October 30, 1979 (HCAR No. 22276) the Commission authorized Met-Ed to issue, sell and renew from time to time through October 1, 1981, its promissory notes (having a maturity of not more than six months from the date of issue) pursuant to the GPU System Revolving Credit Agreement dated as of June 15, 1979, with syndicate of commercial banks. The Commission's orders, among other things, authorized Met-Ed to incur indebtedness under the Agreement up to an amount which, when added to its other outstanding short-term borrowings would not in the aggregate exceed the lesser of (a) $125,000,000 or (b) the amount permitted by Met-Ed's Articles of Incorporation. Borrowings under the Agreement are secured by the guarantee of GPU, by the common stock of GPU's subsidiaries, and in the cases of Jersey Central Power

& Light and Metropolitan Edison by certain other collateral.

Met-Ed now requests that the period during which it may issue, sell and renew its unsecured promissory notes be extended to October 1, 1981. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged. Met-Ed states that this extension of its existing authority is necessary so that it may continue to have the flexibility to borrow under both unsecured credit lines and the GPU System Revolving Credit Agreement since from time to time it may be less costly and more expeditious to borrow pursuant to unsecured credit lines.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 22, 1981, 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 at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-350 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21861; 70-5987]

Pennsylvania Electric Co.; Proposal To Extend Time Period During Which Short-Term Borrowings May Be Made

December 29, 1980.

In the matter of Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907 (70-5987).

Notice is hereby given that Pennsylvania Electric Company ("Penelec"), an electric utility subsidiary of General Public Utilities Inc. ("GPU"), a registered holding company, has filed a post-effective amendment to an application previously filed with this Commission 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 amended application, which is summarized below, for a complete statement of the proposed transaction.

By order dated May 4, 1979 (HCAR No. 21032), the Commission granted Penelec authority to issue or renew, from time to time until December 31, 1979, its unsecured promissory notes maturing not more than nine months after the date of issue, evidencing short-term bank borrowings, provided that the aggregate principal amount of such unsecured promissory notes outstanding at any one time, shall not exceed the lesser of (a) $116,000,000 or (b) the amount permitted by Penelec's Articles of Incorporation.

By orders dated June 19, 1979 (HCAR No. 21107) the Commission authorized Penelec to issue, sell and renew from time to time through October 1, 1981, its promissory notes (having a maturity of not more than six months from the date of issue) pursuant to the GPU System Revolving Credit Agreement dated as of June 15, 1979, with a syndicate of commercial banks. The Commission's order, among other things, authorizes Penelec to incur indebtedness under the Agreement up to an amount which, when added to its borrowings outstanding hereunder, would not in the aggregate exceed the lesser of (a) $116,000,000 or (b) the amount permitted by Penelec's Articles of Incorporation. Borrowings under the Agreement are secured by the guarantee of GPU, by common stock of GPU's subsidiaries, and in the cases of Jersey Central Power & Light and Metropolitan Edison by certain other collateral.

Penelec now requests that the period during which it may issue, sell and renew its unsecured promissory notes be extended from the effective date of the Commission's supplemental order requested by this post-effective amendment to October 1, 1981. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged. Penelec states that this extension of its existing authority is necessary so that it may have the flexibility to borrow under both unsecured credit lines and the GPU System Revolving Credit Agreement since from time to time it may be less costly and more expeditious to borrow pursuant to unsecured credit lines.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 22, 1981, 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 at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-354 Filed 1-3-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17409; SR-MCC-2]

Midwest Clearing Corporation ("MCC"); Order Approving Proposed Rule Change

December 29, 1980.

On November 10, 1980, MCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change which would empower MCC as part of its stock loan program, to establish prioritized classes of participants to use in determining the order in which MCC will borrow securities made available to the MCC system by participants.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17310, November 17, 1980) and by publication in the **Federal Register** (45 FR 77216, November 21, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change by approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-353 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17403; SR-Phlx-80-27]

Philadelphia Stock Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

December 29, 1980.

In the matter of Philadelphia Stock Exchange, Inc., 17th Street & Stock Exchange Place, Philadelphia, PA 19103 (SR-Phlx-80-27).

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on December 4, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission copies of a proposed rule change to modify the Phlx's Board of Governors ("Board") and the Phlx's election procedures. The Board's number of Public Governors[1] would be increased from one to three and its number of Broker Governors would be reduced from 24 to 21.[2] Every year seven Broker Governors and one Public Governor would be elected to three year terms, resulting by the year 1983 in 21 Broker Governors and three Public Governors.[3] The present requirement limiting to 10 the number of non-members of the Phlx who may serve at any one time on the Board would be rescinded,[4] and the present requirement that Public Governors must rotate off the Board at the end of six consecutive years of service would also be rescinded.[5]

The Phlx's Chairman of the Board would be directly elected, by the membership, to a two year term, instead of the present one year term;[6] and after two such consecutive terms he would be ineligible to succeed himself.[7] However, any immediate past Chairman of the Board would automatically become an *ex officio* Board member for one year following his departure from office.[8]

The two Vice Chairmen of the Board would each continue to serve one year terms,[9] but one Vice Chairman would be required to conduct a business primarily involving public securities customers, and the other Vice Chairman would be required to spend the major portion of his time on the Phlx trading floors or be affiliated with an organization that conducts a substantial portion of its business on the Phlx trading floors.[10]

The Phlx's Nominating Committee would be required to hold open meetings for nominations in January of each year and to submit nominations for the Board positions of Chairman, Vice Chairman, Broker Governor, and Public Governor to the Secretary of the Exchange[11] who also could receive nominations from the membership-at-large.[12] The Nominating Committee could not nominate to the Board anyone (except for the Chairman) if the election of any such nominee would cause more than one Board member to be affiliated with the same member organization. The elections themselves would be conducted by the Phlx's Elections Committee.[13]

All appointments to the Nominating Committee and the Elections Committee would be made by the Chairman of the Board, subject to Board approval, in December of each year.[14] No person would be eligible for appointment to any standing committee, including the Nominating Committee and the Elections Committee, if such person's appointment would cause more than one person from the same member organization to be a member of that committee.[15]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-27.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regualtions thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the Phlx's By-Laws (both present and proposed) require that nominations for Board positions be submitted to the Nominating Committee in January of each year for the Exchange's annual election in March.

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[1] The Phlx By-Laws, Section 4-1, state that a "Public Governor shall be a representative of the public unaffiliated with the [Phlx] or any broker or dealer in securities."

[2] Proposed Phlx By-Laws, Sections 3-2, 4-1, and 4-3. Presently there are 24 Broker Governors, eight of whom are elected each year, and one Public Governor who is elected every third year.

[3] *Id.*, Section 4-1. These totals would be in addition to the Chairman of the Board, two Vice Chairmen of the Board, and the President of the Exchange.

[4] *Id.*, Section 4-1.

[5] *Id.*, Section 4-3.

[6] *Id.*, Section 3-2.

[7] *Id.*, Section 4-2.

[8] *Id.*, Section 4-1.

[9] *Id.*, Section 3-2.

[10] *Id.*, Section 4-2.

[11] *Id.*, Section 3-6.

[12] *Id.*, Section 3-7(a).

[13] *Id.*, Section 10-10. Presently the Elections Committee is authorized by Section 10-9 of the By-Laws to submit its own nominations if none are made by the membership-at-large, but the Phlx states that this "procedure has proved cumbersome" and proposes to rescind it.

[14] *Id.*, Section 10-1(c).

[15] *Id.*, Section 10-1(d).

Unless the Commission were to provide accelerated treatment for this filing, it is doubtful that the new rules would be in effect in time for the nomination stage of the Phlx's 1981 election.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley F. Hollis,

Assistant Secretary.

[FR Doc. 81-352 Filed 1-5-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 09/09-5279]

Asian American Capital Corporation; Application for License To Operate as a Small Business Investment Company.

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Asian American Capital 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:

David F. Der, M.D., 3587 Oakes Drive, Hayward, California 94542. Chairman of the Board, Chief Executive Officer, 15.3 percent Stockholder.

George S. Wong, M.D., 676 Blair Avenue, Piedmont, California 94611. President, Director, 10.5 percent Stockholder.

John F. Louie, 4481 Lamont Way, Sacramento, California 95823. Vice President, Assistant Secretary, Director, General Manager.

Thomas Y. Fung, M.D., 3467 LaMesa Drive, Hayward, California 94542. Secretary, Director, 4.9 percent Stockholder.

Bing H. Young, M.D., 2922 Bayview Drive, Alameda, California 94501. Treasurer, Chief Financial Officer, Director, 5.6 percent Stockholder.

Seven other Stockholders owning less than 10 percent each, 63.7 percent.

The Applicant, a California corporation, with its principal place of business at 1911 West Tennyson Road, Suite No. 3, Hayward, California 94546, will begin operations with $500,000 of paid-in capital and paid-in surplus from the sale of 5,100 shares of common stock.

The Applicant will conduct its activities principally in the State of California.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and 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 operations of the Applicant under this management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than January 21, 1981, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Hayward, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 29, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-361 Filed 1-5-81; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0119]

Housing Capital Corporation; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Housing Capital Corporation (HCC), 1133 Fifteenth Street, N.W., Washington, D.C. 20005, a Federal licensee under the Small Business Investment Act of 1958, as amended, has filed an application 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.

HCC proposes to form a limited partnership in which HCC will be the limited partner and Harkins Associates, Inc. (Harkins), 8720 Georgia Avenue, Silver Spring, Maryland 20901, will be the General Partner. Harkins is deemed an Associate of HCC due to its involvement in joint ventures with the National Corporation for Housing Partnerships (NCHP), the parent of HCC, and NCHP Development Corporation (NCHP-DC), another Associate of HCC. Harkins and NCHP-DC are presently joint venturers in a joint venture formed under the name of Olde Towne West Associates. The joint venture was formed to rehabilitate or construct, and sell 77 townhouses in a DIP Urban Renewal Project. The joint venture will assign at cost, all contracts and obligations to the limited partnership, which will then acquire the land and construct and sell 77 townhouses. The joint venture will be dissolved. HCC will invest $50,000 and Harkins will invest $150,000. Because Harkins is deemed an Associate and because a portion of the invested capital will be used to repay NCHP-DC its portion of the joint venture, the transaction falls under §§ 107.1004(b)(1) and 107.1004(b)(4) of the SBA Regulations and requires a written exemption granted by SBA.

Notice is hereby given that any person may, not later than January 21, 1981 submit written comments on the proposed transaction. Any such comments should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Washington, D.C. area.

(Catalog of Federal Domestic Assistance Programs No. 59.011), Small Business Investment Companies.)

Dated: December 29, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-362 Filed 1-5-81; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-19]

Associated Tobacco Manufacturers; Termination of Investigation

The United States Trade Representative, in accordance with the provisions of 15 CFR 2006.6, is terminating the investigation under section 301 of the Trade Act of 1974 (19

U.S.C. 2411) concerning restrictions imposed on imports of pipe tobacco by Japan Tobacco and Salt Public Corporation (JTS). The petition, filed by the Associated Tobacco Manufacturers on October 22, 1979, alleged that JTS, an instrumentality of the Government of Japan which controls all sales of tobacco products in Japan, sets unreasonable prices for imported pipe tobacco, restricts distribution of imported pipe tobacco, and severely restricts advertising of imported pipe tobacco. A **Federal Register** notice including the text of the petition was published on November 8, 1979 (44 FR 64938).

Because the practices complained of were similar to those involved in Docket No. 301-17, concerning cigars, the two investigations were consolidated. In November of 1979, the United States requested that the Council of the General Agreement on Tariffs and Trade (GATT) appointed a panel to consider whether the JTS restrictions were inconsistent with the obligations of Japan under the GATT. Following additional negotiations between Japan and the U.S., during which no resolution was reached, a GATT panel was formed. Briefs were submitted and oral presentations made to the GATT panel in March of this year.

Bilateral discussions continued while the panel was reviewing the information submitted to it in preparation for making its report. These discussions have resulted in an agreement reducing the tariff on imported pipe tobacco and liberalizing other restrictions on importation and distribution of pipe tobacco.

Because of this agreement and because the petitioner has submitted to this office a letter requesting withdrawal of its complaint under section 301, the United States Trade Representative, with the advice of the Section 301 Committee, has determined that action under section 301 is no longer necessary. The investigation of the complaint filed by the Associated Tobacco Manufacturers is terminated.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 81-371 Filed 1-5-81; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-17]

Cigar Association of America, Inc.; Termination of Investigation

The United States Trade Representative, in accordance with the provisions of 15 CFR 2006.6, is terminating the investigation under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) concerning the imposition of internal taxes on imports, in excess of those placed on domestic products, and the restrictions placed upon marketing, advertising and distribution of imported cigars by the Japan Tobacco and Salt Public Corporation (JTS), an instrumentality of the Government of Japan. The petition, filed by the Cigar Association of America, Inc. on March 14, 1979, alleged that the internal taxes and other restrictions were unreasonable and were inconsistent with Japan's international obligations under the GATT. A **Federal Register** notice including the text of the petition was published on March 30, 1979 (44 FR 19083).

Consultation, on an informal basis, were instituted with Japan on the issues raised. Formal bilateral consultations were conducted in August of 1979. During these consultations, the United States sought to obtain agreement from Japan to measures which would guarantee fair market access and equal competitive opportunity for U.S. products in the Japanese market. No agreement was obtained.

The United States requested that the Council of the General Agreement on Tariffs and Trade (GATT) appoint a panel to consider whether the internal taxes and restrictions applied to imports of cigars and pipe tobacco were inconsistent with Japan's obligations under the GATT. Because of the similar issues involved, Docket No. 301-19, Associated Tobacco Manufacturers, was combined with this case. Following unsuccessful, bilateral consultations concerning pipe tobacco, a GATT panel was formed.

Negotiations continued while the panel was reviewing the briefs and information which the parties presented in March of this year. An agreement was reached, prior to the panel's report, which would reduce tariffs applied to imported cigars and would liberalize the restrictions on marketing, advertising and distribution of imported cigars.

Because of the agreement reached with Japan on the issues in this case and because the petitioner has submitted a letter requesting withdrawal of its complaint under section 301, the United States Trade Representative, with the advice of the Section 301 Committee, has determined that action under section 301 is no longer necessary. The petitioner has been advised of this determination. The investigation of the complaint filed by the Cigar Association of America, Inc. is terminated.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 81-372 Filed 1-5-81; 8:45 am]

BILLING CODE 3190-01-M

Amendment of the Tariff Schedules of the United States with Respect to Color Television Receivers From the Republic of Korea

Proclamation No. 4769 of June, 30, 1980, extended the temporary quantitative limitations on color television receivers and certain subassemblies thereof, the products of the Republic of Korea and Taiwan. The proclamation was issued pursuant to the President's decision to extend orderly marketing agreements covering such products.

Pursuant to Proclamation No. 4769, in which the President authorized the United States Trade Representative to make any changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) which might be necessary to carry out the agreements, the changes in the Annex are being made and shall be effective on and after the eighth day following the publication of this notice in the **Federal Register.**

Reubin O'D. Askew,

United States Trade Representative.

Annex

Subpart A, part 2 of the Appendix to the TSUS is amended—

(1) By deleting "923.72" wherever that item number is cited in headnote 5 and substituting "923.77" in lieu thereof;

(2) By deleting paragraphs (d) and (e) of headnote 5 and substituting the following new paragraphs (d) and (e) in lieu thereof:

* * * * *

(d) *Carryover.*—If the restraint level for color television receivers has not been filled for the restraint periods ending June 30, 1980, and June 30, 1981, for such products from Taiwan or the restraint periods ending June 30, 1980, December 31, 1980, June 30, 1981, or December 31, 1981, for such products from the Republic of Korea, upon appropriate request of the Coordinating Council for North American Affairs (CCNAA) or the Government of the Republic of Korea, the shortfall may be entered during the following restraint period provided that the amount of shortfall so entered does not exceed 11 percent of the restraint level for the restraint period during which the shortfall occurred.

(e) *Exceeding restraint levels.*—Upon appropriate request of the CCNAA or of the Government of the Republic of Korea, the restraint level for item 923.66 or 923.73 may

be exceeded by not more than 10 percent and the restraint level for item 923.71 may be exceeded by not more than 38,500 receivers. If the restraint level is exceeded, the United States Trade Representative shall make a downward adjustment of the restraint level for the subsequent restraint period (item 923.68, 923.73 or 923.75), in the absolute amount the restraint level for item 923.66, 923.71, or 923.73, respectively, was exceeded.

(3) By deleting items 923.70 and 923.71 and substituting the following new items 923.70 through 923.75 in lieu thereof (with respect to the Republic of Korea):

Item	Articles	Quota quantity (in units)
923.70	If exported during the period from July 1, 1980, through December 31, 1980, inclusive.	185,000
923.71	If exported during the period from January 1, 1981, through June 30, 1981, inclusive.	200,000
923.73	If exported during the period from July 1, 1981, through December 31, 1981, inclusive.	275,000
923.75	If exported during the period from January 1, 1982, through June 30, 1982, inclusive.	300,000

(4) By redesignating item 923.72 as item 923.77; and

(5) By deleting the reference to "headnote 6" in the superior heading to items 925.11 through 925.13 and substituting "headnote 7" in lieu thereof.

December 19, 1980.

Mr. William T. Archey,
Acting Commissioner,
U.S. Customs Service,
Washington, D.C. 20229

Dear Mr. Archey: A request has been received from the Coordinating Council for North American Affairs (CCNAA) concerning the carryover provision in paragraph 5(a) of the orderly marketing agreement on color television receivers.

Exports from Taiwan of color television receivers classified in TSUS item 923.76 fell short of the 373,000 units alloted for the second restraint period. The Coordinating Council for North American Affairs has requested that 22, 688 sets be carried over into the third period.

Accordingly, pursuant to paragraph 5(d) of the Annex to Proclamation 4769 of June 30, 1980, and provisions of the Orderly Marketing Agreement, you are hereby requested to increase the third restraint period level applicable to imports of color television receivers entering under TSUS Item No. 923.66 by 22,688 sets. The adjusted restraint level for the third period, therefore, will be 422,688 sets.

This letter will be published in the **Federal Register.**

Sincerely,

Reubin O'D Askew,

[FR Doc. 81-336 Filed 1-5-81; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1979 Rev., Supp. No. 15]

First State Insurance Co., New England Reinsurance Corporation; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the Certificates of Authority issued by the Treasury to First State Insurance Company, Boston, Massachusetts, and New England Reinsurance Corporation, Boston, Massachusetts, under Sections 6 to 13 of Title 6 of the United States Code, to qualify as acceptable sureties on federal bonds are hereby terminated effective this date.

The companies were last listed as acceptable sureties on federal bonds at 45 FR 44505 and 45 FR 44509, respectively, July 1, 1980.

With respect to any bonds currently in force with First State Insurance Company and New England Reinsurance Corporation, bond approving officers of the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the companies.

Questions concerning this notice may be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226. Telephone (202) 634-5010.

Dated: December 18, 1980.

William E. Douglas

Commissioner

[FR Doc. 81-288 Filed 1-5-81; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Donald C. Lubick,

Assistant Secretary (Tax Policy).

January 2, 1981.

[FR Doc. 81-488 Filed 1-2-81; 4:32 pm]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

National Cemetery, Florida; Intent To Prepare an Environmental Impact Statement

AGENCY: Veterans Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: To fulfill the requirements of section 102(2)(C) of the National Environmental Policy Act, the Veterans Administration (VA) has identified a need to prepare an Environmental Impact Statement (EIS) and therefore issues this Notice of Intent under Title 40, Code of Federal Regulations, § 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, 20420 (202) 389-2526.

SUPPLEMENTARY INFORMATION:

1. Description of Proposed Action

On October 21, 1980, the Administrator of Veterans Affairs announced the President's approval of a new Veterans Administration National Cemetery in Florida. It is the desire of the Veterans Administration that the national cemetery be located at a site in central Florida readily accessible to concentrations of the state veteran population. The Veterans Administration has determined that a site of approximately 600 acres, depending upon specific conditions, is required to meet the burial needs of central Florida's veteran service area. The proposed development will include space for approximately 300,000 gravesites (thru the year 2025) and the

construction administrative and service facilities.

2. Alternatives

The Veterans Administration presently considers a portion of the Withlacoochee State Forest in Sumter County to be a potential national cemetery site to be analyzed in the EIS. In addition, the Veterans Administration will consider in the EIS other sites determined to be available to the agency and suitable for national cemetery development. The final alternative to be discussed in the EIS will be the NO ACTION alternative.

3. Public and Private Participation in EIS Process

The issues and concerns identified during the scoping process will help determine the nature and extent of the impact analysis in the EIS. The Veterans Administration invites full participation by individuals, public and private organizations and local, State and Federal agencies. Persons wishing to participate in the scoping process should contact the Veterans Administration Office of Environmental Affairs at the above address.

4. Scoping

The Veterans Administration will initiate the scoping process and conduct a public meeting(s) (date and location unscheduled at this time) for the purpose of identifying issues for consideration in the preparation of the EIS.

5. Timing

Tentative time limits have been set for completion of the environmental review at the following milestones:

Availability of draft EIS—September 1981

Availability of final EIS—January 1982

Completion of the Record of Decision—February 1982

6. Request for Copies of Draft EIS

For a copy of the Draft Environmental Impact Statement, placement on the mailing list, or for other NEPA related information, please submit your name and address to the Office of Environmental Affairs at the above address.

Dated: December 24, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 81-355 Filed 1-5-81; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, 60-Bed Nursing Home Care Unit in Spokane, Wash.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a 60-Bed Nursing Home Care Unit of the Veterans Administration Medical Center (VAMC) Spokane, Washington.

The proposed project action involves development of a one story nursing home consisting of 60-Beds plus a limited amount of additional parking (approximately 25 spaces), and small access road, estimated construction costs are approximately 5.2 million dollars.

Four alternative building locations were considered, with three of those analyzed as viable options. Site locations 1 and 2 are located directly south of the main medical center building and site location 4 located in the southeast corner of the VAMC property. Site location 3, located in the northwest area of the property, was considered too distant and not compatible with future development.

The proposed development has been selected to occur at site location 1 (Scheme II) due to its limited impact on the environment and its functional relationship with the existing facilities based on programmatic criteria.

Minimal impact is anticipated on both the human and natural environment. Open space and existing lawn area topography will be altered. Additionally temporary construction related impacts of noise, dust, and soil erosion will occur.

Mitigation of the project impacts include: Implementation of erosion and sedimentation controls; on site noise abatement; and construction air quality controls. All mitigation actions will be implemented utilizing VA Specification Section EP—Environmental Protection, as it applies to the specific project impacts identified.

Findings conclude the proposed action will not cause a significant effect on the physical and human environment, and, therefore, does not require preparation of an Environmental Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Environmental Affairs Office (003A), Veterans Administration Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: December 24, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 81-356 Filed 1-5-81; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, Purchase of Keiper Building in Battle Creek, Mich.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impact that may occur as a result of the purchase of the Keiper Building, located at 5600 Dickman Road, Battle Creek, Michigan. The building will be used for Supply Service Warehouse and a new laundry facility. The Veterans Administration is currently leasing the Keiper Building for a Supply Service Warehouse.

Development of the project will create an increased demand on water supply and electricity.

Findings conclude that the proposed action will not cause a significant adverse effect on the physical and human environment, and therefore, does not require preparation of an Environmental Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in the assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be

addressed to: Director, Environmental Affairs Office (003A), Veterans Administration Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: December 24, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 81-357 filed 1-5-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 3
Tuesday, January 6, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: Commission Meeting, Wednesday, January 7, 1981, 9:30 a.m.

LOCATION: Third Floor Hearing Room, 1111 18th Street, N.W., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: *Urea-Formaldehyde Foam Insulation: Regulatory Options.*

The Commission will consider regulatory action to address hazards that may be associated with urea-formaldhyde foam insulation. The staff briefed the Commission on this matter at the November 24, 1980, meeting, and the Commission met December 5 with representatives of the Formaldehyde Institute. This meeting was originally scheduled for December 22, 1980.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 300, 1111-18th St., NW., Washington, DC 20207, Telephone (202)634-7700.

[S-2383-81 Filed 1-2-81; 10:38 am]

BILLING CODE 6355-01-M

2

December 31, 1980.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: January 7, 1981, 10 a.m.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Power Agenda—475th Meeting, January 7, 1981, Regular Meeting (10 a.m.)

CAP-1. Project No. 2153—California, United Water Conservation District.
CAP-2. Project No. 199, South Carolina Public Service Authority.
CAP-3. Docket No. EL78-43, city of Bountiful, Utah, Utah Power & Light Co., city of Santa Clara, Calif. and Pacific Gas and Electic Co. Project No. 1744, Utah Power & Light Co.
CAP-4. Docket No. 2004, Holyoke Water Power Co.
CAP-5. Docket No. ER79-341, Detroit Edison Co., Consumers Power Co. and Indiana & Michigan Electric Co.
CAP-6. Docket No. ER81-165-000, Northeast Utilities.
CAP-7. Docket No. ER80-447, Public Service Co. of Colorado.
CAP-8. Docket No. ER80-454, Ohio Edison Co.
CAP-9. Docket Nos. ER80-66 et al., New England Power Co.
CAP-10. Docket Nos. E9002 and ER76-122, Commonwealth Edison Co.
CAP-11. Docket No. ER80-568, Kanawha Valley Power Co.
CAP-12. Docket Nos. ER77-325 and ER77-426 (remand), Appalachian Power Co.
CAP-13. Docket Nos. ER80-313 and ER80-376, Public Service Co. of New Mexico.

Miscellaneous Agenda—475th Meeting, January 7, 1981, Regular Meeting

CAM-1. Docket No. RM80-65, exemption from all or part of Part I of the Federal Power Act of small hydroelectric power projects with an installed capacity of 5 megawatts or less.
CAM-2. Docket No. RM80-69, revision of annual report of gas supply for certain natural gas pipelines; Form No. 15.
CAM-3. Docket No. RM80-50, High-Cost Natural Gas: Production enhancement procedures.
CAM-4. Docket No. RA80-52, Buchanan Shell, Inc.
CAM-5. Docket Nos. RA79-5 and RA80-50 (consolidated), Sabre Refining, Inc.

Gas Agenda—475th Meeting, January 7, 1981, Regular Meeting

CAG-1. Docket No. RP80-72, Algonquin Gas Transmission Co.
CAG-2. Docket No. RP80-61, Consolidated Gas Supply Corp.
CAG-3. Docket No. RP80-88-002, Northern Natural Gas Co.
CAG-4. Docket No. CI80-485, Pan Eastern Exploration Co., Docket No. CI80-516, Samedan Oil Corp., Docket No. CI77-518-002, Exxon Corp., Docket No. CI80-522, Arco Oil & Gas Co.
CAG-5. Docket No. CP79-401, Montana Power Co.
CAG-6. Docket Nos. CP66-111, et al., Great Lakes Gas Transmission Co.
CAG-7. Docket No. CP80-211, Florida Gas Transmission Co. and Southern Natural Gas Co.
CAG-8. Docket No. CP80-394, Tennessee Gas Pipeline Co.
CAG-9. Docket No. CP80-442, Consolidated Gas Supply Corp.
CAG-10. Docket No. CP80-450, El Paso Natural Gas Co., Docket No. CI80-463, Warren Petroleum Co.
CAG-11. Docket No. CP80-468, United Gas Pipe Line Co.
CAG-12. Docket No. CP80-565-000, Midwestern Gas Transmission Co., Docket No. CP81-38-000, Michigan Wisconsin Pipe Line Co.

Power Agenda—475th Meeting, January 7, 1981, Regular Meeting

I. Licensed Project Matters

P-1. Reserved.

II. Electric Rate Matters

ER-1. Docket No. ER81-121-000, Virginia Electric & Power Co.
ER-2. Docket No. ER81-105-000, Indiana & Michigan Electric Co.
ER-3. Docket Nos. ER81-130-000 and ER81-139-000, Appalachian Power Co.
ER-4. Docket No. ER80-752, Middle South Services, Inc.
ER-5. Docket No. ER77-277, Pennsylvania Power Co., price squeeze (phase II)
ER-6. Docket Nos. E-8586 and E-8587 (remand)—Public Service Co., of Indiana, Inc.

Miscellaneous Agenda—475th Meeting, January 7, 1981, Regular Meeting

M-1. Docket No. RM79-52, Implementation of section 206 of the Public Utility Regulatory Policies Act of 1978, continuance of service.
M-2. Reserved.
M-3. Reserved.
M-4. Reserved.
M-5. Docket No. RM80-60, ex parte and separation of functions rules.
M-6. Docket No. RM79-76, (Colorado-1), high-cost gas produced from tight formations.

M-7. Docket No. RM80-33, final rules for part 270, subpart B, sections 270.201, 270.202 and 270.204.
M-8. Docket No. GP81—U.S. Geological Survey—New Mexico, Jerome P. McHugh. Price No. 1 Well, JD79-8397.

Gas Agenda—475th Meeting, January 7, 1981, Regular Meeting

I. Pipeline Rate Matters

RP-1(A). Docket Nos. RP79-22 and RP78-52 (storage accounting), Consolidated Gas Supply Corp.
RP-1(B). Docket No. RP79-68, North Penn Gas Co.
RP-2. Docket No. RP78-20, Columbia Gas Transmission Corp.

II. Producer Matters

CI-1. Reserved.

III. Pipeline Certificate Matters

CP-1(A). Docket No. CP80-502, Natural Gas Pipeline Co. of America.
CP-1(B). Docket No. CP80-520, Natural Gas Pipleline Co. of America.
CP-1(C). Docket No. CP81-43, Energy Gathering, Inc.
CP-2. Docket No. CI81-22-000, Southern Union Gathering Co.
CP-3. Docket No. RP75-79 (phase II), Lehigh Portland Cement Company v. Florida Gas Transmission Company. Docket No. CP77-44, Abitibi Corporation v. Florida Gas Transmission Company.
CP-4. Discussion of Jurisdictional Consequences of NGPA Section 311 Transportation.

Kenneth F. Plumb,

Secretary.

[S-2382-81 Filed 1-2-81; 10:32 am]

BILLING CODE 6450-80-M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., Thursday, January 8, 1981.

PLACE: 1700 G. Street, NW., Board Room, 6th Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Extension of Time—Western Federal Savings and Loan Association of Denver, Denver, Colorado.

Service Corporation Activity Affiliated Mortgage and Development Company Albuquerque Federal Savings and Loan Association, Albuquerque, New Mexico.

Branch Office Application—Fidelity Federal Savings and Loan Association, Glendale, California.

[S2384-81 Filed 1-2-81; 11:52 am]

BILLING CODE 6720-01-M

4

NUCLEAR REGULATORY COMMISSION.

DATE: Tuesday, January 6, and Wednesday, January 7, 1981.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Tuesday, January 6; 10 a.m.

1. *Discussion of Amendments to Part 140—Changes in Nuclear Energy Liability Insurance Policy* (Approximately 1 hour—public meeting)

Wednesday, January 7; 10 a.m.

1. *Discussion and Vote on Final Rule—10 CFR 60—Disposal of HL Radioactive Waste in Geologic Repositories—Licensing Procedures* (Approximately 1½ hours—public meeting)

Wednesday, January 7; 2:30 p.m.

1. *Affirmation/Discussion Session* (Approximately 1 hour—public meeting)

(a) *Affirmation—*

1. Revisions in Draft Bailly Show Cause Order
2. Final Rule on Protection of Transient Shipments
3. General Licensing of Carriers of Irradiated Fuel
4. Redraft of Indian Point Order (Proceeding)
5. Petition re Dresden Nuclear Power Station
6. 12/19 OGC Memo, Waste Conf. Proceeding

(b) *Discussion and Vote of Above Affirmation Items, if required*

ADDITIONAL INFORMATION: By a vote of 3-0 (Commissioner Gilinsky not present) on December 22, 1980, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules, that Commission business required that affirmation of Order in the Matter of Pacific Gas & Electric Co., held that day, be held on less than one week's notice to the public.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Automatic telephone answering service for schedule update: (202) 634-1498; those planning to attend a meeting should reverify the status on the day of the meeting.

December 30, 1980.

Walter Magee,

Office of the Secretary.

[S-2385-81 Filed 1-2-81; 12:33 pm]

BILLING CODE 7590-01-M

5

FOREIGN CLAIMS SETTLEMENT COMMISSION.

[F.C.S.C. Meeting Notice No. 12-80]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME

Wednesday, Jan. 7, 14, 21 and 28, 1981 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic and the People's Republic of China; Claims for Vietnam Prisoner of War Compensation.

Oral Hearings

Thursday, Jan. 22, 1981 at 10:00 a.m.—CN-2-027—Charles K. Ho
Thursday, Jan. 22, 1981 at 10:00 a.m.—CN-2-032—Wallace Han-Jen Chang
Thursday, Jan. 22, 1981 at 10:00 a.m.—CN-2-033—Frank Tse-Jui Chang
Thursday, Jan. 22, 1981 at 10:00 a.m.—CN-2-034—Molly Lien Dee King Chang
Thursday, Jan. 22, 1981 at 10:00 a.m.—CN-2-060—Roger Y. K. Hsu
Thursday, Jan. 22, 1981 at 2:00 p.m.—CN-2-015—Welthy Kiang Chen
Thursday, Jan. 22, 1981 at 2:00 p.m.—CN-2-037—Glennis Sheu-Lau Gokson
Thursday, Jan. 22, 1981 at 2:00 p.m.—CN-2-055—Ben L. Pond
Thursday, Jan. 22, 1981 at 2:00 p.m.—CN-2-063—Grace M. Wong
Tuesday, Jan. 27, 1981 at 10:00 a.m.—CN-2-028—Barbara K. Applegater
Tuesday, Jan. 27, 1981 at 10:00 a.m.—CN-2-058—Lilla Miller Byrum
Tuesday, Jan. 27, 1981 at 2:00 p.m.—CN-2-005—Adele Dina Murphy
Tuesday, Jan. 27, 1981 at 2:00 p.m.—CN-2-019—Lawrence C. Cheng
Tuesday, Jan. 27, 1981 at 2:00 p.m.—CN-2-023—Lawrence and Pauline Cheng
Tuesday, Jan. 27, 1981 at 2:00 p.m.—CN-2-022—Vera Cheng
Tuesday, Jan. 27, 1981 at 2:00 p.m.—CN-2-036—William A. Hsi
Thursday, Jan. 29, 1981 at 10:00 a.m.—CN-2-040—Gail G. Casson
Thursday, Jan. 29, 1981 at 10:00 a.m.—CN-2-043—Anna Sakin
Thursday, Jan. 29, 1981 at 2:00 p.m.—CN-2-009—Leib Merkin
Thursday, Jan. 29, 1981 at 2:00 p.m.—CN-2-010—Helen Hart Reynolds, Carolyn Hart Crawford
Thursday, Jan. 29, 1981 at 2:00 p.m.—CN-2-061—Albert Wong

Subject matter listed above not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, N.W., Washington, D.C. Request for information, or advance notice of intention to observe a meeting, may be directed to Executive Director, Foreign Claims Settlement Commission, 1111-20th Street, N.W., Washington, D.C. 20579. Telephone (202) 653-6155

Dated at Washington, D.C., on December 30, 1980.

Judith H. Lock,

Administrative Officer.

[FR Doc. S-7-81 Filed 1-5-81; 9:48 am]

BILLING CODE 4410-01-M

6

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: January 6, 1981 at 11:00 a.m.

PLACE: Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C.

STATUS: Closed to the public.

MATTERS TO BE DISCUSSED: The Board will continue its discussion of Chrysler's new Operating and Financing Plans and related documents and its need for additional guarantees. The Board also expects to meet with representatives of Chrysler and tis advisers and to receive the separate reactions of the United Auto Workers and Chrysler's lenders to the proposed cost reductions and other actions contemplated by Chrysler's new Operating and Financing Plans and related documents. The Board does not, however, expect to take any formal action at its Janurary 6 meeting on Chrylser's December 23 application for an additional $400 million of guarantees.

CONTACT PERSON FOR MORE INFORMATION: Bruce D. Bolander, Secretary of the Board (202) 566-2278.

This notice is given as a result of a court order. The position of the Board is that is not subject to the Government in the Sunshine Act.

Dated: January 2, 1981

Bruce D. Bolander,

Secretary of the Board.

[S-11-81 Filed 1-5-81; 11:32 am]

BILLING CODE 4810-27-M

federal register

Tuesday
January 6, 1981

Part II

Department of Agriculture

Food and Nutrition Service

Procedures for Reducing, Suspending, or Cancelling Food Stamp Benefits; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[Amdt. No. 146]

7 CFR Parts 271, 272, 273 and 274

Procedures for Reducing, Suspending or Cancelling Food Stamp Benefits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking amends and finalizes emergency final Food Stamp Program rules in the April 2, 1980 **Federal Register** (45 FR 21998) which established procedures to be used in the event that food stamp benefits were to be reduced, suspended or cancelled.

Under the Food Stamp Act of 1977, the Secretary of Agriculture may not spend more money for food stamp allotments than is appropriated by Congress. If the Secretary determines that there is not enough money available to provide full benefits to all certified households, the Department is required to reduce the value of the benefits issued to those households. These rules establish the procedures to be used if such an action is necessary.

EFFECTIVE DATES: These rules are effective upon publication and must be implemented no later than March 9, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy/Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250, 202–447–9075. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Larry Carnes at the above address.

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 "significant".

Section 18 of the Food Stamp Act of 1977, as amended (Public Law 95–113, 91 Stat. 979, Sept. 29, 1977), sets limits on the amounts of money that can be appropriated each year for the Food Stamp Program. It also requires that the Secretary not spend more for food stamp benefits than the amount appropriated by Congress. To ensure that appropriations are not exceeded, Congress required the Secretary to direct State agencies to reduce the value of allotments that are issued to certified households if he determined it was necessary to do so to keep spending under the level of appropriations.

Because there was a danger that the funding for Program operations for FY 1979 was going to run out, the Department issued emergency rules on June 12, 1979 (44 FR 33762) establishing allotment reduction procedures. Those rules, based on legal opinions from the Department's General Counsel and the Comptroller General of the United States, required that if a reduction was ordered it be accomplished on a *pro rata* basis, i.e., all households would have their food stamp allotments reduced by the same percentage amount. While *pro rata* reductions result in all households having their allotments reduced by the same percentage, they also result in households with lower incomes having more food stamps taken away from them than are taken away from higher income households.

To correct this situation and ensure that the most needy participant households do not bear a disproportionate share of any ordered reduction, Congress included a provision in the 1979 Amendments to the Food Stamp Act (Pub. L. 96–58) amending Section 18 of the Food Stamp Act by adding new sections (c) and (d) which give the Secretary the authority to establish a benefit reduction procedure that would result in benefits being reduced on other than a *pro rata* basis. (See, Senate Rept., No. 96–236, 96th Cong., 1st Sess., p. 19.) Specifically, Section 1(4) of the 1979 Amendments, states, in part, that: "In prescribing the manner in which allotments will be reduced * * * the Secretary shall ensure that such reductions reflect, to the maximum extent practicable, the ratio of household income, determined under sections 5(d) and 5(e) of (the Food Stamp Act), to the income standards of eligibility for households of equal size. . . ." Although this amendment provides for reducing benefits on other than a *pro rata* basis, neither the amendments nor the legislative history prescribe a specific method under which benefits should be reduced.

On November 9, 1979, the Department issued a Notice of Intent to Propose Rules in the **Federal Register** seeking public input into the development of a new allotment reduction procedure. The Department had intended to issue proposed rules based on the comments received on the Notice and then issue final rules. However, because of the possibility of having to reduce benefits as early as June 1980, emergency final rules were issued instead of proposed rules. These emergency final rules, issued in the April 2, 1980 **Federal Register** (45 FR 21998–22002) established a reduction procedure, in compliance with the amendment to Section 18 of the Food Stamp Act, that called for reductions on other than a *pro rata* basis.

The Department announced in the April 2 rulemaking that public comments were being solicited and that final rules would be issued based on the responses. Only four comment letters were received. This was, in all likelihood, due in part to the activity that was taking place during the comment period to prepare for a suspension of the June 1980 food stamp allotments. It may also reflect a lack of serious objection to the April 2 rulemaking, which was based on careful consideration of comments received in response to the Notice of Intent, with special attention given to administrative issues raised. While only a few comment letters were received, many suggestions and questions were received in conjunction with the suspension contingency planning. The Department decided to consider the suggestions and questions received along with the four comment letters. This final rulemaking, then, is based both on input from the commenters and information received during the contingency planning.

Reduction Method

The April 2 rulemaking specified that if a reduction was ordered, the Thrifty Food Plan amounts that are used to calculate benefit levels would be reduced. By using this method to reduce benefits, higher income participants would lose a greater proportion of their benefits than lower income participants. For example, in November 1980, a 4-person household with a net food stamp income of $300 would have received $119 in food stamps. If the Thrifty Food Plan were reduced by 50%, this household would receive $15 in food stamps or about 13% of its normal allotment. A 4-person household with a net food stamp income of $100 would normally receive $179 in food stamps. If the Thrifty Food Plan were reduced by 50%, this household would receive $75 in food stamps or about 42% of its normal allotment.

Essentially, this reduction method requires the same action by State agencies as the action taken annually to update the allotment tables. Thus, the use of this method would not require extensive computer changes nor would it require that extensive changes be made in issuance systems. An added advantage is the relatively short lead time this method requires. This would allow the Department more time to

estimate the percentage redction needed and would increase the accuracy of this estimate.

The Department decided, in issuing the April 2 rulemaking, to adopt this approach because of these advantages. The relatively quick reaction time it allows, coupled with the ability of all State agencies to implement it were significant factors leading to the decision. A number of State agencies indicated that other approaches to benefit reductions would not be administratively feasible for them. The Department paid particular concern to these administrative issues, especially since the failure of just one State agency to implement any ordered benefit reduction could result in the Department exceeding the spending limits set by Congress and violating the Food Stamp Act.

In addition, this method was viewed as the most equitable method for participants. Under this method, the percentage of reduction would be lowest for zero net income households and greatest for the highest net income households. Therefore, the poorer a food stamp family is, the lower the percentage reduction in its allotment will be. Higher income families will have their benefits reduced by larger percentages. This method ensures that the most needy participant households do not bear a disproportionate share of benefit reductions.

Comments received on the April 2 rulemaking, as well as the Department's experience in working with State agencies to plan for possible benefit reductions last year, do not indicate any significant problems with the Department's original decision and do not raise new issues pertaining to the decision. This provision of the April 2 rules is retained unchanged.

Provisions for Elderly/Disabled Households and Minimum Benefit Levels

Most of the commenters who responded to this issue when addressing the November 9, 1979 Notice strongly opposed any special provisions. The majority were opposed due to the administrative difficulties inherent in such a provision. Most pointed out that any special provision would have to be based on the ability of State agencies to identify those households with elderly and disabled members and to issue benefits to such households on one basis while issuing benefits to the remainder of their caseload on another. Most State agencies cannot do this easily. To identify the households with elderly and disabled members would require a manual case by case search that would be very time consuming. To issue benefits to two segments of the caseload using different sets of rules would require extensive computer reprogramming. This again would be time consuming and very costly, and would not be compatible with the expeditious action needed to implement a benefit reduction.

The commenters' responses to the idea of establishing a minimum benefit level, however, were favorable. Some commenters noted that without a minimum benefit many households would receive few or no benefits during a reduction. Perhaps most important, though, were the comments noting that a minimum benefit level would serve as a cushion to elderly and disabled households, lessening the impact on them. Since many elderly and disabled households currently participate at or near the $10 minimum benefit level, maintaining this minimum benefit level during a reduction would help protect the elderly and disabled from especially severe cutbacks.

As a result of these comments and the need to construct a benefit reduction system that is administratively feasible, the April 2, 1980 emergency rules did not contain any special provisions applicable to households with elderly or handicapped members, but did afford some protection to the elderly and disabled by establishing a minimum benefit level of $10 for all households during a reduction. This minimum benefit level is guaranteed to all households whenever a benefit reduction of less than 90% of the projected issuance in a month is in effect. It is not guaranteed when a cancellation or suspension of all benefits is involved or when a reduction of 90% or more of the projected issuance in a month is ordered. (The minimum benefit level cannot be guaranteed when large reductions are ordered since there may not be enough money available to do so. For example, total issuance for August 1980 was approximately $760 million. If a 90% reduction was ordered, $76 million would have been available. However, in that same month, nearly 7.9 million households participated. To provide $10 to each household, the Department would have needed $79 million, $3 million more than would have been available. Therefore, to ensure that the appropriations limit is not exceeded, the minimum benefit level was not made applicable when large reductions or suspensions or cancellations are ordered.)

Comments received on the April 2 rules as well as experience in contingency planning for benefit reductions last year do not indicate significant problems or new issues arising from these decisions. These decisions, which reflect the extensive comments received on the Notice of Intent and accord with administrative necessity, are retained in these final rules.

Other Issues

This final rulemaking is not significantly different than the emergency rules issued on April 2, 1980. The changes that were made are aimed primarily at clarifying provisions that gave rise to questions during the contingency planning for the June 1980 suspension of benefits.

One such change is the inclusion of a provision requiring that State agencies resume issuing benefits as soon as practicable following the end of a suspension. The Department expects that the resumption of benefits would occur very rapidly. Last spring, during contingency planning for a possible suspension of benefits in June, all State agencies indicated they could resume benefits within four days after the suspension was lifted.

This provision was added after the Department received several inquiries regarding when State agencies were to begin issuing June 1980 benefits, assuming those benefits were going to be suspended. The April 2, 1980 rules did not address the issue. The provision in the final rule lets State agencies know that they can and must move immediately to resume issuance when a suspension ends.

Another issue that arose was whether the provision requiring the issuance of full retroactive benefits during reductions, suspensions and cancellations should be retained. The emergency final regulations issued on April 2, 1980 required that retroactive benefits scheduled for issuance during a month in which a reduction, suspension or cancellation was in effect be unaffected by the reduction, suspension or cancellation. It was the Department's belief that a reduction action should be applied to all benefits issued for the current month. Since retroactive benefits issued in a month in which a reduction, suspension or cancellation is in effect actually represent an entitlement for a previous month, they should be unaffected.

Several comments were received requesting that the Department allow the postponing of the issuance of retroactive benefits scheduled for issuance during reductions, suspensions and cancellations. It was felt that proceeding with the issuance might result in problems in that it could

confuse participants who would not understand why they received the benefit level they received, it could cause complications in issuance at a time when things would be complicated enough, and it could cause resentment among households who do not receive such benefits (especially during suspensions and cancellations). The comments suggested that these problems could be avoided by preserving households' entitlements to retroactive benefits but postponing the issuance of such benefits.

The Department carefully considered this issue but decided not to change its position. While postponing the issuance of retroactive benefits to people might ease some administrative burdens, such burdens will not be great in the first place. More importantly, retroactive benefits, though perhaps small in volume, will become important issuances to households during reductions and especially during suspensions and cancellations. Therefore, the former policy is retained.

A change was made in the requirements pertaining to record keeping during reductions, suspensions and cancellations. The April 2, 1980 rules required State agencies to be able to produce a record of the amount of benefits each household received during a reduction and the amount each household was supposed to receive had a reduction not been in effect. This latter requirement pertained to cancellations also. The rules explained that these records whould be used in the event restored benefits were to be provided.

Some commenters objected to this provision, pointing out that restored benefits could be provided without the production of the records. It was suggested, therefore, that the rule be changed to require the ability to provide restored benefits as opposed to requiring the production of issuance records. The Department agrees and has changed the rule. State agencies are no longer required to produce issuance records. They are required to be able to determine who was eligible to participate in months affected by reductions and cancellations, what each household's benefit level was supposed to have been and what each household received. This information would be used to provide restored benefits.

Another issue that arose during the contingency planning for the possible suspension of June 1980 benefits was whether State agencies should be required to process eligible cases on an expedited basis during suspensions and cancellations of benefits. Since issuance occurs in months in which benefits are reduced, the question did not arise with respect to reductions.

The emergency final regulations issued on April 2, 1980 did not address this issue. Thus, the expedited processing rules which apply during normal issuance months currently apply during suspensions and cancellations. Those commenters who raised this issue were of the opinion that since no issuance would be taking place during suspensions and cancellations, and since State agency personnel would be preoccupied with other tasks brought on by the suspension or cancellation, it would be prudent to waive the expedited processing rules during such months.

In considering the issue, the Department was concerned with minimizing the administrative burden placed on State agencies by suspension and cancellation actions while ensuring that eligible households that are in immediate need receive benefits as soon as possible. Three alternatives were examined with this concern in mind: 1) retaining the two-day processing standard, 2) waiving the two-day processing standard, and 3) retaining the two-day processing standard in suspensions while establishing a two-to-thirty day standard in cancellations.

The third alternative was adopted. This requires that State agencies follow the two day processing rule in § 273.2(i) during suspensions. Thus, immediate need households would have their cases processed quickly and, if eligible, would receive their benefits as soon as the suspension was lifted. Suspensions, by their very nature, are likely to be temporary interruptions in benefits that do not last an entire month. A suspension could last for only a few days. These final rules do, however, call for a two-to-thirty day standard to be used during cancellations. Immediate need households applying during cancellations would have their cases processed by the end of the cancellation month or within two days, whichever is later. It is hoped that during this time the application process will be completed and that benefits for the month following the cancellation month will be made available. In most cases this gives State agencies more time to process expedited cases during cancellations, thus alleviating some of the administrative burden inherent in such processing. It also gives State agencies a better opportunity to fully process cases before the next month's issuance. This will hopefully eliminate the need for immediate need households to return to the certification office before the beginning of the second month to ensure their continued participation in the Program.

The section of the April 2 rules relating to fair hearings is revised by these final rules. In the April 2 rules, the Department advised participants and State agencies that fair hearings could be requested if a household disagreed with a reduction, suspension or cancellation. However, participants' rights to continued benefits in such situations were withdrawn. This, as explained in the rule, was necessary to ensure that the money the reduction, suspension or cancellation was intended to save was, indeed, saved.

The final rules go beyond the April 2 provision in that they allow State agencies to dismiss those requests for fair hearings that contest the occurrence of a reduction, suspension or cancellation rather than the manner in which such action was applied in a specific case. Several State agencies had pointed out that it would be burdensome to hold fair hearings for those households who merely objected to the imposition of a reduction, suspension or cancellation since State agencies could do nothing about the households' grievances. With this in mind, the Department agreed that a limit on fair hearings was appropriate. However, requests for fair hearings for any other reasons, such as a disagreement with the way a reduction was imposed on a household, i.e., the household's benefits were reduced too much, must be honored. As with the April 2 rules, though, continued benefits are not to be provided to such households.

A new section that did not appear in the April 2 emergency rules has been added to these final rules. This section pertains to the requirements for the location and hours of operation of issuance services contained in § 272.5 of the regulations. Those rules assume that normal issuance takes place at the beginning of each month. Therefore, State agencies are required to comply with standards that are geared to ensuring that issuance services are available at the beginning of each month. Since in a month when there is a suspension or cancellation, issuance will not occur on the assumed schedule, the requirements for the provision of issuance services become meaningless. Therefore, the new section added to the rules waives the locations and hours requirements for issuance services for months in which suspensions and cancellations take place. In their place, State agencies are required to establish issuance services so that the issuance needs of the caseload are met. In months in which suspensions occur this

will mean arranging for issuance services to be open when issuance resumes. In months in which cancellations occur it may mean reducing issuance services.

The last change made in the rules concerns the requirements for staggered issuance. Current rules allow State agencies to stagger the mailing of ATP cards and the over-the-counter issuance of coupons through the 15th day of each month. The rules also require that the direct mailing of coupons be staggered through the 10th day of each month and allow staggering through the 15th day. The April 2 rules waived these requirements for months in which suspensions were ordered. The question arose, however, as to whether there should be substitute rules for use following the end of a suspension.

In determining whether there should be alternate staggering rules, the Department needed to balance the administrative needs of reducing exposure to theft and controlling lines at issuance offices with the need to provide households with their suspended benefits as soon after the end of a suspension as possible. The result is a rule that allows State agencies to stagger the mailing of ATP's and the issuance of over-the-counter coupons over a five day period or over the time remaining in the State agency's normal staggering cycle. Thus, State agencies will always have at least 5 days in which to stagger. The rule specifies a similar staggering schedule for the direct mailing of coupons. However, State agencies are required to stagger the mailing of coupons over a five day period or over the time remaining in the State agency's normal staggering cycle, whichever is longer. This provision ensures that people will not need to wait an inordinate amount of time to receive their suspended benefits yet gives State agencies some control over the volume of people at issuance sites and reduces the exposure to mail theft.

Implementation

These final rules are effective upon their publication. State agencies are required to have the rules in place so that they can be used to reduce, suspend or cancel food stamp allotments within 60 days of publication. Since there are relatively few changes for State agencies to implement, this timeframe should not prove to be burdensome.

For the reasons set out in the preamble, Parts 271, 272, 273 and 274 of 7 CFR are amended as set forth below.

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.7, paragraphs (a), (b), (c), (d), and (e) are revised; paragraph (f) is revised and redesignated as paragraph (h), and new paragraphs (f) and (g) are added. The changes read as follows.

§ 271.7 Allotment reduction procedures.

(a) *General purpose.* This section sets forth the procedures to be followed if the monthly food stamp allotments determined in accordance with the provisions of § 273.10 must be reduced, suspended, or cancelled to comply with Section 18 of the Food Stamp Act of 1977, as amended. The best available data pertaining to the number of people participating in the program and the amounts of benefits being issued shall be used in deciding whether such action is necessary.

(b) *Nature of reduction action.* Action to comply with Section 18 of the Food Stamp Act of 1977, as amended, may be a suspension or cancellation of allotments for one or more months, a reduction in allotment levels for one or more months or a combination of these three actions. If a reduction in allotments is deemed necessary, allotments shall be reduced by reducing Thrifty Food Plan amounts for each household size by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction would be smallest for one-person households and greatest for the largest households. Since the dollar amount would be the same for all households of the same size, the rate of reduction would be lowest for zero net income houeholds and greatest for the highest net income households. All households affected by a reduction action shall be guaranteed a minimum benefit of $10 unless the action is a cancellation of benefits, a suspension of benefits, or a reduction of benefits of 90 per cent or more of the total amount of benefits projected to be issued in the affected month.

(c) *Reduction method.* If a reduction in allotments is deemed necessary, the Thrifty Food Plan amounts for all household sizes shall be reduced by a percentage specified by FNS. For example, if it is determined that a 25 per cent reduction in the Thrifty Food Plan amount is to be made, the reduction for all four-person households would be calculated as follows: The Thrifty Food Plan amount for a four-person household ($209 in November 1980) would be reduced by 25% to $157. Then 30 percent of the household's net food stamp income would be deducted from the reduced Thrifty Food Plan Amount. For example, 30 per cent of a net food stamp income of $200, $60, would be deducted from the reduced Thrifty Food Plan Amount ($157), resulting in a reduced allotment of $97.

(d) *Implementation of allotment reductions.* (1) *Reductions.* (i) If a decision is made to reduce monthly food stamp allotments, FNS shall notify State agencies of the date the reduction is to take effect and by what percentage Thrifty Food Plan amounts are to be reduced.

(ii) Upon receiving notification that a reduction is to be made in an upcoming month's allotments, State agencies shall act immediately to implement the reduction. Such action would differ from State to State depending on the nature of the issuance system in use. Where there are computerized issuance systems, the program used for calculating allotments shall be altered to reflect the appropriate percentage reduction in the Thrifty Food Plan for each household size and the computer program shall be adjusted to allow for a minimum benefit of $10. FNS will provide State agencies with revised issuance tables reflecting the percentage reductions to be made in Thrifty Food Plan amounts and reduced Thrifty Food Plan levels. In States where manual issuance is used, State agencies shall reproduce the issuance tables provided by FNS and distribute them to issuance personnel. State agencies shall ensure that the revised issuance tables are distributed to issuance agents and personnel in time to allow benefit reductions during the month ordered by FNS. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office.

(2) *Suspensions and cancellations.* (i) If a decision is made to suspend or cancel the distribution of food stamp benefits in a given month, FNS shall notify State agencies of the date the suspension or cancellation is to take effect. In the event of a suspension or cancellation of benefits, the provision for a $10 minimum benefit level shall be disregarded and all households shall have their benefits suspended or cancelled. Upon receiving notification that an upcoming month's issuance is to be suspended or cancelled, State agencies shall take immediate action to effect the suspension or cancellation. This action would involve making

necessary computer adjustments, and notifying issuance agents and personnel.

(ii) Upon being notified by FNS that a suspension of benefits is over, State agencies shall act immediately to resume issuing benefits to certified households and shall resume benefit issuance as soon as practicable.

(3) *Affected allotments.* Whenever a reduction of allotments is ordered for a particular month, reduced benefits shall be calculated for all households for the designated month. However, any household whose reduced benefits would be less than $10 shall receive a minimum benefit of $10 except as provided in § 273.10(e)(2). Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month would not be reduced, suspended or cancelled, even though they are issued during an affected month.

(4) *Notification of eligible households.* Reductions, suspensions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions, suspensions and cancellations of allotments in accordance with the notice provisions of § 273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions, suspensions or cancellations of allotments.

(5) *Restoration of benefits.* Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not *entitled* to the restoration of the lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS shall direct State agencies to provide affected households with restored benefits unless the Secretary determines that the amount of surplus funds is too small to make this practicable. The procedures implemented by State agencies for reducing and cancelling benefits shall be designed so that in the event FNS directs the restoration of benefits, such benefits are issued promptly.

(e) *Effects of reductions, suspensions and cancellations on the certification of eligible households.* (1) Except as provided in paragraph (e)(2) below, determinations of the eligibility of applicant households shall not be affected by reductions, suspensions or cancellations of allotments. State agencies shall accept and process applications during a month(s) in which a reduction, suspension or cancellation is in effect in accordance with the requirements of Part 273. Determinations of eligibility shall also be made according to the provisions of Part 273. If an applicant is found to be eligible for benefits and a reduction is in effect, the amount of benefits shall be calculated by reducing the Thrifty Food Plan amount by the appropriate percentage for the applicant's household size and then deducting 30 percent of the household's net food stamp income from the reduced Thrifty Food Plan amount. If an applicant is found to be eligible for benefits while a suspension or cancellation is in effect, no benefits shall be issued to the applicant until issuance is again authorized by FNS.

(2) *Expedited service.* (i) Households eligible to receive expedited processing who apply for program benefits during months in which reductions or suspensions are in effect, shall have their cases processed in accordance with the expedited processing provisions of § 273.2(i).

(A) Those households that receive expedited service in months in which reductions are in effect and that are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the benefit delivery timeframe specified in § 273.2(i).

(B) Those households that receive expedited service in months in which suspensions are in effect and that are determined to be eligible shall have benefits issued to them within the timeframe specified in § 273.2(i). However, if the suspension is still in effect at the time issuance is to be made, the issuance shall be suspended until the suspension is ended.

(ii) Households eligible to receive expedited processing who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be two days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service, contained in § 273.2(i), shall be applicable to these cases.

(3) The reduction, suspension or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households. Those participating households whose certification periods expire during a month in which allotments have been reduced, suspended or cancelled shall be recertified according to the provisions of § 273.14. Households found eligible to participate during a month in which allotments have been reduced, suspended or cancelled shall have certification periods assigned in accordance with the provisions of § 273.10.

(f) *Fair hearings.* Any household that has its allotment reduced, suspended or cancelled as a result of an order issued by FNS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

(g) *Locations and hours of operation of certification and issuance services.* The requirements in § 272.5 (b) and (c) pertaining to the location and hours of operation of issuance services shall not be applied in months in which the issuance of benefits has been suspended or cancelled. In such months, State agencies shall determine what types of issuance services to make available, where they should be located and when they should be available. State agencies' determinations should be based on the schedule and volume of issuance in the affected month and on the variables affecting the provision of issuance services that are detailed in § 272.5. State agencies must have issuance services available to serve households receiving restored or retroactive benefits for a prior, unaffected month.

(h) *Penalties.* Notwithstanding any other provision of this subchapter, FNS may take one or more of the following actions against a State agency that fails to comply with a directive to reduce, suspend or cancel allotments in a particular month.

(1) If FNS ascertains that a State agency does not plan to comply with a directive to reduce, suspend or cancel allotments for a particular month, a warning will be issued advising the State agency that if it does not comply, FNS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s). If, after receiving such a

warning, a State agency does not comply with a directive to reduce, suspend or cancel allotments, FNS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s).

(2) If FNS ascertains after warning a State agency as provided in (1) above, that the State agency does not plan to comply with a directive to reduce, suspend or cancel allotments, a court injunction may be sought to compel compliance.

(3) If a State agency fails to reduce, suspend or cancel allotments as directed, FNS will bill the State agency for all over issuances that result. If a State agency fails to remit the billed amount to FNS within a prescribed period of time the funds will be recovered through offsets against the Federal share of the State agency's administrative costs, or any other means available under law.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 Paragraph (g)(3) is revised and reads as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation.* * *

(3) *Amendment 146.* The procedures contained in Amendment No. 146 shall be implemented by State agencies in time to be able to issue reduced food stamp allotments or to suspend or cancel allotments within 60 days after the date of publication of this amendment in the Federal Register.

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PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, paragraph (i)(3) is amended by adding language after the title of paragraph (i)(3) and before paragraph (i)(3)(i). The revision reads as follows:

§ 273.2 Application processing.

* * * * *

(i) Expedited service. * * *

(3) Processing standards. All households receiving expedited service, except those receiving it during months in which allotments are suspended or cancelled, shall have their cases processed in accordance with the following provisions. Those households receiving expedited service during suspensions or cancellations shall have their cases processed in accordance with the provisions of § 271.7(e)(2).* * *

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4. In § 273.10, paragraph (e)(2)(ii) is amended by adding the words "Except as provided in paragraph (iii) below," at the beginning. In addition, paragraph (e)(2)(iii) is revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels. * * *

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

(2) Eligibility and benefits. * * *

(ii) Except as provided in paragraph (iii) below, * * *

(iii) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible housholds shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the Thrifty Food Plan amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the Thrifty Food Plan amounts by the percentage specified in the FNS Notice; round the result to the nearest dollar amount; i.e., round it down if it ends in 1 through 49 cents and round it up if it ends in 50 to 99 cents; and subtract the result from the normal Thrifty Food Plan amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in subparagraph (ii) above and substitute the reduced Thrifty Food Plan amounts for the normal Thrifty Food Plan amounts.

(B) Except as provided in (C) below, if the amount of benefits obtained by the calculation in paragraph (A) is less than $10, the household shall be provided a minimum benefit of $10.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit may be disregarded and all households may have their benefits lowered by reducing Thrifty Food Plan amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible housholds shall have their allotment levels calculated according to the procedures in paragraph (ii) above. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for a $10 minimum benefit shall be disregarded and all housholds shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FNS.

* * * * *

5. In § 273.15, paragraph (a) is revised and reads as follows:

§ 273.15 Fair hearings.

(a) *Availability of hearings.* Except as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the houshold in the Program.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

6. In § 274.2, paragraphs (e)(2) and (f)(6) are revised and read as follows:

§ 274.2 Issuance systems.

* * * * *

(e) *ATP issuance.* * * *

(2) In months when issuance has not been affected by a suspension of allotments, State agencies may stagger the issuance of ATP's to certified households through the 15th day of the month provided that each household's cycle shall be established so that it receives its ATP at the same time every month and it has an opportunity to obtain its coupons prior to the end of the month. In months in which benefits have been suspended under the provisions of § 271.7, State agencies may stagger the issuance of ATP's to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger the issuance of ATP's from the date issuance resumes through the 15th of the month (if the 15th of the month has not already passed), or over a five day period following the resumption of issuance. In some circumstances, this may result in ATP's being issued after the end of the month in which the suspension occurred.

* * * * *

(f) *HIR card issuance system.* * * *

(6) In months when issuance has not been affected by a suspension of allotments, State agencies may stagger the issuance of coupons to certified households through the 15th of the month. In months in which benefits have been suspended under the provisions of § 271.7, State agencies may stagger the issuance of coupons to households following the end of the suspension. In

such cases, State agencies may, at their option, stagger the issuance of coupons from the date issuance resumes to the 15th of the month (if the 15th of the month has not already passed), or over a five day period following the resumption of issuance. In some circumstances, this may result in coupons being issued to certified households after the end of the month in which the suspension occurred.

* * * * *

6. In § 274.3, paragraph (b)(6) is revised, paragraph (b)(7) is redesignated as (b)(8), and a new paragraph (b)(7) is added. The revision and addition read as follows:

§ 274.3 Issuance of coupons through the mail.

* * * * *

(b) Mail issuance controls and records. * * *

(6) In months in which issuance has not been affected by a suspension of allotments, direct mail issuance shall be staggered through the 10th day of the month and may be staggered through the 15th day provided that each household will likely receive its coupons on the same date every month. The State agency shall ensure that coupons are not mailed to concentrations of households with the same ZIP code on the same day. FNS may provide waivers to State agencies that present adequate documentation to indicate that theft from the mail will not represent a significant problem.

(7) In months in which issuance has been suspended under the provisions of § 271.7, direct mail issuance shall be staggered either from the date issuance resumes following the end of the suspension to the last day left in the State agency's normal staggering schedule, or over a five day period beginning the day issuance resumes, whichever is a longer period of time. This requirement shall not apply to State agencies that have received waivers from the requirements of paragraph (b)(6) of this section.

(8) * * *

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(91 Stat. 958 (7 U.S.C. 2011–2027)

(Catalog of Federal Domestic Assistance Program No. 10551, Food Stamps)

Dated: December 19, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

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Tuesday
January 6, 1981

Part III

Environmental Protection Agency

Pulp, Paper, and Paperboard Industry Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 430 and 431

[WH-FRL 1650-6]

Pulp, Paper, and Paperboard Builders' Paper and Board Mills Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA proposes regulations to limit the discharge of effluents and the introduction of pollutants into publicly owned treatment works from facilities that produce pulp, paper, and paperboard. The purpose of this regulation is to provide effluent limitations guidelines for "best practicable technology," "best available technology," and "best conventional technology" and to establish new source performance standards and pretreatment standards under sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act. The intended effect of this action is to reduce the discharge of conventional and toxic pollutants discharged by the pulp, paper, and paperboard industry.

DATES: A period of sixty days from the date of publication in the **Federal Register** will be allowed for submission of comments on this proposal. Comments must be received by February 4, 1981.

ADDRESS: Send comments in triplicate to: Mr. Robert W. Dellinger, Effluent Guidelines Division, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, ATTENTION: EGD Docket Clerk, Pulp, Paper, and Paperboard Industry, (WH-552). A copy of the supporting information and all public comments submitted in response to proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library), 401 M St. S.W., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. Robert W. Dellinger, at the address listed above, or call (202) 426-2554. Information concerning the economic analysis and copies of the economic analysis documents may be obtained from Mr. Robert C. Ellis, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, or call (202) 426-2617.

SUPPLEMENTARY INFORMATION:

Overview

The SUPPLEMENTARY INFORMATION section of this preamble describes the legal authority and background, technical and economic bases, and other aspects of the proposed regulations. It also presents a summary of comments on the draft technical development document, which was circulated in June of 1979, and solicits comments on specific areas of interest.

Many abbreviations and acronyms are used throughout this notice to avoid excessive narrative; a list of these and their definitions is set forth in Appendix A. Definitions of various terms, possibly unfamiliar to some readers, are also provided in that appendix.

Support for these proposed regulations is in four major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* and in *Procedures for Analysis of Pulp, Paper, and Paperboard Effluents for Toxic and Nonconventional Pollutants.* EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories.* The Agency's economic analysis is found in *Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pulp, Paper, and Paperboard Point Source Category.*

Organization of This Notice

I. Legal Authority

The regulations described in this notice are proposed under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217 (the "Act")). These regulations are also proposed in compliance with the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979).

II. Background

A. *The Clean Water Act.* The Federal Water Pollution control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," (Section 101(a)). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" (BPT, (Section 301(b)(1)(A)). By July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable (BAT which will result in reasonable further progress toward the

national goal of eliminating the discharge of pollutants." (Section 301(b)(2)(A)). New industrial direct dischargers were required to comply with section 306, new source performance standards (NSPS), based on best available demonstrated technology. New and existing dischargers to publicly owned treatment works (POTWs) were subject to pretreatment standards under sections 307(b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTWs (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis in the absence of regulations, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, section 307(a) of the act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The Agency was unable to promulgate many of these toxic pollutant regulations and guidelines within the time periods stated in the Act. In 1976, EPA was sued by several environmental groups and, in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating, for 21 major industries, BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 toxic pollutants and classes of pollutants (see *Natural Resources Defense Council, Inc.*, v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979)).

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation into the Act of many of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "toxic" pollutants and classes of pollutants which Congress declared "toxic" under section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Congress added a new section 304(e) to the Act, authorizing the Administrator to prescribe what have been termed "best management practices (BMPs)" to prevent the release of toxic or hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revised the control program for non-toxic pollutants. Instead of BAT for "conventional' pollutants identified under section 304(a) (4) (including biochemical oxygen demand, suspended solids, fecal coliform, and pH), the new section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT). The factors considered in assessing BCT include the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction for an industrial discharge with the cost and level of reduction of similar parameters for a typical POTW (Section 304(b)(4)(B)). For non-"toxic", non-"conventional" pollutants, sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment, or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these regulations is to provide effluent limitations guidelines for BPT, BAT, and BCT and to establish NSPS and pretreatment standards for existing and new sources (PSES, PSNS) under sections 301, 304, 306, and 307 of the Clean Water Act.

B. *Prior EPA Regulations.* EPA promulgated BPT, BAT, NSPS, and PSNS for the builders' paper and roofing felt subcategory of the Builders' Paper and Board Mills Point Source Category on May 9, 1974 (39 FR 16578; 40 CFR Part 431, Subpart A). EPA promulgated BPT, BAT, NSPS, and PSNS for the unbleached kraft, sodium-based neutral sulfite semi-chemical, ammonia-based neutral sulfite semi-chemical, unbleached kraft-neutral sulfite semi-chemical (cross recovery), and paperboard from wastepaper subcategories of the Pulp, Paper and Paperboard Point Source Category on May 29, 1974 (39 FR 18742; 40 CFR Part 430, Subchapter N, Subparts A–E). EPA promulgated BPT for the dissolving kraft, market bleached kraft, BCT (board, coarse, and tissue) bleached kraft, fine bleached kraft, papergrade sulfite (blow pit wash), dissolving sulfite pulp, groundwood-chemi-mechanical, groundwood-thermo-mechanical, groundwood-CMN papers, groundwood-fine papers, soda, deink, nonintegrated-fine papers, nonintegrated-tissue papers, tissue from wastepaper, and papergrade sulfite (drum wash) subcategories of the Pulp, Paper, and Paperboard Point Source Category on January 6, 1977 (42 FR 1398; 40 CFR Part 430, Subchapter N, Subparts F–U).

Several industry members challenged the regulations promulgated on May 29, 1974, and on January 6, 1977. These challenges were heard in the District of Columbia Circuit of the United States Court of Appeals. The promulgated regulations were upheld in their entirety with one exception. The Agency was ordered to reconsider the BPT BOD_5 limitation for acetate grade pulp production in the dissolving sulfite pulp subcategory (*Weyerhaeuser Company, et al.* v. *Costle*, 590 F. 2nd 1011; D.C. Circuit 1978). In response to this remand, the Agency proposed BPT regulations for acetate grade pulp production in the dissolving sulfite pulp subcategory on March 12, 1980 (45 FR 15952; 40 CFR Part 430, Subchapter N, Subpart K).

The regulations proposed in this notice include BPT, BCT, and revised BAT regulations and supersede prior NSPS, PSNS, and PSES regulations for the Builders' Paper and Board Mills and the Pulp, Paper, and Paperboard Point Source Categories, henceforth referred to as the pulp, paper, and paperboard industry.

C. *Overview of the Industry.* The pulp, paper, and paperboard industry is included within the U.S. Department of Commerce, Bureau of the Census Standard Industrial Classifications (SIC)

2611, 2621, 2631, and 2661. It is comprised of facilities where wood pulp, non-wood pulp, paper, and paperboard are produced and can be divided into three major segments: integrated, secondary fiber, and nonintegrated mills. A wide variety of products, including pulp, newsprint, coated printing papers, unbleached and bleached linerboard, tissue papers, glassine and greaseproof papers, cotton fiber papers, special industrial papers, and bleached and unbleached kraft papers are manufactured through the application of various process techniques. Mills where pulp alone or pulp and paper or paperboard are manufactured on-site are referred to as integrated mills. Those mills where paper or paperboard are manufactured but pulp is not manufactured on-site are referred to as nonintegrated mills. Mills where wastepaper is used as the primary raw material to produce paper or paperboard are commonly referred to as secondary fiber mills.

The four major steps in the production of wood pulp are wood preparation, pulping, washing and screening, and bleaching (if desired). The end result is a brown or white pulp that can be used in the manufacture of paper and paperboard products.

The initial step in the production of wood pulp is raw material preparation. A common sequence of operations employed during preparation of whole logs is slashing, debarking, washing, chipping, and storage. This may vary depending on the form in which the raw materials arrive at the mill.

After preparation, the wood is reduced to a usable form of fiber. This operation is called "pulping" and is accomplished by several possible combinations of mechanical and/or chemical "cooking" processes. The most common types of pulping processes employed are: 1) mechanical pulping (i.e., groundwood and thermo-mechanical) and 2) chemical pulping (i.e., alkaline (kraft and soda), sulfite, or semi-chemical processes).

After pulping, the brown stock (pulp fibers) is washed and screened. The screened rejects are then either repulped or discarded. Where a white or lightly colored pulp is required, an optional stage, bleaching, is employed.

In the bleaching process, the brown stock is decolored (brightened or whitened) through the use of chemicals such as chlorine, chlorine dioxide, sodium hypochlorite, zinc hydrosulfite, or sodium hydrosulfite. The mechanism of decoloring results from the removal or brightening of lignins and resins. After the brown stock is washed and screened, or bleached, it is stored for use in making paper or paperboard.

At secondary fiber mills, wastepaper is prepared to produce a stock to be used in the manufacture of paper or board products. Fibers suitable for papermaking result after wastepaper is cooked in a pulper, where it is repeatedly exposed to rotating impeller blades. Depending on the end product usage, heavily-printed wastepaper may be deinked. Ink and other nondesirable components are removed by flotation and washing using detergents, dispersants, fixing and softening agents, and other chemicals. If desired, these fibers can be bleached using chlorine, sodium hypochlorite, or chlorine dioxide; if wastepaper is high in groundwood content, peroxides or hydrosulfites are used. After washing and screening, the stock is stored prior to papermaking.

At all mills (integrated, secondary fiber, or nonintegrated) where paper or paperboard are produced, purchased pulp or pulp produced on-site is resuspended in water and blended with other components. The stock is then mechanically processed in beaters or continuous refiners to ensure that the necessary matting characteristics are provided to obtain the desired strength in the paper or paperboard. Another aspect of stock preparation is the addition of chemical additives. The most common chemical additives are alum and rosin (for sizing), fillers (clays, calcium carbonate, and titanium dioxide for opacity, smoothness, and brightness), resins (to improve wet strength), dyes, and starches (for improved strength, erasability, and abrasion resistance).

After the stock has been prepared to the specifications required to make the product, the sheet (paper) or plies (paperboard) are made. There are two principal methods to make paper or board: on a Fourdrinier or a cylinder machine. Both methods are similar with the major significant differences occurring in the "wet-end" formation process. On the Fourdrinier machine, the slurry (diluted pulp) flows from the headbox onto an endless moving wire screen where the sheet is formed and through which water drains by gravity and suction. On a cylinder machine, a revolving wire-mesh cylinder rotates in a vat of diluted pulp and picks up a layer of fibers which are deposited onto a moving felt. The cylinder machine has the capacity to make multi-layered sheets, which accounts for its principal use in the manufacture of paperboard.

Both types of machines are equipped with press and dryer sections. The sheet is transferred from the wire or felt to the press section where additional water is removed through mechanical means prior to drying. In the dryer section, the sheet or board is carried through a series of heated hollow steel or iron cylinder. Sizing or coatings can be applied at the dry end or on separate machines. Following the drying section, the sheet can be calendered for a smoooth finish and packaged for shipment.

The pulp, paper, and paperboard industry is a high water use industry. Major uses of water are similar industry wide although the amount used varies from segment to segment. The two methods of wastewater discharge include direct discharge to navigable waters and indirect discharge to a publicly owned treatment works (POTW). At some mills, recycle systems or evaporation techniques are used so that no wastewater is discharged. It has been estimated that wastewater discharges total 16.0 million cubic meters (4.2 billion gallons) per day. The largest contributor of wastewater is the intergrated segment, where discharges total about 14.0 million cubic meters (3.6 billion gallons) per day. Of the 218 operating mills in the intergrated segment for which technical survey responses were received, there are 183 direct dischargers, 26 indirect dischargers, 7 indirect/direct dischargers, and 2 mills where no wastewater is discharged. Of the 271 operating mills in the secondary fiber segment for which technical survey responses were received, there are 77 direct dischargers, 148 indirect dischargers, 2 indirect/direct dischargers, and 44 mills no wastewater is discharged. Total wastewater discharge from this industry segment is 0.95 million cubic meters (0.26 billion gallons) per day. Of the 143 operating mills in the nonintergrated segment for which technical survey responses were received, there are 76 direct dischargers, 57 indirect dischargers, 5 indirect/direct dischargers, and 5 mills where no wastewater is discharged. Total wastewater discharge from this industry segment is about 1.2 million cubic meters (0.32 billion gallons) per day.

The most important pollutants associated with the production of pulp, paper, or paperboard are: 1) toxic pollutants (chloroform, zinc, trichlorophenol, and pentachlorophenol, 2) conventional pollutants (BOD5, TSS, and pH), and 3) nonconventional pollutants (ammonia, color, resin acids, and bleach plant derivatives).

Wastewater characteristics differ from subcategory to subcategory due to the varying nature of processes

employed and/or products manufactured. In general the wastes are complex mixtures of natural and synthetic organic materials and inorganic chemicals. the wastes are high in BOD5 and TTS, with typical raw waste concentrations ranging from 150 to 900 mg/1 for BOD5 and from 250 to 2,000 mg/1 for TTS.

EPA estimates that there are 706 operating pulp, paper, and paperboard mills in the United States. Detailed technical information is available for 632 of these mills. These facilities range from large integrated kraft mills producing over 1,800 kkg/day (2,000 tons/day) to small nonintergrated mills where less than 1 kkg/day (1.1 tons/day) of product are made.

Pulp, paper, and paperboard mills are located throughout the United States. Historically, the industry has spread from the Northeastern U.S. to the North Central states and later to the Pacific Northwest. In the late 1930s, significant industry growth occurred in the Southern states.

During the past ten years, except during the recession of 1975, sales of paper and paperboard products have risen at a steady pace from $20.6 billion in 1969 to $55.4 billion in 1979. This represents a compound annual growth rate in sales of 10.4 percent. The industry after-tax return on sales during the period averaged 5.0 percent, slightly higher than the average for all manufacturing industries. After-tax returns on net worth have averaged 11.2 percent, or slightly below the average for all manufacturing industries. Capital investment expenditures increased from a low of $1.25 billion in 1971 to a high of $4.9 billion in 1979.

Several changes are projected for the industry. Though overall sales for paper and paperboard products are expected to rise, the demand for some product types may rise or fall disproportionately to that trend. For example, domestic newsprint production capacity is expected to increase dramatically. This will increase domestic sales and reduce the Nation's reliance on imports of newsprint which now total over half of the Nation's newsprint consumption. The paper and paperboard market share for non-deinked secondary fiber mills, on the other hand, is expected to decline. These smaller, less efficient mills have a competitive disadvantage due to their higher unit costs of production relative to the larger virgin fiber mills.

The Agency expects that closures will occur in the industry without the imposition of additional pollution controls. These closures are expected to occur in all three major segments of the industry due to two major factors. First, demand is declining in some product sectors causing marginal mills to close. Second, the industry is concentrating its operations in fewer and larger mills and closing the smaller, older, high cost mills. The production capacity lost through these closures will be replaced through utilization of excess or idle capacity at existing mills. In many product sectors, this idle capacity accounts for over 20 percent of the total capacity.

Though rising demand indicates the need to expand the industry's production capacity, the Agency expects most additions to industry capacity to be made through expansion of existing mills.

Several factors lead the Agency to believe that few new "green field" mills will be constructed. Most existing mills are built in such a way that on-site expansion is possible. They are also built with excess capacity included in part of the production line. Thus, capacity expansion can be accomplished simply by expanding the capacity of the remainder of the production line. This expansion option is less risky and less expensive than the construction of a new mill.

The construction of a new mill requires that a site be found that is suitable for the operation, has access to sufficient water, is close to raw material supplies, and is large enough to accommodate the mill operation. Finding such a site at a reasonable cost can be difficult.

III. Scope of this Rulemaking and Summary of Methodology

These proposed regulations expand the water pollution control requirements for the pulp, paper, and paperboard industry. In EPA's initial (May 1974 and January 1977) rulemaking, emphasis was placed on the achievement of BPT, BAT, and NSPS based on the control of familiar, primarily conventional, pollutants. In 1977, EPA proposed PSES based on compliance with general prohibitive waste provisions (42 FR 6476; 40 CFR Part 128 (now, Part 403)). By contrast, in this round of rulemaking, EPA's efforts are directed toward instituting BCT and BAT effluent limitations, new source performance standards, and pretreatment standards for existing and new sources that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants.

In general, BCT represents the best control technology for conventional pollutants that is reasonable in cost and effluent reduction benefits. It replaces BAT for conventional pollutants. BAT represents, at a minimum, the best economically-achievable performance in any industrial category or subcategory and, as a result of the Clean Water Act of 1977, emphasis has shifted from control of familiar, primarily conventional, pollutants to control of a lengthy list of toxic substances. New source performance standards represent the best available demonstrated technology for control of all pollutants, and pretreatment standards for existing and new sources represent the best economically-achievable performance for control of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs, including management of sludge.

In the 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared 65 pollutants and classes of pollutants "toxic" under section 307(a) of the Act. Those engaged in wastewater sampling and control had little experience dealing with these pollutants. In addition, these pollutants often appear and have toxic effects at concentrations which severely taxed available analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly and decisively to detect, measure and regulate these substances. Thus, with the passage of the 1977 legislation, the focus of the Nation's water pollution control program was directed toward the control of pollutants for which there was relatively little knowledge or experience.

EPA's implementation of the Act required a complex development program, described in this section and subsequent sections of this notice. Initially, because in many cases no public or private agency had done so, EPA and its laboratories and consultants had to develop analytical methods for toxic pollutant detection and measurement, which are discussed under SAMPLING AND ANALYTICAL PROGRAM. EPA then gathered technical and finaicial data about the industry which are summarized under DATA-GATHERING EFFORTS. With these data, the Agency proceeded to develop these proposed regulations.

First, EPA studied the pulp, paper, and paperboard industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of manufacturing facilities, water use, wastewater constituents, or other factors required the development of

separate effluent limitations and standards of performance for different segments of the industry. This study required the identification of raw waste and treated effluent characteristics, including: 1) the sources and volume of water used, the manufacturing processes employed, and the sources of pollutants and wastewaters within the plant, and 2) the constitutents of wastewaters, including toxic pollutants. (See INDUSTRY SUBCATEGORIZATION.) EPA then identified the constitutents of wastewaters which should be considered for effluent limitations guidelines and standards of performance, and statistically analyzed raw waste constituents, as discussed in detail in Section V of the Development Document.

Next, EPA identified several distinct control and treatment technologies, including both in-plant and end-of-process technologies, which are in use or capable of being used to control or treat pulp, paper, and paperboard industry wastewater. The Agency compiled and analyzed historical and newly generated data on the effluent quality resulting from the application of these technologies. The long-term performance, operational limitations, and reliability of each of the treatment and control technologies were also identified. In addition, EPA considered the non-water quality environmental impacts of these technologies, including impacts on air quality, solid waste generation, and energy requirements.

The Agency then estimated the costs of each control and treatment technology for the various industry subcategories from unit cost curves developed by standard engineering analysis as applied to the specific pulp, paper, and paperboard wastewater characteristics. EPA derived unit process costs from model plant characteristics (production and flow) applied to each treatment process unit cost curve (i.e., activated sludge, chemically-assisted clarification/sedimentation, granular activated carbon adsorption, mixed media filtration). These unit process costs were combined to yield total cost at each treatment level. After confirming the reasonableness of this methodology by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs. Costs and economic impacts are discussed in detail under the various technology options, and in the section of this notice entitled COSTS, EFFLUENT REDUCTION BENEFITS, AND ECONOMIC IMPACTS.

Upon consideration of these factors, as more fully described below, EPA identified various control and treatment technologies as BPT, BCT, BAT, NSPS, PSES, and PSNS. The proposed regulations, however, do not require the installation of any particular technology. Rather, they require achievement of effluent limitations representative of the proper application of these technologies or equivalent technologies. A mill's existing controls should be fully evaluated, and existing treatment systems fully optimized, before commitment to any new or additional end-of-pipe treatment technology.

The effluent limitations for BPT, BCT, BAT, and NSPS are expressed as mass limitations (kg/kkg or lbs/1000 lbs of finished product) and are calculated one of three ways: (1) by multiplying (a) maximum anticipated effluent concentrations determined from analysis of control technology performance data and (b) typical wastewater flow for each subcategory, (2) by multiplying (a) long-term average effluent loadings determined from analysis of control technology performance data and (b) a process or treatment variability factor, or (3) by multiplying (a) long-term average effluent concentrations determined from analysis of control technology performance data, (b) typical wastewater flow for each subcategory, and (c) a process or treatment variability factor. These basic calculations were performed for each regulated pollutant or pollutant parameter for each subcategory of the industry. Effluent limitations for PSES and PSNS are expressed as allowable concentrations in milligrams per liter (mg/l). Mass limitations are also provided as guidance for POTWs if mass limitations are imposed along with, or instead of, the concentration limitations.

IV. Data-Gathering Efforts

The data-gathering efforts involved several distinct, detailed activities which are summarized here. All aspects of the program are described in detail in Section II of the Development Document and Section I of the Economic Impact Analysis.

In general, data-gathering efforts were conducted by four principal means: 1) a review of the administrative record for the proposal and promulgation of prior EPA regulations; 2) surveys of the industry; 3) contact with representatives of State regulatory agencies, EPA regional offices, and EPA and private research facilities; and 4) a review of pertinent literature.

The administrative records relating to previous EPA regulations included the original Development Documents (EPA-440/1-74-026a, May 1974; EPA-440/1-74-025a, May 1974; and EPA-440/1-76/047-b, December 1976) and their appendices. These records were very useful in obtaining general information on the pulp, paper, and paperboard industry. They were reviewed for information on the use of chemical additives, the use or suspected presence of toxic and nonconventional pollutants, applicable production process controls, and available effluent treatment techniques. The administrative record also included economic information contained in the original economic impact analysis documents (EPA-230/1-73-023, September 1973, and EPA-230/2-76-045, January 1976).

A. *Data-Gathering—Specifics of Technical Study.* An industry survey program was developed to collect technical information on the manufacture of pulp, paper, and paperboard. This information was collected under authority of section 308 of the Act. With considerable input from and review by industry representatives, two questionnaires were developed for (1) integrated and secondary fiber facilities, and (2) nonintegrated facilities. Through the survey program, the agency sought information on age and size of facilities, raw material usage, production processes employed, wastewater characteristics, and methods of wastewater control and treatment. It was felt by industry representatives that, to ensure a sound data base for establishment of regulatons, it was necessary to survey the entire industry. Therefore, questionnaires were sent to representatives of all known operating mills. Of the 678 known operating mills to be sent the questionnaires, 632 responses (over 93 percent) were received. It has since been determined that there are about 706 operating mills; some of the mills not included in the technical survey are old mills that are now operating but were shut down at the time of the survey or are new mills that have begun operation after submittal of the questionnaires in the fall of 1977.

The technical contractor contacted representatives of State regulatory agencies, EPA regional offices, and EPA and private research facilities for available pertinent data and for information on unpublished research activities.

An extensive literature review was performed with the purpose of: 1) obtaining pertinent general information

on the pulp, paper, and paperboard industry, 2) preparing a background information file on the presence of the 129 toxic pollutants that may be discharged from pulp, paper, and paperboard mills, 3) obtaining information on the presence of other pollutants (nonconventional pollutants) that may be discharged from pulp, paper, and paperboard mills, and 4) obtaining information on production process controls and effluent treatment technology employed in the industry for control of toxic, conventional, and nonconventional pollutants. Four automated literature document searches were employed in addition to reviewing the publications of the Pulp and Paper Research Institute of Canada and of EPA's Office of Research and Development. Through these sources, over one million articles/papers and 3,500 environmental data files were searched. Those which appeared relevant were obtained, reviewed, and, if appropriate, incorporated into the data base. After completing the literature review, 14 additional nonconventional polutants (xylene, 4 resin acids, 3 fatty acids, and 6 bleach plant derivatives) were added to the list of 129 specific toxic pollutants to be investigated during the sampling and analytical program.

B. *Data-Gathering—Specifics of Economic Study.* Data for the economic analysis of the industry were obtained from a financial survey program under the authority of section 308 of the Clean Water Act. Questionnaires seeking mill capacity, production volume, production costs, balance sheet and income information, costs for existing treatment facilitites, and projected capital expenditures were sent to representatives of 706 mills. Of these, responses to the initial request for information were received for 546 mills. Responses indicated that 48 of these mills were either closed or that pulp, paper, or paperboard products were no longer manufactured. Thus, a total of 594 responses were received in the initial mailing. A follow-up letter was sent to representatives of the 112 non-responding mills that yielded 88 additional responses; therefore, responses were received for a total of 682 mills, a 97 percent response rate. The financial survey data was supplemented by data from government publications, industry members, trade associations, publicly-available financial studies, and visits to mills.

Because of the desire of several mill owners to safeguard the confidential financial information requested in the financial survey by means beyond those provided by EPA, an agreement was reached between the mill owners and EPA allowing mill owners the choice to send their financial survey responses to an impartial third party or directly to EPA. This agreement, known as the Third Party Data Aggregation Procedure Agreement, was implemented to allow the mill owners to have added protection of their confidential information above that provided by EPA, if they so desired, while still allowing the Agency to perform an analysis using actual mill data. The financial data received on all survey responses was stored as one computer data base held by the third party.

As part of this procedure EPA agreed to include several limitations on uses of the data base in conducting our study of the pulp, paper, and paperboard industry. Among them were limitations on the Agency's access to the data base and on the output of computer programs performed using the data base. The Agency could not remove data on individual mills from the premises of the third party nor could the name and location of a mill be seen with its financial information. The only outputs which could be seen were those generated using data from two or more mills. Because of these limitations on access to and uses of the data base, the Agency was constrained from performing some detailed analyses. However, these were not in any area of major concern and the quality of the analysis performed is quite high when compared to analyses performed without data collected in financial surveys. The results of the analysis are presented in Section XVI of this notice.

V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants is limited. In the field of wastewater treatment, little attention was paid to the control of specific organic compounds until a few years ago. Only on rare occasions has EPA regulated, or has industry monitored or even developed methods to monitor for these pollutants. As a result, analytical methods for many of the toxic pollutants have not yet been promulgated under section 304(h) of the Act. Moreover, state-of-the-art techniques involve the use of expensive, sophisticated equipment, with costs ranging as high as $200,000 per unit.

When faced with these problems, EPA scientists, including staff of the Environmental Research Laboratory in Athens, Georgia and staff of the Environmental Monitoring and Support Laboratory in Cincinnati, Ohio, conducted a literature search and initiated a laboratory program to develop analytical and sampling protocols. The result was the establishment of a comprehensive set of procedures entitled, *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, (EPA, Cincinnati, Ohio, April 1977).

Because section 304(h) methods were available for most toxic metals, pesticides, total cyanide, and total phenolics, the analytical effort focused on developing methods for sampling and analyzing specific organic toxic pollutants. The three basic analytical approaches considered were infrared spectroscopy, gas chromatography (GC) with multiple detectors, and gas chromatography/mass spectrometry (GC/MS). In selecting among these alternatives, EPA considered sensitivity, laboratory availability, costs, applicability to diverse waste streams from numerous industries, and capability for implementation within the statutory and court-ordered time constraints of EPA's program.

The Agency concluded that infrared spectroscopy was not sufficiently sensitive or specific for application in wastewater analyses, and that GC with multiple detectors without mass spectrometry would require multiple runs incompatible with time constraints and would possibly result in failure to detect certain toxic pollutants. EPA chose GC/MS because it could identify a wide variety of pollutants in many different matrices and do so in the presence of interfering compounds and within the time constraints of the program. In EPA's judgment, GC/MS and the other analytical methods for toxics used in this rulemaking represent the best state-of-the-art methods for toxic pollutant analyses available at the time of this study.

As the state-of-the-art matures, EPA intends to refine the sampling and analytical protocols to keep pace with technological advancements. However, limited resources prevent EPA from reworking completed sampling and analyses to keep up with the evolution of analytical methods. As a result, the analytical techniques used in some rulemakings may differ slightly from those used in others. In each case, however, the analytical methods used represent the best state-of-the-art available for a given industry study. One of the goals of EPA's analytical program is the proposal and promulgation of additional section 304(h) analytical methods for toxic pollutants, scheduled for calendar years

1979 and 1980. On December 3, 1979, EPA proposed rules establishing test procedures for the analysis of 113 organic toxic pollutants (44 FR 69464; 40 CFR 136).

Before proceeding to analyze industrial wastewaters, EPA concluded that it had to define specific toxic pollutants for analyses. The list of 65 toxic pollutants and classes of toxic pollutants potentially includes thousands of specific pollutants; the expenditure of resources in government and private laboratories would be overwhelming if analyses were attempted for all of these pollutants. Therefore, in order to make the task more manageable, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for selection of these 129 pollutants included frequency of occurrence in water, chemical stability and structure, amount of the chemical produced, availability of chemical standards for measurement, and other factors. In addition to the 129 specific toxic pollutants, EPA decided to investigate the presence of an additional 14 nonconventional organic pollutants known to be present in pulp, paper, and paperboard effluents.

EPA ascertained the presence and magnitude of the 129 specific toxic and the additional 14 nonconventional pollutants in pulp, paper, and paperboard wastewaters in a two-phase sampling and analysis program: screening and verification. The purpose of the screening program was the identification of those of the 129 specific toxic and the 14 nonconventional pollutants that are present in pulp, paper, and paperboard effluents. The procedures used to analyze wastewater samples during screening, described in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (EPA, Cincinnati, Ohio, April, 1977) and *Procedures for Screening of Pulp, Paper, and Paperboard Effluents for Fourteen Nonconventional Pollutants* (EPA, Washington, D.C., December, 1980), also allow for calculation of the approximate quantity of those specific toxic and additional 14 nonconventional pollutants present. The purpose of the verification program was to verify the presence of the toxic and additional nonconventional pollutants identified during screening and to determine the quantity of specific toxic and nonconventional pollutants present in pulp, paper, and paperboard wastewaters prior to treatment and after the application of various control and treatment technologies employed in the industry.

Ideally, the Agency would complete all aspects of the screening program prior to commencement of the verification program. However, a complication arose in the process of completing these investigations that forced the Agency to depart from this preferred approach.

In the screening phase, 15 mill groupings were established that were representative of the pulp, paper, and paperboard industry. One mill from each of 11 of the 15 groups was selected for sampling. A selection was not initially possible for the remaining four groups because insufficient information was available to allow such a selection. Mill sampling proceeded and each of the 11 selected mills were sampled by an Agency contractor. After completion of the 11 sampling visits, funding for the project was depleted due to delays in receipt of supplemental appropriations from Congress. Monies allocated for completion of the technical study became available only after a delay of seven months. Keeping in mind the court-imposed deadlines, the Agency determined that any further delay in initiation of the verification sampling program was intolerable. During the period of delay, a methodology was developed that would allow initiation of the verification program immediately upon availability of funding and would also provide for development of the same high quality of data that would be obtained if the screening program had been completed.

Specific toxic pollutants to be analyzed during the verification program were selected on the basis of the best information available to the Agency. This necessitated a heavy reliance on analytical data gathered during the abbreviated screening program. All specific toxic pollutants identified as present in discharges from the 11 sampled mills were analyzed during verification sampling. In addition, it was decided that both screening and verification studies would be conducted simultaneously at all verification mills where processes were employed that were representative of the four mill groupings not previously a part of the screening program.

EPA Regional field teams had conducted and were continuing to conduct sampling studies at 47 pulp, paper, and paperboard mills. Sample collection and analysis adhered to the procedures specified in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (EPA, Cincinnati, Ohio, April, 1977); therefore, the results of these EPA Regional investigations are equivalent to the screening data obtained during contractor screening studies at the 11 mills. Unfortunately, at the time of commencement of the verification program, no complete data were available for any of the total of 47 sampling visits conducted by EPA Regional sampling teams. Therefore, the Agency decided to continue to use GC/MS procedures during the verification program because this would allow storage of all verification data on computer tapes.

Analysis of verification parameters began as soon as samples were collected and shipped to the analytical laboratory. Computer tapes including data on all specific toxic pollutants were prepared. This enabled a review of the data tapes upon the determination that other specific toxic pollutants were present in pulp, paper, and paperboard effluents that were not identified at the 11 screening mills. This storage of data ensured that the verification program would yield comparable results to that which would have been obtained had screening results been available from mills representative of all 15 mill groupings.

The Agency later determined that further analysis of the data tapes would be unnecessary after completion of a thorough review of screening data. These data were gathered during screening studies conducted by EPA Regional field teams and during contractor verification sampling at those 17 mills where processes were employed that were characteristic of the four mill groupings that were not a part of the initial contractor screening program. All additional compounds that were identified and were not analyzed during verification sampling were present in amounts too small to be effectively reduced by technologies known to the Administrator.

The procedures used to analyze samples collected during verification sampling provided for additional quality control and quality assurance over those procedures used during the screening phase. These verification procedures are the same as Methods 624 and 625 proposed under authority of sections 304(h) and 501(a) of the Act (see 40 CFR Part 136; 44 FR 69464 (December 3, 1979)). The Agency chose the option of including additional quality control and quality assurance procedures described in *Procedures for Analysis of Pulp, Paper, and Paperboard Effluents for Toxic and Nonconventional Pollutants* (EPA, Washington, D.C., December, 1980). These quality control and quality assurance procedures allow for

interpretation of data to account for the percent recovery of specific toxic and nonconventional pollutants and for a determination of whether the analytical results are valid. This is accomplished through the addition of external standards characteristic of groups of the specific toxic and nonconventional pollutants under investigation: phenolics, phthalates, polynuclear aromatic hydrocarbons, and resin and fatty acids. During the verification program 60 facilities were sampled; at least one and as many as six mills were sampled that were characteristic of each of the subcategories of the pulp, paper, and paperboard industry.

The primary objective of the field sampling programs (both screening and verification) was to produce composite samples of wastewater from which determinations could be made of the amount (concentration) of toxic pollutants present. Sampling was conducted during three consecutive days of plant operation. Raw wastewater samples were taken either before treatment or after minimal preliminary treatment (i.e., screening, primary sedimentation), depending upon accessibility to the wastewater stream. Treated effluent samples were taken either following pretreatment (usually indirect dischargers) or after biological and/or physical/chemical treatment (direct dischargers). EPA also sampled the raw water source (e.g., intake water) to determine the presence of toxic pollutants prior to contamination by the manufacturing process.

Prior to both screening and verification plant visits, sample containers were carefully washed and prepared using appropriate procedures specified in *Sampling and Analysis Procedures for Screening of Industrial Pollutants for Priority Pollutants* (EPA, Cincinnati, Ohio, April, 1977). EPA took a number of other precautions to minimize potential contamination from sampler components. Samples were kept on ice prior to and during express shipment in insulated containers. At raw waste or pretreatment and at final effluent sampling points, automatic samplers were used to prepare composite samples from individual aliquots collected at 30-minute intervals.

The analyses for the 129 toxic pollutants were performed according to groups of chemicals and associated analytical schemes. Organic toxic pollutants include 32 volatile (purgeable) and 82 nonvolatile pollutants. The nonvolatile pollutants include 2 base extractables, 45 neutral extractables, 11 acid extractables, and 24 pesticides. Inorganic toxic pollutants include 13 heavy metals, cyanide, and asbestos. One pollutant, 2,3,7,8-tetrachloro-dibenzo-a-dioxin (TCDD), was not analyzed. TCDD was omitted because of its extreme toxicity and the health hazards involved in preparing standard solutions. The 14 additional nonconventional organics include xylene, a volatile organic, and 13 acid-extractable organics (3 fatty acids, 4 resin acids, and 6 bleach plant derivatives).

The primary analytical method used in screening was the identification of volatile organics and base-neutral and acid-extractable organics through the use of gas chromatography (GC) with confirmation and quantification on all samples by mass spectrometry (MS). A similar approach was used during verification except that a single acid-neutral extraction was employed in the analysis of extractable organics. GC was employed for analysis of pesticides with presence confirmed by MS. The Agency analyzed the toxic heavy metals by atomic adsorption spectrophotometry (AAS), with flame or graphite furnace atomization following appropriate digestion of the sample, and by the inductively-coupled argon plasma (ICAP) excitation technique. Total cyanide and total phenols were measured by conventional wet chemistry techniques as outlined in "Standard Methods for the Examination of Water and Wastewater, 14th Edition." Analyses for asbestos were accomplished by microscopy and fiber presence reported as chrysotile fiber count. Analyses for other nonconventional pollutants (color, ammonia, and COD) were accomplished using "Methods for Chemical Analysis of Water and Wastes," (EPA 625/6-74-003) and amendments thereto. A detailed discussion of the analytical procedures employed for all determinations is provided in Appendix A of the Development Document.

During screening, 72-hour composite samples were collected for analysis of specific toxic pollutants (acid and base-neutral extractable organics, pesticides, and metals except mercury), 13 of the 14 additional nonconventional organic pollutants, and asbestos. Grab samples were taken for volatile (purgeable) priority organics, xylene, total phenolics, total cyanide, and mercury.

During the verification program, 24-hour composite samples were collected for three consecutive days for analysis of specific toxic pollutants (acid-neutral extractable organics, pesticides, and metals except mercury), 13 of the 14 additional nonconventional pollutants under investigation, COD, color, and ammonia. Grab samples were taken for volatile (purgeable) priority organics, xylene, mercury, and total cyanide.

VI. Industry Subcategorization

In developing these regulations, it was necessary to determine whether different effluent limitations and standards of performance were appropriate for different groups of mills (subcategories) within the industry. The factors considered in identifying these subcategories included: raw materials used, products manufactured, production processes employed, mill size and age, and treatment costs. The original (Phase I and Phase II) rulemaking efforts resulted in a total of 22 different subcategories.

As part of the BAT review program, an updated and more complete data base has been collected for 632 operating mills in the pulp, paper, and paperboard industry. A review of the existing subcategorization scheme was undertaken in order to determine its adequacy in representing current industry practices.

In the integrated mills segment of the industry, this review has resulted in a number of revisions. A single semi-chemical subcategory has been established that includes all mills where paperboard is made from semi-chemical pulp produced on-site. Mills previously within the sodium-based neutral sulfite semi-chemical (NSSC) and the ammonia-based NSSC subcategories are now included in the semi-chemical subcategory. Another new subcategory, unbleached kraft and semi-chemical, has been established that includes all mills where pulp is produced without bleaching using two pulping processes, unbleached kraft and semi-chemical, wherein the spent semi-chemical cooking liquor is burned within the kraft chemical recovery system. Mills previously within the unbleached kraft-neutral sulfite semi-chemical (cross recovery) subcategory are included in the unbleached kraft and semi-chemical subcategory.

In the secondary fiber segment, a new subcategory, the wastepaper-molded products subcategory, has been established to reflect distinct process and wastewater differences associated with the production of molded products from wastepaper.

In the nonintegrated segment of the industry, three new subcategories have been established to represent differences in the manufacture of specific products. The new subcategories are nonintegrated-lightweight, nonintegrated-filter and nonwoven, and nonintegrated-paperboard.

Detailed information on the basis for these revisions is presented in Section IV of the Development Document. The subcategories of the pulp, paper, and paperboard industry for which regulations are proposed in this rulemaking are defined as follows:

Dissolving Kraft. This subcategory includes mills where a highly bleached pulp is produced using a "full cook" process employing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. Included in the manufacturing process is a "pre-cook" operation termed pre-hydrolysis. The principal product is a highly bleached and purified dissolving pulp used principally for the manufacture of rayon and other products requiring the virtual absence of lignin and a very high alpha cellulose content.

Market Bleached Kraft. This subcategory includes mills where a bleached pulp is produced using a "full cook" process employing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. Papergrade market pulp is produced at mills representative of this subcategory.

Board, Coarse, and Tissue (BCT) Bleached Kraft. This subcategory includes the integrated production of bleached kraft pulp and board, coarse, and tissue papers. Bleached kraft pulp is produced on-site using a "full cook" process employing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. The principal products include paperboard (B), coarse papers (C), tissue papers (T), and market pulp.

Fine Bleached Kraft. This subcategory includes the integrated production of bleached kraft pulp and fine papers. Bleached kraft pulp is produced on-site using a "full cook" process employing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. The principal products are fine papers, which include business, writing, and printing papers, and market pulp.

Soda. This subcategory includes the integrated production of bleached soda pulp and fine papers. The bleached soda pulp is produced on-site using a "full cook" process employing a highly alkaline sodium hydroxide cooking liquor. The principal products are fine papers, which include printing, writing, and business papers, and market pulp.

Unbleached Kraft. This subcategory includes mills where pulp is produced without bleaching using a "full cook" process employing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. The pulp is used on-site to produce linerboard, the smooth facing in corrugated boxes, and bag papers.

Semi-Chemical. This subcategory includes mills where pulp is produced using a process that involves the cooking of wood chips under pressure using a variety of cooking liquors including neutral sulfite and combinations of soda ash and caustic soda. The cooked chips are usually refined before beging converted on-site into board or similar products. The principal products include corrugating medium, insulating board, partition board, chip board, tube stock, and specialty boards.

Unbleached Kraft and Semi-Chemical. This subcategory includes mills where pulp is produced without bleaching using two pulping processes: unbleached kraft and semi-chemical. Spent semi-chemical cooking liquor is burned within the kraft chemical recovery system. The pulps are used on-site to produce both linerboard and corrugating medium used in the production of corrugated boxes.

Dissolving Sulfite Pulp. This subcategory includes mills where a highly bleached and purified pulp is produced using a "full cook" process employing strong solutions of sulfites of calcium, magnesium, ammonia, or sodium. The pulps produced by this process are viscose, nitration, cellophane, or acetate grades and are used principally for the manufacture of rayon and other products that require the virtual absence of lignin.

Papergrade Sulfite (Blow Pit Wash). This subcategory includes integrated production of sulfite pulp and paper. The sulfite pulp is produced on-site using a "full cook" process employing an acidic cooking liquor of sulfites of calcium, magnesium, ammonia, or sodium. Following the cooking operations, the spent cooking liquor is washed from the pulp in blow pits. The principal products include tissue papers, newsprint, fine papers, and market pulp.

Papergrade Sulfite (Drum Wash). This subcategory includes the integrated production of sulfite pulp and paper. The sulfite pulp is produced on-site employing a "full cook" process using an acidic cooking liquor of sulfites of calcium, magnesium, ammonia, or sodium. Following the cooking operations, the spent cooking liquor is washed from the pulp on vacuum or pressure drums. Also included are mills using belt extraction systems for pulp washing. Principal products made include tissue papers, fine papers, newsprint, and market pulp.

Groundwood—Thermo-Mechanical. This subcategory includes the production of thermo-mechanical groundwood pulp and paper. The thermo-mechanical groundwood pulp is produced on-site using a "brief cook" process employing steam (with or without the addition of cooking chemicals such as sodium sulfite) followed by mechanical defibration in refiners, resulting in yields of approximately 95% or greater. The pulp may be brightened using hydrosulfite or peroxide bleaching chemicals. The principal products include market pulp, fine papers, newsprint, and tissue papers.

Groundwood-Coarse, Molded, News (CMN) Papers. This subcategory includes the integrated production of groundwood pulp and paper. The groundwood pulp is produced, with or without brightening, utilizing only mechanical defibration using either stone grinders or refiners. The principal products made by this process include coarse papers (C), molded fiber products (M), and Newsprint (N).

Groundwood-Fine Papers. This subcategory includes the integrated production of groundwood pulp and paper. The groundwood pulp is produced, with or without brightening, utilizing only mechanical defibration by either stone grinders or refiners. The principal products made by this process are fine papers which include business, writing, and printing papers.

Deink. This subcategory includes the integrated production of deinked pulp and paper from wastepapers using an alkaline process to remove contaminants such as ink and coating pigments. The deinked pulp is usually brightened or bleached. Principal products include printing, writing and business papers, tissue papers, and newsprint.

Tissue From Wastepaper. This subcategory includes the production of tissue papers from wastepapers without deinking. The principal products made include facial and toilet papers, glassine, paper diapers, and paper towels.

Paperboard from Wastepaper. This subcategory includes mills where paperboard products are manufactured from a wide variety of wastepapers such as corrugated boxes, box board, and newspapers; no bleaching is done on-site. Mills where paperboard products are manufactured principally or exclusively from virgin fiber are not included within this subcategory, which includes only those mills where wastepaper comprises at least 80 percent of the raw material fibers. The principal products include a wide variety of items used in commercial packaging, such as bottle cartons.

Wastepaper-Molded Products. This subcategory includes mills where molded products are produced from wastepapers without deinking. Products include molded items such as fruit and

vegetable packs and similar throwaway containers and display items.

Builders' Paper and Roofing Felt. This subcategory includes mills where heavy papers used in the construction industry are produced from cellulosic fibers derived from wastepaper, wood flour and sawdust, wood chips, and rags. Neither bleaching nor chemical pulping processes are employed on-site.

Nonintegrated-Fine Papers. This subcategory includes nonintegrated mills where fine papers are produced from purchased pulp. The principal products of this process are printing, writing, business, and technical papers.

Nonintegrated-Tissue Papers. This subcategory includes nonintegrated mills where tissue papers are produced from wood pulp or deinked pulp prepared at another site. The principal products made at these mills include facial and toilet papers, glassine, paper diapers, and paper towels.

Nonintegrated-Lightweight Papers. This subcategory includes nonintegrated mills where lightweight or thin papers are produced from wood pulp or secondary fibers prepared at another site and from nonwood fibers and additives. The principal products made at these mills include uncoated thin papers, such as carbonizing papers and cigarette papers, and some special grades of tissue such as capacitor, pattern, and interleaf.

Nonintergrated-Filter and Nonwoven Papers. This subcategory includes nonintegrated mills where filter papers and nonwoven items are produced from a furnish of wood pulp, secondary fibers, and nonwood fibers prepared at another site. The principal products made at these mills include filter and blotting papers, nonwoven packaging and specialties, insultation, technical papers, and gaskets.

Nonintegrated-Paperboard. This subcategory includes nonintegrated mills where paperboard is produced from wood pulp or secondary fibers prepared at another site. The principal products made at these mills include linerboard, folding boxboard, milk cartons, food board, chip board, pressboard, and other specialty boards. Mills where electrical grades of board and matrix board are produced are not included in this subcategory.

The subcategories described above do not reflect the industry segments used to evaluate the economic impacts of the proposed regulations. As can be determined from the descriptions above, at mills in certain subcategories a variety of end products can be manufactured. Also, each end product can be made at mills in various subcategories. For example, tissue papers are made at mills in the BCT bleached kraft, both papergrade sulfite, deink, tissue from wastepaper, and nonintegrated-tissue subcategories. At mills in some of these subcategories, several other products can also be made. The economic impacts are presented from both the mill types and the product types which are described below (see Section XVI, COSTS, EFFLUENT REDUCTION BENEFITS, AND ECONOMIC IMPACTS).

VII. Available Wastewater Control and Treatment Technology

A. *Status of In-Place Technology.* The control and treatment technologies that are employed to reduce pollutant discharge from pulp, paper, and paperboard manufacturing facilities include a broad range of in-plant and process changes and end-of-pipe treatment techniques. The in-plant control measures range from the application of minor water conservation measures, such as liquid level control, to extensive recycling of wastewater. The end-of-pipe treatment technologies range from no treatment to complete containment of wastewater. At most mills, programs have been implemented that combine elements of both in-plant control and wastewater treatment.

In-plant control measures employed at mills in the pulp, paper, and paperboard industry include water reduction and reuse techniques, chemical substitution, and process changes. Techniques to reduce water use include the use of high pressure showers for wire and felt cleaning on the paper machine and the elimination of water use where applicable (i.e., for housekeeping, for barking of whole logs).

Extensive reuse of water is practiced in the pulp, paper, and paperboard industry. A recent study prepared by the EPA Office of Research and Development indicates that all intake water is used almost three and one-half times before it is discharged. Recirculation techniques include reuse of paper machine whitewater as pump seal water, as pulp dilution water, and on paper machine showers and the use of jump-stage or countercurrent washing of pulp.

Chemical subtitution involves the replacement of process chemicals having high pollutant strength or toxic properties with others that are less polluting or more amenable to treatment. Historically, mercury compounds were contained in biocide and slimicide formulations used in the pulp, paper, and paperboard industry. Process chemicals containing mercury are no longer used in this industry. Similarly, biocide and slimicide formulations containing chlorophenolics have been replaced with formulations that do not contain these toxic pollutants. Zinc hydrosulfite was commonly used in the bleaching of groundwood pulps; this bleaching chemical has been replaced through the use of sodium hydrosulfite, thus minimizing zinc discharge from the pulp, paper, and paperboard industry.

Process changes include various measures that reduce water use, wastewater discharge, and/or wastewater loadings while improving processing efficiency. Replacement of barometric condensers with surface condensers, evaporation of process streams for by-product recovery, the addition of spill control systems to enable reprocessing of chemical cooking liquors, and addition or enlargement of existing pulp washers are examples of process changes that have been successfully employed in the pulp, paper, and paperboard industry to reduce pollutant loadings while improving process efficiencies.

The end-of-pipe treatment technologies employed by the industry include: no treatment, preliminary treatment (neutralization, equalization, primary clarification, and/or various flotation techniques), biological or equivalent treatment (aerated stabilization basins with and without settling basins, oxidation ponds, and activated sludge systems), and physical/chemical treatment (filtration and chemically-assisted clarification).

At approximately five percent of the direct discharging mills, no treatment is provided. At another 20 percent, only preliminary treatment is provided. It is anticipated that some of these mills will be connected to POTWs currently in the construction or design stages. At the remaining 75 percent of the direct discharging mills, biological or equivalent treatment is provided, with aerated stabilization basins the predominant type of treatment system employed. Biologically-treated effluents are further treated at three mills using chemically-assisted clarification.

At approximately 84 percent of the indirect discharging mills surveyed, no treatment is provided. To date, discharge from these facilities to POTWs has been allowed with no specific control requirements. It is anticipated that this may change as industrial waste contributions to POTWs are evaluated and user charges assessed in accordance with EPA guidelines. At the remaining indirect discharging mills, only preliminary treatment, usually primary clarification or dissolved air flotation, is employed.

There are 51 pulp, paper, and paperboard mills from which no wastewater is discharged to navigable waters. Ninety percent of these mills are secondary fiber mills; at over 70 percent, wastepaper board or builders' paper and roofing felt are produced.

B. *Control Technologies Considered.* An extensive review of the control and treatment alternatives available for application in the pulp, paper, and paperboard industry has resulted in identification of various methods for control of toxic, conventional, and nonconventional pollutants. In general, toxic pollutnats are effectively controlled through the application of the best practicable control technology currently available. However, it has been determined that pentachlorophenol and trichlorophenol, constituents of biocides and slimicides used in this industry, are not effectively treated and pass through existing treatment systems. These pollutants and the toxic metal zinc, once commonly used in the bleaching of mechanical pulps, can be controlled through the substitution of process chemicals. This process control technology forms the basis of technology options considered in establishing BAT, NSPS, PSES, and PSNS.

Technologies identified for control of conventional pollutants include: (1) BPT technology plus the implementation of additional production process controls to reduce raw waste loads, ensuring additional removal of BOD and TSS; (2) BPT technology plus the addition of chemically-assisted clarification for those subcategories where BPT was based on biological treatment, or BPT technology plus the addition of biological treatment for those subcategories where BPT was based on primary treatment only; (3) Option 1 plus the addition of chemically-assisted clarification for those subcategories where BPT was based on biological treatment, or Option 1 plus the addition of biological treatment for those subcategories where BPT was based on primary treatment only; and (4) upgrade of existing BPT to attain effluent levels characteristic of best performing mills. These technology options were considered in establishing BCT effluent limitations. It was determined that NSPS for conventional pollutants would be based on the application of production process controls to reduce wastewater discharge and raw waste loadings and end-of-pipe treatment in the form of biological treatment for all subcategories except nonintegrated-tissue papers, nonintegrated-filter and nonwoven papers, nonintegrated-lightweight papers, and nonintegrated-paperboard, where end-of-pipe treatment is in the form of primary clarification.

Several technologies were identified for control of nonconventional pollutants in pulp, paper, and paperboard wastewaters, including (1) control of ammonia discharges at mills where ammonia is used as a chemical cooking base through (a) substitution to a different base chemical or (b) through the application of biological treatment in a mode to allow conversion of ammonia to nitrate, and (2) control of color in those subcategories where highly colored effluents are discharged through the application of chemically-assisted clarification. Detailed information on technologies available for control of ammonia and color are contained in Sections VII, VIII, and IX of the Development Document. It has been determined that effluent limitations and standards will not be established for ammonia and color. Color will be controlled on a case-by-case basis as dictated by water quality considerations. The Agency is seeking public comment on ammonia discharges from integrated mills where ammonia-based cooking chemicals are used; limited information is currently available on the discharge of this nonconventional pollutant.

VIII. Best Practicable Control Technology (BPT) Effluent Limitations

Effluent limitations reflecting the best practicable control technology currently available (BPT) are generally based on the average of the best existing performance of plants of various sizes, ages, and unit processes within an industry or subcategory. Where existing performance is uniformly inadequate, BPT may be treansferred from a different subcategory or category. Limitations based on transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limits (see *Tanners' Council of America* v. *Train*, 540 F. 2d 1188 (4th Cir. 1976)). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such changes or controls are common industry practice.

BPT considers the total cost of the application of technololgy in relation to the effluent reduction benefits to be achieved from the technologies. The cost/benefit inquiry for BPT is a limited balancing, which does not require the Agency to quantify benefits in monetary terms (see, e.g., *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir. 1975)). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies (see *Weyerhaeuser Company* v. *Costle*, 11 ERC 2149 (D.C. Cir. 1978)).

The Clean Water Act requires the establishment of BCT limitations for industry subcategories that discharge conventional pollutants. In order to develop BCT limitations for four new subcategories of the pulp, paper, and paperboard industry (wastepaper-molded products, nonintegrated-lightweight papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard), a base level BPT determination is desirable because the "cost-reasonableness test", required as part of the BCT determination, rest on the incremental cost of removal of BOD_5 and TSS form BPT to BCT.

As stated above, the Act establishes the requirements for development of BPT limitations, which are basically the average of the best existing performance. The best practicable control technology currently available for the wastepaper-molded products subcategory has been identified as biological treatment, which is also the technology on which BPT limitations are based for all other subcategories of the secondary fibers segment of the pulp, paper, and paperboard industry.

It has been determined that wastewater discharges from the nonintegrated-lightweight papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard subcategories are similar in nature to discharges from the nonintegrated-tissue papers subcategory. For these subcategories, the best practicable control technology currently available has been identified as primary clarification, which is the technology on which BPT limitations are based for the nonintegrated-tissue papers subcategory.

The economic analysis indicates that implementation of BPT would require four direct discharging mills in the wastepaper-molded products subcategory to invest a total of $6.17 million and incur annual costs (including operation, maintenance, interest, and depreciation) of $1.85 million. The remainder of the direct discharging mills in the wastepaper-molded products,

nonintegrated-lightweight papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard subcategories already have treatment in-place that is at least equivalent to that which forms the basis of BPT effluent limitations. The only product sector affected by these regulations will be the molded pulp product sector. Production costs are expected to increase by about 6.9 percent. No supply and demand analysis can be done for this product sector, but any price increases will be limited to the cost increase. If only half of the cost increase is passed through to users of molded pulp products, there will be no closures as a result of implementation of these proposed rules.

IX. Best Available Technology (BAT) Effluent Limitations

The factors considered in establishing the best available technology economically achievable (BAT) level of control include environmental considerations such as air pollution, energy consumption, and solid waste generation, the costs of applying the control technology, the age of process equipment and facilities, the process employed, process changes, and the engineering aspects of applying various types of control techniques (Section 304(b)(2)(B)). In general, the BAT technology level represents, at a minimum, the best existing economically-achievable performance of plants of shared characteristics. Where existing performance is uniformly inadequate, BAT technology may be transferred from a different subcategory or industrial category. BAT may include process changes or internal controls, even when not common industry practice.

The statutory assessment of BAT considers costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle*, 11 ERC 2149 (D.C. Cir. 1978)). In assessing the proposed BAT, the Agency has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this consideration of costs, the primary determinant of BAT is effluent reduction capability using economically-achievable technology. As a result of the Clean Water Act of 1977, the achievement of BAT has become the national means of controlling the discharge of toxic pollutants. Four different toxic pollutants of concern are discharged from mills in the pulp, paper, and paperboard industry. These pollutants are chloroform, trichlorophenol, pentachlorophenol, and zinc. EPA has selected two available BAT technology options for consideration that will significantly reduce their discharge. Explanation and analysis of these options follow. For a more detailed discussion, see Sections VIII and X of the Development Document.

OPTION 1—Base effluent limitations on the proper application and operation of the technologies that formed the basis of BPT effluent limitations. The technologies on which existing BPT regulations are based include: screening, primary clarification, and biological treatment for all subcategories except nonintegrated-tissue, nonintegrated-lightweight, nonintegrated-filter and nonwoven, and nonintegrated-paperboard, where regulations are based or assumed to be based on screening and primary clarification. Effluent limitations were also established to control the discharge of zinc from the groundwood-fine, groundwood-CMN, and groundwood-thermo-mechanical subcategories. Zinc was regulated under BPT on the basis of precipitation using lime. EPA has determined that the technology actually employed at mills in these subcategories to comply with BPT effluent limitations was the substitution of sodium hydrosulfite, a bleaching chemical, for zinc hydrosulfite.

Regulated pollutants (chloroform and zinc) would be discharged at levels found in mill effluents where BPT limitations are attained. There would be no incremental cost associated with this option.

(B) OPTION 2—Base effluent limitations for control of toxic pollutants on chemical substitution. Slimicides and biocides containing trichlorophenol and pentachlorophenol can be replaced with formulations that do not contain these toxic pollutants.

Pentachlorophenol and trichlorophenol would be reduced to trace amounts. There would be negligible incremental cost associated with this option.

(C) BAT SELECTION AND DECISION CRITERIA—EPA has selected both Options 1 and 2 as the bases for proposed BAT effluent limitations. Option 1 has been selected to ensure control of the discharge of chloroform and zinc from the pulp, paper, and paperboard industry. In those nine subcategories where pulp is bleached with chlorine or chlorine-containing compounds, the resulting high levels of chloroform were found to be substantially reduced through the application of biological treatment. Existing BPT effluent limitations for zinc, which have been incorporated in the BAT regulations, ensure that only low levels of this toxic metal will be discharged from the pulp, paper, and paperboard industry.

Option 2, chemical substitution, was selected for control of trichlorphenol and pentachlorophenol, as it assures control of these toxic pollutants to trace levels without expensive end-of-pipe treatment. EPA has determined, after analysis of data obtained as a result of the verification program, that these pollutants are not effectively removed through the application of primary or biological treatment, the technology bases of BPT effluent limitations for all subcategories. EPA projects that alternative chemicals are currently being used at approximately 80 percent of the mills in the pulp, paper, and paperboard industry, supporting the Agency's decision to select this option.

X. Best Conventional Technology (BCT) Effluent Limitations

The 1977 amendments added section 301(b)(2)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(a)(4)—BOD, TSS, fecal coliform, and pH—and any additional pollutants defined by the Administrator as "conventional" (oil and grease).

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a "cost-reasonableness" test, which involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of publicly owned treatment works (POTWs) to the cost and level of reduction of such pollutants from a class or category of industrial sources. As part of its review of BAT for certain "secondary" industries, the Agency promulgated the methodology for this cost test (see 44 FR 50732 (August 29, 1979)). This methodology compares subcategory removal costs (dollars per pound of pollutant, measuring from BPT to BCT) with costs experienced at POTWs.

EPA applied this methodology to the costs for removal of conventional pollutants beyond BPT levels from pulp, paper, and paperboard effluents.

Four technology options (which are described in greater detail in Section

VIII and XI of the Development Document) were considered, including:

(A) OPTION 1—Base effluent limitations on the technology on which BPT is based for each subcategory plus additional in-plant production process controls. No additional end-of-pipe technology beyond BPT is contemplated in this option. Effluent limitations are proposed for each subcategory of the industry and are based on specific controls that include segregation of non-contact cooling water, use of dry barking operations, collection of spills and leaks for reprocessing, increased efficiency of pulp washing, collection and reuse of paper machine spills, improvement in save-all operation, and effluent recycle/reuse. These controls primarily achieve reductions in water use, wastewater discharge, and BOD*5* raw waste loading. Implementation of process controls will improve performance of existing primary and secondary biological treatment systems due to the reductions of raw waste loadings. Evaluation of Option 1 by the BCT cost-reasonableness test shows that the nonintegrated-paperboard subcategory fails the test. For this subcategory, BCT, for this option, is equal to BPT.

The total mass of pollutants removed through application of this technology option would be 47 million kg/yr (103 million lbs/yr) of BOD*5* and 66 million kg/yr (145 million lbs/yr) of TSS, a 27 percent reduction of BOD*5* and a 24 percent reduction of TSS.

The economic analysis indicates that compliance with this option would require that direct dischargers in all segments of the industry invest a total of $654 million and incur annual costs (including operation, maintenance, interest, and depreciation) of $186 million at the projected 1982 industry capacity. Price effects as a result of these costs are expected to range from a decrease of 0.17 percent of semi-chemical corrugating medium to an increase of 3.7 percent for dissolving pulp. Decreases in prices result from decreasing demand for products and a large amount of excess capacity in the product sectors. Price decreases cause a rise in demand, which enables producers to utilize some of their excess capacity. The effects of these costs on the contribution to capital (profitability) in the affected product sectors range from a decrease of 4.1 percent to an increase of 1.28 percent. In product sectors that lose profitability, four mills in the affected subcategories may close rather than invest in pollution control equipment. However, the Agency also projects that three mills that would otherwise close would remain open due to their improved competitive standing under this regulatory option. A net gain in industry capacity of approximately 0.3 percent over the base case is expected due to this option.

(B) OPTION 2—Base effluent limitations on the addition of chemically-assisted clarification of BPT final effluents for all integrated and secondary fiber subcategories and for the nonintegrated-fine subcategory (for these subcategories BPT is based on biological treatment). It is contemplated that additional solids-contact clarifier(s) will be added using alum as a coagulant and polymer as a flocculant aid. For the remaining nonintegrated subcategories, for which primary treatment was the basis of BPT, effluent limitations are based on the addition of biological treatment. Evaluation of Option 2 by the BCT cost-reasonableness test shows that the paperboard from wastepaper, tissue from wastepaper, wastepaper-molded products, builders' paper and roofing felt, nonintegrated-tissue papers, nonintegrated-lightweight papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard subcategories fail this test. For those subcategories where Option 2 fails the BCT cost-reasonableness test, the less-stringent Option 1 forms the basis for BCT if it passes the test.

The total mass of pollutants removed through application of this technology option would be 95 million kg/yr (208 million lbs/yr) of BOD*5* and 203 million kg/yr (446 million lbs/yr) of TSS, a 55 percent reduction of BOD*5* and a 73 percent reduction of TSS.

The economic analysis indicates that compliance with this option would require that direct dischargers in all segments of the industry invest a total of $1.56 billion and incur annual costs (including operation, maintenance, interest, and depreciation) of $605 million at the projected 1982 industry capacity. Price effects as a result of these costs are expected to range from a decrease of 0.52 percent for recycled linerboard to an increase of 5.28 percent for dissolving pulp. Price decreases result from decreasing demand for products and a large amount of excess capacity in the product sectors. The price decreases cause a rise in demand, which enables producers to utilize some of their excess capacity. The effects of these costs on the contribution to capital (profitability) in the affected product sectors range from a decrease of 9.57 percent to an increase of 4.30 percent. The losses in profitability in some product sectors may lead five mills in the affected subcategories to close rather than invest in pollution control equipment. However, the Agency also projects that one mill that would otherwise have closed will remain open due to its improved competitive standing under this regulatory option. These closures would represent a net 0.3 percent loss in industry capacity.

(C) OPTIONS 3—Base effluent limitations on BCT Option 1 plus the addition of chemically-assisted clarification for all integrated and secondary fiber subcategories and for the nonintegrated-fine papers subcategory (for these subcategories BPT is based on biological treatment). It is comtemplated that additional solids-contact clarifier(s) will be added using alum as a coagulant and polymer as a flocculant aid. For the remaining nonintegrated subcategories, for which primary treatment was the basis of BPT, effluent limitations are based on the application of Option 1 plus the addition of biological treatment. Evaluation of Option 3 by the BCT cost-reasonableness test shows that the tissue from wastepaper, wastepaper-molded products, builders' paper and roofing felt, nonintegrated-tissue papers, nonintegrated-lightweight, papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard subcategories fail this test. For the subcategories where Option 3 fails the BCT cost-reasonableness test, the less-stringent Options 1 or 2 form the basis for BCT if they pass the test.

The total mass of pollutants removed through application of this technology option would be 108 million kg/yr (238 million lbs/yr) of BOD*5* and 216 million kg/yr (476 million lbs/yr) of TSS, a 64 percent reduction of BOD*5* and a 78 percent reduction of TSS.

The economic analysis indicates that compliance with this option would require that direct dischargers in all segments of the industry invest a total of $2.11 billion and incur annual costs (including operation, maintenance, interest, and depreciation) of $860 million at the projected 1982 industry capacity. Price effects as a result of these costs are expected to range from a decrease of 0.80 percent for recycled linerboard to an increase of 8.96 percent for dissolving pulp. The effects of these costs on the contribution to capital (profitability) at the affected mills range from a decrease of 12.59 percent to an increase of 38.4 percent. The losses in profitability in some product sectors may lead six mills in the affected subcategories to choose to close rather than invest in pollution control equipment. However, the Agency also projects that two mills that would

otherwise have closed will remain open due to their improved competitive standing under this regulatory option. These closures would represent a net 0.5 percent loss in industry capacity.

(D) OPTION 4—Base effluent limitations on the levels attained by best performing mills in the respective subcategories. Best mill performance for a subcategory is generally the average performance at all mills where BPT effluent limitations are attained. The technologies for achieving Option 4 effluent limitations vary depending on the type of treatment systems that are employed at mills in each subcategory. Treatment systems commonly employed at mills in the integrated segment, nonintegrated-fine papers, and deink subcategories in which BPT was based on biological treatment include aerated stabiliazation basins, activated sludge systems, and oxidation ponds.

It is contemplated that aerated stabilization basin treatment systems will be upgraded through the addition of spill prevention and control systems, by increasing aeration capacity, and by providing additional settling cpacity. For the nonintegrated-fine papers subcategory, it is contemplated that equalization will also be provided. Conversion to the extended aeration activated sludge process was considered to be the probable method of upgrading the performance of aerated stabilization basins located in colder climates.

It is contemplated that activated sludge systems will be upgraded through the addition of spill prevention and control systems, by providing equalization, by increasing the capacity of aeration basins and by providing for operation in the contact stabilization mode, and by increasing the size of clarification and sludge-handling equipment.

It is contemplated that oxidation ponds will be upgraded through the addition of rapid sand filtration to remove algae that can contribute to the discharge of large levels of suspended solids.

At mills in the nonintegrated subcategories in which BPT is based or assumed to be based on primary treatment, it is contemplated that existing primary treatment systems will be upgraded by reducing clarifier overflow rates to provide for better settling, by adding chemical coagulants, and by increasing sludge-handling capability.

At best performing mills in the remaining subcategories (paperboard from wastepaper, tissue from wastepaper, wastepaper-molded products, and builders' paper and roofing felt), extensive use is made of production process controls to reduce wastewater discharge. Therefore, Option 4 for these subcategories is based on the application of the same technology as discussed in BCT Option 1: the technology on which BPT is based plus the application of additional production process controls.

Evaluation of Option 4 by the BCT cost-reasonableness test shows that the nonintegrated-tissue, nonintegrated-lightweight, nonintegrated-filter and nonwoven, and nonintegrated-paperboard subcategories fail this test. For those subcategories where Option 4 fails the BCT cost-reasonableness test, the less-stringent Option 1 forms the basis for BCT if it passes the test.

The total mass of pollutants removed by this technology option would be 62 million kg/yr (137 million lbs/yr) of BOD*5* and 117 million kg/yr (258 million lbs/yr) of TSS, a 37 percent reduction of BOD*5* and a 42 percent reduction of TSS.

The economic analysis indicates that compliance with this option would require that direct dischargers in all segments of the industry invest a total of $1.28 billion and incur annual costs (including operation, maintenance, interest, and depreciation) of $398 million at the projected 1982 industry capacity. Price increases as a result of these costs are expected to range from zero percent for uncoated groundwood and construction paper and board to 3.57 percent for bleached kraft foldingboard. The effects of these costs on the contribution to capital (profitability) at the affected mills range from a decrease of 5.86 percent to an increase of 7.68 percent. The Agency projects that nine mills will close as a result of these costs. The Agency also projects that three mills that would close without pollution controls in place will remain open. These mills are now high cost, marginal producers whose competitive standing would be improved as a result of the imposition of controls on some lower cost producers and the resultant price increases. A small net loss in industry capacity from the base case is expected due to this option.

(E) BCT SELECTION AND DECISION CRITERIA—EPA has selected Option 4 as the basis for proposed effluent limitations for all subcategories for which the BCT cost-reasonableness test passes. EPA has determined that costs at POTWs are $1.27 per pound of BOD*5* and TSS removed (1978 dollars); if removal costs for a subcategory are less than that cost, they are considered reasonable (44 FR 50732 (August 29, 1979)). In those subcategories where the cost-reasonableness test fails, the less stringent Option 1 forms the basis of BCT if it passes the cost-reasonableness test. The only exceptions are the dissolving sulfite pulp and the builders' paper and roofing felt subcategories for which BCT is established at the BPT level because of the projected severe economic impact. The removal costs for each subcategory for the selected BCT option are shown in Table 1.

Table 1—*BCT Analysis—Proposed Regulation*

	Subcategory average costs (dollars per pound)	Selected BCT option
Dissolving Kraft	0.31	4
Market Bleached Kraft	0.48	4
BCT Bleached Kraft	0.44	4
Alkaline-Fine*	0.46	4
Unbleached Kraft	0.67	4
Semi-Chemical	1.02	4
Unbleached Kraft and Semi-Chemical	0.98	4
Dissolving Sulfite Pulp	(**)	BPT
Papergrade Sulfite	0.42	4
Groundwood-TMP	0.62	4
Groundwood-CMN Papers	0.65	4
Groundwood-Fine Papers	0.75	4
Deink	0.68	4
Tissue from Wastepaper	0.47	4
Paperboard from Wastepaper	0.10	4
Wastepaper-Molded Products	0.64	4
Builders' Paper and Roofing Felt	(**)	BPT
Nonintegrated-Fine Papers	0.23	4
Nonintegrated-Tissue Papers	0.44	1
Nonintegrated-Lightweight Papers	0.75	1
Nonintegrated-Filter and Nonwoven Papers	0.78	1
Nonintegrated-Paperboard	(***)	BPT

*Includes Fine Bleached Kraft and Soda Subcategories.
**BCT equals BPT due to severe economic impact.
***BCT equals BPT as no regulatory option passes the BCT cost test.

There are several factors that weighed heavily in the Agency's decision to select Option 4 as the primary basis of proposed BCT limitations. This option yields significant removals of BOD*5* and TSS at significantly lower costs to the industry than Options 2 and 3 and has been proven through full-scale operation throughout the entire range of process types found in the pulp, paper, and paperboard industry. Option 4 effluent limitations are being attained at 21, 20, and 29 of the direct discharging mills in the integrated, secondary fiber, and nonintegrated segments, respectively. Reliance on Option 2 would mean that effluent limitations would not be attained at only 5, 15, and 22 mills in the integrated, secondary fiber, and nonintegrated segments, respectively. Option 3 effluent limitations are now being attained at only 3, 6, and 20 mills in the integrated, secondary fiber, and nonintegrated segments, respectively. While chemically-assisted clarification is a proven and available technology, uncertainties exist as to the chemical dosage rate required to effect optimum treatment plant performance. Chemical dosage rate has a direct bearing on costs. Because of the heavy reliance on the determination of BCT based on a

cost-reasonableness test, these uncertainties of dosage rate could have a significant impact on a final determination of BCT. At present, the Agency feels more confident establishing BCT effluent limitations that are currently being attained at a significant number of mills through the application of readily available technology, biological treatment (all subcategories except those where BPT is based or assumed to be based on primary treatment) or primary treatment (nonintegrated-tissue papers, nonintegrated-lightweight papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard subcategories). The proposed limitations will allow considerable flexibility to the industry in their approach to achieving BCT. Combinations of internal controls, treatment system modifications, and even additional end-of-pipe treatment in the form of chemically-assisted clarification can be employed to attain the proposed limitations in the most cost effective manner.

XI. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under section 306 of the Act is the best available demonstrated technology. At new plants, the opportunity exists to design the best and most efficient pulp and papermaking processes and wastewater treatment facilities, so Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible. It is encouraged that at new sources, reductions in the use of and/or discharge of both water and toxic pollutants be attained through the application of in-plant control measures, but it is expected that the toxic pollutants present in the discharges from the industry today will also present in the discharges from new sources. To control these and the conventional pollutants, EPA considered two options for selection of NSPS. For detailed discussions of these technology options, see Sections VIII and XII of the Development Document.

(A) OPTION 1—Base effluent limitations for control of toxic and conventional pollutants on the application of production process controls to reduce wastewater discharge and raw waste loadings and end-of-pipe treatment in the form of biological treatment for all subcategories except nonintegrated-tissue papers, nonintegrated-lightweight papers, nonintegrated-filter and nonwoven papers, and nonintegrated-paperboard, where end-or-pipe treatment is in the form of primary clarification. This option includes both production process controls that form the basis of BPT and BCT Option 1 in combination with end-of-pipe treatment with a design basis identical to BCT Option 4.

This option ensures substantial reductions in the discharge of the toxic pollutant chloroform from those subcategories where pulp is bleached with chlorine or chlorine-containing compounds. The conventional pollutants BPD*5* and TSS will be controlled at levels equal to or more stringent than BCT Option 4 for all subcategories. The implementation of this technology option will mean that significant quantities of the toxic pollutants zinc, trichlorophenol, and pentachlorophenol may be discharged from direct discharging new source mills.

Economic analysis indicates that selection of this option would not change the rate of entry into the industry or slow the rate of industry growth.

(B) OPTION 2—Base effluent limitations for control of toxic pollutants on chemical substitution. Sodium hydrosulfite can be substituted for zinc hydrosulfite used in the bleaching of mechanical pulps. This substitution ensures the discharge of low levels of zinc from the pulp, paper, and paperboard industry. Slimicides and biocides containing trichlorophenol and pentachlorophenol can be replaced with formulations that do not contain these toxic compounds. The discharges of pentachlorophenol and trichlorophenol would be reduced to trace amounts.

Economic analysis indicates that selection of this option would not change the rate of entry into the industry or slow the rate of industry growth.

(C) NSPS SELECTION AND DECISION CRITERIA—EPA has selected both Options 1 and 2 as the bases for proposed NSPS. Option 1 has been selected to ensure control of the discharge of BOD*5*,TSS, and chloroform from the pulp, paper, and paperboard industry. In those nine integrated subcategories where pulp is bleached with chlorine or chlorine-containing compounds, the resulting high levels of chloroform will be substantially reduced. Application of this control option will also result in significant reductions in the discharge of BOD*5* and TSS. Option 2 was selected for control of trichlorophenol, pentachlorophenol, and zinc. Application of this technology option ensures that only low levels of zinc and virtually no trichlorophenol or pentachlorophenol will be discharged from new sources in the pulp, paper, and paperboard industry.

XII. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for pollutants, such as heavy metals, that pass through POTWs in amounts that would violate direct discharge effluent limitations or limit POTWs' sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which served as the framework for these proposed pretreatment regulations for the pulp, paper, and paperboard industry, can be found at 43 FR 27736 (June 26, 1978). Based on these requirements, EPA considered one option for selection of PSES. For detailed discussions of this option, see Sections VIII and XIII of the Development Document.

EPA has been conducting an extensive study of POTWs and on the basis of this study has determined that many of the metals present in industrial discharges pass through POTWs and may limit sludge disposal alternatives. One of these metals is zinc, a component of one chemical used in the bleaching of mechanical pulps.

(A) OPTION 1—Base effluent limitations for control of toxic pollutants on chemical substitution. Sodium hydrosulfite can be substituted for zinc hydrosulfite in the bleaching of mechanical pulps. This substitution ensures the discharge of only low levels of zinc to POTWs from indirect discharging pulp, paper, and paperboard mills. Slimicides and biocides containing trichlorophenol and pentachlorophenol can be replaced with formulations that do not contain these toxic compounds. The discharge of pentachlorophenol and trichlorophenol, toxic pollutants likely to pass through POTWs, would be reduced to trace amounts. Chloroform is effectively controlled through the application of biological treatment, the type of treatment most commonly used at POTWs. Therefore, this option does

not include specific control technology for the removal of chloroform.

The total masses of regulated pollutants removed through the application of this PSES technology option are estimated to be:

10,000 kg/yr (22,000 lbs/yr) of trichlorophenol
3,600 kg/yr (8,000 lbs/yr) of pentachlorophenol, and
20,000 kg/yr (44,000 lbs/yr) of zinc.

There would be negligible incremental costs associated with the substitution to formulations not containing pentachlorophenol or trichlorophenol. Chemical substitution to minimize zinc discharges will cost about $23,300 per year at the one indirect discharging mill where zinc hydrosulfite is now being used.

(B) SELECTION OF PRETREATMENT TECHNOLOGY AND DECISION CRITERIA—EPA has selected Option 1 as the basis for proposed PSES. The implementation of Option 1 control technology ensures minimal discharge of the toxic metal zinc, from new source indirect discharging mills, minimizing sludge disposal problems and pass through, and virtually eliminates the discharge of the toxic organics trichlorophenol and pentachlorophenol, pollutants likely to pass through POTWs. The toxic pollutant chloroform has been found to be effectively removed through the application of biological treatment and will be controlled at POTWs.

XIII. Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant control measures, and end-of-pipe treatment, and to use plant site selection to ensure adequate treatment system installation. The pretreatment option considered for new dischargers to POTWs is essentially the same as for PSES, and includes:

OPTION ONE—Base limitations for control of toxic pollutants on chemical substitution. Sodium hydrosulfite can be substituted for zinc hydrosulfite in the bleaching of mechanical pulps. This substitution ensures the discharge of only low levels of zinc to POTWs from new source indirect discharging pulp, paper, and paperboard mills. Slimicides and brocides containing trichlorophenol and pentachlorophenol can be replaced with formulations that do not contain these toxic compounds. The discharge of pentachlorophenol and trichlorophenol, toxic pollutants likely to pass through POTWs, would be reduced to trace amounts. Chloroform is effectively controlled through the application of biological treatment, the type of treatment most commonly used at POTWs. Therefore, this option does not include specific control technology for the removal of chloroform.

Economic analysis indicates that this option would not change the rate of entry into the industry or slow the rate of industry growth.

(B) SELECTION OF PRETREATMENT TECHNOLOGY AND DECISION CRITERIA—EPA has selected Option 1 as the basis for proposed PSNS. The implementation of Option 1 control technology ensures minimal discharge of the toxic metal zinc from new source indirect discharging mills, minimizing sludge disposal problems and pass through of this pollutant. This option also virtually eliminates the discharge, from new source indirect discharging mills, of the toxic organics trichlorophenol and pentachlorophenol, pollutants likely to pass through POTWs. The toxic pollutant chloroform has been found to be effectively removed through the application of biological treatment and will be controlled at POTWs.

XIV. Regulated Pollutants

The basis for selection of pollutants controlled by these regulations is set out in Section VI of the Development Document. Summary information is provided about their general nature, common industrial use, use in the pulp, paper, and paperboard industry, detection frequency and concentration levels. Some of these pollutants are designated toxic under section 307(a) of the Act.

A. BCT—The pollutants controlled by this regulation include the statutory conventional pollutants BOD5, TSS, and pH. These pollutants are subject to numerical limitations expressed in kilograms per thousand kilograms (pounds per 1000 pounds) of product, except pH for which an allowable discharge range is established.

B. BAT—The toxic pollutants controlled for direct dischargers by this regulation are trichlorophenol, pentachlorophenol, chloroform, and zinc. These pollutants are subject to numerical limitations expressed in kilograms per thousand kilograms (pounds per 1000 pounds) of product.

C. NSPS—

1. Conventional pollutants—The pollutants controlled by this regulation include the statutory conventional pollutants BOD5, TSS, and pH.

2. Toxic pollutants—The toxic pollutants controlled by this regulation are trichlorophenol, pentachlorophenol, chloroform, and zinc.

These pollutants are subject to numerical limitations expressed in kilograms per thousand kilograms (pounds per 1000 pounds) of product, except pH for which an allowable discharge range is established.

D. PSES AND PSNS—The pollutants specified for control by proposed PSES and PSNS include trichlorophenol, pentachlorophenol, and zinc. The toxic pollutant chloroform has been found to be effectively controlled through the application of biological treatment, the type of treatment most commonly used at POTWs. Therefore, chloroform is not regulated under PSES or PSNS.

The PSES and PSNS effluent limitations are expressed as allowable maximum daily concentrations (milligrams per liter). Mass limitations (kg/kkg or lb/1000 lb of product) are provided as guidance in cases where it is necessary to impose mass limitations for control of pollutants discharged from pulp, paper, and paperboard mills contributing to POTWs.

XV. Pollutants and Subcategories Not Regulated

The Settlement Agreement contained provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been re-written in a Revised Settlement Agreement that was approved by the United States District Court for the District of Columbia on March 9, 1979.

A. *Pollutants Excluded.* Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and, therefore, excluded from regulation are listed in APPENDIX B to this notice.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants that are present in amounts too small to be effectively reduced by technologies known to the Administrator. APPENDIX C lists the toxic pollutants that were detected in amounts too small to be effectively reduced by available technologies, and which, therefore, are excluded from regulation.

It has also been determined that no nonconventional pollutants associated with the production of pulp, paper, and

paperboard will be regulated through establishment of BAT, NSPS, PSES, or PSNS. Color will be controlled on a case-by-case basis as dictated by water quality considerations. The Agency is seeking public comment on ammonia discharges from integrated mills where ammonia-based cooking chemicals are used; limited information is currently available on the discharge of this nonconventional pollutant. Limited information exists on the levels of resin acids and their derivatives present in wastewater discharges from the pulp, paper, and paperboard industry. This sparcity of data makes it impossible at this time to establish uniform national standards limiting the discharge of these compounds.

B. *Subcategories Excluded.* The limitations in this regulation have been developed to cover the general case for this industry category. In specific cases, it may be necessary for the NPDES permitting authority to establish permit limits on toxic pollutants that are not subject to limitation in this regulation (see RELATIONSHIP TO NPDES PERMITS).

While the Settlement Agreement requires EPA to regulate portions of the pulp, paper, and paperboard industry listed under the U.S. Department of Commerce, Bureau of the Census, Standard Industrial Classification (SIC) code numbers 2600 and 2700, Paragraph 8(a)(iv) of the Revised Settlement Agreement authorizes EPA to exclude portions of the industry from regulation. Pulp Mills (SIC 2611), Paper Mills, except Building Paper Mills (SIC 2621), Paperboard Mills (SIC) 2631), and Building Paper and Building Board Mills (SIC 2661) are covered by this regulation. One exception is the groundwood-chemi-mechanical subcategory for which BPT effluent limitations have been established; however, BAT, BCT, NSPS, PSES, and PSNS regulations are not proposed at this time. There are only 3 mills in this subcategory and insufficient data are available at this time to determine the effect of the degree of chemical usage in the pulping process on raw waste generation. Toxic pollutants that were detected in discharges from mills in this subcategory were detected in amounts too small to be effectively reduced by technologies known to the Administrator. Mills in this subcategory will be assigned permit limitations on a case-by-case basis.

Available information on the remaining subgroups, known as the converted paper industry (SIC 2641, SIC 2642, SIC 2643, SIC 2645, SIC 2646, SIC 2647, SIC 2648, SIC 2649, SIC 2651, SIC 2652, SIC 2653, SIC 2654, SIC 2655, and SIC 2682), was reviewed and the Agency has concluded that facilities listed in these Standard Industrial Classifications should be excluded from regulation under Paragraph 8(a)(iv). Process wastewater flow-rates from these facilities are generally low, with the median rate estimated at zero. The process wastewater that is discharged is usually measured in tens of gallons per day and is limited to clean-ups in printing, gluing, and coating operations. While potential exists for discharge of heavy metals and other priority pollutants in operations using inks and coating materials, total amounts of toxic pollutants discharged are expected to be insignificant because flows are characteristically low. One reason that the converted paper industry was included in the Settlement Agreement was because of the presumed potential for PCB discharge. However, PCBs have not been used in the converted paper industry since 1972. PCBs entering the paper cycle today are found only in repulping operations which are regulated under the secondary fiber subcategories of the pulp, paper, and paperboard industry.

XVI. Monitoring Requirements

The Agency intends to establish a regulation requiring permittees to conduct additional monitoring when they violate their permit limitations. The provisions of such monitoring requirements will be specified for each permittee and may include analysis for some or all of the toxic pollutants or the use of biomonitoring techniques. The additional monitoring is designed to determine the cause of the violation, necessary corrective measures, and the identity and quantity of toxic pollutants not specifically limited in the permit which are discharged during the violation. Each violation will be evaluated on a case-by-case basis by the permitting authority to determine whether or not the additional monitoring contained in the permit is necessary. A more lengthy discussion of this requirement appears at 44 FR 34407, June 14, 1979. The Agency intends to amend 40 CFR Part 403, General Pretreatment Regulations. The Part 403 amendment will require that parameters limited by the pretreatment standards be monitored at indirect discharging plants.

XVII. Costs, Effluent Reduction Benefits, and Economic Impacts

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. (See 43 FR 12661 (March 23, 1978)). EPA's proposed regulations for implementing Executive Order 12044 require a Regulatory Analysis for major significant regulations involving annualized compliance costs of more than $100 million or meeting other specified criteria. (See 43 FR 29891 (July 11, 1978)). Where these criteria are met, the proposed regulations require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and an evaluation of alternatives such as: (1) alternative types of regulations, (2) alternative stringency levels, (3) alternative timing, and (4) alternative methods of ensuring compliance.

The proposed regulations for the pulp, paper, and paperboard industry meet the proposed criteria for a formal Regulatory Analysis. This proposed rulemaking satisfies the formal regulatory analysis requirements. While the Clean Water Act does not permit consideration of alternative timing or alternative methods of ensuring compliance, EPA has considered alternative stringency levels and alternative types of regulations, as discussed above. Moreover, the Agency has performed a detailed analysis of the economic impact of these proposed regulations.

EPA's economic assessment is set forth in *Economic Impact Analysis of Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Pulp, Paper, and Paperboard Mills Point Source Category*, November 1980. This report details the investment and annualized costs for the industry as a whole and for each subcategory for each option, including the proposed option. The report also explains, in detail, the methodology used to derive the impacts as well as the impacts themselves. The data underlying the analysis were obtained from the Development Document, publicly available financial publications and surveys, and the results of EPA's financial survey program described under DATA-GATHERING EFFORTS. The report assesses the impact of those costs in terms of price and production changes, mill profitability effects, mill closures, employment impacts, community effects, and effects on the balance of trade.

A. *Economic Impact Methodology.* The methodology used in the economic analysis is applied microeconomics where a supply and demand analysis is performed to determine the price, production, capacity utilization, and profitability of mills in the industry before and after the imposition of water pollution controls. Standard capital budgeting techniques are used to project

the impact on mill profitability, number of closures, and the lost capacity from those closures that could result from the costs of pollution control necessary to meet proposed effluent limitations.

Using information on production costs contained in the responses to the financial survey, supply curves were generated for each of several generic pulp, paper, and paperboard product sectors. As outlined in Section VI, several technical subcategories contribute to the total production in any product sector. Price, production, and profitability impacts are based on the projected supply and demand characteristics of product sectors and are presented as such. The closure and capacity loss impacts result from changes in prices and production, but have been calculated on a mill-by-mill basis. Thus, they can be presented by generic mill type.

The impact of the regulation on employment as a result of projected closures cannot be presented on a specific basis. This is the result of the limitations on the output and use of the data outlined under DATA-GATHERING EFFORTS. The Agency may, however, present general information on the total employment impacts and the total capacity of the affected mills.

Employment data was not requested in the financial survey since it had already been requested in the technical survey. Because of limitations in the third party agreement, this information could not be directly included in the data base. As a result, employment figures were used as part of analytical computer programs to associate employment with mill information held in the data base. The employment impacts are presented using the aggregates of the total employment associated with all mills projected to close. These estimates are presented for each generic mill type.

Since any output showing data from a single mill could not be shown, the sites of mills projected to close, either with or without establishment of the proposed regulations, could not be included in the analysis or seen by the Agency. As can be seen below, however, the aggregate volume of daily production capacity lost along with the number of mills projected to close can give a good approximation of the size range of the plants affected by the regulations.

The effects of mill closings on communities also cannot be determined accurately. The determination of community impacts is based on a knowledge of the number of employees affected and their location, information again not available to the Agency due to the limitations contained in the third party agreement. The possible impacts of closures on regions of the country have been estimated based on income loss. Income loss is estimated based on the revenues of mills projected to close. Revenue figures are reported in the financial survey.

The impacts of the regulation on the balance of trade are quantitatively and qualitatively determined. These impacts are based on the past behavior of the product sectors in international markets and on the projected prices of domestic production relative to foreign production. The prices of each product type are input to an international paper trade econometric model. Domestic prices are quantitatively determined in the analysis. However, insufficient information is available for the Agency to evaluate the future business environment of foreign producers with great certainty. Thus, a qualitative study of probable changes in the foreign sector environment is made and the conclusions are studied with the results of the econometric model. A judgment of the ability of domestic producers to compete in foreign markets is then made.

The decision criteria for determining projected mill closures were based on standard cash flow and net present value (NPV) analyses. The cash flows of the mills are calculated based on the expected mill revenues resulting from the prices found in the supply and demand analysis and the mills' costs of production as found in the financial survey responses. These are projected over the life of the pollution control investment and discounted at the industry's cost of capital. If the NPV of the total cash flow of a mill over the life of the investment is less than the salvage value of the mill (working capital plus a portion of the mill's book value), then the mill is projected to close.

B. *Economic Impacts for Mill Types.*

Integrated Mills. The Agency projects 150 of the 187 direct discharging mills in this segment for which the Agency has economic information will incur costs to comply with the proposed BCT regulations. The Agency expects that the remaining direct discharging mills will not require additional controls or costs to comply with the proposed regulations because they are already meeting the proposed guidelines. The mill capacity requiring expenditures for BCT is assumed to include existing mill capacity and the added capacity the Agency expects to be operable before the end of 1982. EPA estimates that the industry will invest $1.1 billion and have annual costs of compliance including depreciation, interest, operating, and maintenance costs of $338 million per year at the projected 1982 industry capacity.

EPA expects that six of the 218 mills in this segment for which the Agency has economic information will close due to factors unrelated to the proposed regulations. The Agency also projects that one mill in this segment will close as a result of the regulations. However, the Agency expects that one mill will remain open that would close if no regulations were implemented. This is due to its improved competitive standing after imposition of pollution controls.

Achievement of the proposed BCT limitations by the integrated mills segment of the industry will reduce conventional pollutant discharge (BOD*5* and TSS) to the Nation's waterways by 155 million kg (342 million pounds) per year. The Agency finds that these effluent reduction benefits are achieved at costs between $0.68 and $2.24 per kg ($0.31 and $1.02 per pound) of BOD*5* and TSS removal. These costs are reasonable as defined under the Agency's BCT cost-reasonableness determination methodology (see 44 FR 50732; August 29, 1979).

Secondary Fiber Mills. The Agency projects that 60 of the 84 direct discharging mills in this segment for which the Agency has economic information will incur costs to comply with the proposed regulations. The Agency expects that the remaining direct discharging mills will not require any additional controls or costs to comply with the regulations because they are already meeting the proposed guidelines. The mill capacity requiring expenditures for BCT is assumed to include existing mill capacity and the added capacity the Agency expects to be operable before the end of 1982. EPA estimates that the industry will invest $57 million and have annual costs of compliance including depreciation, interest, and operating and maintenance costs of $21 million per year at the projected 1982 industry capacity.

EPA expects that 25 of the 273 mills in this segment for which the Agency has economic information will close due to factors unrelated to the proposed regulations. The Agency also projects that five mills in this segment will close as a result of these regulations. However, the Agency expects that two mills will remain open that would close if no regulations were implemented. This is due to their improved competitive standing after imposition of pollution controls.

Achievement of the proposed BCT limitations by the secondary fiber mills segment of the industry will reduce

conventional pollutant discharges (BOD5 and TSS) to the Nation's waterways by 6.73 million kg (14.8 million pounds) per year. The Agency finds that these effluent reduction benefits are achieved at costs of between $0.22 and $1.50 per kg ($0.10 and $0.68 per pound) of BOD5 and TSS removal. These costs are reasonable as defined under the Agency's BCT cost-reasonableness determination methodology (see 44 FR 50732, August 29, 1979).

Nonintegrated Mills. The Agency projects that 47 of the 80 direct discharging mills in this segment for which the Agency has economic information will incur costs to comply with the proposed regulations. The Agency expects that the remaining direct discharging mills will not require additional controls or costs to comply with the proposed regulations because they are already meeting the proposed guidelines. The mill capacity requiring expenditures is assumed to include existing mill capacity and the added capacity the Agency expects to be operable before the end of 1982. EPA estimates that the industry will invest $29 million and have annual costs including depreciation, interest, and operating and maintenance costs of $8.0 million per year at the projected 1982 industry capacity.

EPA expects that 26 of the 143 mills in this segment for which the Agency has economic information will close due to factors unrelated to the proposed regulations. The Agency also projects that one mill in this segment will close rather than invest in pollution control equipment. However, the Agency expects that one mill will remain open that would close if no regulations were implemented. This is due to its improved competitive standing after imposition of pollution controls. These effects serve to provide a small net gain in capacity for this segment.

Achievement of the proposed BCT limitations by the nonintegrated mills segment of the industry will reduce conventional pollutant discharges (BOD5 and TSS) to the Nation's waterways by 6.18 million kg (13.6 million pounds) per year. The Agency finds that these effluent reduction benefits are achieved at costs of between $0.51 and $1.72 per kg ($0.23 and $0.78 per pound) of BOD5 and TSS removal. These costs are reasonable as defined under the Agency's BCT cost-reasonableness determination methodology (see 44 FR 50732, August 29, 1979).

C. *Economic Impacts for Product Sectors.* As noted above, the technical subcategories or segments do not reflect the market for final pulp, paper, or paperboard products. Mills in several technical subcategories contribute to the total production of any single product sector. Presented below are the impacts on prices, production costs, production volume, and the contribution to capital (profitability) in each product sector expected due to the proposed regulations.

Market Pulp. Market pulp is pulp sold to pulp consumers such as nonintegrated paper mills. The production considered in this product sector does not include pulp transferred between two company owned mills in this country, but does include pulp transferred to affiliated mills outside this country. By definition, the product sector does not include dissolving pulp, which is discussed below. The domestic capacity to produce pulp is approximately 45 million kkg (50 million tons) per year. Almost all of this pulp is used on-site to produce final pulp, paper, and paperboard products. At those mills where more pulp is produced than necessary to sustain their own operations or those where pulp only is produced, pulp is sold for use at other mills where pulp is either not manufactured (nonintegrated mills) or not enough is manufactured on-site to supply their own needs. The amount of pulp sold in this way was 5.8 million kkg (6.4 million tons) in 1978, or about 12.8 percent of the total domestic pulp production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 4.5 to 7.0 percent at the affected mills. The effects of the proposed regulations on prices, production, and the product sector's contribution to capital cannot be determined.

Dissolving Pulp. Dissolving pulp is highly refined chemical cellulose which is converted by chemical processes into rayon, cellophane, acetate, and cellulose derivatives. The domestic capacity to produce dissolving pulp is approximately 1.4 million kkg (1.5 million tons) per year, or 1.75 percent of the total domestic capacity for pulp, paper, and paperborad production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of approximately 0.6 percent. A price increase of 2.85 percent and a production decrease of 2.09 percent are also expected The combined effect of these two impacts will be to add 4.0 percent to the product sector's contribution to capital (profitability).

Unbleached Kraft Paper. Unbleached kraft paper is paper produced with over 50 percent virgin wood fibers. The paper is used for wrapping paper, shipping sacks, bags, and other papers. The domestic capacity to produce unbleached kraft paper is approximately 4.1 million kkg (4.5 million tons) per year, or 5.1 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.7 to 2.5 percent. A price increase of 0.69 percent and a production decrease of 0.75 percent are also expected. The combined effect of these two impacts will be to subtract 1.3 percent from the product sector's contribution to capital (profitability).

Bleached Kraft Paper. Bleached kraft paper contains over 50 percent virgin wood fibers bleached to a specific brightness. The paper is used as delicatessen paper, butcher's paper, bags, shipping sacks, wrapping paper, and other bleached papers. The domestic capacity to produce bleached kraft paper is approximately 1.1 million kkg (1.2 million tons) per year, or 1.24 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.7 to 3.5 percent. A price increase of 0.83 percent and a production decrease of 2.26 percent are also expected. The combined effect of these impacts will be to subtract 5.9 percent from the product sector's contribution to capital (profitability).

Glassine and Grease Proof Papers. Glassine and grease proof papers are papers made for converting to products such as waxed paper, parchment paper, glassine, waxing, and greaseproof papers. These papers include glassine, greaseproof, vegetable parchment, and some bleached or unbleached sulfite papers. The domestic capacity to produce glassine and greaseproof papers is approximately 0.21 million kkg (0.23 million tons) per year, or 0.26 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.0 percent. A price increase of 1.83 percent and a production decrease of 5.94 percent are also expected. The combined effect of these impacts will be to add 7.7 percent to the product sector's contribution to capital (profitability).

Special Industrial Paper. Special industrial papers are papers of all types design for specialized end uses. Products considered to be special industrial papers include abrasive

papers, electrical (transformer) board, vulcanizing paper, pipe wrap insulation, impregnating paper, gasket stock, electrical insulation paper, and absorbent papers. The domestic capacity to produce special industrial papers is approximately 0.91 million kkg (1.0 million tons) per year, or 1.13 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.2 to 2.2 percent. A price increase of 0.61 percent and a production decrease of 0.48 percent are also expected. The combined effects of these impacts will be to add 0.9 percent to the product sector's contribution to capital (profitability).

Newsprint. Newsprint is paper made largely from groundwood pulp and used chiefly in the printing of newspapers. The domestic capacity to produce newsprint is approximately 5.3 million kkg (5.8 million tons) per year or 6.64 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 2.5 to 4.8 percent. A price increase of 3.2 percent and a production decrease of 0.87 percent are also expected. The combined effect of these two impacts will be to add 3.8 percent to the product sector's contribution to capital (profitability).

Coated Printing Paper. Coated printing paper is bleached paper coated on one or both sides with a substance which is at least 50 percent pigment. Printing papers coated on one side are almost always used for labels and wraps, especially in the processed food industries. The highest grades of printing paper coated on both sides are used for high quality media and advertising paper while lower grades are used for the printing of magazines. The domestic capacity to produce coated printing paper is approximately 5.0 million kkg (5.5 million tons) per year, or 6.28 percent of total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.8 to 2.0 percent. A price increase of 0.49 percent and a production decrease of 0.20 percent are also expected. The combined effect of these two impacts will be to subtract 1.0 percent from the product sector's contribution to capital (profitability).

Uncoated Freesheet. Uncoated freesheet is bleached, uncoated printing and writing paper containing no more than 25 percent groundwood pulp fibers. Uncoated freesheet is used as offset, tablet, text book, envelope, and business papers such as bond, ledger, mimeo, and duplicator papers. The domestic capacity to produce uncoated freesheet paper is approximately 8.2 million kkg (9.0 million tons) per year, or 10.25 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.3 to 2.6 percent. A price increase of 0.80 percent and a production decrease of 0.19 percent are also expected. The combined effect of these impacts will be to subtract 0.5 percent from the product sector's contribution to capital (profitability).

Uncoated Groundwood Paper. Uncoated groundwood paper is paper containing more than 25 percent groundwood pulp fibers, excluding newsprint. Uncoated groundwood paper is used as a coating base stock, groundwood paper for converting to other products, and as printing paper. The domestic capacity to produce uncoated groundwood paper is approximately 1.6 million kkg (1.8 million tons) per year, or 2.04 percent of total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.6 to 2.1 percent. No price increases or production decreases are expected. However, the added cost of the proposed regulations will subtract 2.6 percent from the product sector's contribution to capital (profitability).

Thin Papers. Thin papers are thin specialty papers used for such products as tracing paper, onionskin, one-time carbonizing paper, Bible paper, translucents, condenser paper, and cigarette paper. The domestic capacity to produce thin papers is approximately 0.36 million kkg (0.4 million tons) per year, or 0.51 percent of total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.7 percent. A price increase of 0.20 percent and a production decrease of 0.08 percent are also expected. The combined effect of these impacts will be to subtract 1.7 percent from the product sector's contribution to capital (profitability).

Solid Bleached Bristols. Solid bleached bristols are either coated or uncoated heavyweight papers. Solid bleached bristols are used for products such as tag stock, file folder stock, index, uncoated printing paper, coated bristols, tabulating index board, postcards, manila paper, manila board, and illustration board. The domestic capacity to produce solid bleached bristols is approximately 1.0 million kkg (1.1 million tons) per year, or 1.28 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.7 to 3.0 percent. A price increase of 0.67 percent and a production decrease of 0.24 percent are expected. The combined effect of these impacts will be to subtract 0.8 percent from the product sector's contribution to capital (profitability).

Cotton Fiber Paper. Cotton fiber paper is paper with 25 percent or more of its fiber content from cotton, cotton rags, cotton linters, flax, or similar fibers. Products such as ledger paper, currency paper, linen paper, and fine writing papers are examples of cotton fiber papers. The domestic capacity to produce cotton fiber paper is approximately 0.12 million kkg (0.13 million tons per year, or 0.15 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.6 percent. A price increase of 0.08 percent and a production decrease of 0.15 percent are also expected. The combined effect of these impacts will be to subtract 0.2 percent from the product sector's contribution to capital (profitability).

Tissue. Tissue papers are sanitary papers found in both industrial and consumer grades. Industrial tissue is used for products such as cellulose wadding, industrial wipes, and napkin stock. Consumer tissue products are those made for retail sale such as napkins, towels, wipes, sanitary napkins, toilet tissue, facial tissue, and diaper liners. The domestic capacity to produce tissue papers is approximately 4.9 million kkg (5.4 million tons) per year, or 6.20 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.5 to 3.2 percent. A price increase of 0.23 percent and a production decrease of 0.01 percent are projected. The combined effect of these impacts will be to subtract 0.3 percent from the product

sector's contribution to capital (profitability).

Unbleached Kraft Linerboard. Unbleached kraft linerboard is paperboard containing at least 80 percent virgin wood fibers and is produced by the kraft process. It is used as the facing material on corrugated or solid fiber boxes. The domestic capacity to produce unbleached kraft linerboard is approximately 14.6 million kkg (16.1 million tons) per year, or 18.29 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 2.3 to 2.5 percent. A price increase of 1.86 percent and a production decrease of 0.94 percent are also expected. The combined effect of these impacts will be to subtract 0.9 percent from the product sector's contribution to capital (profitability).

Bleached Kraft Linerboard. Bleached kraft linerboard is paperboard containing at least 80 percent virgin wood fiber and is produced through the kraft process. Bleached kraft linerboard is used for such products as retail store display stands, advertising paper, and is converted into cigarette and similar boxes. The domestic capacity to produce bleached kraft linerboard is approxiamtely 0.13 million kkg (0.14 million tons) per year or 0.16 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 2.9 percent. A price increase of 2.63 percent and a production decrease of 0.99 percent are also expected. The combined effect of these impacts will be to subtract 1.5 percent from the product sector's contribution to capital (profitability).

Bleached Kraft Foldingboard. Bleached kraft foldingboard is paperboard made from at least 80 percent virgin wood fibers and is produced using the kraft process. Examples of bleached kraft foldingboard products are containers for ice cream, butter, oleomargarine, frozen foods, cosmetics, and drugs found at retail stores. The domestic capacity to produce bleached foldingboard is approximately 2.1 million kkg (2.3 million tons) per year, or 2.58 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 2.6 percent. A price increase of 3.57 percent and a production decrease of 2.52 percent are also expected. The combined effect of these impacts will be to subtract 3.7 percent from the product sector's contribution to capital (profitability).

Semi-Chemical Corrugating Medium. Semi-chemical corrugating medium is paperboard made from at least 75 percent virgin wood fibers that are processed using the semi-chemical process. It is used as the inner layer or layers of a corrugated box and faced with linerboard for conversion into corrugated boxes. The domestic capacity to produce semi-chemical corrugating medium is approximately 5.0 million kkg (5.5 million tons) per year, or 6.28 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 3.1 to 3.6 percent. A price increase of 2.48 percent and a production decrease of 1.76 percent are also expected. The combined effect of these impacts will be to add 1.6 percent from the product sector's contribution to capital (profitability).

Recycled Linerboard. Recycled linerboard is paperboard made from recycled paper of various grades and contains less than 80 percent virgin wood fibers. It is used as the facing of corrugated boxes. The domestic capacity to produce recycled linerboard is approximately 0.36 million kkg (0.4 million tons) per year, or 0.47 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 2.5 percent. A price increase of 0.18 percent and a production increase of 0.01 percent are also expected. This production increase is the result of a shift in demand away from the higher-priced kraft linerboards to recycled linerboard. The combined effect of these impacts will be to add 0.6 percent to the product sector's contribution to capital (profitability).

Recycled Corrugating Medium. Recycled corrugating medium is paperboard produced having less than 75 percent virgin wood fibers and is predominately made from recycled paper of varying grades. It is used as the inner layer or layers of corrugated boxes. This product sector also includes container chip and filler board. The domestic capacity to produce recycled corrugating medium is approximately 1.7 million kkg (1.9 million tons) per year, or 2.16 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.7 percent. A price increase of 1.41 percent and a production increase of 1.90 percent are also expected. This projected increase in production is the result of a shift in the demand for corrugating medium away from the higher priced semi-chemical type to the recycled type. The combined effect of these two impacts will be to add 1.94 percent to the product sector's contribution to capital (profitability).

Recycled Foldingboard. Recycled foldingboard is paperboard made from recycled fibers from various paper grades. It is converted into folding cartions or into rigid or set-up boxes, depending on the bending quality of the board. The domestic capacity for producting recycled foldingboard is approximately 2.9 million kkg (3.2 million tons) per year, or 3.63 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.7 to 2.8 percent. A price increase of 0.07 percent and a production decrease of 0.08 percent are also expected. The combined effect of these impacts will be to subtract 0.5 percent from the product sector's contribution to capital (profitability).

Solid Bleached Board. Solid bleached board is paperboard made from at least 80 percent virgin fibers and bleached to a specified brightness. Solid bleached board products include milk cartons, packaging for moist or oily foods, and paper cups. The domestic capacity to produce solid bleached bristols is approximately 2.0 million kkg (2.2 million tons) per year, or 2.46 percent of the total domestic capacity for pulp, paper, and paperboard production.

The agency projects that the costs of the proposed regulations will result in an increase in production costs of 1.9 to 3.7 percent. A price increase of 0.72 percent and a production decrease of 0.64 percent are also expected. The combined effect of these impacts will be to subtract 0.4 percent from the product sector's contribution to capital (profitability).

Molded Pulp Products. Molded pulp products are pressed and molded goods made from either virgin fiber pulp or wastepaper pulp. These products include egg cartons, paper plates, food trays, and paper mache articles. The domestic capacity to produce molded pulp products is approximately 0.27 million kkg (0.3 million tons) per year, or 0.31 percent of the total domestic

capacity for pulp, paper, and paperboard production.

The Agency projects that the proposed BPT regulations will cause a 6.9 percent increase in production costs. The Agency also projects that the costs of the proposed BCT regulations will result in an increase in production costs of 0.6 percent over those for BPT. Price increases, production impacts and effects on contribution to capital (profitability) cannot be estimated for this product sector though price increases are limited to the cost increase.

All Other Board. All other board products include products made from either virgin fiber or wastepaper pulps. Examples of these are tube board, tag board, ticket stock, gypsum wall board facings, and match stem board. The domestic capacity produce all other board is approximately 4.1 million kkg (4.5 million tons) tons per year, or 5.10 percent of the total domestic capacity for pulp, paper and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 3.7 percent. A price increase of 0.14 percent and a production decrease of 0.07 percent are also expected. The combined effect of these impacts will be to subtract 3.7 percent from the product sector's contribution to capital (profitability).

Contruction Paper and Board. Construction paper and board are paper and board products predominately made from recycled fibers for use in converting to other products not typically connected to the pulp, paper, and paperboard industry. The products for which construction paper and board forms the base include asphalted paper and board, sheathing, insulating building paper and board, wallboard, roofing (prepared and shingles), panelboard, millboard, wallpaper, pressboard, accoustical board and title, asbestos paper and board, felt fiberboard, and hardboard. The domestic capacity to produce construction paper and board is approximately 6.7 million kkg (7.4 million tons) per year, or 8.38 percent of the total domestic capacity for pulp, paper, and paperboard production.

The Agency projects that the costs of the proposed regulations will result in an increase in production costs of 0.2 to 1.2 percent. No price increases or production decreases are expected. However, the effect of the costs of the proposed regulations will be to subtract 0.3 percent from the product sector's contribution to capital (profitability).

XVIII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. While it is difficult to balance pollution problems against each other and against energy use, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the non-water quality environmental impacts associated with the proposed regulations:

A. Air Pollution—Implementation of BAT, BCT, NSPS, PSES, and PSNS are not anticipated to result in any incremental increase in air pollution from the pulp, paper, and paperboard industry.

B. Solid Waste—EPA estimates that the total solid waste generated as a result of attainment of BAT, BCT, and PSES will increase by about 1.3 percent of the present industry total. Information on which these estimates are based is contained in Sections IX, X, XI, XII, XIII, and XIV of the Development Document.

The solid wastes generated through wastewater treatment at pulp, paper, and paperboard mills have not been listed as hazardous in regulations recently promulgated by the Agency under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (see 45 FR 33066 (May 19, 1980)). A recent study by EPA's Office of Solid Waste indicates that most leachates from this industry are non-hazardous under RCRA testing protocols (see *disposal Practices for Selected Industrial Solid Wastes*, EPA, Washington, D.C. (May 1980)). Accordingly, it does not appear likely that the industry will be subject to the comprehensive RCRA program establishing requirements for persons handling, transporting, treating, storing, and disposing of hazardous waste.

C. Energy Requirements—EPA estimates that the attainment of proposed BAT, BCT, and PSES will increase energy consumption by about 0.9 percent over present industry use. Proposed PSNS will result in no increase in energy usage. Information on which these estimates are based is contained in Sections IX, X, XI, XII, XIII, and XIV of the Development Document.

XIX. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe what have been termed "best management practices (BMPs)" described under AUTHORITY and BACKGROUND. In the future, EPA intends to develop BMPs which are: (1) Generic in nature and applicable to all industrial sites; (2) specfic in nature and applicable to a specified industrial category; and (3) guidance to permit authorities in establishing BMPs required by unique circumstances at a given plant.

XX. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. An upset provision is necessary, it has been argued, because such upsets will inevitably occur due to limitations in control technology. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. (Compare *Marathon Oil Co.* v. *EPA*, 564 F2d 1253 (9th cir. 1977) with *Weyerhaeuser* v *Costle*, 590 F.2d 1011 (D.C. Cir. 1978), and see *American Petroleum Institute* v. *EPA, 540 F.2d 1023 (10th Cir. 1976); CPC International, Inc.* v. *Train*, 540 F.2d 973 (4th Cir. 1976).)

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits, and has recently promulgated NPDES regulations which include upset and bypass permit provisions. ((See 45 FR 33290, 33448; 40 CFR 122.60(G)(H))(May 19, 1980)). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The pypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property

damage. Consequently, although permittees in the pulp, paper, and paperboard industry will be entitled to upset and bypass provisions in NPDES permits, these proposed regulations do not specifically address these issues.

XXI. Variances and Modifications

Upon the promulgation of these regulations, the numerical effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to pulp, paper, and paperboard direct dischargers. In addition, on promulgation, the pretreatment limitations are directly applicable to indirect dischargers.

For the BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. (See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977)). This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it is included in the NPDES regulations and not the specific pulp, paper, and paperboard industry regulations. (See the NPDES regulations at 40 CFR Part 125 Subpart D; 44 FR 32854, 32893 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.)

The BAT limitations in these regulations also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for non-toxic pollutants are subject to modifications under sections 301(c) and 301(g) of the Act. Under section 301(l) of the Act, these statutory modifications are not applicable to "toxic" pollutants.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs (See 40 CFR 403.7 and 403.13; 43 CFR 27736 (June 26, 1978)). Pretreatment standards for new sources are subject only to the credit provision (See 40 CFR 403.7; 43 FR 27736 (June 26, 1978) and proposed amendments 44 FR 62260 (October 29, 1979)). New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications (see *duPont* v. *Train, supra*).

XXII. Relationship to NPDES Permits

The BAT, BCT, and NSPS limitations in these regulations will be applied to individual pulp, paper, and paperboard mills through NPDES permits issued by EPA or approved State agencies, under section 402 of the Act. The preceding section of this preamble discussed the binding effect of these regulations on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

First, one matter that has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations guidelines and standards. Under currently applicable EPA regulations, States and EPA Regions issuing NPDES permits prior to promulgation of these regulations must include a "reopener clause," providing for permits to be modified to incorporate BAT regulations when they are promulgated (see 40 CFR 122.62(c); 45 FR 33290, 33449 (May 19, 1980)). Permits issued after June 30, 1981 must meet the requirements of section 301(b)(2) of the Clean Water Act whether or not applicable effluent limitations guidelines have been promulgated (see 40 CFR 122.62(c); 45 FR 33290, 33339 (May 19, 1980)). At one time, EPA had a policy of issuing short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. While the Agency continues to encourage EPA and State permit writers to issue short-term permits to primary industry dischargers until June 30, 1981, EPA has changed its policy to allow more flexibility (see 45 FR 33340 (May 19, 1980)). EPA permit writers may issue long-term permits to primary industries even if guidelines have not yet been promulgated provided that the permits require BAT and BCT and contain reopener clauses. The appropriate technology levels and limitations will be assessed by the permit issuer on a case-by-case basis on consideration of the statutory factors (see *U.S. Steel Corp.* v. *Train*, 556 F.2d 822, 844, 854 (7th Cir. 1977)). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings (see 44 FR 32854 (June 7, 1979)).

Another noteworthy topic is the effect of these regulations on the powers of NPDES permit-issuing authorities. The limitations in this regulation have been developed to cover the general case of this industry category. For specific cases, it may be necessary for the NPDES authority to establish limits on pollutants which are not subject to limitation in these regulations. The promulgation of these regulations does not restrict the power of any permit-issuing authority to act on these or any other EPA regulations, guidelines, or policy, in any manner consistent with law. For example, the fact that these regulations do not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis, when necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of state or Federal law require limitations (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Cleam Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XXIII. Small Business Administration Financial Assistance

There are two SBA programs that may be important sources of funding for the Pulp, Paper, and Paperboard and the Builders' Paper and Board Mills Point Source Categories. They are the SBA's Economic Injury Loan Program and Pollution Control Financing Guarantees.

Section 8 of the FWPCA amended section 7 of the Small Business Act, 5 U.S.S. § 636, to authorize the SBA through its Economic Injury Loan Program, to make loans to assist small business concerns in effecting additions to or alterations in equipment, facilities, or methods of operation in order to meet water pollution control requirements under the Federal Water Pollution Control Act if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration (see 44 FR 57914 (October 9, 1979)). Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the Federal Government and is currently set at 8¼ percent. Loan repayment periods may extend up to thirty years depending on the ability of the firm to repay the loan and the useful life of the equipment.

Firms in the Pulp, Paper, and Paperboard and Builders' Paper and Board Mills Point Source Categories may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA Headquarters or in the ten EPA Regional offices:

Headquarters—Ms. Frances Desselle, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 426-7874

Region I—Mr. Ted Landry, Enforcement Division, Environmental Protection Agency, J. F. Kennedy Federal Building, Boston, MA 02203, Telephone: (617) 223-5061

Region II—Mr. Gerald DeGartano, Enforcement Division, Room 432, Environmental Protection Agency, 26 Federal Plaza, New York, NY 10007, Telephone: (212) 264-4711

Region III—Mr. Bob Gunter, Environmental Protection Agency, Curtis Building, 3IR20, 6th and Walnut Streets, Philadelphia, PA 19106, Telephone: (215) 597-2564

Region IV—Mr. John Hurlebaus, Grants Administrative Support Section, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, GA 30308, Telephone: (404) 881-4491

Region V—Mr. Arnold Leder, Water and Hazardous Material, Enforcement Branch, Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60605, Telephone: (312) 353-2114

Region VI—Ms. Jan Horn, Enforcement Division, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, TX 75270, Telephone: (214) 729-2760

Region VII—Mr. Paul Walker, Water Division, Environmental Protection Agency, 1735 Baltimore Avenue, Kansas City, MO 64108, Telephone: (816) 374-2725

Region VIII—Mr. Gerald Burke, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, CO 80203, Telephone: (303) 327-4579

Region IX—Ms. Linda Powell, Permits Branch, Enforcement Division (E-4), Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 556-3450

Region X—Mr. Danforth Bodien, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, WA 98101, Telephone: (206) 442-1352

Interested persons may also contact the Assistant Regional Administrators for Financial Assistance in the Small Business Administration Regional offices for more details on Federal loan assistance programs. For further information, write or telephone any of the following individuals:

Region I—Mr. George H. Allen, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 60 Batterymarch, 10th Floor, Boston, MA 02110, Telephone: (617) 223-3891

Region II—Mr. John Axiotakis, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 26 Federal Plaza, New York, NY 10007, Telephone: (212) 264-1452

Region III—Mr. David Malone, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 231 St. Asaphs Road, West Lobby, Suite 646, Bala Cynwyd, PA 19004, Telephone: (215) 596-5908

Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1375 Peachtree Street, N.E., Atlanta, GA 30367, Telephone: (404) 881-2009

Region V—Mr. Howard Bondruska, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 219 South Dearborn Street, Chicago, IL 60604, Telephone: (312) 353-4534

Region VI—Mr. Till Phillips, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, TX 75202, Telephone: (214) 767-7873

Region VII—Mr. Richard Whitley, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, MO 64016, Telephone: (816) 374-3210

Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1405 Curtis Street, Executive Tower Building, 22nd Floor, Denver, CO 80202, Telephone: (303) 837-3686

Region IX—Mr. Larry J. Wodarski, Deputy Assistant Regional Administrator for Financial Assistance, Small Business Administration, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone: (415) 556-7782

Region X—Mr. Jack Welles, Regional Administrator, Small Business Administration, 710 2nd Avenue, Dextor Horton Bldg., 5th Floor, Seattle, WA 98104, Telephone: (206) 442-1455.

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by P.L. 94-305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution facilities when the financing is provided through tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses as defined by the Small Business Administration (see 44 FR 57914 (October 9, 1979)). Bond financing with SBA's guarantee of the payments makes available long-term (20-30 years), low interest (7 percent) financing to small businesses. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn Street, Magazine Bldg., Rosslyn, VA 22209, (703) 235-2900.

XXIV. Summary of Public Participation

In mid-July of 1979, the Agency circulated a contractor's draft technical report entitled "Preliminary Data Base for Review of BATEA Effluent Limitations Guidelines, NSPS, and Pretreatment Standards for the Pulp, Paper, and Paperboard Point Source Category" to a number of interested parties, including the American Paper Institute (API), the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), the Natural Resources Defense Council, Inc. (NRDC), EPA Regional personnel, and personnel representing all State agencies with permitting authority. The NCASI distributed copies of the report to its member companies. The contractor's draft report did not contain recommendations for effluent limitations guidelines, new source performance standards, or pretreatment standards. Rather, the report presented a summary of the technical information on which the Agency intended to base the currently proposed regulations. The Agency accepted written comments on the draft report until September 21, 1979. Additional written comments were received after that date. A summary of all of the major comments received prior to September 21, 1979, and, to the extent possible, of all major comments received to date is presented here.

1. Comment: The contractor's report deals extensively with toxicity of untreated effluents and ignores a large body of evidence, submitted with the comments, that generally indicates that treated effluents from the pulp, paper, and paperboard industry are not acutely toxic and present no toxicity problems in receiving streams.

Response: The purpose of the contractor's draft report was to present

a summary of the information on which effluent limitations guidelines, new source performance standards, and pretreatment standards would be established. The Clean Water Act of 1977 specifies (1) that effluent limitations and new source performance standards are to be established on a technology basis and (2) that pretreatment standards are to be established to ensure that pollutants do not interfere with, pass through, or otherwise be incompatible with publicly owned treatment works. Paragraph 8 of the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979), provides guidance to the Agency on exclusions of specific pollutants, categories, or subcategories from regulations under the effluent limitations guidelines, standards of performance, and/or pretreatment standards. Paragraphs 8(a)(iii) and 8(a)(iv) allow exclusion of specific pollutants if "the pollutant is present only in trace amounts and is neither causing or likely to cause toxic effects," and if for "a category or subcategory, the amount and the toxicity of each pollutant in the discharge does not justify developing national regulations." Paragraph 8(b)(ii) allows exclusion of all point sources within a point source category or point source subcategory from regulation under the pretreatment standards "if the toxicity and amount of the incompatible pollutants (taken together) introduced by such point source into treatment works . . . . that are publicly owned is so insignificant as not to justify developing a pretreatment regulation." Specific references to toxicity are summarized in the Development Document as necessary to support exclusion of pollutants, subcategories, or categories from regulations under the effluent limitations guidelines, standards of performance, or pretreatment standards based on the guidance provided in Paragraph 8 of the Settlement Agreement. All available references relating to toxicity, including those submitted with the comments, are included in the record supporting these proposed rules.

2. Comment: The contractor's draft report fails to provide information on the removal of toxic or nonconventional pollutants that can be attained through the application of the various technology options presented.

Response: At the time of distribution of the contractor's draft report, analysis of information on the removal of toxic and nonconventional pollutants through the application of existing and available treatment techniques had not been completed. The results of the verification sampling program which were presented in the report form the basis of these analyses which are now complete. The treatability of toxic and nonconventional pollutants present in pulp, paper, and paperboard wastewater discharges is discussed in the development document supporting these proposed rules.

3. Comment: Several commentators objected to the method used to establish base level raw waste loads and to the raw waste loads presented as characteristic of loadings resulting from the application of available production process controls. Many felt that the method resulted in the double counting of the pollutant reduction benefits of available production process controls that were in place at certain mills used in the establishment of base level raw waste loadings.

Response: The base level raw waste loads were presented in the contractor's draft report for the purpose of providing a starting point from which to determine pollutant reductions that are attainable after the application of additional production process controls that were not generally applied within a given subcategory. It was recognized that certain of the controls were in place at some individual facilities; however, for a specific production process control to be considered applicable at mills in any subcategory, the control was not in use at the majority of mills in the subcategory.

The Agency recognizes that BPT is the starting point for determination of effluent reduction benefits and incremental costs of BCT and BAT regulations. Therefore, the methodology used to calculate raw waste loads achievable through implementation of additional production process controls has been modified from that presented in the contractor's draft report. This revised methodology and the resulting anticipated raw waste loadings are presented in detail in the development document accompanying these proposed rules. The revised methodology generally involves the establishment of attainable raw waste loads based on the average of the raw waste loads that are demonstrated in each subcategory that are lower than those that formed the basis of development of BPT effluent limitations. Additional production process controls identified as capable of reducing pollutant loadings are those available technologies not being widely practiced in the subcategory. The Agency recognizes that the approach used at individual mills to reduce raw waste loadings will vary. However, this modified approach leads to determinations of raw waste loadings that are achievable and demonstrated.

4. Comment: The use of a "pure" mill approach in establishing guidelines is unnecessary and confusing. The methodology for deriving "pure" mill raw waste loads from actual mill data is unclear, inconsistent, and not statistically valid.

Response: In the contractor's draft report, an attempt was made to account for the diversity that exists within certain subcategories due to such factors as different percentages of pulp produced on-site to manufacture a given product. "Pure" mills, hypothetical mills where distinct unit operations are employed to produce particular products, were defined to be used in establishment of guidelines in an effort to account for these factors. This generally involved predicting raw waste characteristics at pure mills based on actual mill data. For many subcategories, the small number of mills or lack of available data make such predictions extremely difficult and can lead to inaccurate asssessments of the capability of the various technology options considered as the basis of proposed regulations. Because of the inability to check the accuracy of such predictions, the Agency has chosen to base effluent limitations and standards on a model mill approach, similar to that used to establish BPT. Where appropriate, provisions have been made in the regulations to account for the impact of significant factors on the determination of attainable effluent limitations and standards.

5. Comment: The benefits of production process controls are overstated and the estimates of the costs of implementation of this level of technology are understated.

Response: The Agency has reviewed its methodology of determining reductions in raw waste loadings resulting from the implementation of available production process controls and revised this methodology as explained above. Data available to the Agency substantiate the attainability of these raw waste loadings.

EPA intends that the costs of attainment of effluent limitations based on the application of BPT technology plus the addition of applicable production process controls be accurately estimated. EPA does not intend to estimate the costs of implementation of specific production process controls at each mill in the industry. The proposed regulations do not require that specific technology be implemented, only that effluent

limitations be met. Previous cost estimates were reviewed and new cost estimates developed based on application of this technology option. Cost estimates that were received in industry comments that were widely devergent from the Agency contractor's initial estimates involved extensive building modification or the construction of additional chemical recovery capacity that was not contemplated in the preparation of previous and current cost estimates. It is the Agency's opinion that at individual mills where extensive modification and construction would be required to implement a specific production process control, lower cost technology options exist that would allow attainment of the effluent limitations. It is the Agency's position that our current estimates are representative of the costs to attain the effluent limitations based on the implementation of this technology option.

6. Comment: The capability of BPT technology (biological treatment) is overstated in the contractor's draft report. The assumption that biological treatment systems can achieve specified concentrations irrespective of raw waste load is not supported in the contractor's draft report or in the BPT record. Where data exists, the Agency should use that data to determine the capability of biological treatment systems. If data do not exist, the plots of influent versus effluent BOD previously developed by the Agency (see prior Development Document; EPA–440/1–76/047–b, December 1976) could be used to predict the capability of biological treatment systems in removing BOD.

Response: The effluent concentrations presented in the contractor's draft report to predict attainable effluent pollutant levels were based on a preliminary assessment of the capability of biological treatment systems in use in the industry. The Agency has adopted the commenter's recommended approach and has relied on all available data to assess the capability of biological treatment. In fact, the relationships for influent versus effluent BOD mentioned by the commenter have been used in the calculation of effluent BOD from biological treatment systems after the application of production process controls to reduce raw waste loadings (BCT Option 1).

7. Comment: The data base for performance of chemically-assisted clarification is insufficient. Chemical dosage rates assumed in the contractor's draft report are too low and the removal capabilities at the assumed dosage rates are overstated.

Response: Data were submitted to the Agency by industry during the comment period that have served to expand the data base available for evaluation of this technology. Subsequent to the comment period, the Agency has obtained pilot and full-scale data for the application of chemically-assisted clarification to treat the effluent from a mill where bleached kraft fine papers are produced. In addition, several commenters provided information on bench-scale investigations into the proper chemical dosage required to effectively coagulate biologically-treated effluent discharged from facilities representative of several subcategories of the pulp, paper, and paperboard industry. Based on all data available to the Agency in January of 1980, the Agency determined chemical dosage rates representative of that required to effectively coagulate biologically-treated effluents from each of the appropriate subcategories of the pulp, paper, and paperboard point source category.

8. Comment: The application of activated carbon adsorption technology has not been demonstrated for treatment of pulp, paper, and paperboard industry wastewaters. Removal capabilities are overstated and system reliability is questionable.

Response: Information on activated carbon adsorption was presented in the contractor's draft report because it is an available technology for removal of many organic compounds. Many of the 129 specific toxic compounds and the 14 nonconventional pollutants under investigation in this industry are organic compounds, amenable to treatment by the application of activated carbon treatment technology. Therefore, treatment of pulp, paper, and paperboard effluents through application of activated carbon technology was considered to be a viable technology option for removel of toxic and nonconventional organic pollutants. The Agency had not yet completed its assessment of toxic and nonconventional pollutant data at the time of publication of the contractor's draft report. Since that time, the Agency has completed its assessment of the removal capability of existing treatment systems that are attaining BPT effluent limitations. The Agency has determined that little additional toxic or nonconventional pollutant reduction benefit would result from application of this technology in further treating pulp, paper, and paperboard effluents conforming to BPT effluent limitations. As a consequence, the application of granular activated carbon is no longer under consideration as a BAT control and treatment technology option.

9. Comment: Biological pretreatment prior to discharge to a POTW is contrary to Congress' intended support of joint industrial/municipal treatment. Such a requirement could place a significant financial burden on communities with jointly financed municipal-industrial facilities should management of industrial facilities decide to withdraw from POTWs.

Response: Because biological treatment is a proven technology capable of removing many of the toxic pollutants, it was being considered as a pretreatment technology option. This option is no longer being considered by the Agency because a less expensive option is available that ensures that pass through of toxic pollutants or upset of POTWs receiving pulp, paper, and peperboard wastewaters does not occur. Our anslysis of available data indicates that the sources of toxic pollutants (cholorphenolics) that are likely to pass through POTWs are certain slimicide and biocide formulation used at some mills in the industry. Therefore, the most effective technique for removal of these toxic pollutants is the substitution of slimicide and biocide formations that contain toxic pollutants with formulations that do not.

XXV. Solicitation of Comments

EPA invited and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be pointed to with specificity and requires that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving additional comments and information in connection with the following: (1) An alternative methodology for establishing BCT effluent limitations for the pulp, paper, and paperboard industry was submitted by the American Paper Institute (API) about eight months after the end of the formal comment period provided for review of the contractor's draft report. The API proposal involves establishing a set of "best variability performers" (i.e., mills where effluent levels of BOD and TSS within ±50 percent of BPT are attained and where effluent variability is less than that used in the establishment of BTP). Variability factors for this set of mills have been calculated, averaged, and applied to the annual average BOD and TSS effluent levels that formed the basis of BPT. This resulted in a determination of maximum 30-day and maximum daily BOD and TSS effluent limitations. API states that BCT effluent limitations established by

application of this alternative methodology can be achieved through spill containment and equilization. The basic design of existing biological treatment systems would remain unchanged.

API estimates that attainment of BCT limitations based on this methodology would mean reductions of BOD and TSS on the order of 18 to 28 percent when compared to BPT. API has estimated the capital cost of compliance to be between $0.40 to $0.55 billion, substantially less than that anticipated through attaniment of proposed BCT effluent limitations.

The Agency has completed a review of this alternative approach and has several reservations concerning the methodology: (a) The API methodology arbitrarily establishes a set of "best variability performers" without indicating whether the technologies used at this set of mills are consistent with the technology basis used to estimate the costs of compliance (i.e., spill control and equalization). If the technologies on which effluent limitations are based cannot be related to the set of "best variability performers," a serious deficiency exists in the methodology. Effluent limitations based on such a methodology would likely be found to be arbitrary and capricious; and (b) An assumption is made that no improvement in annual average treatment plant performance will occur through application of spill control and equalization. Contrary to this assumption, it is likely that these technologies will result in improved treatment plant performance. If slug loadings and abrupt pH changes that are known to inhibit the performance of biological treatment systems are eliminated, improvement in overall treatment system performance will result, thus lowering annual average BOD and TSS discharges.

As a part of this rulemaking, EPA requests comments on the appropriateness of API's alternative approach.

(2) In order to provide a more extensive data base for this rulemaking, EPA requests that representatives of pulp, paper, and paperboard mills voluntarily sample and analyze for the toxic pollutants proposed for regulation. Samples should be taken, at a minimum, from intake water, raw wastewater, and pretreated or final effluent where treatment is in place. Voluntary sampling and analyses must be conducted by the same methods used by EPA and, therefore, individuals who intend to participate in this effort should contact Robert W. Dellinger (see ADDRESS at beginning of preamble) for further assistance. Sampling and analysis procedures and a list of laboratories capable of performing the analyses will be made available to those wishing to participate in this program.

(3) EPA requests that mill representatives review all data submitted to the Agency, including data on flow and production, to insure their accuracy.

(4) Characterization of the nature of sludges generated at pulp, paper, and paperboard mills due to wastewater treatment and the costs of sludge handling and disposal are important to these regulations and regulations being developed by EPA's Office of Solid Waste, under authority of the Resource Conservation and Recovery Act (RCRA). The Agency solicits additional data concerning the quantities, pollutant content, and handling and disposal costs for all solid wastes.

(5) Possible underestimation of production process control technology and end-of-pipe treatment costs were issues raised during public comment. In order to perform a meaningful comparison of EPA cost data and industry cost data, EPA requests detailed information on salient design and operating characteristics, estimates of installed cost for each unit or piece of equipment, the date of installation and the amount of installation labor required, and the cost for operation and maintenance broken down into units of usage and cost for energy (kilowatt hours or equivalent), chemicals, and labor (work-years or equivalent). Industry submittals to date have been lacking in sufficient detailed information to enable direct comparision to EPA cost estimates. In many instances, a closer look at industry estimates has indicated that no direct comparison can be made because of significant differences in the assumptions made in estimating costs. Sufficient detail must be provided in comments to provide a thorough understanding of the assumptions used in estimating costs and of the exact system or units for which cost estimates have been provided.

(6) The Agency is seeking additional information on the chemical dosage rates necessary to effect efficient clarification of biologically treated effluents in each of the industry subcategories. Sufficient detailed information must be provided in the comments to enable a determination by the Agency of the optimum dosage rate required to obtain a highly clarified effluent. Submittals to date have been lacking in information such as pH of the wastewater before and after chemical addition, consideration of whether the addition of sulfuric acid and alum will reduce chemical requirements, and methods used in the calculation of solids generation.

(7) The Agency is seeking additional information on ammonia discharges from integrated mills where ammonia-based cooking chemicals are used. Information is sought on raw waste and final effluent levels of ammonia, available end-of-pipe technologies and their capability to remove ammonia, the feasibility of change to a different chemical base, and the costs associated with the application of end-of-pipe or production process control technologies.

(8) The Council on Wage and Price Stability (CWPS) recently submitted to the Agency a detailed study suggesting a different methodology to determine the POTW comparison figure used in the BCT cost-reasonableness test. Copies of the CWPS study are available by contacting Mr. Robert C. Ellis (see FOR FURTHER INFORMATION CONTACT at beginning of preamble).

The CWPS study implies a POTW comparison figure of about 17 cents per pound of BOD and TSS removed, a level that would result in very little control beyond BPT. The Agency is currently reviewing the CWPS study in detail. Any change in the cost-reasonableness test could affect the BCT regulations proposed herein. As part of this rulemaking, EPA requests comments on the appropriateness of the CWPS methodology and analysis.

Dated: December 11, 1980.

Douglas M. Costle,

Administrator.

Appendix A—Abbreviations, Acronyms and Other Terms Used in This Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BAT—The best available technology economically achievable, under section 301(b)(2)(A) of the Act

BCT—The best conventional pollutant control technology, under section 301(b)(2)(E) of the Act

BMP—Best management practices, under section 304(3) of the Act

BPT—The best practicable control technology currently available, under section 301(b)(1)(A) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217)

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States

Indirect discharger—A facility which discharges or may discharge

pollutants into a publicly owned treatment works
NPDES permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act
NSPS—New source performance standards under section 306 of the Act
POTWs—Publicly owned treatment works
PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act
PSNS—Pretreatment standards for new sources of indirect discharges, under section 307(c) of the Act
RCRA—Resource Conservation and Recovery Act (PL 94–580) of 1976, Amendments to Solid Waste Disposal Act

Appendix B—Toxic Pollutants Not Detected in Treated Effluents

acenaphthene, acrolein, 1,2,4-trichlorobenzene, hexachlorobenzene, hexachloroethane, chloroethane, bis(2-chloroethyl) ether, 2-chloroethyl vinyl ether, para-chloro-meta-cresol, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 3,3'-dichlorobenzidine, 1,2-dichloropropane, 1,2-diphenylhydrazine, 4-chlorophenyl phenyl ether, 4-bromophenyl phenyl ether, bis(2-chloroisopropyl) ether, bis(2-chloroethoxy) methane, methylene chloride (dichloromethane), methyl chloride (chloromethane), methyl bromide (bromomethane), dichlorodifluoromethane, hexachlorobutadiene, hexachlorocyclopentadiene, 2-nitrophenol, 2,4-dinitrophenol, 4,6-dinitro-o-cresol, *n*-nitroso-dimethylamine, *n*-nitroso-di-*n*-propylamine, bis(2-ethylhexyl)phthalate, 1,2-benzanthracene (benzo(a)anthracene), 3,4-benzopyrene (benzo(a)pyrene), 3,4-benzofluoranthene, 11,12-benzofluoranthene (benzo(k)fluoranthene), 1,12-benzoperylene(benzo(ghi)perylene), phenanthrene, dibenzo(a,h)anthracene(1,2,5,6-dibenzanthracene), vinyl chloride (chloroethylene), aldrin, dieldrin, chlordane, 4,4'-DDT, 4,4'-DDE (p,p'-DDX), 4,4'-DDD (p,p'-TDE), a-endosulfan-Alpha, b-endosulfan-Beta, endosulfan sulfate, endrin, endrin aldehyde, heptachlor, heptachlor epoxide, a-BHC-Alpha, b-BHC-Beta, r-BHC (lindane)-Gamma, g/BHC-Delta, toxaphene, asbestos

Appendix C—Toxic Pollutants Detected in Treated Effluents at Amounts Too Small To Be Effectively Reduced by Technologies Known to the Administrator

acrylonitrile, benzene, benzidine, carbon tetrachloride (tetrachloromethane), chlorobenzene, 1,2-dichloroethane, 1,1,1-trichloroethane, 1,1-dichloroethane, 1,1,2-trichloroethane, 1,1,2,2-tetrachloroethane, bis (chloromethyl) ether, 2-chloronaphthalene, 2-chlorophenol, 1,2-dichlorobenzene, 1,1-dichloroethylene, 1,2-trans-dichloroethylene, 2,4-dichlorophenol, 1,2-dichloropropylene (1,3-dichloropropene), 2,4-dimethylphenol, 2,4-dinitrotoluene, 2,6-dinitrotoluene, ethylbenzene, fluoranthene, bromoform (tribromomethane), dichlorobromomethane, trichlorofluoromethane, chlorodibromomethane, isophorone, naphthalene, nitrobenzene, 4-nitrophenol, N-nitrosodiphenylamine, phenol, butyl benzyl phthalate, di-n-butyl phthalate, di-n-octyl phthalate, diethyl phthalate, dimethyl phthalate, chrysene, acenaphthylene, anthracene, fluorene, indeno (1,2,3-cd)pyrene (2,3-o-phenylenepyrene), pyrene, tetrachloroethylene, toluene, trichloroethylene, PCB–1242 (Arochlor 1242),* PCB–1254 (Arochlor 1254),* PCB–1221 (Arochlor 1221),* PCB–1232 (Arochlor 1232),* PCB–1248 (Arochlor 1248),* PCB–1260 (Arochlor 1260),* PCB–1016 (Arochlor 1016),* Antimony (Total), Arsenic (Total), Beryllium (Total), Cadmium (Total), Chromium (Total), Copper (Total), Cyanide (Total), Lead (Total), Mercury (Total), Nickel (Total), Selenium (Total), Silver (Total), Thallium (Total)

It is proposed to amend Title 40 by revising Part 430 to read as follows:

PART 430—THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

Subpart A—Unbleached Kraft Subcategory

Sec.
430.10 Applicability; description of the unbleached kraft subcategory.
430.11 Specialized definitions.
430.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
430.14 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
430.15 New source performance standards (NSPS).
430.16 Pretreatment standards for existing sources (PSES).
430.17 Pretreatment standards for new sources (PSNS).

Subpart B—Sodium-Based Neutral Sulfite Semi-Chemical Subcategory

430.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]
430.24 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) [Reserved]
430.25 New source performance standards (NSPS) [Reserved]
430.26 Pretreatment standards for existing sources (PSES) [Reserved]
430.27 Pretreatment standards for new sources (PSNS) [Reserved]

Subpart C—Ammonia-Based Neutral Sulfite Semi-Chemical Subcategory

430.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]
430.34 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) [Reserved]
430.35 New source performance standards (NSPS) [Reserved]
430.36 Pretreatment standards for existing sources (PSES) [Reserved]
430.37 Pretreatment standards for new sources (PSNS) [Reserved]

Subpart D—Unbleached Kraft-Neutral Sulfite Semi-Chemical (Cross Recovery) Subcategory

430.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]
430.44 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) [Reserved]
430.45 New source performance standards (NSPS) [Reserved]
430.46 Pretreatment standards for existing sources (PSES) [Reserved]
430.47 Pretreatment standards for new sources (PSNS) [Reserved]

Subpart E—Paperboard From Wastepaper Subcategory

430.50 Applicability; description of the paperboard from wastepaper subcategory.
430.51 Specialized definitions.

*PCBs have been found at part per billion levels at mills where wastepaper is used as a raw material. Under Paragraph 12 of the Settlement Agreement, the Administrator may establish more stringent effluent limitations, guidelines, standards, or other necessary controls upon a determination that the discharge of PCBs would interfere with the attainment or maintenance of water quality in a specific portion of the navigable waters.

Subpart AA—Nonintegrated-Paperboard Subcategory

Authority: Secs. 301, 304, 306, 308, and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by Clean Water Act of 1977, Pub. L. 95–217).

Subpart A—Unbleached Kraft Subcategory

§ 430.10 Applicability; description of the unbleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper at unbleached kraft mills.

§ 430.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous discharges shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control techology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR Sections 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart A

[Facilities where linerboard is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.5	2.0
TSS	6.2	3.7
pH—Within the range of 5.0 to 9.0 at all times.		

Subpart A

[Facilities where bag paper and other mixed products are produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	4.5	2.7
TSS	7.2	4.4
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.14 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations.

Concentration limitations are only applicable to non-continuous dischargers.

Subpart A

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0013	0.025
Trichlorophenol	.0016	.030

§ 430.15 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive

days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart A

[Facilities where linerboard is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	2.1	1.2
TSS	3.7	2.2
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.00078	0.025
Trichlorophenol	.00094	.030

Subpart A

[Facilities where bag paper and other mixed products are produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.6	2.1
TSS	5.8	3.5
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0011	0.025
Trichlorophenol	.0013	.030

§ 430.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works (POTWs) must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart A

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart A

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0013
Trichlorophenol	0.0016

§ 430.17 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart A

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart A

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/100 lb) of product)
Pentachlorophenol	0.0013
Trichlorophenol	.0016

Subpart B—Sodium-Based Neutral Sulfite Semi-Chemical Subcategory

§ 430.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]

§ 430.24 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) [Reserved]

§ 430.25 New source performance standards (NSPS) [Reserved]

§ 430.26 Pretreatment standards for existing sources (PSES) [Reserved]

§ 430.27 Pretreatment standards for new sources (PSNS) [Reserved]

Subpart C—Ammonia-Based Neutral Sulfite Semi-Chemical Subcategory

§ 430.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]

§ 430.34 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) [Reserved]

§ 430.35 New source performance standards (NSPS) [Reserved]

§ 430.36 Pretreatment standards for existing sources (PSES) [Reserved]

§ 430.37 Pretreatment standards for new sources (PSNS) [Reserved]

Subpart D—Unbleached Kraft-Neutral Sulfite Semi-Chemical (Cross Recovery) Subcategory

§ 430.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved]

§ 430.44 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) [Reserved]

§ 430.45 New source performance standards (NSPS) [Reserved]

§ 430.46 Pretreatment standards foe existing sources (PSES) [Reserved]

§ 430.47 Pretreatment standards for new sources (PSNS) [Reserved]

Subpart E—Paperboard From Wastepaper Subcategory

§ 430.50 Applicability; description of the paperboard from wastepaper subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of paperboard from wastepaper.

§ 430.51 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82.

Subpart E

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	1.2	0.74
TSS	1.5	.89
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.54 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 125.32, and existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best attainable by the application of the best available technology economically achievable (BAT), except that non-continous discharges shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart E

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.00032	0.025
Trichlorophenol	0.00039	.030

§ 430.55 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart E

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
Bod*5*	1.20	0.74
TSS	1.50	0.89
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.00032	0.025
Trichlorophenol	.00039	.030

§ 430.56 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart E

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart E

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.00075
Trichlorophenol	.00090

§ 430.57 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart E

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart E

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.00075
Trichlorophenol	.00090

Subpart F—Dissolving Kraft Subcategory

§ 430.60 Applicability; description of the dissolving kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of dissolving pulp at kraft mills.

§ 430.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production in air-dry-tons (10% moisture) divided by the number of operating days during that year. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart F

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	12.2	7.2
TSS	18.6	11.3
pH—Within the range of 5.0 to 9.0 at all times		

§ 430.64 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR Sections 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart F

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.055	0.24
Pentachlorophenol	.0057	.025
Trichlorophenol	.0069	.030

§ 430.65 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart F

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	11.2	6.6

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
TSS	17.1	10.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	milligrams per liter
Chloroform	0.051	0.240
Pentachlorophenol	.0053	.025
Trichlorophenol	.0063	.030

§ 430.66 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart F

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart F

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0057
Trichlorophenol	.0069

§ 430.67 Pretreatment standards for new sources (PSNS)

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart F

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart F

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0057
Trichlorophenol	.0070

Subpart G—Market Bleached Kraft Subcategory

§ 430.70 Applicability; description of the market bleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of market pulp at bleached kraft mills.

§ 430.71 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production in air-dry-tons (10% moisture) divided by the number of operating days during that year. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average efffluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	10.5	6.2
TSS	13.2	8.0
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.74 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall

not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart G

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.042	0.240
Pentachlorophenol	.0043	.025
Trichlorophenol	.0052	.030

§ 430.75 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart G

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	8.2	4.8
TSS	10.2	6.2
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.032	0.240
Pentachlorophenol	.0034	.025
Trichlorophenol	.0040	.030

§ 430.76 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart G

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart G

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0043
Trichlorophenol	.0052

§ 430.77 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart G

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart G

Pollutant or pollutant property	PSNS effluent limitations (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0043
Trichlorophenol	.0052

Subpart H—BCT Bleached Kraft Subcategory

§ 430.80 Applicability; description of the BCT bleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of paperboard, coarse paper, and tissue paper at bleached kraft mills.

§ 430.81 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper and paperboard production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	7.5	4.5
TSS	10.8	6.6
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.84 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart H

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.035	0.240
Pentachlorophenol	.0037	.025
Trichlorophenol	.0044	.030

§ 430.85 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart H

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	5.8	3.5
TSS	8.4	5.1
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.028	0.240
Pentachlorophenol	.0029	.025
Trichlorophenol	.0034	.030

§ 430.86 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart H

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart H

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0037
Trichlorophenol	.0044

§ 430.87 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS).

Subpart H

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart H

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0037
Trichlorophenol	.0044

Subpart I—Fine Bleached Kraft Subcategory

§ 430.90 Applicability; description of the fine bleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and fine papers at bleached kraft mills.

§ 430.91 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.93 Effient limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the applicant of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82.

Subpart I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	5.9	3.5
TSS	9.2	5.6
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.94 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any exising point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart I

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.031	0.240
Pentachlorophenol	.0032	.025
Trichlorophenol	.0039	.030

§ 430.95 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart I

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	3.8	2.3
TSS	6.0	3.6
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.020	0.240
Pentachlorophenol	.0021	.025
Trichlorophenol	.0025	.030

§ 430.96 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart I

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart I

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0032
Trichlorophenol	.0039

§ 430.97 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart I

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart I

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day) (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0032
Trichlorophenol	.0039

Subpart J—Papergrade Sulfite (Blow Pit Wash) Subcategory

§ 430.100 Applicability; description of the papergrade sulfite (blow pit wash) subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper at papergrade sulfite mills, where blow pit pulp washing techniques are used.

§ 430.101 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

(e) Sulfite cooking liquor shall be defined as bisulfite cooking liquor when the pH of the liquor is between 3.0 and 6.0 and as acid sulfite cooking liquor when the pH is less than 3.0.

§ 430.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD_5 by 1.78 and TSS by 1.82.

Subpart J

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days
	Kg/kkg or (or pounds per 1,000 lb) of product	
BOD $_5$	$0.0033x^2-0.176x+11.1$	$0.0020x^2-0.104x+6.61$
TSS	$0.0055x^2-0.291x+18.4$	$0.0033x^2-0.177x+11.2$
pH	Within the range of 5.0 to 9.0 at all times.	

x = Percent sulfite pulp in final product

§ 430.104 Effluent limitations representing the degree of effleuent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart J

Pollutant or pollutant property	BAT effluent limitations (maximum for any one day)	
	Kg/kkg (pounds per 1,000 lb) of product	Milligrams/liter
Chloroform	$(0.00912x^2-0.485x+30.72)/1,000$	0.240
Pentachlorophenol	$(0.000950x^2-0.0506x+3.2)/1,000$	0.025
Trichlorohenol	$(0.00114x^2-0.067x+30.84)/1,000$	0.030

x = Percent sulfite pulp in final product.

§ 430.105 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart J

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
BOD5	$0.0025x^2 - 0.134x + 8.46$	$0.0015x^2 - 0.079x + 5.02$
TSS	$0.0042x^2 - 0.221x + 14.0$	$0.0025x^2 - 0.134x + 8.50$
pH	Within the range of 5.0 to 9.0 at all times.	
	Maximum for any one day	
	Kg/kkg (pounds per 1,000 lb) of product	Milligrams/liter
Chloroform	$(0.00693x^2 - 0.369x + 23.4)/1,000$	0.240
Pentachlorophenol	$(0.000722x^2 - 0.0384x + 2.43)/1,000$	0.025
Trichlorophenol	$(0.000866x^2 - 0.0461x + 2.92)/1,000$	0.030

x = Percent sulfite pulp in final product.

§ 430.106 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart J

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart J

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), Kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	$(0.000950x^2 - 0.0506x + 3.2)/1,000$
Trichlorophenol	$(0.00114x^2 - 0.0607x + 3.84)/1,000$

x = percent sulfite pulp in final product.

§ 430.107 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart J

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) Milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart J

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) Kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	$(0.000950x^2 - 0.0506x + 3.2)/1,000$.
Trichlorophenol	$(0.00114x^2 - 0.0607x + 3.84)/1,000$.

x = percent sulfite pulp in final product.

Subpart K—Dissolving Sulfite Pulp Subcategory

§ 430.110 Applicability; description of the dissolving sulfite pulp subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp at dissolving sulfite mills.

§ 430.111 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production in air-dry-tons (10% moisture) divided by the number of operating days during that year. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum-barking operations which are those drum barking operations that use substantial quantitites of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for noncontinuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30

consecutive days effluent limitations set forth in this subpart.

§ 430.113 Effluent limitations representing the degree of effluent reduction attainable by the applicaton of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSSS by 1.82.

Subpart K

[Facilities where nitration grade pulp is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	41.4	21.5
TSS	70.6	38.0
pH—Within the range of 5.0 to 9.0 at all times.		

Subpart K

[Facilities where viscose grade pulp is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	44.3	23.1
TSS	70.6	38.0
pH—Within the range of 5.0 to 9.0 at all times.		

Subpart K

[Facilities where cellophane grade pulp is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	48.1	25.0
TSS	70.6	38.0
pH—Within the range of 5.0 to 9.0 at all times.		

Subpart K

[Facilities where acetate grade pulp is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	52.0	27.1
TSS	70.6	38.0
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.114 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in Kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart K

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.066	0.240
Pentachlorophenol	.0069	.025
Trichlorophenol	.0083	.030

§ 430.115 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous deschargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart K

[Facilities where nitration grade pulp is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	20.3	12.3
TSS	38.5	23.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.059	0.240
Pentachlorophenol	.0062	.025
Trichlorophenol	.0074	.030

Subpart K

[Facilities where viscose grade pulp is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	21.6	12.8
TSS	38.5	23.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.059	0.240
Pentachlorophenol	.0062	.025
Trichlorophenol	.0074	.030

Subpart K

[Facilities where cellophane grade pulp is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	23.5	13.9
TSS	38.5	23.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.059	0.240
Pentachlorophenol	.0062	.025
Trichlorophenol	.0074	.030

Subpart K

[Facilities where acetate grade pulp is produced]

	NSPS effluent limitations	
Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	25.4	15.0
TSS	38.5	23.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.059	0.240
Pentachlorophenol	.0062	.025
Trichlorophenol	.0074	.030

§ 430.116 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart K

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart K

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0069
Trichlorophenol	.0083

§ 430.117 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretrreatment standards for new sources (PSNS):

Subpart K

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart K

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0069
Trichlorophenol	.0083

Subpart L—Grounded-Chemi-Mechancial Subcategory

§ 430.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 430.124 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 430.125 New source performance standards (NSPS). [Reserved]

§ 430.126 Pretreatment standards for existing sources (PSES). [Reserved]

§ 430.127 Pretreatment standards for new sources (PSNS). [Reserved]

Subpart M—Groundwood-Thermo-Mechanical Subcategory

§ 430.130 Applicability; description of the groundwood-thermo-mechanical subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper at groundwood mills through the application of the thermo-mechanical process.

§ 430.131 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect

wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart M

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.9	2.3
TSS	6.2	3.7
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.134 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart M

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0022	0.025
Trichlorophenol	.0026	.030
Zinc	.26	3.0

§ 430.135 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart M

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	1.5	0.89
TSS	2.3	1.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.00083	0.025
Trichlorophenol	.0010	.030
Zinc	.10	3.0

§ 430.136 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart M

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030
Zinc	3.0

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart M

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0022
Trichlorophenol	0.0026
Zinc	0.26

§ 430.137 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart M

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030
Zinc	3.0

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart M

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0022
Trichlorophenol	0.0026
Zinc	0.26

Subpart N—Groundwood-CMN Papers Subcategory

§ 430.140 Applicability; description of the groundwood-CMN papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and coarse paper, molded pulp products, and newsprint at groundwood mills.

§ 430.141 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82.

Subpart N

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	4.5	2.7
TSS	6.3	3.8
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.144 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart N

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0025	0.025
Trichlorophenol	.0030	.030
Zinc	.30	3.0

§ 430.145 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart N

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	3.2	1.9
TSS	4.4	2.7
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per/liter
Pentachlorophenol	0.0020	0.025
Trichlorophenol	.0024	.030
Zinc	.24	3.0

§ 430.146 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart N

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030
Zinc	3.0

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart N

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0025
Trichlorophenol	.0030
Zinc	.30

§ 430.147 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart N

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030
Zinc	3.0

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart N

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0025
Trichlorophenol	.0030
Zinc	.30

Subpart O—Groundwood-Fine Papers Subcategory

§ 430.150 Applicability; description of the groundwood-fine papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and fine paper at groundwood mills.

§ 430.151 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations, such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.153 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart O

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	4.1	2.4
TSS	5.9	3.5
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.154 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart O

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day): Kg/kkg (lb/1,000 lb) of product	BAT effluent limitations (Maximum for any 1 day): Milligrams per liter
Pentachlorophenol	0.0023	0.025
Trichlorophenol	.0027	.030
Zinc	.27	3.0

§ 430.155 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart O

Pollutant or pollutant property	NSPS effluent limitations: Maximum for any 1 day	NSPS effluent limitations: Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	2.6	1.5
TSS	3.7	2.2
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day: Kg/kkg (lb/1,000 lb) of product	Maximum for any 1 day: Milligrams per liter
Pentachlorophenol	0.0014	0.025
Trichlorophenol	.0017	.030
Zinc	.17	3.0

§ 430.156 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart O

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030
Zinc	3.0

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart O

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0023
Trichlorophenol	.0027
Zinc	.27

§ 430.157 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart O

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030
Zinc	3.0

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart O

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) kg/kkg (orlb/1,000 lb) of product
Pentachlorophenol	0.0023
Trichlorophenol	.0027
Zinc	.27

Subpart P—Soda Subcategory

§ 430.160 Applicability; description of the soda subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper at soda mills.

§ 430.161 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.163 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continous discharges shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart P

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	5.9	3.5
TSS	9.2	5.6
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.164 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart P

Poluant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.031	0.240
Pentachlorophenol	.0032	.025
Trichlorphenol	.0039	.030

§ 430.165 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart P

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.8	2.3
TSS	6.0	3.6

pH—Within the range of 5.0 to 9.0 at all times.

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Chloroform	0.020	0.240
Pentachlorophenol	.0021	.025
Trichlorophenol	.0025	.030

§ 430.166 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart P

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart P

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0032
Trichlorophenol	.0039

§ 430.167 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart P

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart P

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0032
Trichlorophenol	.0039

Subpart Q—Deink Subcategory

§ 430.170 Applicability; description of the deink subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper at deink mills.

§ 430.171 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above,

requires compliance with the effluent limitations established by this subpart for noncontinuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for noncontinuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.173 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82.

Subpart Q

[Facilities where fine paper is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	8.9	5.3
TSS	12.5	7.6

pH—Within the range of 5.0 to 9.0 at all times.

Subpart Q

[Facilities where tissue paper is produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	9.8	5.8
TSS	15.0	9.1

pH—Within the range of 5.0 to 9.0 at all times.

§ 430.174 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations.

Concentration limitations are only applicable to non-continuous dischargers.

Subpart Q

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.024	0.240
Pentachlorophenol	.0025	.025
Trichlorophenol	.0031	.030

§ 430.175 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart Q

[Facilities where fine paper is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	4.3	2.5
TSS	6.0	3.6

pH—Within the range of 5.0 to 9.0 at all times.

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Chloroform	0.012	0.240
Pentachlorophenol	.0012	.025
Trichlorophenol	.0015	.030

Subpart Q

[Facilities where tissue paper is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	6.0	3.6
TSS	9.2	5.6

pH—Within the range of 5.0 to 9.0 at all times.

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Chloroform	0.015	0.240
Pentachlorophenol	.0016	.025
Trichlorophenol	.0019	.030

Subpart Q

[Facilities where newprint is produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	5.1	3.1
TSS	9.9	6.0

pH—Within the range of 50 to 9.0 at all time

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Chloroform	0.016	0.240
Pentachlorophenol	.0017	.025
Trichlorophenol	.0020	.030

§ 430.176 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart Q

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart Q

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.025
Trichlorophenol	.0031

§ 430.177 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart Q

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart Q

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.025
Trichlorophenol	.0031

Subpart R—Nonintegrated-Fine Papers Subcategory

§ 430.180 Applicability; description of the nonintegrated-fine papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of fine paper at nonintegrated mills.

§ 430.181 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuouse dishcarger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.183 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart R

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for 1 day	Average of daily consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.9	2.3
TSS	4.1	2.5
pH—wWithin the range of 5.0 to 9.0 at all times.		

§ 430.184 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart R

Pollutant or pollutant property	BAT effluent limitations (maximum for one 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/per liter
Pentachlorophenol	0.0016	0.025
Trichlorophenol	.0019	.030

§ 430.185 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performances standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average

effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart R

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	2.5	1.5
TSS	2.6	1.6
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/per liter
Pentachlorophenol	0.0010	0.025
Trichlorophenol	.0012	.030

§ 430.186 Pretreatment of existing sources (PSES)

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart R

Pollutant or pollutant property	PSES effluent limitations (maximum to rany 1 day) milligrams per liter (mg/l)
Pentacholorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart R

Pollutant or pollutant property	PSES Effluent limitations (maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0016
Trichlorophenol	.0019

§ 430.187 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart R

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day) milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart R

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0016
Trichlorophenol	.0019

Subpart S—Nonintegrated-Tissue Papers Subcategory

§ 430.190 Applicability; description of the nonintegrated-tissue papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tissue papers at nonintegrated mills.

§ 430.191 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.193 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76.

Subpart S

BCT Effluent Limitations	Pollutant or pollutant property	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	9.4	5.2
TSS	8.5	4.1
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.194 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart S

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0020	0.025
Trichlorophenol	.0024	.030

§ 430.195 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.79 and TSS by 1.76. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart S

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	6.1	3.4
TSS	5.3	2.6
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentacholorophenol	0.0020	0.025
Trichlorophenol	0.0024	0.030

§ 430.196 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart S

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart S

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0024
Trichlorophenol	0.0029

§ 430.197 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart S

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart S

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0024
Trichlorophenol	0.0029

Subpart T—Tissue From Wastepaper Subcategory

§ 430.200 Applicability; description of the tissue from wastepaper subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tissue paper from wastepaper without de-inking at secondary fiber mills.

§ 430.201 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.203 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent

reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart T

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	6.6	3.9
TSS	7.8	4.7
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.204 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart T

Pollutant or pollutant property	BAT effluent limitations, maximum for any 1 day	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0017	0.025
Trichlorophenol	0.0020	0.030

§ 430.205 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart T

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	6.6	3.9
TSS	7.8	4.7
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0017	0.025
Trichlorophenol	0.0020	0.030

§ 430.206 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart T

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart T

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0026
Trichlorophenol	.0032

§ 430.207 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart T

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart T

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0026
Trichlorophenol	.0032

Subpart U—Papergrade Sulfite (Drum Wash) Subcategory

§ 430.210 Applicability; description of the papergrade sulfite (drum wash) subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper at papergrade sulfite mills, where vacuum or pressure drums are used to wash pulp.

§ 430.211 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured at the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10 percent moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for noncontinuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for noncontinuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

(e) Sulfite cooking liquor shall be defined as bisulfite cooking liquor when the pH of the liquor is between 3.0 and 6.0 and as acid sulfite cooking liquor when the pH is less than 3.0.

§ 430.213 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart U

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
BOD5	$0.0033x^2 - 0176x + 11.1$	$0.0020x^2 - 0.104x + 6.61$
TSS	$0.0055x^2 - 0.291x + 18.4$	$0.0033x^2 - 0.177x + 11.2$
pH	Within the range of 5.0 to 9.0 at all times.	

x = Percent sulfite pulp in final product.

§ 430.214 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart U

Pollutant or pollutant property	BAT effluent limitations (maximum for any one day)	
	Kg/kkg (pounds per 1,000 lb) of product	Milligrams/liter
Chloroform	$(0.00912x^2 - 0.485x + 30.72)/1,000$	0.240
Pentachlorophenol	$(0.000950x^2 - 0.506x + 3.2)/1,000$	0.025
Trichlorophenol	$(0.00114x^2 - 0.0607x + 3.84)/1,000$	0.030

x = Percent sulfite pulp in final product.

§ 430.215 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart U

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any one day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
BOD5	$0.0025x^2 - 0.134x + 8.46$	$0.0015x^2 - 0.079x + 5.02$
TSS	$0.0042x^2 - 0.221x + 14.0$	$0.0025x^2 - 0.134x + 8.50$
pH	Within the range of 5.0 to 9.0 at all times.	

	Maximum for any one day	
	Kg/kkg (pounds per 1,000 lb) of product	Milligrams/liter
Chloroform	$(0.00693x^2 - 0.369x + 23.4)/1,000$	0.240
Pentachlorophenol	$(0.000722x^2 - 0.0384x + 2.43)/1,000$	0.025
Trichlorophenol	$(0.000866x^2 - 0.0461x + 2.92)/1,000$	0.030

x = Percent sulfite pulp in final product.

§ 430.216 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pullutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart U

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart U

Pollutant or pollutant property	PSES effluent limitations—maximum for any 1 day (kg/kkg (or lb/1,000lb) of product)
Pentachlorophenol	$(0.000950\ x^2 - 0.0506\ x + 3.2)/1,000$
Trichlorophenol	$(0.00114\ x^2 - 0.0607\ x + 3.84)/1,000$

x=percent sulfite pulp in final product

§ 430.217 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart U

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart U

Pollutant or pollutant property	PSNS effluent limitations—maximum for any 1 day kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	$(0.000950\ x^2 - 0.0506\ x + 3.2)/1,000$
Trichlorophenol	$(0.00114\ x^2 - 0.0607\ x + 3.84)/1,000$

x=percent sulfite pulp in final product.

Subpart V—Unbleached Kraft and Semi-Chemical Subcategory

§ 430.220 Applicability; description of the unbleached kraft and semi-chemical subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper at combined unbleached kraft and semi-chemical mills, wherein the spent semi-chemical cooking liquor is burned within the unbleached kraft chemical recovery system.

§ 430.221 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.223 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart V

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	5.3	3.1
TSS	8.7	5.3
pH—Within the range of 6.0 to 9.0 at all times.		

§ 430.224 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart V

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0015	0.025
Trichlorophenol	.0018	.030

§ 430.225 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart V

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.4	2.0
TSS	5.7	3.4
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.00095	0.025
Trichlorophenol	0.0011	0.030

§ 430.226 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart V

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart V

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0015
Trichlorophenol	0.0018

§ 430.227 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart V

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart V

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0015
Trichlorophenol	0.0018

Subpart W—Semi-Chemical Subcategory

§ 430.230 Applicability; description of the semi-chemical subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper at semi-chemical mills.

§ 430.231 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.233 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart W

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	5.3	3.1
TSS	7.2	4.4
pH—Within the range of 6.0 to 9.0 at all times.		

§ 430.234 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart W

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0011	0.025
Trichlorophenol	0.0013	0.030

§ 430.235 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart W

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	3.3	1.9
TSS	4.5	2.7
pH—Within the range of 5.0 to 9.0 at all times.		

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.00067	0.025
Trichlorophenol	0.00080	0.030

§ 430.236 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart W

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart W

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0011
Trichlorophenol	0.0013

§ 430.237 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart W

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart W

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0011
Trichlorophenol	0.0013

Subpart X—Wastepaper—Molded Products Subcategory

§ 430.240 Applicability; description of the wastepaper-molded products subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of molded products from wastepaper without deinking at secondary fiber mills.

§ 430.241 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30

consecutive days effluent limitations set forth in this subpart.

§ 430.242 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82.

Subpart X

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	4.4	2.3
TSS	10.8	5.8
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.243 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82

Subpart X

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	1.8	1.1
TSS	3.5	2.1

Subpart X—Continued

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range of 5.0 to 9.0 at all times		

§ 430.244 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart X

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.00059	0.025
Trichlorophenol	0.00071	0.030

§ 430.245 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart X

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg or (lb/1,000 lb) of product	
BOD5	1.8	1.1

Subpart X—Continued

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	3.4	2.1
pH—Within the range of 5.0 to 9.0 at all times		

Pollutant or pollutant property	Maximum for any 1 day	
	kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.00059	0.025
Trichlorophenol	0.00071	0.030

§ 430.246 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart X

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart X

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0017
Trichlorophenol	0.0021

§ 430.247 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart X

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.0025
Trichlorophenol	0.0030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart X

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0017
Trichlorophenol	0.0021

Subpart Y—Nonintegrated-Lightweight Paper Subcategory

§ 430.250 Applicability; description of the nonintegrated-lightweight papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of lightweight paper at nonintegrated mills.

§ 430.251 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous dicharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.252 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76.

Subpart Y

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	23.9	13.2
TSS	21.6	10.6
pH—Within the range of 5.0 to 9.0 at all times.		

Subpart Y

[Facilities where electrical grade papers are produced]

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	37.8	20.8
TSS	34.0	16.7
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.253 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76.

Subpart Y

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	18.9	10.4
TSS	16.9	8.3
pH—Within the range of 5.0 to 9.0 at all times.		

Subpart Y

[Facilities where electrical grade papers are produced]

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	32.8	18.1
TSS	29.5	14.4
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.254 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart Y

Pollutant or pollutant property	BAT effluent limitations—maximum for any 1 day	
	Kg/kkg(lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0040	0.025
Trichlorophenol	.0048	.030

Subpart Y

[Facilities where electrical grade papers are produced]

Pollutant or pollutant property	BAT effluent limitations—maximum for any 1 day	
	Kg/kkg(lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0070	0.025
Trichlorophenol	.0084	.030

§ 430.255 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD_5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD_5 by 1.79 and TSS by 1.76. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart Y

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (or lb/1,000 lb) of product	
BOD*	12.1	6.7
TSS	10.4	5.1

pH—Within the range of 5.0 to 9.0 at all times.

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg(lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0040	0.025
Trichlorophenol	.0048	.030

Subpart Y

[Facilities where electrical grade papers are produced]

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*	21.3	11.7
TSS	18.3	8.9

pH—Within the range of 5.0 to 9.0 at all times.

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg(1b/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0070	0.025
Trichlorophenol	.0084	.030

§ 430.256 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart Y

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day) (milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart Y

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day) kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0051
Trichlorophenol	.0061

Subpart Y

[Facilities where electrical grade papers are produced]

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day) Kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0080
Trichlorophenol	.0096

§ 430.257 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart Y

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) Milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart Y

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) Kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0051
Trichlorophenol	0.0061

Subpart Y

[Facilities where electrical grade papers are produced]

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day) Kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0080
Trichlorophenol	0.0096

Subpart Z—Nonintegrated-Filter and Nonwoven Subcategory

§ 430.260 Applicability; description of the nonintegrated-filter and nonwoven subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of filter and nonwoven papers at nonintegrated mills.

§ 430.261 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in

terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.262 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the averge of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76.

Subpart Z

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	29.4	16.2

Subpart Z—Continued

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	26.6	13.0

pH—Within the range of 5.0 to 9.0 at all times.

§ 430.263 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations for BOD5 *by 1.79 and TS by 1.78.*

Subpart Z

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	23.4	12.9
TSS5	21.1	10.3

pH—Within the range of 5.0 to 9.0 at all times.

§ 430.264 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart Z

Pollutant or pollutant property	BAT effluent limitations (maximum for any 1 day)	
	Kg/kkg (lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0050	0.025
trichlorophenol	0.0059	0.030

§ 430.265 New source performance standards (NSPS)

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart Z

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	15.1	8.3
TSS	13.0	6.4

pH—Within the range of 5.0 to 9.0 at all times.

	Maximum for any 1 day	
	Kg/kkg (lb/1,000 lb) of product	Milligrams/liter
Pentachlorophenol	0.0050	0.025
Trichlorophenol	0.0059	0.030

§ 430.266 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart Z

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart Z

Pollutant or pollutant property	PSES effluent limitations (maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0062
Trichlorophenol	0.0075

§ 430.267 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart Z

Pollutant or pollutant property	PSNS effluent limitations (maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	0.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart Z

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0062
Trichlorophenol	.0075

Subpart AA—Nonintegrated-Paperboard

§ 430.270 Applicability; description of the nonintegrated-paperboard subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of paperboard at nonintegrated mills. The production of electrical grades of board and matrix board is not included in this subpart.

§ 430.271 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.272 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations of BOD5 by 1.79 and TSS by 1.76.

Subpart AA

Pollutant or pollutant property	BPT effluent limitation	
	Maximum for one 1 day	Average of daily values of 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	6.3	3.5
TSS	5.8	2.8
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.273 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76.

Subpart AA

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for one 1 day	Average of daily values of 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	6.3	3.5
TSS	5.8	2.8
pH—Within the range of 5.0 to 9.0 at all times.		

§ 430.274 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration

limitations are only applicable to non-continuous dischargers.

Subpart AA

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0013	0.025
Trichlorophenol	.0016	.030

§ 430.275 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD5 and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD5 by 1.79 and TSS by 1.76. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart AA

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD5	3.5	1.9
TSS	3.1	1.5
pH—Within the range of 5.0 to 9.0 at all times.		

Pollutant or pollutant property	Maximum for any 1 day	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0012	0.025
Trichlorophenol	.0014	.030

§ 430.276 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart AA

Pollutant or pollutant property	PSES effluent limitations (Maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart AA

Pollutant or pollutant property	PSES effluent limitations (Maximum for any one day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0013
Trichlorophenol	.0016

§ 430.277 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart AA

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day), milligrams per liter (mg/l)
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart AA

Pollutant or pollutant property	PSNS effluent limitations (Maximum for any 1 day), kg/kkg (or lb/1,000 lb) of product
Pentachlorophenol	0.0013
Trichlorophenol	.0016

It is proposed to amend Title 40 by revising Part 431 to read as follows:

PART 431—THE BUILDERS' PAPER AND BOARD MILLS POINT SOURCE CATEGORY

Subpart A—Builders' Paper and Roofing Felt Subcategory

Sec.

Authority: Secs. 301, 304, 306, 308, and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by Clean Water Act of 1977, Pub. L. 95-217).

Subpart A—Builders' Paper and Roofing Felt Subcategory

§ 431.210 Applicability; description of the builders' paper and roofing felt subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of builders' paper and roofing felt from wastepaper.

§ 431.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be measured in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be

deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect wastewater treatment levels that are representative of application of best practicable control technology currently available or best conventional pollutant control technology in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 431.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82.

Subpart A

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	5.0	3.0
TSS	5.0	3.0
pH—Within the range of 5.0 to 9.0 at all times.		

§ 431.14 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT), except that non-continuous dischargers shall not be subject to the maximum day mass limitations in kg/kkg (lbs/1,000 lbs), but shall be subject to concentration limitations. Concentration limitations are only applicable to non-continuous dischargers.

Subpart A

Pollutant or pollutant property	BAT effluent limitations (Maximum for any 1 day)	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.0015	0.025
Trichlorophenol	.0018	.030

§ 431.15 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS), except that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days effluent limitations for BOD*5* and TSS, but shall be subject to annual average effluent limitations determined by dividing the average of 30 consecutive days limitations for BOD*5* by 1.78 and TSS by 1.82. Also, for non-continuous dischargers, concentration limitations (mg/l) shall apply, where provided. Concentration limitations will only apply to non-continuous dischargers.

Subpart A

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or lb/1,000 lb) of product	
BOD*5*	1.5	0.87
TSS	2.2	1.3
pH—Within the range of 5.0 to 9.0 at all times.		

	(Maximum for any 1 day)	
	Kg/kkg (or lb/1,000 lb) of product	Milligrams per liter
Pentachlorophenol	0.00027	0.025
Trichlorophenol	.00033	.030

§ 431.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

Subpart A

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart A

Pollutant or pollutant property	PSES effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0015
Trichlorophenol	.0018

§ 431.17 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

Subpart A

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (milligrams per liter (mg/l))
Pentachlorophenol	0.025
Trichlorophenol	.030

In cases when POTWs find it necessary to impose mass effluent limitations, the following equivalent mass limitations are provided as guidance:

Subpart A

Pollutant or pollutant property	PSNS effluent limitations—Maximum for any 1 day (kg/kkg (or lb/1,000 lb) of product)
Pentachlorophenol	0.0015
Trichlorophenol	.0018

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federal register

Tuesday
January 6, 1981

Part IV

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Modifications and Supersedeas 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 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

None.

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.

Alabama—AL80–1060, March 28, 1980
Arkansas—AR80–4020, March 14, 1980
Colorado—CO80–5138, October 24, 1980
Florida—FL78–1072, September 1, 1978; FL79–1111, July 20, 1979; FL80–1118, November 7, 1980; FL80–1119, November 7, 1980; FL77–1060, May 20, 1977; FL80–1040, January 4, 1980
Georgia—GA77–1103, August 26, 1977; GA77–1104, August 26, 1977; GA77–1111, August 26, 1977; GA77–1139, November 11, 1977; GA77–1031, March 25, 1977; GA77–1068, May 20, 1977; GA78–1066, August 11, 1978; GA78–1096, November 24, 1978; GA79–1012, January 5, 1979; GA79–1054, March 30, 1979; GA80–1056, February 15, 1980; GA79–1058, March 30, 1979; GA79–1059, March 30, 1979; GA79–1156, December 7, 1979; GA79–1083, May 11, 1979
Kansas—KS78–4050, May 12, 1978
Kentucky—KY79–1162, December 14, 1979; KY79–1168, December 14, 1979; KY79–1167, December 14, 1979
Louisiana—LA80–4084, November 7, 1980; LA80–4089, November 7, 1980
New Mexico—NM79–4061, April 13, 1979
Oklahoma—OK79–4019, January 5, 1979; OK80–4008, January 5, 1980; OK80–4065, July 25, 1980; OK80–4061, July 18, 1980; OK80–4060, July 18, 1980; OK80–4063, July 18, 1980; OK80–4064, July 18, 1980; OK80–4068, August 1, 1980; OK78–4093, September 15, 1978
South Carolina—SC78–1085, September 29, 1978; SC79–1016, February 2, 1979; SC79–1020, February 2, 1979; SC79–1037, March 9, 1979; SC79–1038, February 23, 1979; SC79–1045, March 9, 1979; SC79–1047, March 16, 1979;

SC79–1048, March 16, 1979; SC79–1062, April 6, 1979; SC79–1102, June 29, 1979; SC79–1128, September 14, 1979; SC79–1130, September 28, 1979; SC80–1057, February 29, 1980; SC79–1132, September 28, 1979; SC80–1049, February 8, 1980; SC80–1047, January 25, 1980

Tennessee—TN80–1054, February 8, 1980; TN79–1005, January 5, 1979; TN79–1053, March 23, 1979; TN77–1120, September 30, 1977

Texas—TX78–4065, June 16, 1978; TX80–4018, March 14, 1980; TX80–4076, October 10, 1980; TX80–4077, October 10, 1980; TX80–4078, October 10, 1980; TX80–4085, November 7, 1980; TX80–4086, November 7, 1980; TX80–4087, November 7, 1980; TX80–4088, November 7, 1980; TX80–4097, December 5, 1980; TX80–4098, December 5, 1980; TX80–4099, December 5, 1980

Virginia—VA79–3049, November 9, 1979; VA80–3005, April 4, 1980; VA79–3050, November 9, 1979; VA78–3062, September 22, 1978; VA80–3053, September 5, 1980

Wyoming—WY80–5129, September 19, 1980

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publications in the **Federal Register** are listed with each State. Supersedeas decisions numbers are in parentheses following the numbers of the decisions being superseded.

Florida—FL80–1037 (FL81–1166), January 4, 1980; FL80–1036 (FL81–1167), January 4, 1980; FL80–1035 (FL81–1168), January 4, 1980; FL80–1045 (FL81–1169), January 18, 1980

Louisiana—LA80–4072 (LA81–4002), October 3, 1980

Mississippi—MS79–1084 (MS81–1136), May 18, 1979; MS79–1123 (MS81–1153), September 7, 1979; MS79–1060 (MS79–1154), April 13, 1979; MS79–1112 (MS81–1155), July 20, 1979; MS79–1136 (MS81–1156), October 19, 1979; MS80–1013 (MS81–1157), January 4, 1980; MS80–1104 (MS81–1158), September 19, 1980; MS79–1077 (MS81–1159), April 27, 1979; MS79–1115 (MS81–1160), August 3, 1979; MS80–1010 (MS81–1161), January 4, 1980; MS79–1092 (MS81–1162), June 1, 1979; MS80–1009 (MS81–1163), January 4, 1980; MS80–1008 (MS81–1164), January 4, 1980; MS80–1007 (MS81–1165), January 4, 1980

Tennessee—TN80–1044 (TN81–1170), January 11, 1980

Texas—TX80–4017 (TX81–4001), March 14, 1980; TX78–4089 (TX81–4003), September 15, 1978; TX79–4013 (TX81–4004), January 5, 1979; TX80–4032 (TX81–4005), June 6, 1980; TX80–4034 (TX81–4006), June 6, 1980; TX80–4036 (TX81–4007), June 20, 1980; TX80–4043 (TX81–4008), September 28, 1979; TX 79–4041 (TX81–4009), September 28, 1979

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 24th day of December 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. AL-80-1060-Mod. #1					
(45 FR 20649-March 28,1980)					
States of Alabama,Arkansas, Florida,(west of Aucilla River),Kentucky,Louisiana, Mississippi,Missouri, Tennessee & Texas					
CHANGE:					
Hydraulic Dredging:					
Cook Helper-Mess Boy	$3.35				
Dredges Under 16":					
Deckhand	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #AR80-4020-Mod.#1					
45FR7442 - March 14, 1980					
Statewide, Arkansas					
CHANGE:					
LABORERS:					
Laborers	$3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CO80-5138 - Mod. #4					
(45 FR 70682 - Oct. 24, 1980)					
El Paso County, Colorado					
CHANGE:					
Asbestos workers	$ 13.49	.75	1.52		.05
Bricklayers; Stonemasons	12.25	.85	.95		.04
Plumbers; pipefitters	12.90	.85	1.15	1.60	.10
Terrazzo workers	11.79	.85	.70		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL78-1072 - MOD. #2					
(43 FR 39249 - September 1, 1978)					
Bay, Escambia, Okaloosa, Santa Rosa and Walton Counties, Florida					
Change:					
Laborers	$3.35				
Truck Drivers	3.35				
Power Equipment Operators:					
Roller	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL79-1111 - MOD. #4					
(44 FR 42858 - July 20, 1979)					
Bay County, Florida					
Change:					
Laborers:					
Laborers	3.35				
Power Equipment Operators:					
Bulldozers	3.35				
Forklift	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL80-1118 - MOD. #1					
(45 FR 74312 - November 7, 1980)					
Dixie, Hamilton, Lafayette, Madison, Suwannee, & Taylor Counties, Florida					
Change:					
Laborers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL80-1119 - MOD. #1					
(45 FR 74312 - November 7, 1980)					
Alachua, Baker, Bradford, Columbia, Gilchrist, Levy, Marion, & Union Counties, Florida					
Change:					
Laborers:					
Laborers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL77-1060 - Mod. #5 (42 FR 26093 - May 20, 1977) Polk County, Florida					
Change:					
Truck Drivers	3.35				
DECISION NO. FL80-1040 - Mod. #1 (45 FR 1342 - January 4, 1980) Lake, Orange, Osceola and Seminole					
Change:					
Laborers, Unskilled	3.35				
Truck Drivers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
DECISION NO. GA77-1103 - MOD. #3 (42 FR 43322 - August 26, 1977) Chatham County, Georgia					
CHANGE:					
Laborers:					
Laborers	$3.35				
DECISION NO. GA77-1104 - MOD. #4 (42 FR 43322 - August 26, 1977) Banks, Barrow, Bartow, Catoosa, Chattooga, Cherokee, Cobb, Dade, Dawson, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Jackson, Lumpkin, Madison, Murray, Paulding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, White, & Whitfield Counties, Georgia					
CHANGE:					
Laborers:					
Air Tool, Chain Saw & Power Saw Operators	3.35				
Unskilled	3.35				
Truck Drivers	3.35				

DECISION NO. GA77-1111 - MOD. #4
(42 FR 43323 - August 26, 1977)
Appling, Atkinson, Bacon, Baker, Baldwin, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Charlton, Chattahoochee, Clarke, Clay, Clayton, Clinch, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Emanuel, Evans, Fayette, Glascock, Glynn, Grady, Greene, Hancock, Harris, Heard, Henry, Houston, Irwin, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Macon, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Muscogee, Newton, Oconee, Oglethorpe, Peach, Pierce, Pike, Pulaski, Putnam, Quitman, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Troup, Turner, Twiggs, Upson, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, Wilkes, Wilkinson, & Worth Counties, Georgia

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Form Setters	$3.35				
Laborers:					
Pipelayers	3.35				
Sign Erectors, Guardrail Post Driving Operators, Auger-boom Operators, Striping Machine Operators	3.35				
Unskilled	3.35				
Truck Drivers	3.35				
Power Equipment Operators:					
Oiler-greaser	3.35				
Tractor (farm type)	3.35				

DECISION NO. GA77-1139 - MOD. #2
(42 FR 58926 - November 11, 1977)
DeKalb & Fulton Counties, Georgia

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Laborers:					
Unskilled	$3.35				
Truck Drivers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #GA77-1031 - Mod. #2 (42 FR 16355 - March 25, 1977) Baker, Calhoun, Clay, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Quitman, Randolph, Seminole, & Terrell Counties, Georgia					
CHANGE:					
Laborers:					
Laborers	$ 3.35				
Pipelayers	3.35				
Truck drivers	3.35				
DECISION #GA77-1068 - Mod. #1 (42 FR 26136 - May 20, 1977) Hall County, Georgia					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Mason tenders	3.35				
Roofers	3.35				
Truck drivers	3.35				
DECISION #GA78-1066 - Mod. #2 (43 FR 35809 - August 11, 1978) Appling, Bacon, Candler, Dodge, Emanuel, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, & Wheeler Counties, Georgia					
CHANGE:					
Laborers	$ 3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #GA78-1096 - Mod. #5 (43 FR 55142 - November 24, 1978) Chattahoochee County, & Columbus, Georgia					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Mason tenders	3.35				
Mortar mixers	3.35				
Truck drivers	3.35				
DECISION #GA79-1012 - Mod. #2 (44 FR 1631 - January 5, 1979) Ware County, Georgia					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Plasterers tenders	3.35				
Mortar mixers	3.35				
Power Equipment Operators:					
Backhoe	3.35				
Motor grader	3.35				
Pump	3.35				
Scraper	3.35				
DECISION #GA79-1054 - Mod. #2 (44 FR 19110 - March 30, 1979) Banks, Clarke, Elbert, Greene, Hart, Jackson, Madison, Morgan, Newton, Oconee, Oglethorpe, & Walton Counties, Georgia					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #GA80-1056 - Mod. #1 (45 FR 10579 - February 15, 1980) Baldwin, Bibb, Bleckley, Butts, Crawford, Houston, Jasper, Jones, Lamar, Monroe, Peach, Pike, Putnam, Twiggs, Upson, & Wilkinson Counties, Georgia					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Luteran	3.35				
DECISION #GA79-1058 - Mod. #2 (44 FR 19110 - March 30, 1979) Camden, Glynn, & McIntosh Counties, Georgia					
CHANGE:					
Laborers - unskilled	$ 3.35				
DECISION #GA79-1059 - Mod. #2 (44 FR 19111 - March 30, 1979) Atkinson, Berrien, Brantley, Brooks, Charlton, Clinch, Colquitt, Cook, Echols, Lanier, Lowndes, Pierce, Thomas, Ware, & Wayne Counties, Georgia					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Mason tenders	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #GA79-1156 - Mod. #2 (44 FR 70629 - December 7, 1979) Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Lumpkin, Rabun, Stephens, Towns, Union, & White Counties, Georgia					
CHANGE:					
Laborers - unskilled	$ 3.35				
Truck drivers	3.35				
DECISION #GA79-1083 - Mod. #1 (44 FR 27856 - May 11, 1979) Chattahoochee, Harris, Macon, Marion, Meriwether, Muscogee, Schley, Stewart, Sumter, Talbot, Taylor, Troup, & Webster Counties, Georgia					
CHANGE:					
Laborers - unskilled	$ 3.35				

DECISION #KS78-4050, MOD. #1 (43 FR 20658, May 12, 1978) Barber, Barton, Cheyenne, Clark, Comanche, Decatur, Edwards, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greely, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Kiowa, Lane, Lincoln, Logan, Meade, Mitchell, Morton, Ness, Norton, Osborn, Pawnee, Phillips, Pratt, Rawlings, Rice, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, and Wichita Counties, KANSAS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asphalt raker	$3.35				
Laborer (construction & general)	3.35				
Scaleman	3.35				

DECISION NO. KY79-1162 - MOD. #1 (44 FR 72795 - December 14, 1979) Adair, Clinton, Cumberland, Green, Metcalfe, Monroe, & Taylor Counties, Kentucky	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Changes:					
Laborers	$3.35				
Truck Drivers	3.35				

DECISION NO. KY79-1168 - MOD. #1 (44 FR 72798 - December 14, 1979) Bath, Menifee, Montgomery, Powell, & Wolfe Counties, Kentucky	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Changes:					
Laborers:					
Unskilled	3.35				
Mason Tenders	3.35				

DECISION No. KY79-1167 - Mod #1 (44FR 72797 - December 14, 1979) Bracken, Mason, Nicholas, & Robertson	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, Unskilled	3.35				

DECISION NO. LA80-4084 - MOD. #2 (45 FR 74347 - November 7, 1980) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Carpenters:					
Zone 7:					
Carpenters & soft floor layers	$11.60				
Millwrights	12.35				
Piledrivermen	12.10				
Zone 9:					
Carpenters & soft floor layers:	11.60				
Millwrights	12.35				
Piledrivermen	12.10				
Glaziers - Zone 2	10.25				.01
Line Construction:					
Zone 6:					
Linemen, equipment ops.	12.75	.85	3%		1/2%
Cable splicers	13.25	.85	3%		1/2%
Groundman	3.93	.85	3%		1/2%
Marble, tile & terrazzo workers & finishers:					
Zone 1:					
Marble, tile & terrazzo finishers	8.65	.40		.30	
Zone 2:					
Tile setters	9.60	.48	.67		.02
Zone 6:					
Marble, tile & terrazzo finishers	8.65	.40		.30	
Zone 7:					
Tile finishers	8.65	.40		.30	
Painters:					
Zone 1 - Group 1	13.245		.30		
Group 2	13.445		.30		
Group 3	13.59		.30		
Group 4	15.035		.30		
Zone 5 - Group 1	10.35				
Group 2	10.85				
Group 3	11.35				
Zone 6 - Painters, tape & float, vinyl & paperhangers	10.95	.40	.30		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. LA80-4084 (Cont'd)					
Roofers:					
Zone 3:					
Roofers	$10.13	.60	.75		.04
Roofer helpers does not use the tools of the trade in removing & disposing of old roofing, stocking & unloading material, hauling materials to the journeyman & sweeping	6.34	.60	.75		.04
Zone 4:					
Roofers	10.00		.30		
Kettlemen	8.60		.30		
Zone 5:					
Roofers	11.89		.20		.04
Kettlemen	8.23		.20		.04
ADD:					
Elevator constructors:					
Zone 1:					
Helpers (Prob.)	50%JR				
Zone 2:					
Helpers (Prob.)	50%JR				
DECISION NO. LA80-4089 - MOD. #2 (45 FR 74361 - November 7, 1980) Bossier, Caddo & Calcasieu Parishes, Louisiana					
CHANGE:					
Painters:					
Bossier & Caddo Pars.:					
Painters, tape & float, vinyl & paperhangers	10.95	.40	.30		.05
Calcasieu Parish:					
Group 1	13.245		.30		
Group 2	13.445		.30		
Group 3	13.59		.30		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. LA80-4089 (Cont'd):					
Roofers:					
Bossier & Caddo Pars.:					
Roofers	$11.89		.20		.04
Kettlemen	8.23		.20		.04
Tile setters:					
Calcasieu Parish	9.60	.48	.67		.02
ADD:					
Elevator constructors:					
Bossier & Caddo Pars.:					
Helpers (Prob.)	50%JR				
Calcasieu Par.:					
Helpers (Prob.)	50%JR				

DECISION #NM79-4061 - Mod. #2
44 FR 22311-April 13, 1979
Dona Ana County, New Mexico

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr..
CHANGE:					
LABORERS:					
Laborers	$3.35				
Mason tenders	3.35				
Mortar mixers	3.35				
Plasterers tenders	3.35				

DECISION #OK79-4019. #3
44 FR 1665-January 5, 1979
Oklahoma, Cleveland and Canadian Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS:					
Laborers	$3.35				
Mason tenders	3.35				
POWER EQUIPMENT OPERATORS:					
Bulldozers	3.35				
TILE SETTERS' FINISHERS	3.35				

DECISION NO. OK80-4008 - Mod. #1
45 FR 1175-January 5, 1980
Comanche County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS:					
Laborers	$3.35				
Truck drivers	3.35				

DECISION #OK80-4065-Mod. #2
45 FR 49832-July 25, 1980
Wagoner County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$12.70	1.275	1.00		.03
GLAZIERS	11.44	.70	.30		.01
LINE CONSTRUCTION					
Linemen	12.50		3%		½%
Cable splicers	13.25		3%		½%
Hole digger operator	11.33		3%		½%
Heavy equipment operator (or pole cat equivalent)	11.33		3%		½%
Line truck driver (winch operator)	10.27		3%		½%
Jackhammerman	9.35		3%		½%
Powderman	11.33		3%		½%
Groundman	8.34		3%		½%
Truck driver (flat bed, ton and half and under)	8.91		3%		½%
ROOFERS	11.40		3%		½%
SHEET METAL WORKERS	13.50	.50	.72		.10
UNDER, ELECTRICIANS-CABLE SPLICERS ZONE DEFINITIONS ZONE I-A thirty (30) mile radius from the Post Office in Muskogee					
OMIT:					
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
ADD:					
ELEVATOR CONSTRUCTORS	12.44	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS' HELPER	70%JR	1.195	.82	a+b	.035
PAINTERS:					
Southeastern half of Wagoner					
Brush and roller	11.05		.40	.20	.10
Highwork and stage	11.65		.40	.20	.10
Sandblasting & spray	11.90		.40	.20	.10
Hot or bituminous	12.55		.40	.20	.10

DECISION #OK80-4065-Mod. #2 Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD: (Cont'd)					
PAINTERS:					
Northwestern half of Wagoner County					
Brush and roller	$12.25		.40		.10
Highwork or stage	12.65		.40		.10
Sandblasting or spray	12.90		.40		.10
Hot or bituminous	13.55		.40		.10
Sheetrock hand tools	12.25		.40		.10
Sheetrock power tools	12.65		.40		.10
SOFT FLOOR LAYERS	11.46	.70	.70		.03

ADD-UNDER FOOTNOTED FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 years 6%; over 5 years 8% of basic hourly rate. Plus 2½% of hourly rate.
b - PAID HOLIDAYS A through G

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day After Thanksgiving; g-Christmas Day

DECISION #OK80-4061-Mod. #2
45 FR 48449-July 18, 1980
Muskogee, Adair, Cherokee & Okmulgee, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BOILERMAKERS	$12.70	1.275	1.00		.03
ELEVATOR CONSTRUCTORS	12.44	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS' HELPER	70%JR	1.195	.82	a+b	.035
GLAZIERS	11.44	.70	.30		.01
LINE CONSTRUCTION					
Lineman	12.50		3%		4%
Cable splicers	13.25		3%		4%
Hole digger operator	11.33		3%		4%
Heavy equipment operator(pole or cat equivalent)	11.33		3%		4%
Jackhammerman	9.35		3%		4%
Line truck (winch operator)	10.27		3%		4%
Powderman	11.33		3%		4%
Groundman	8.34		3%		4%
Truck driver (flat bed ton and half and under)	8.91		3%		4%
PAINTERS (Okmulgee):					
Brush	12.25		.40		.10
Highwork and stage	12.65		.40		.10
Spray and sandblasting	12.90		.40		.10
Hot or bituminous	13.55		.40		.10
Sheetrock hand tools	12.25		.40		.10
Sheetrock power tools	12.65		.40		.10
PAINTERS (Adair, Muskogee & Cherokee Counties):					
Brush painting & roller	11.05		.40	.20	.10
Highwork & Stage	11.65		.40	.20	.10
Sandblasting & Spray	11.90		.40	.20	.10
Hot or Bituminous	12.55		.40	.20	.10
ROOFERS	11.40	.60	.50		.04
SHEET METAL WORKERS	13.50	.50	.72		.10
ADD:					
SOFT FLOOR LAYERS	11.46	.70	.70	8%	.03

DECISION #OK80-4060-Mod. #3
45 FR 48439-July 18, 1980
Pittsburg County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BOILERMAKERS	$12.70	1.275	1.00		.03
CARPENTERS:					
Carpenters	9.80	.55	.85		.05
Millwrights-Piledrivermen	11.15	.55	.85		.05
GLAZIERS	11.44	.70	.30		.01
LINE CONSTRUCTION					
Linemen	12.50		3%		4%
Cable splicers	13.25		3%		4%
Hole digger operator (or pole cat equivalent)	11.33		3%		4%
Line truck driver(winch oper.)	10.27		3%		4%
Jackhammerman	9.35		3%		4%
Powderman	11.33		3%		4%
Truck driver (flat bed, ton and half and under)	8.91		3%		4%
PAINTERS:					
Brush and roller	11.05		.40	.20	.07
Highwork and stage	11.65		.40	.20	.07
Sandblasting and spray painting	11.90		.40	.20	.07
Hot or bituminous	12.55		.40	.20	.07
Sheet rock power tools	11.65		.40	.20	.07
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
ROOFERS	11.40	.60	.50		.04
SHEET METAL WORKERS	13.50	.50	.72		.10
SOFT FLOOR LAYERS	11.46	.70	.70	8%	.03

DECISION #OK80-4063-Mod. #2
45 FR 48441-July 18, 1980
Garfield County, Oklahoma

CHANGE:	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	12.65				
ELECTRICIANS:					
ZONE I	13.35	.70	8%+.10		1%
ZONE II	13.60	.70	8%+.10		1%
ZONE III	13.85	.70	8%+.10		1%
CABLE SPLICERS:					
ZONE I	13.60	.70	8%+.10		1%
ZONE II	13.85	.70	8%+.10		1%
ZONE III	14.10	.70	8%+.10		1%
ELEVATOR CONSTRUCTORS	12.29	1.195	.95	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.195	.95	a+b	.035
GLAZIERS	11.10		.30		
LINE CONSTRUCTION:					
Linemen	12.50		3%		4%
Cable splicers	13.25		3%		4%
Hole digger operator	11.33		3%		4%
Heavy equipment operators(or pole cat equivalent)	11.33		3%		4%
Line truck driver (winch oper.)	10.27		3%		4%
Jackhammerman	9.35		3%		4%
Powdermen	11.33		3%		4%
Groundman	8.34		3%		4%
Truck driver (flat bed, ton and half and under)	8.91		3%		4%
ROOFERS	11.40	.60	.50		.04
SHEET METAL WORKERS	13.56	.78	1.38		.10
OMIT:					
TERRAZZO WORKERS FINISHERS	7.33				
TERRAZZO WORKERS FLOOR MACHINE OPERATOR	7.43				
TERRAZZO WORKERS BASE MACHINE OPERATOR	7.68				
TILE & MARBLE FINISHERS	7.00				

DECISION #OK80-4064-Mod. #2
45 FR 48444-July 18, 1980
Oklahoma, Cleveland, Caddo, Canadian, Kingfisher, Lincoln, Logan, McClain, Grady, Seminole and Pottawatomie Counties, Oklahoma

CHANGE:	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:					
Oklahoma, Cleveland, Canadian, Logan and McClain Counties	13.15	.62	.75		.03
Lincoln, Pottawatomie and Seminole Counties	12.20	.62	.75		.10
Kingfisher County	12.85				
Caddo and Grady Counties	11.67	.62	1.00		.10
ELECTRICIANS:					
Zone I	13.35	.70	8%+.10		1%
Zone II	13.60	.70	8%+.10		1%
Zone III	13.80	.70	8%+.10		1%
CABLE SPLICERS:					
Zone I	13.60	.70	8%+.10		1%
Zone II	13.85	.70	8%+.10		1%
Zone III	14.10	.70	8%+.10		1%
ELEVATOR CONSTRUCTORS	12.29	1.195	.95	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.195	.95	a+b	.035
GLAZIERS	11.10		.30		
LINE CONSTRUCTION:					
Lineman	12.50		3%		4%
Cable splicers	13.25		3%		4%
Hole digger operator	11.33		3%		4%
Heavy equipment operator(or pole cat equivalent)	11.33		3%		4%
Line truck driver (winch oper.)	10.27		3%		4%
Jackhammerman	9.35		3%		4%
Powderman	11.33		3%		4%
Groundman	8.34		3%		4%
ROOFERS	11.40	.60	.50		.04
SHEET METAL WORKERS	13.56	.78	1.38		.10
SOFT FLOOR LAYERS:					
Resilient floor layers and carpet layers	11.10	.60		.65	.03
OMIT:					
TERRAZZO WORKERS FINISHER	7.33				
TERRAZZO BASE MACHINE MAN	7.68				
TERRAZZO FLOOR MACHINE MAN	7.43				
TILE & MARBLE FINISHERS	7.00				

DECISION #OK80-4068-Mod. #2
45 FR 51422-August 1, 1980
Comanche County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$12.70	1.275	1.00		.03
CARPENTERS:					
Carpenters	10.35	.55	.50		.04
Millwrights-Piledrivermen	10.85	.55	.50		.04
Power saw operator	10.475	.55	.50		.04
ELECTRICIANS	11.95	.60	3%		4%
ELEVATOR CONSTRUCTORS	12.29	1.195	.95	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.195	.95	a+b	.035
GLAZIERS *	11.10		.30		
IRONWORKERS	12.10	.75	.85		.12
LINE CONSTRUCTION:					
Linemen	12.50		3%		4%
Cable splicers	13.25		3%		4%
Hole digger operator	11.33		3%		4%
Heavy equipment operators (or pole cat equivalent)	11.33		3%		4%
Line truck driver (winch oper.)	10.27		3%		4%
Jackhammerman	9.35		3%		4%
Powdermen	11.33		3%		4%
Groundmen	8.34		3%		4%
Truck driver (flat bed, ton and half under)	8.81		3%		4%
ROOFERS	11.40	.60	.50		.04
SHEET METAL WORKERS	13.56	.78	1.38		.10
OMIT:					
Terrazzo workers' finishers	7.33				
Terrazzo workers' floor machine operators	7.43				
Terrazzo base machine operator	7.68				
TILE & MARBLE FINISHERS	7.00				

DECISION #OK78-4093 - Mod. #3
43 FR 41363-September 15, 1978
Atoka, Bryan, Choctaw, Haskill, Latimer, McCurtain, Pittsburg & Pushmataha Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
POWER EQUIPMENT OPERATORS:					
Rollers, motor graders, scrapers & tractors	$3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC78-1085 - Mod. #3 (43 FR 45164 - September 29, 1978) Statewide, South Carolina					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Power Equipment Operators:					
Roller operators	3.35				
Truck drivers	3.35				
DECISION #SC79-1016 - Mod. #3 (44 FR 6888 - February 2, 1979) Beaufort, Colleton, Hampton, & Jasper Counties, South Carolina					
CHANGE:					
Laborers	$ 3.35				
Truck drivers	3.35				
DECISION #SC79-1020 - Mod. #3 (44 FR 6888 - February 2, 1979) Chester, Chesterfield, Fairfield, Kershaw, & Lancaster Counties, South Carolina					
CHANGE:					
Laborers	$ 3.35				
Truck drivers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC79-1037 - Mod. #4 (44 FR 13230 - March 9, 1979) Sumter County, South Carolina					
CHANGE:					
Laborers	$ 3.35				
Truck drivers	3.35				
DECISION #SC79-1038 - Mod. #3 (44 FR10934 - February 23, 1979) Cherokee, Union, & York Counties, South Carolina					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Asphalt rakers	3.35				
Truck drivers	3.35				
DECISION #SC79-1045 - Mod. #2 (44 FR 13232 - March 9, 1979) Abbeville, Edgefield, Greenwood, Laurens, McCormick, Newberry, & Saluda Counties, South Carolina					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Mortar mixers	3.35				
Pipe layers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC79-1047 - Mod. #4 (44 FR 16322 - March 16, 1979) Greenville County, South Carolina					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Mason tenders	3.35				
DECISION #SC79-1048 - Mod. #3 (44 FR 16295 - March 16, 1979) Spartanburg County, South Carolina					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Power Equipment Operators:					
Rollers	3.35				
DECISION #SC79-1062 - Mod. #3 (44 FR 20937 - April 6, 1979) Georgetown & Horry Counties, South Carolina					
CHANGE:					
Laborers	$ 3.35				
Truck drivers	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC79-1102 - Mod. #2 (44 FR 38105 - June 29, 1979) Abbeville, Greenwood, Laurens, McCormick, Newberry, & Saluda Counties, South Carolina					
CHANGE:					
Laborers	$ 3.35				
Truck drivers	3.35				
DECISION #SC79-1128 - Mod. #3 (44 FR 53661 - September 14, 1979) Lexington & Richland Counties, South Carolina					
CHANGE:					
Laborers:					
Unskilled	$ 3.35				
Mason tenders	3.35				
DECISION #SC79-1130 - Mod. #2 (44 FR 56107 - September 28, 1979) Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, & Jasper Counties, South Carolina					
CHANGE:					
Laborers - unskilled	$ 3.35				

DECISION #SC80-1057 - Mod. #1 (45 FR 13604 - February 29, 1980) Chester, Chesterfield, Fairfield, Kershaw, Lancaster, & York Counties, South Carolina	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Laborers - unskilled	$ 3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NUMBER SC79-1132 Mod #1 (44 FR 56107 dated September 28, 1979) Anderson, Cherokee, Greenville, Oconee, Pickens, Spartanburg, and Union Counties, South Carolina					
CHANGE:					
LABORERS: laborers	$ 3.35				
DECISION NUMBER SC80-1049 Mod #1 (45 FR 8866 dated February 8, 1980) Darlington, Dillon, Florence, Lee, Marion, and Marlboro Counties in South Carolina					
CHANGE:					
LABORERS TRUCK DRIVERS	$ 3.35 3.35				
DECISION NUMBER SC80-1047 Mod #2 (45 FR 6310 dated January 25, 1980) STATEWIDE, SOUTH CAROLINA					
CHANGE:					
ASPHALT RAKER ASPHALT LAYDOWN MAN IRONWORKER: Reinforcing & Structural LABORERS: Common	$ 3.35 3.35 3.35 3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NUMBER SC80-1047 Mod #2 (Cont.)					
OILER	$ 3.35				
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor	3.35				
Asphalt Plant Helper	3.35				
Power Tool Operator	3.35				
Roller Operator	3.35				
Stone Spreader	3.35				
Sweeper	3.35				
Tractor Crawler	3.35				
Tractor-Utility	3.35				
Truck Driver- Light	3.35				
Weighman Scales (Truck)	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TN80-1054 Mod.#1 (45 FR 8867 February 8,1980) Anderson, Grainger, Hamblen, Jefferson, Knox & Roane Cos. Tennessee					
CHANGE:					
LABORERS:					
Unskilled	$3.35				
DECISION #TN79-1005 Mod.#2 (44 FR 1667 January 5,1979) Dyer, Gibson, Lake, Lauderdale, Obion & Weakley Cos. Tennessee					
CHANGE:					
LABORERS:					
Unskilled	$3.35				
Mason Tender	3.35				
TRUCK DRIVER	3.35				
DECISION #TN79-1053 Mod.#2 (44 FR 17883 March 23,1979) Campbell, Claiborne, Cumberland, Fentress, Hancock, Morgan, Pickett, Scott, & Union Cos., Tennessee					
CHANGE:					
LABORERS:					
Unskilled	$3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TN77-1120 Mod.#1 (42 FR 52880 September 30, 1977)					
Coffee Co., Tennessee (Excluding Arnold Air Force Base & Arnold Engineering Development Site)					
LABORERS	$3.35				
ROOFERS	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX78-4065 - MOD. #1 (43 FR 26271 -June 16,1978)					
Collin, Dallas, Denton, Ellis, Hunt, Kaufman & Rockwall Cos., Texas					
CHANGE:					
Laborers:					
Laborers	$ 3.35				
DECISION NO. TX80-4018 - MOD. #5 (45 FR 16828-March 14, 1980)					
Cameron, Hidalgo, Starr & Willacy Cos., Texas					
CHANGE:					
Asbestos workers	13.39	.55	1.00		
Laborers:					
Common laborers	3.35				
Air tool operators	3.35				
Mason tenders	3.35				
Mortar mixers	3.35				
Plasterers' tenders	3.35				
Truck drivers	3.35				
DECISION NO. TX80-4076 - MOD. #3 (45 FR 67535 - October 10, 1980)					
Wichita County, Texas					
CHANGE:					
Plumbers & pipefitters:					
Zone 1	12.65	.50	1.00		.05
Zone 2	13.15	.50	1.00		.05
Sheet metal workers	12.84				.09
ADD:					
Elevator constructors:					
Helpers (Prob.)	50%JR				
OMIT:					
Truck drivers	3.10				

DECISION NO. TX80-4077 - MOD. #3 (45 FR 67538 - October 10, 1980) Galveston & Harris Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Line construction:					
Zone 1:					
Lineman & cable splicer	$14.95	.60	3%		1/2%
Groundman	8.67	.60	3%		1/2%
Zone 2:					
Lineman & cable splicer	14.55	.60	3%		1/2%
Groundman	8.44	.60	3%		1/2%
Painters:					
Remainder of Harris Co.:					
Group 1	13.095	.765	.60	.40	.05
Group 2	13.47	.765	.60	.40	.05
Group 3	13.22	.765	.60	.40	.05
Group 4	13.72	.765	.60	.40	.05
Soft floor layers	12.92	.60	.55		.14
ADD:					
Elevator constructors: Helpers (Prob.)	50%JR				
DECISION NO. TX80-4078 - MOD. #4 (45 FR 67537 - October 10, 1980) Travis County, Texas					
CHANGE:					
Marble, tile & terrazzo finishers:					
Marble, tile & terrazzo finisher	7.67				
Terrazzo floor machine ops.	7.87				
Terrazzo base machine ops.	8.02				
Soft floor layers	12.92	.60	.55		.14
ADD:					
Elevator constructors: Helpers (Prob.)	50%JR				

DECISION NO. TX80-4085 - MOD. #2 (45 FR 74365 - November 7, 1980) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
OMIT:					
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 & over	3.38				
CHANGE:					
Asbestos workers	12.50	.80	1.35		.02
Lathers	13.65				.01
Plumbers & pipefitters	12.65	.50	.65	1.06	
Power equipment operators:					
Group 1	12.40	.65	.50		.15
Group 2	11.90	.65	.50		.15
Group 3	9.95	.65	.50		.15
DECISION NO. TX80-4086 - MOD. #2 (45 FR 74368 - November 7, 1980) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
CHANGE:					
Marble & tile finishers: Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.	8.99				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4086 (CONT'D):					
CHANGE:					
Sheet metal workers-Zone2	$12.84				.09
ADD:					
Elevator constructors:					
Helpers (Prob.)	50%JR				
DECISION NO. TX80-4087					
MOD. #1					
(45 FR 74365 - November 7, 1980)					
Gregg County, Texas					
CHANGE:					
Bricklayers	12.60		.45		.05
Carpenters: Carpenters	11.20				.015
Millwrights	14.00				.015
Piledrivermen	11.70				.015
DECISION NO. TX80-4088 -					
MOD. #1					
(45 FR 74364 - November 7, 1980)					
Harrison County, Texas					
CHANGE:					
Laborers:					
Laborers	3.35				
DECISION NO. TX80-4097 -					
MOD. #1					
(45 FR 80644-December 5, 1980)					
Lubbock County, Texas					
CHANGE:					
Asbestos workers	12.50	.80	1.35		.02
Carpenters	11.30	.48	.60		.01
OMIT:					
Truck drivers	3.10				

DECISION NO. TX80-4098-MOD. #1 (45 FR 80643 - December 5, 1980) Bowie County, Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Carpenters: Carpenters	$11.25				.05
Millwrights	13.95				.05
Piledrivermen	12.25				.05
ADD:					
Elevator constructors:					
Helpers (Prob.)	50%JR				
DECISION NO. TX80-4099 -					
MOD. #1					
(45 FR 80640 - December 5, 1980)					
Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
ADD:					
Elevator constructors:					
Helpers (Prob.)	50%JR				
CHANGE:					
Building Construction:					
Bricklayers	12.15	.70	.55		.03
Carpenters:					
Zone 1 - Carpenters	11.00				
Millwrights	11.25				
Laborers:					
Unskilled	3.35				
Truck drivers	3.35				
Incidental Paving & Utilities:					
Air Tool Man	3.75				
Asphalt Heaterman	4.25				
Asphalt Raker	5.50				
Asphalt Shoveler	4.25				
Batching Plant Scaleman	5.50				
Carpenter	5.75				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4099 (CONT'D)					
Incidental Paving & Utilities (Cont'd):					
Carpenter Helper	$ 4.00				
Concrete Finisher(Paving)	6.45				
Concrete Finisher Helper (Paving)	4.75				
Concrete Finisher(Structures)	5.30				
Concrete Finisher Helper (Structures)	4.50				
Concrete Rubber	4.00				
Electrician	8.85				
Electrician Helper	4.00				
Form Builder (Structures)	5.00				
Form Builder Helper (Structures)	3.75				
Form Setter (Paving & Curb)	5.00				
Form Setter Helper (Paving & Curb)	3.75				
Form Setter (Structures)	5.65				
Form Setter Helper (Structures)	4.15				
Laborer, Common	3.75				
Laborer, Utility Man	4.00				
Mechanic	5.50				
Mechanic Helper	4.10				
Oiler	4.85				
Serviceman	4.50				
Pipelayer:					
Bosque, Falls, Hill & McLennan Cos.	5.00				
Pipelayer (Concrete & Clay):					
Bell & Coryell Cos.	5.00				
Pipelayer Helper:					
Bosque, Falls, Hill & McLennan Cos.	4.25				
Pipelayer Helper (Concrete & Clay):					
Bell & Coryell Cos.	4.25				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4099 (CONT'D):					
Incidental Paving & Utilities (Cont'd):					
Plumbers (Bell & Coryell Cos.):					
Zone 1 - 35 miles from Waco including towns of Temple & Belton	$10.88	.30	.55		.04
Zone 2 - all area not included in Zone 1	11.28	.30	.55		.04
Powderman	5.50				
Reinforcing Steel Setter (Structures)	4.90				
Reinforcing Steel Setter Helper	4.25				
Sign Erector	4.65				
Sign Erector Helper	3.35				
Spreader Box Man	4.55				
Swamper	4.55				
Power Equipment Operators:					
Asphalt Distributor	5.00				
Asphalt Paving Machine	5.10				
Broom or Sweeper Operator	4.00				
Bulldozer, 150 HP & Less	4.80				
Bulldozer, over 150 HP	5.75				
Concrete Paving Curing Machine	5.00				
Concrete Paving Saw	4.75				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	5.10				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	6.25				
Crusher or Screening Plant Operator	4.60				
Foundation Drill Op. (Truck Mounted)	7.75				
Foundation Drill Op. Helper	4.25				
Front End Loader (2½ CY and Less)	4.75				
Front End Loader (over 2½ CY)	5.65				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4099 (CONT'D)					
Incidental Paving & Utilities (Cont'd):					
Power Equipment Ops. (Cont'd):					
Motor Grader Op., Fine Grade	$7.00				
Motor Grader Operator	5.30				
Roller, Steel Wheel (Plant-Mix Pavements)	4.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.00				
Roller, Pneumatic (Self-Propelled)	3.95				
Scrapers (17 CY & Less)	4.40				
Scrapers (Over 17 CY)	5.20				
Tractor (Crawler Type) 150 HP and Less	3.35				
Tractor (Crawler Type) over 150 HP	4.60				
Tractor (Pneumatic) 80 HP and Less	4.50				
Tractor (Pneumatic) over 80 HP	5.10				
Traveling Mixer	4.10				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.45				
Wagon Drill, Boring Machine or Post Hole Driller Operator	4.00				
Truck Drivers:					
Single Axle, Light	4.00				
Single Axle, Heavy	4.25				
Tandem Axle or Semitrailer	5.00				
Lowboy-Flaot	4.80				
Welder	5.00				
Welder Helper	3.60				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. VA-79-3049-Mod #3 (44 FR 65313-November 9,1979 Counties of Accomack,Greensville,Isle of Wight,James City,Northampton,Southampton,Surry,Sussex,York and the cities of Emporia,Franklin,Suffolk, and Williamsburg VA					
CHANGE:					
Laborers, Unskilled	$3.35				
Pipelayers	3.35				
Truck Drivers:					
Single Rear Axle	3.35				
DECISION NO. VA-80-3005-Mod #2 (45 FR 23282-April 4,1980) Alleghany,Augusta,Bath, Clarke,Frederick,Highland, Page,Rockbridge,Rockingham, Shenandoah & Warren Ctys VA					
CHANGE:					
Laborers, Unskilled	3.35				
DECISION NO. VA-79-3050-Mod #2 (44 FR 63614-November 9, 1979) Amherst,Appomattox,Buckingham,Campbell,Charlotte, Cumberland,Halifax,Nelson, Pittsylvania,Prince Edward, & the cities of Danville, Lynchburg, & South Boston VA					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
VA-79-3050 (Con't)					
CHANGE:					
Fence Erector/Guard Rail	$3.35				
Fireman	3.35				
Laborer, Unskilled	3.35				
Truck Driver-Single Rear Axle	3.35				
DECISION NO. VA-78-3062-Mod #2 (43 FR 43244-September 22, 1978) Bland,Buchanan,Dickenson, Grayson,Lee,Russell,Scott, Smyth,Tazewell,Washington, Wise, & Wythe Counties, VA					
CHANGE:					
Ironworker, Structural					
Helper	3.35				
Laborer, Unskilled	3.35				
Transit Mix Truck Operator	3.35				
DECISION NO. VA-80-3053-Mod #1 (45 FR 59109-September 5, 1980) Bedford,Botetourt,Carroll, Craig,Floyd,Franklin,Giles, Henry,Montgomery,Patrick, Pulaski & Roanoke Counties & the cities of Bedford, Galax,Martinsville,Radford, Roanoke, & Salem					
CHANGE:					
Truck Driver, Heavy Duty (7 C.Y. & Under)	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. WY80-5129 - Mod.#4 (45 FR 62689 - September 19,1980) Converse, Goshen, Laramie, Natrona, Niobrara and Platte Counties, Wyoming					
CHANGE:					
PLUMBERS: Steamfitters:					
Area 1:					
Zone 1	$ 11.19	.90	.90	1.50	.18
Zone 2	12.04	.90	.90	1.50	.18
Zone 3	12.90	.90	.90	1.50	.18
Zone 4	14.18	.90	.90	1.50	.18
Zone 5: (Footnote "b"):					
General contracts $2,500,000.00 or less	11.19	.90	.90	1.50	.18
Sheet metal workers:					
Area 1	13.39	.53	1.22		.09

SUPERSEDEAS DECISION

STATE: Florida COUNTIES: See below
DECISION NUMBER: FL81-1166 DATE: Date of Publication
Supersedes Decision No. FL80-1037 dated January 4, 1980 in 45 FR 1342
DESCRIPTION OF WORK: Highway Construction Projects (does not include airport runways and taxiways; tunnels; bridges designed to accomadate navigation; rest areas which include building structures; and railroad construction

Alachua, Bradford, Calhoun, Citrus, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lake, Lafayette, Leon, Levy, Liberty, Madison, Marion, Pasco, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla and Washington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	3.93				
Cement Finishers	3.42				
Electricians	5.95				
Laborers	3.35				
Truck Drivers	3.35				
Welders- Rate for craft					
POWER EQUIPMENT OPERATORS					
Asphalt Mixers	3.50				
Asphalt Screeds	3.41				
Concrete Batching Plants	3.50				
Concrete Paving Machines	3.65				
Cranes, Derricks, and Drag-Lines	3.92				
Gradall	3.59				
Mechanics	3.53				
Motor Graders	3.49				
Piledriver-Leadsmen	5.00				
Widening Spreader Machines	3.68				
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: Florida COUNTIES: See below
DECISION NUMBER: FL81-1167 DATE: Date of Publication
Supercedes Decision No. FL80-1036 dated January 4, 1980 in 45FR 1343
DESCRIPTION OF WORK: Highway Construction Projects (does not include airport runways and taxiways; tunnels; bridges designed to accomodate navigation; rest areas which include building structures; and railroad construction

Bay, Escambia, Gulf, Okaloosa, Santa Rosa, and Walton	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	4.16				
Concrete Finishers	3.48				
Ironworkers, Reinforcing	4.07				
Laborers	3.35				
Welders - Rate for craft					
POWER EQUIPMENT OPERATORS:					
Cranes, Derricks, Draglines	3.75				
Mechanics	4.39				
Motor Graders	3.50				
Piledriver - Leadsmen	3.70				
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: Florida
DECISION NO. FL81-1168
COUNTIES: See below
DATE: Date of Publication
Supersedes Decision No. FL80-1035 dated January 4, 1980 in 45 FR 1343
DESCRIPTION OF WORK: Highway Construction Projects (does not include airport runways & taxiways; tunnels; bridges designed to accomadate navigation; rest areas which include building structures; and railroad construction)

Baker, Clay, Duval, Flagler, Nassau, and St. Johns	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	4.51				
Concrete Finishers	3.89				
Electricians	7.70	.30	1%	.42	1%
Ironworkers, Reinforcing	4.87				
Laborers:					
Common	3.35				
Air Tool Operators	3.50				
Pipelayers	3.53				
Painters:					
Structural Steel	5.73				
Piledrivermen	5.00				
Truck Driver	3.35				
Welders - Rate for craft					
POWER EQUIPMENT OPERATORS:					
Asphalt Distributors	3.45				
Asphalt Paving Machines	3.80				
Asphalt Plant	3.45				
Asphalt Finisher	3.46				
Backhoe	3.68				
Cranes, Derricks, Draglines	4.48				
Front End Loader	3.50				
Mechanics	4.18				
Motor Grader	4.37				
Scrapers	4.15				
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: Florida
DECISION NUMBER: FL81-1169
COUNTIES: See below
DATE: Date of Publication
Supersedes Decision No. FL80-1045 dated January 18, 1980 in 45 FR 3862
DESCRIPTION OF WORK: Highway Construction Projects (does not include airport runways and taxiways; tunnels; bridges designed to accomadate navigation; rest areas which include building structures; and railroad construction)

Brevard and Volusia (excluding Cape Canaveral Air Force Station, Patrick Air Force Base, Kennedy Space Flight Center and Melabar Radar fite), Hillsborough, Indiam River, Manatee, Martin, Orange, Osceola, Pinellas, Polk, St. Lucie, Sarasota, and Seminole Counties, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	4.00				
Carpenters	5.00				
Concrete Finishers	5.00				
Form Setters	3.79				
Ironworkers					
Reinforcing	5.32				
Laborers					
Unskilled	3.35				
Asphalt Rakers	4.27				
Lutemen	4.00				
Pipelayers	4.33				
Painters, Spray	9.75				
Piledrivers, Leadmen	5.25				
Traffic Signal Mechanic	4.59				
POWER EQUIPMENT OPERATORS					
Asphalt Distributors	3.99				
Asphalt Mixers	3.95				
Asphalt Paving Machines	4.36				
Backhoes	5.00				
Boom Augers	3.90				
Bulldozers	4.30				
Cranes	5.34				
Earth Moving Machines	4.10				
Gradalls	4.75				
Grader Machines	5.25				
Guard Rail Erectors	3.97				
Loaders	3.49				

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: Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles

DECISION NO.: LA81-4002

DATE: Date of Publication

Supersedes Decision No. LA80-4072, dated October 3, 1980, in 45 FR 65886.

DESCRIPTION OF WORK: Highway Projects (does not include building structures in rest area projects & airports in Bossier, Caddo, Calcasieu, Jefferson & Orleans Parishes).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS & STONEMASONS					
ZONE 1 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes	$13.50	.63	.85		.05
ZONE 2 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes	12.70	.75	.485		.10
ZONE 3 - Bossier & Caddo Parishes	11.30	.55	.65		
CARPENTERS & PILEDRIVERMEN					
ZONE 1 - Bossier & Caddo Parishes	11.07	.55	.50		.04
ZONE 2 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes	12.05	.70	.70		.06
ZONE 3 - Calcasieu Parish	11.73	.80	.33		.07
ZONE 4 - Cameron & Jefferson Davis Parishes	9.40	.80	.33		.07
ZONE 5 - Allen & Beauregard Parishes	8.90	.80	.33		.07
CEMENT MASONS					
ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes	11.12	.79	.50		.09
ZONE 2 - Bossier & Caddo Parishes	11.05	.45			
ZONE 3 - Calcasieu Parish	11.85				
ZONE 4 - Cameron & Jefferson Davis Parishes	10.60				
ZONE 5 - Allen & Beauregard Parishes	10.10				
ELECTRICIANS					
ZONE 1 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes:					
Electricians	$14.75	.55	3%+.40		1/10%
Cable Splicers	15.00	.55	3%+.40		1/10%
ZONE 2 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes:					
Electricians	13.65	.45	3%+.40		.05
Cable Splicers	13.65	.45	3%+.40		.05
ZONE 3 - Bossier & Caddo Parishes:					
Electricians	13.25	1.75	3%		1%
Cable Splicers	13.75	1.75	3%		1%
IRONWORKERS					
ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes	12.01	.93	.65		.08
ZONE 2 - Calcasieu Parish	11.95	.60	.65		.05
ZONE 3 - Bossier & Caddo Parishes	10.65	.60	1.45		.06
ZONE 4 - Cameron & Jefferson Davis Parishes	9.30	.60	.65		.05
ZONE 5 - Allen & Beauregard Parishes	8.80	.60	.65		.05
LABORERS					
ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes:					
GROUP 1	8.13	.30	.27		.05
GROUP 2	8.23	.30	.27		.05
GROUP 3	8.68	.30	.27		.05
GROUP 4	9.93	.30	.27		.05
ZONE 2 - Bossier & Caddo Parishes					
GROUP 1	7.18	.25	.27		.05
GROUP 2	7.28	.25	.27		.05
GROUP 3	7.73	.25	.27		.05
GROUP 4	7.98	.25	.27		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 3 - Calcasieu Parish:					
GROUP 1	$ 8.18	.25	.27		.05
GROUP 2	8.28	.25	.27		.05
GROUP 3	8.73	.25	.27		.05
GROUP 4	8.98	.25	.27		.05
ZONE 4 - Cameron & Jefferson Davis Parishes:					
GROUP 1	6.68	.25	.27		.05
GROUP 2	6.78	.25	.27		.05
GROUP 3	7.23	.25	.27		.05
GROUP 4	7.43	.25	.27		.05
ZONE 5 - Allen & Beauregard Parishes:					
GROUP 1	6.48	.25	.27		.05
GROUP 2	6.58	.25	.27		.05
GROUP 3	7.03	.25	.27		.05
GROUP 4	7.23	.25	.27		.05

LABORERS CLASSIFICATIONS DEFINITIONS

GROUP 1 - Laborers, including but not limited to signalman; foundation driller & demolishing & dismantling man

GROUP 2 - Raker, concrete spreader, carpenter tenders, distributor man, finisher tenders, formsetter tenders, jackhammer operator, jetting laborer, painter tenders, pit man, pipelayer or tile layer, power monkey tender, tamper, tree pruner, stonemason tender, stoker, asphalt raker, concrete shovelers, power tool operator & motorized buggy operator

GROUP 3 - Formsetter, head or master-high type pavement

GROUP 4 - Powderman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes					
GROUP 1 - Lineman	$13.65	.45	3%+.40		.05
GROUP 2 - Operator hole digging equipment; operator tractor with winch & derrick operator; operator line truck with winch & derrick working hot lines	75% JR	.45	3%+.40		.05
GROUP 3 - Operator using hole truck & trailer or pole hauling & setting truck (not in energized lines)	65% JR	.45	3%+.40		.05
GROUP 4 - Operator using truck without winch	45% JR	.45	3%+.40		.05
GROUP 5 - Groundmen	50% JR	.45	3%+.40		.05
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes:					
GROUP 1 - Linemen, equipment operators	14.75	.55	3%+.40		1/10%
GROUP 2 - Cable Splicers	15.00	.55	3%+.40		1/10%
GROUP 3 - Groundmen	12.75	.55	3%+.40		1/10%
ZONE 3 - Bossier & Caddo Parishes:					
GROUP 1 - Linemen; operators	13.25	1.75	3%		1%
GROUP 2 - Cable Splicers	13.75	1.75	3%		1%
GROUP 3 - Groundmen	11.25	1.75	3%		1%
PAINTERS					
ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes:					
GROUP 1 - Brush	13.245		.30		
GROUP 2 - Spray, sandblasting, hydroblasting, spider operator, rubberizing & pyroflexing, steam jennies	13.59		.30		

PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 3 - Bridge work	$15.035		.30		
ZONE 2 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes:					
GROUP 1 - Painters	9.845	.625	.60		.08
GROUP 2 - Spray, Swing stage	10.22	.625	.60		.08
GROUP 3 - Industrial	11.095	.625	.60		.08
ZONE 3 - Allen (north-eastern most corner, north of Rt. 10) Parish					
GROUP 1 Painters	10.35				
GROUP 2 Spray, stage, steeple work	10.85				
GROUP 3 - All Industrial work including sandblasting or power tools of any kind	11.35				
ZONE 4 - Bossier & Caddo Parishes	10.95	.40	.30		.05
PLUMBERS & PIPEFITTERS					
ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes	13.10	.75	1.00		.10
ZONE 2 - Bossier & Caddo Parishes	11.87	.70	1.10	1.00	.09
ZONE 3 - Allen, Beauregard Calcasieu, Cameron & Jefferson Davis Parishes	14.01	.67	.72		.08
POWER EQUIPMENT OPERATORS					
ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes					
GROUP 1	11.91	.65	1.10		.10
GROUP 2	12.16	.65	1.10		.10
GROUP 3	11.66	.65	1.10		.10
GROUP 4	10.25	.65	1.10		.10
GROUP 5	9.85	.65	1.10		.10
GROUP 6	8.71	.65	1.10		.10
GROUP 7	7.84	.65	1.10		.10
GROUP 8	9.90	.65	1.10		.10
GROUP 9	10.15	.65	1.10		.10
GROUP 10	8.09	.65	1.10		.10

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POWER EQUIPMENT OPERATORS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 2 - Bossier & Caddo Parishes					
GROUP 1	$11.03	.65	1.10		.10
GROUP 2	11.28	.65	1.10		.10
GROUP 3	10.78	.65	1.10		.10
GROUP 4	9.61	.65	1.10		.10
GROUP 5	8.98	.65	1.10		.10
GROUP 6	7.83	.65	1.10		.10
GROUP 7	7.23	.65	1.10		.10
GROUP 8	9.27	.65	1.10		.10
GROUP 9	9.52	.65	1.10		.10
GROUP 10	7.48	.65	1.10		.10
ZONE 3 - Calcasieu Parish					
GROUP 1	11.56	.65	1.10		.10
GROUP 2	11.81	.65	1.10		.10
GROUP 3	11.31	.65	1.10		.10
GROUP 4	9.93	.65	1.10		.10
GROUP 5	9.27	.65	1.10		.10
GROUP 6	8.13	.65	1.10		.10
GROUP 7	7.23	.65	1.10		.10
GROUP 8	9.58	.65	1.10		.10
GROUP 9	9.83	.65	1.10		.10
GROUP 10	7.48	.65	1.10		.10
ZONE 4 - Cameron & Jefferson Davis Parishes					
GROUP 1	8.85	.65	1.10		.10
GROUP 2	9.10	.65	1.10		.10
GROUP 3	8.60	.65	1.10		.10
GROUP 4	7.54	.65	1.10		.10
GROUP 5	7.00	.65	1.10		.10
GROUP 6	5.97	.65	1.10		.10
GROUP 7	5.67	.65	1.10		.10
GROUP 8	7.27	.65	1.10		.10
GROUP 9	7.52	.65	1.10		.10
GROUP 10	5.92	.65	1.10		.10
ZONE 5 - Allen & Beauregard Parishes					
GROUP 1	8.35	.65	1.10		.10
GROUP 2	8.60	.65	1.10		.10
GROUP 3	8.10	.65	1.10		.10
GROUP 4	7.04	.65	1.10		.10
GROUP 5	6.50	.65	1.10		.10

POWER EQUIPMENT OPERATORS (ZONE 5 CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 6	$ 5.47	.65	1.10		.10
GROUP 7	5.17	.65	1.10		.10
GROUP 8	6.77	.65	1.10		.10
GROUP 9	7.02	.65	1.10		.10
GROUP 10	5.42	.65	1.10		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - 60 ton crane & over; crane with ft. boom
GROUP 2 - Crane with ft. boom
GROUP 3 - Crane all types; deck winches (2); hi-ho & similar type equipment; 3 drums (or more) stabilizers; pulls all types; concrete mixer 1 yd. & over; all pavers; ditching or trenching machines (track type); mechanics & equipment welders; well point system; hoist, 2 drums or more; hoist, 1 drum, 40 vertical ft. or more; scrapers, bulldozers, rubber-tired or track other than farm-type; scoopmobiles; motor patrol; gradall; rollers on hot mix; asphalt paving machines; front end loaders, other than farm-type, 1 cu. yd. or over; shovels & backhoes, all types, & equivalent equipment; piledrivers; sideboom cats; a-frame trucks when handling steel or pipe; work boats requiring license ops.; tugboats; fork lifts over 10 ton capacity; foundation drilling machines
GROUP 4 - 2 drums stabilizers; front end loaders under 1 cu. yd, A-frame truck except when handling steel or pipe; finishing machines (concrete); power subgraders; tow tractor (crawler type); 1 drum hoist under 40 vertical ft.; firemen; concrete spreader; pugmill; bituminous distributor on surface treatment & equivalent; bullfloats & equivalent; job grease man; unit op.; work boats not requiring licensed ops.; inboard motored crew boats
GROUP 5 - Single drum stabilizers; concrete mixer under 1 yd., spray curing machines; rollers on subgrade; 1 air compressor over 125 cu. ft.; form graders; asphalt finisher screed man; pump over 4"; scale op.; crusher ops.; concrete jointing machines; concrete saw; tack machines & equivalent equipment; pump crete; electric elevator (inside); oiler-driver; farm-type rubber tired tractor, with attachments, except backhoes; kolum buff & similar equipment; fork lifts, 10 ton capacity & under; outboard crew boats
GROUP 6 - Batch plant operator
GROUP 7 - Oiler
GROUP 8 - Firemen
GROUP 9 - Fireman operating steam valve
GROUP 10 - Oiler on crane using air to drive piles

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS					
ZONE 1 - Calcasieu Parish	$13.50	.58	.60		.18
ZONE 2 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes	12.25	3%+.65	1.11		.16
ZONE 3 - Allen, Beauregard, Cameron & Jefferson Davis Parishes	13.57	.55	.80		.16
ZONE 4 - Bossier & Caddo Parishes	12.09	3%+.69	.50		.19
TRUCK DRIVERS					
ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes:					
GROUP 1	8.23	.70			
GROUP 2	8.36	.70			
GROUP 3	8.42	.70			
GROUP 4	8.50	.70			
GROUP 5	8.69	.70			
ZONE 2 - Bossier & Caddo Parishes:					
GROUP 1	8.36				
GROUP 2	8.46				
GROUP 3	8.69				
GROUP 4	8.90				
GROUP 5	9.32				
ZONE 3 - Calcasieu Parish:					
GROUP 1	8.39	.70			
GROUP 2	8.52	.70			
GROUP 3	8.58	.70			
GROUP 4	8.65	.70			
GROUP 5	8.84	.70			
ZONE 4 - Allen & Beauregard Parishes					
GROUP 1	6.47	.70			
GROUP 2	6.60	.70			
GROUP 3	6.66	.70			
GROUP 4	6.73	.70			
GROUP 5	6.93	.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 5 - Cameron & Jefferson Davis Parishes:					
GROUP 1	$ 6.57	.70			
GROUP 2	6.70	.70			
GROUP 3	6.76	.70			
GROUP 4	6.83	.70			
GROUP 5	7.02	.70			

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP 1 - 1 ton & under; warehouseman, material checker, receiving clerk, spotter & dumper
GROUP 2 - 1½ tons to & including 2 tons (exclusive of dump trucks)
GROUP 3 - Single axle dump trucks, single axle water trucks
GROUP 4 - Heavy equipment, tandem axle dump & tandem axle water trucks, winch lift, transit mix, floats, pole trailers, 4 axle trailers & truck mechanic
GROUP 5 - Special equipment, euclids & 5 axle moving equipment

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 as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

STATE: MISSISSIPPI

COUNTIES: George, Hancock, Harrison, Jackson, Pearl River and Stone

DECISION NUMBER: MS81-1136 DATE: Date of Publication
Supersedes Decision NO.: MS79-1084, May 18, 1979, 44 FR 29049
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 mechanics	$5.12				
Bricklayers	8.00				
Carpenters	6.02				
Cement Masons	5.71				
Drywall finishers	7.00				
Drywall hangers	6.00				
Electricians	7.60				
Ironworkers	7.50				
Laborers:					
unskilled	3.35				
pipelayers	4.58				
Painters	7.96				
Plumbers & Pipefitters	6.19				
Power Equipment Operators:					
backhoe	5.71				
dozer	5.54				
roller	5.39				
tractor	5.25				
Roofers	5.00				
Sheet Metal workers	4.75				
Soft floor layers	4.50				
Tile setters	7.75				
Truck drivers	4.50				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Adams, Amite, Franklin, Jefferson, Lawrence, Lincoln, Pike, Walthall, and Wilkinson

DECISION NUMBER: MS81-1153 DATE: Date of publication

Supersedes Decision No.: MS79-1123, September 7, 1979, 44 FR 52531

DESCRIPTION OF WORK: Residential construction consisting of 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	$5.50				
Bricklayers	6.50				
Carpenters	5.17				
Cement masons	5.37				
Drywall hangers	5.50				
Electricians	5.14				
Ironworkers:					
reinforcing	4.52				
structural & ornamental	4.50				
Laborers:					
mason tenders	3.35				
mortar mixers	3.56				
pipelayers	3.50				
unskilled	3.35				
Painters:					
brush	4.26				
Plumbers & Pipefitters	6.95				
Power Equipment Operators:					
backhoe	4.00				
bulldozer	4.00				
roller	3.75				
Roofers(shingles)	4.00				
Sheet metal workers	4.94				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Attala, Chickasaw, Choctaw, Clay, Lowndes, Monroe, Noxubee, Oktibbeha, Webster, and Winston

DECISION NUMBER: MS81-1154 DATE: Date of publication

Supersedes Decision No.: MS79-1060, April 13, 1979, 44 FR 22296

DESCRIPTION OF WORK: Residential construction consisting of 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	$5.15				
Bricklayers	6.50				
Carpenters	5.75				
Cement masons	4.47				
Drywall finishers	5.00				
Drywall hangers	5.00				
Electricians	5.00				
Ironworkers:					
reinforcing	4.50				
Insulators	5.83				
Laborers	3.35				
Painters:					
brush	5.00				
Plumbers & Pipefitters	5.45				
Power Equipment Operators:					
backhoe	4.00				
bulldozer	3.50				
motor grader	4.88				
tractor	3.35				
Roofers	4.14				
Sheet metal workers	4.00				
Soft floor layers	6.00				
Tile setters	6.00				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Alcorn, Itawamba, Lee Pontotoc, Prentiss, Tippah, Tishomingo, and Union

DECISION NUMBER: MS81-1155

DATE: Date of publication

Supersedes Decision No.: MS79-1112, July 20, 1979, 44 FR 42845

DESCRIPTION OF WORK: Residential Construction consisting of 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	$3.90				
Bricklayers	7.23				
Carpenters	4.98				
Cement masons	4.98				
Electricians	4.60				
Ironworkers:					
structural & ornamental	5.00				
Laborers:					
asphalt rakers	3.35				
mason tenders	4.00				
mortar mixers	4.00				
pipelayers	3.35				
unskilled	3.35				
Painters:					
brush	3.90				
Plumbers & Pipefitters	7.50				
Power Equipment Operators:					
backhoe	4.68				
bulldozer	4.13				
form setter	3.98				
front end loader	4.38				
motor grader	4.68				
oiler - greaser	3.75				
roller	3.40				
tractor	3.35				
Roofers	4.50				
Sheet metal workers	4.13				
Soft floor layers	5.59				
Truck drivers	3.69				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Benton, DeSoto, Marshall, Tate, and Tunica

DECISION NUMBER: MS81-1156

DATE: Date of publication

Supersedes Decision No.: MS79-1136, October 19, 1979, 44 FR 60505

DESCRIPTION OF WORK: Residential Construction consisting of 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	$5.50				
Bricklayers	5.43				
Carpenters	4.50				
Cement masons	4.25				
Drywall finishers	4.55				
Drywall hangers	4.33				
Electricians	4.25				
Form setters	4.25				
Ironworkers:					
structural & ornamental	4.25				
Laborers:					
asphalt rakers	4.00				
unskilled	3.35				
Painters:					
brush	5.00				
Plumbers & Pipefitters	6.00				
Power Equipment Operators:					
backhoe	4.63				
bulldozer	6.00				
scraper	4.80				
roller	5.83				
Roofers	5.00				
Sheet metal workers	4.51				
Soft floor layers	5.75				
Truck drivers	4.25				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Bolivar, Coahoma, Humphreys, Quitman, Sunflower, and Washington

DECISION NUMBER: MS81-1157

DATE: Date of publication

Supersedes Decision No.: MS80-1013, January 4, 1980, 45 FR 1345

DESCRIPTION OF WORK: Residential Construction consisting of 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	$4.50				
Bricklayers	5.50				
Carpenters	4.50				
Cement masons	4.16				
Drywall hangers	4.01				
Electricians	4.75				
Fence erectors	4.00				
Insulators	3.35				
Ironworkers:					
ornamental	4.00				
reinforcing	3.75				
Laborers	3.35				
Painters	4.50				
Plumbers	6.00				
Power Equipment Operators:					
asphalt spreader	3.67				
backhoe	3.35				
mechanic	4.13				
Roofers	4.00				
Sheet metal workers	4.25				
Soft floor layers	4.00				
Truck drivers	3.35				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Clairborne, Copiah, Hinds, Issaquena, Madison, Rankin, Sharkey, Simpson, Warren, and Yazoo

DECISION NUMBER: MS81-1158

DATE: Date of publication

Supersedes Decision No.: MS80-1104, September 19, 1980, 45 FR 62666

DESCRIPTION OF WORK: Residential Construction consisting of 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	$5.00				
Bricklayers	7.90				
Carpenters	4.92				
Carpet layers	5.75				
Drywall finishers	7.50				
Drywall hangers	5.43				
Cement masons	6.10				
Electricians	7.25				
Insulators	4.00				
Ironworkers:					
reinforcing	4.59				
Laborers:					
mason tenders	3.75				
mortar mixers	4.13				
unskilled	3.35				
Painters:					
brush	6.01				
roller	7.50				
Plumbers & Pipefitters	7.25				
Power Equipment Operators:					
backhoe	5.43				
bulldozer	4.69				
loader	6.12				
pump operator	5.26				
roller	4.00				
trenching machine	5.20				
Roofers	5.00				
Tile setters	6.38				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Clarke, Jasper, Kemper, Lauderdale, Neshoba, and Newton

DECISION NUMBER: MS81-1159

DATE: Date of publication

Supersedes Decision No.: MS79-1077, April 27, 1979, 44 FR 25115

DESCRIPTION OF WORK: Residential Construction consisting of 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	$6.25				
Bricklayers	7.50				
Carpenters	6.04				
Cement masons	6.00				
Drywall finishers	4.92				
Drywall hangers	5.53				
Electricians	9.45	.32	.28	.12	
Glaziers	4.90				
Ironworkers:					
reinforcing	4.96				
Laborers:					
mason tenders	3.35				
mortar mixers	3.50				
unskilled	3.35				
Painters:					
brush	5.00				
Plumbers & Pipefitters	7.25				
Power Equipment Operators:					
backhoe	3.50				
bulldozer	3.88				
Roofers	5.75				
Sheet metal workers	5.00				
Soft floor layers	5.00				
Tile setters	6.50				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Calhoun, Carroll, Grenada, Holmes, Lafayette, LeFlore, Montgomery, Panola, Tallahatchie, and Yalobusha

DECISION NUMBER: MS81-1160

DATE: Date of publication

Supersedes Decision No.: MS79-1115, August 3, 1979, 44 FR 45847

DESCRIPTION OF WORK: Residential Construction consisting of 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.
Carpenters	$4.78				
Cement masons	3.35				
Drywall finishers	4.00				
Drywall hangers	5.00				
Electricians	4.00				
Ironworkers:					
reinforcing	4.25				
Laborers	3.35				
Painters:					
brush	3.60				
Plumbers & Pipefitters	6.00				
Power Equipment Operators:					
bulldozer	5.50				
trenching machine	4.75				
Sheet metal workers	3.50				
Soft floor layers	4.00				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI COUNTIES: George, Hancock, Harrison, Jackson, Pearl River, and Stone

DECISION NUMBER: MS81-1161 DATE: Date of publication

Supersedes Decision No.: MS80-1010, January 4, 1980, 45 FR 1349

DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$7.00				
Carpenters	5.66				
Cement masons	5.06				
Cement finishers	5.06				
Electricians	6.00				
Ironworkers:					
reinforcing	8.50				
Laborers:					
asphalt rakers	3.35				
air tool operators	4.18				
concrete saw operators	5.00				
grade checkers	4.00				
mason tenders	4.50				
pipelayers	3.35				
unskilled	3.35				
Painters:					
structural steel	5.43				
Piledrivermen	5.52				
Power Equipment Operators:					
A-frame truck (winch)	4.50				
aggregate spreader	3.50				
air compressor	3.35				
asphalt distributor	4.00				
asphalt plant	4.00				
backhoe	4.74				
bulldozer	5.33				
concrete batch plant	5.30				
concrete finishing machine	6.50				
curing machine	3.35				
concrete paving machine	3.55				
concrete spreader machine	3.35				
crane and dragline	6.00				
guard rail post driver	3.50				
earth auger	4.00				
firemen	3.35				
joint filler	3.35				
loader (all types)	4.50				
mechanic	6.13				
mixer (all types)	3.35				
motor patrol	5.42				
mulcher	3.35				
oiler - greaser	4.50				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't					
pileDriver	6.25				
roller (self-propelled)	3.35				
scales (all types)	3.40				
scraper	5.00				
shovel	4.74				
spreader	4.00				
striping machine	4.00				
tractor (track type)	5.00				
tractor (wheel type)	3.35				
trenching machine	4.00				
sub grade machine	3.60				
crusher feeder	3.35				
Truck drivers	3.35				
Tugboat operators	5.50				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Adams, Amite, Covington, Forrest, Franklin, Greene, Jefferson, Jefferson-Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, Wilkinson

DECISION NUMBER: MS81-1162 DATE: Date of publication

Supersedes Decision No.: MS79-1092, June 1, 1979, 44 FR 31854

DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$5.00				
Carpenters	5.00				
Cement masons	5.03				
Cement finishers	5.03				
Electricians	9.70				
Ironworkers:					
reinforcing	5.05				
structural	6.00				
Laborers:					
air tool operators	3.50				
asphalt rakers	3.68				
concrete saw operators	4.25				
grader checkers	3.75				
mason tenders	4.00				
unskilled	3.35				
Painters:					
structural steel	4.00				
Piledrivermen	4.25				
Power Equipment Operators:					
A frame truck (winch)	3.75				
aggregate spreader	3.50				
air compressor	4.88				
asphalt distributor	3.82				
asphalt plant	4.88				
backhoe	4.93				
bulldozer	4.68				
concrete batch plant	4.50				
concrete finishing machine	3.75				
concrete paving machine	3.35				
concrete spreader machine	3.35				
crane and dragline	6.00				
guard rail post driver	3.35				
earth auger	3.35				
fireman	3.35				
joint filler	3.35				
joint setter	3.75				
loader (all types)	4.05				
mechanic	5.09				
mixer (all types)	3.50				
motor patrol	4.50				
mulcher	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
oiler - greaser	3.64				
piledriver	4.75				
roller (self-propelled)	3.35				
scales (all types)	3.38				
scraper	4.00				
shovel	4.93				
spreader	3.82				
striping machine	4.00				
tractor (track type)	3.75				
tractor (wheel type)	3.35				
trenching machine	3.75				
crusher feeder	3.35				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: MISSISSIPPI

COUNTIES: Attala, Clarke, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee, Scott, Smith, and Winston

DECISION NUMBER: MS81-1163 DATE: Date of publication

Supersedes Decision No.: MS80-1009, January 4, 1980, 45 FR 1348

DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$5.50				
Carpenters	4.50				
Cement masons	4.25				
Cement finishers	4.25				
Electricians	7.00				
Ironworkers:					
reinforcing	4.50				
Laborers:					
air tool operators	3.35				
asphalt rakers	3.65				
concrete saw operators	4.00				
grade checkers	4.10				
mason tenders	3.88				
pipelayers	3.35				
unskilled	3.35				
Painters:					
structural steel	6.00				
Power Equipment Operators:					
A frame truck (winch)	3.75				
aggregate spreader	3.35				
air compressor	3.65				
asphalt distributor	4.19				
asphalt plant	3.88				
backhoe	4.75				
bulldozer	4.30				
concrete batch plant	3.35				
concrete finishing machine	4.50				
concrete paving machine	3.50				
concrete spreader machine	3.35				
crane and dragline	5.50				
crusher feeder	3.50				
curing machine	3.35				
earth auger	3.35				
firemen	3.35				
guard rail post driver	3.35				
joint setter	3.35				
loader (all types)	4.29				
mechanic	5.04				
mixer (all types)	4.00				
motor patrol	4.00				
mulcher	3.35				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
oiler-greaser	3.35				
piledriver	4.25				
roller (self-propelled)	3.50				
scales (all types)	3.35				
scraper	4.75				
shovel	4.75				
spreader	4.19				
striping machine	4.25				
tractor (track type)	3.35				
tractor (wheel type)	3.35				
trenching	4.35				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Clairborne, Copiah, Hinds, Holmes, Humphreys, Issaquena, Madison, Rankin, Sharkey, Simpson, Warren, and Yazoo

DECISION NUMBER: MS81-1164

DATE: Date of publication

Supersedes Decision No.: MS80-1008, January 4, 1980, 45 FR 1347

DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$5.00				
Carpenters	4.89				
Cement masons	4.96				
Cement finishers	4.96				
Electricians	10.65				
Ironworkers:					
reinforcing	4.72				
Laborers:					
asphalt rakers	3.35				
grade checkers	3.75				
mason tenders	4.07				
pipelayers	4.50				
unskilled	3.35				
Painters:					
structural steel	5.00				
Power Equipment Operators:					
A frame truck (winch)	5.00				
aggregate spreader	3.50				
air compressor	3.35				
asphalt distributor	3.50				
asphalt plant	4.00				
backhoe	5.02				
bull dozer	5.00				
concrete batch plant	4.25				
concrete breaker	3.35				
concrete finishing machine	5.25				
concrete paving machine	3.80				
concrete spreader	4.25				
crane and dragline	6.00				
crusher feeder	3.35				
curing machine	3.35				
earth auger	5.00				
fireman	3.60				
guard rail post driver	3.50				
hydro-hammer	3.35				
joint filler	3.35				
joint setter	3.95				
loader (all types)	5.10				
mechanic	4.50				

DECISION NUMBER: MS81-1164

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
mixer (all types)	3.60				
motor patrol	5.70				
mulcher	3.35				
oiler-greaser	3.35				
piledriver	3.70				
roller (self-propelled)	3.71				
scales (all types)	4.00				
scraper	5.73				
shovel	5.02				
spreader	3.50				
striping machine	4.00				
tractor (track type)	4.00				
tractor (wheel type)	3.35				
trenching machine	3.35				
Truck drivers	3.50				
Welder-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: MISSISSIPPI

COUNTIES: Bolivar, Carroll, Coahoma, DeSoto, Grenada, LaFlore, Montgomery, Panola, Quitman, Sunflower, Tallahatchie, Tate, Tunica, Washington, and Yalobusha

DECISION NUMBER: MS81-1165 DATE: Date of publication

Supersedes Decision No.: MS80-1007, January 4, 1980, 45 FR 1346

DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$7.00				
Carpenters	5.00				
Cement masons	5.00				
Cement finishers	5.00				
Electricians	6.00				
Ironworkers:					
reinforcing	4.75				
structural	4.75				
Laborers:					
air tool operators	3.35				
asphalt rakers	3.38				
concrete saw operators	4.85				
grade checkers	3.66				
mason tenders	3.67				
pipelayers	3.50				
unskilled	3.35				
Painters:					
structural steel	4.50				
Power Equipment Operators:					
aggregate spreader	3.35				
air compressor	3.35				
asphalt distributor	3.35				
asphalt plant	3.35				
backhoe	4.68				
bulldozer	5.00				
concrete batch plant	4.00				
concrete breaker	3.35				
concrete finishing machine	3.50				
concrete paving machine	3.50				
concrete spreader machine	3.35				
crane and dragline	6.00				
crusher feeder	3.35				
curing machine	3.35				
earth auger	3.35				
guard rail post driver	3.50				
fireman	3.35				
hydo-hammer	3.35				
joint filler	3.35				
loader (all types)	4.44				
mechanic	4.10				
mixer (all types)					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
motor patrol	5.00				
mulcher	3.35				
oiler-greaser	4.00				
piledriver	5.50				
roller (self-propelled)	3.35				
scales (all types)	4.00				
scraper	5.00				
shovel	4.69				
spreader	3.35				
striping machine	5.00				
subgrade machine	4.00				
tractor (track type)	3.35				
tractor (wheel type)	3.35				
trenching machine	4.00				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: TENNESSEE
DECISION NUMBER: TN81-1170
COUNTIES: STATEWIDE
DATE: DATE OF PUBLICATION
Supersedes Decision Number TN80-1044, dated January 11, 1980, in 45 FR 2495
DESCRIPTION OF WORK: HEAVY CONSTRUCTION PROJECTS (except Hamilton County), and HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR TOOL OPERATOR	$ 5.30				
ASPHALT PAVER OPERATOR	6.42				
ASPHALT RAKER	5.64				
BACKHOE OPERATOR	7.18				
BITUMINOUS DISTRIBUTOR MACHINE OPERATOR	5.59				
BRICKLAYERS	7.94				
BORING MACHINE OPERATOR (Horizonal)	5.40				
BULLDOZER or PUSH DOZER OPERATOR	6.95				
CARPENTER	6.95				
CENTRAL MIXING PLANT OPERATOR	6.23				
CHAIN SAW OPERATOR	5.14				
CONCRETE FINISHER	6.57				
CONCRETE FINISHING MACHINE	6.76				
CONCETE MIXER OPERATOR-Less than 1 yard	5.12				
CONCRETE PAVER OPERATOR	6.58				
CONCRETE RUBBER	5.61				
CONCRETE SAW OPERATOR	5.56				
CRANE OPERATOR	7.22				
CURB MACHINE OPERATOR (Manual)	6.20				
CURB MACHINE OPERATOR (Automatic)	6.24				
DITCH PAVER MACHINE OPERATOR	4.93				
DOZER or LOADER - Stock Pile Only	6.12				
DRILL OPERATOR (Cassion)	10.71				
DRILL OPERATOR PILING	5.76				
ROCK DRILL OPERATOR	5.76				
FRONT END LOADER	7.09				
ELECTRICIANS:					
Shelby County Only	13.73	.95	3% + .50		½ of 1%
Remaining Counties	11.56				
FENCE ERECTOR	6.43				
FLAGPERSON	4.89				
FORM SETTER - Steel Road	6.20				
GUARD RAIL ERECTOR	5.60				
IRON WORKERS:					
Reinforcing	6.63				
Structural	7.14				
LABORER	4.72				
MECHANIC - Class I (Heavy Duty)	7.25				
MECHANIC - Class II (Light Duty)	6.94				
MECHANIC'S HELPER (Tire Changer and/or Greaser)	$ 5.20				
MORTAR MIXER	5.14				
MOTAR PATROL OPERATOR - Finish	7.00				
MOTAR PATROL (Rough)	6.99				
MULCHER or SEEDER OPERATOR	5.51				
NOZZLEMAN or GUNOPERATOR (Gunite)	6.16				
OILER	5.96				
PAINTER or SANDBLASTER	6.70				
PILE DRIVER OPERATOR	7.21				
PIPELAYER	5.40				
POWDER PERSON	6.56				
ROLLER - Asphalt	6.02				
ROLLER - Compaction (Self-Propelled)	5.76				
SCALE OPERATOR	6.33				
SCRAPER OPERATOR	6.75				
SHOVEL OPERATOR	6.71				
SIGN ERECTOR	6.30				
SOIL STABLIZATION MACHINE OPERATOR	5.94				
SPREADER OPERATOR - Self Propelled	6.75				
TRACTOR OPERATOR - Boom and Hoist	5.96				
TRACK DRILL OPERATOR	5.56				
TRACTOR OPERATOR - Crawler or Utility	6.95				
TRACTOR OPERATOR - Farm	5.27				
TRENCHING MACHINE OPERATOR	6.65				
TRUCK DRIVER (2 & 3 Axles)	5.13				
TRUCK DRIVERS (4 & 5 Axles or more or Heavy-Duty)	5.51				
WELDERS - Rate for Craft					

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)).

STATE: Texas
COUNTIES: Statewide
DECISION NO.: TX81-4001
DATE: Date of Publication
Supersedes Ddcision No. TX80-4017, dated March 14, 1980, in 44 FR 16818.
DESCRIPTION OF WORK: See "Area Covered by Various Zones"

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	$ -	$ -	$ 3.75	$ -	$ 3.50
Asphalt Heaterman	5.60	4.85	4.00	4.30	4.00
Asphalt Raker	4.65	4.50	5.00	4.25	4.35
Asphalt Shoveler	-	3.95	3.75	3.50	3.50
Batching Plant Scaleman	5.85	5.30	6.00	5.25	4.25
Batterboard Setter	-	4.20	-	-	4.30
Carpenter	5.50	5.70	5.25	5.50	5.20
Carpenter Helper	4.65	4.75	4.05	4.00	4.25
Concrete Finisher (Paving)	6.65	6.50	5.35	5.30	5.35
Concrete Finisher Helper (Paving)	4.50	5.00	4.25	3.75	3.50
Concrete Finisher (Structures)	6.00	5.50	5.25	4.95	5.15
Concrete Finisher Helper (structures)	5.60	5.05	4.35	4.00	4.00
Concrete Rubber	-	-	4.60	3.50	4.05
Electrician	8.20	8.10	8.50	9.45	9.00
Electrician Helper	-	-	-	5.85	4.75
Fireman	-	-	-	-	-
Form Builder (Structures)	5.30	5.45	5.65	4.55	5.70
Form Builder Helper (Structures)	4.50	4.20	4.50	4.15	4.10
Form Liner (Paving and Curb)	6.50	5.60	-	4.75	4.45
Form Setter (Paving and Curb)	6.00	5.00	5.35	4.45	5.30
Form Setter Helper (Paving and Curb)	-	4.00	3.75	3.50	4.25
Form Setter (Structures)	6.00	6.25	5.75	4.95	4.95
Form Setter Helper (Structures)	4.50	5.25	4.25	4.10	4.00
Laborer, Common	3.75	3.95	3.75	3.50	3.50
Laborer, Utility Man	4.70	4.70	4.45	4.00	3.50
Manhole Builder, Brick	5.20	4.50	-	-	4.45
Mechanic	6.25	7.00	5.25	6.05	5.85
Mechanic Helper	5.00	4.25	4.40	4.00	4.50
Oiler	5.00	4.50	5.00	4.00	4.50
Serviceman	5.50	4.95	4.65	4.45	4.00
Painter (Structures)	4.60	-	6.00	5.50	4.90
Painter Helper (Structures)	-	-	3.75	4.35	-
Piledrivermen	$ -	$ -	$ -	$ 4.25	$4.35
Pipelayer	5.60	4.00	4.45	4.25	4.45
Pipelayer Helper	4.00	3.95	3.75	3.70	3.75
Pneumatic Mortarman	-	-	-	-	-
Powderman	6.15	5.50	5.00	5.00	5.50
Powderman Helper	-	-	3.75	3.50	4.25
Reinforcing Steel Setter (Paving)	-	5.50	5.50	-	4.75
Reinforcing Steel Setter (Structures)	6.50	5.45	5.00	4.70	5.65
Reinforcing Steel Setter Helper	4.00	-	4.20	3.90	4.00
Steel Worker (Structural)	-	-	-	4.15	4.80
Steel Worker Helper (Structural)	-	-	-	-	4.30
Sign Erector	-	-	-	5.85	5.30
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	4.60	5.00	4.70	5.20	4.00
Swamper	4.35	4.55	4.25	4.00	4.00
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor	5.75	5.00	5.25	4.20	4.50
Asphalt Paving Machine	6.30	5.20	5.20	4.50	5.20
Broom or Sweeper Operator	4.35	4.00	4.60	4.15	4.00
Bulldozer, 150 HP and less	5.30	5.00	4.70	4.50	4.65
Bulldozer, over 150 HP	6.00	5.70	5.25	5.50	5.35
Concrete Paving Curing Machine	5.25	-	-	4.25	4.70
Concrete Paving Finishing Machine	6.25	5.30	-	4.65	-
Concrete Paving Form Grader	5.25	-	-	-	-
Concrete Paving Gang Vibrator	-	-	-	-	4.60
Concrete Paving Grinder	-	-	-	-	5.50
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	5.00	7.00	-	-	4.10
Concrete Paving Saw	5.50	-	4.50	4.50	-

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
POWER EQUIPMENT OPERATORS: (Cont'd)					
Concrete Paving Spreader	$ -	$ -	$ -	$ -	$4.35
Paving Sub Grader	-	5.25	4.25	-	5.50
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	5.75	5.00	5.15	5.10	5.10
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and over)	6.30	6.95	6.00	5.95	5.75
Crusher or Screening Plant Operator	5.60	4.95	4.70	5.25	4.25
Elevating Grader	6.00	-	4.60	5.35	4.00
Form Loader	-	-	-	5.75	-
Foundation Drill Operator (Crawler Mounted)	5.60	5.85	8.00	-	7.70
Foundation Drill Operator (Truck Mounted)	7.10	7.00	5.50	5.50	6.25
Foundation Drill Operator Helper	4.50	5.50	3.95	-	3.75
Front End Loader (2½ CY and less)	5.00	4.95	4.65	4.40	4.00
Front End Loader (Over 2½ CY)	5.90	5.70	5.65	5.45	5.35
Mixer (Over 16 CF)	-	-	-	-	4.50
Mixer (16 CF and less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	6.30	7.00	6.50	6.30	6.55
Motor Grader Operator	6.00	5.75	5.40	5.35	5.30
Pump Crete	-	-	-	-	-
Roller, Steel Wheel (Plant-Mix Pavements)	5.00	4.50	4.55	3.95	4.35
Roller, Steel Wheel (Other Flat Wheel or Tamping)	4.75	4.35	4.10	3.90	3.80
Rollet, Pneumatic (Self-Propelled)	4.55	4.30	4.05	3.85	3.85
Scrapers (17 CY and less)	4.95	5.00	4.50	4.50	4.50
Scrapers (Over 17 CY)	5.60	5.60	5.20	5.00	5.00
Self-Propelled Hammer	-	-	-	-	-
Side Boom	-	4.00	-	-	4.20

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
POWER EQUIPMENT OPERATORS: (CONT'D)					
Tractor (Crawler type) 150 HP and less	$ 4.70	$ 4.25	$ 4.50	$ 4.00	$ 4.10
Tractor (Crawler type) over 150 HP	5.15	4.75	4.70	4.65	5.30
Tractor (Pneumatic) 80 HP and less	4.30	4.25	4.10	4.00	4.00
Tractor (Pneumatic) over 80 HP	4.90	5.00	4.65	4.75	5.00
Traveling Mixer	4.80	-	4.00	4.15	3.50
Trenching Machine, Light	5.45	-	5.25	4.25	4.30
Trenching Machine, Heavy	5.45	-	5.75	4.75	5.00
Wagon Drill, Boring Machine or Post Hole Driller Operator	4.90	4.50	4.50	4.50	4.25
TRUCK DRIVERS:					
Single Axle, Light	4.75	4.35	4.10	4.00	4.05
Single Axle, Heavy	4.75	4.50	4.10	4.35	4.05
Tandem Axle or Semitrailer	-	-	4.20	-	4.30
Lowboy-Float	5.50	5.00	5.00	4.85	4.25
Transit-Mix	-	-	-	-	-
Winch	-	-	4.25	-	4.15
Vibrator Man (Hand type)	3.90	-	-	3.50	-
Welder	6.30	6.00	5.65	5.40	5.40
Welder Helper	-	4.50	4.35	4.60	4.50

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic H. . Rates	Basic Hourly Rates
Air Tool Man	$ 3.50	$ 3.50	$ 3.35	$ 3.75	$ -
Asphalt Heaterman	4.00	4.50	3.60	4.25	4.05
Asphalt Raker	3.90	3.50	4.75	5.50	5.95
Asphalt Shoveler	4.10	4.20	-	4.25	4.35
Batching Plant Scaleman	4.00	5.75	4.75	5.50	6.00
Batterboard Setter	-	5.40	-	-	6.00
Carpenter	4.65	5.50	5.50	5.75	6.00
Carpenter Helper	3.75	4.35	4.95	4.00	4.70
Concrete Finisher (Paving)	5.00	4.50	5.00	6.45	6.50
Concrete Finisher Helper (Paving)	3.50	3.50	4.55	4.75	5.00
Concrete Finisher (Structures)	4.30	5.35	5.50	5.30	5.95
Concrete Finisher Helper (Structures)	3.60	4.00	4.00	4.50	4.85
Concrete Rubber	3.50	3.50	5.25	4.00	4.00
Electrician	7.50	9.25	7.75	8.85	7.50
Electrician Helper	-	5.50	6.25	4.00	5.00
Fireman	-	-	-	-	-
Form Builder (Structures)	5.25	5.55	5.50	5.00	6.00
Form Builder Helper (Structures)	3.50	4.90	4.50	3.75	4.50
Form Liner (Paving and Curb)	3.70	4.75	-	-	6.00
Form Setter (Paving and Curb)	3.85	5.30	4.25	5.00	5.00
Form Setter Helper (Paving and Curb)	3.50	4.00	4.05	3.75	4.85
Form Setter (Structures)	4.70	5.35	5.55	5.65	6.00
Form Setter Helper (Structures)	3.95	4.50	4.50	4.15	5.20
Laborer, Common	3.50	3.50	3.35	3.75	4.00
Laborer, Utility Man	4.15	4.30	4.10	4.00	4.50
Manhole Builder, Brick	4.35	4.75	-	-	-
Mechanic	4.35	6.00	6.20	5.50	6.35
Mechanic Helper	3.95	4.25	4.50	4.10	5.00
Oiler	4.00	4.70	4.50	4.85	5.25
Serviceman	4.25	4.80	4.50	4.50	4.90
Painters (Structures)	5.95	5.00	7.00	-	-
Painter Helper (Structures)	-	3.50	-	-	-
Piledrivermen	6.60	6.75	5.25	-	7.00

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Pipelayer	$ 3.75	$ 4.45	$ 4.85	$ 5.00	$ 5.55
Pipelayer Helper	3.50	4.00	3.75	4.25	4.25
Pneumatic Mortarman	-	-	-	-	-
Powderman	5.00	6.00	6.00	5.50	5.60
Powderman Helper	-	4.25	-	-	-
Reinforcing Steel Setter (Paving)	-	-	-	-	4.75
Reinforcing Steel Setter (Structures)	4.60	5.00	5.15	4.90	5.85
Reinforcing Steel Setter Helper	3.50	4.25	4.15	4.25	4.25
Steel Worker (Structural)	-	5.75	4.50	-	4.75
Steel Worker Helper (Structural)	-	-	3.70	-	4.10
Sign Erector	-	-	4.75	4.65	5.75
Sign Erector Helper	-	-	4.00	3.35	5.25
Spreader Box Man	4.55	4.75	4.75	4.55	5.00
Swamper	-	-	4.25	4.55	4.40
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor	4.50	5.10	5.00	5.00	6.00
Asphalt Paving Machine	5.45	6.25	5.00	5.10	6.20
Broom or Sweeper Operator	3.65	4.00	4.00	4.00	-
Bulldozer, 150 HP and less	4.25	4.50	4.70	4.80	5.00
Bulldozer, over 150 HP	4.90	5.95	5.95	5.75	6.15
Concrete Paving Curing Machine	-	-	-	5.00	5.85
Concrete Paving Finishing Machine	4.25	-	-	-	6.30
Concrete Paving Form Grader	-	-	-	-	-
Concrete Paving Gang Vibrator	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	5.50	-	-	-	-
Concrete Paving Mixer	-	-	-	-	7.00
Concrete Paving Saw	-	-	-	4.75	4.50
Concrete Paving Spreader	-	-	-	-	5.00

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
POWER EQUIPMENT OPERATORS: (CONT'D)					
Paving Sub Grader	$ -	$ -	$ -	$ -	$ 5.25
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.65	5.95	5.25	5.10	6.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and over)	6.25	6.85	7.05	6.25	7.00
Crusher or Screening Plant Operator	-	4.25	4.75	4.60	-
Elevating Grader	-	4.00	5.00	-	-
Form Loader	-	-	-	-	-
Foundation Drill Operator (Crawler Mounted)	7.75	-	5.75	-	-
Foundation Drill Operator (Truck Mounted)	7.75	-	8.00	7.75	7.00
Foundation Drill Operator Helper	4.25	-	5.35	4.25	4.85
Front End Loader (2½ CY and less)	4.00	5.00	4.60	4.75	5.40
Front End Loader (Over 2½ CY)	4.75	5.50	5.65	5.65	6.55
Mixer (Over 16 CF)	-	4.50	-	-	7.00
Mixer (16 CF and less)	-	-	-	-	5.00
Motor Grader Operator, Fine Grade	5.70	6.75	7.00	7.00	7.00
Motor Grader Operator	5.25	5.50	6.00	5.30	6.00
Pump Crete	-	-	-	-	-
Roller, Steel Wheel (Plant-Mix Pavements)	4.50	4.90	4.00	4.50	5.85
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.90	3.90	4.60	4.00	5.15
Roller, Pneumatic (Self-Propelled)	4.15	4.35	4.10	3.95	4.80
Scrapers (17 CY and less)	4.25	4.50	5.00	4.40	5.00
Scrapers (over 17 CY)	4.75	5.70	6.00	5.20	6.00
Self-Propelled Hammer	-	-	-	-	5.50
Side Boom	-	-	-	-	4.00
Tractor (Crawler type) 150 HP and less	3.75	3.80	3.75	3.35	5.75

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
POWER EQUIPMENT OPERATORS: (Cont'd)					
Tractor (Crawler type) over 150 HP	$ 4.95	$ 5.10	$ 4.00	$ 4.60	$ 6.20
Tractor (Pneumatic) 80 HP and less	3.80	4.00	4.00	4.50	4.75
Tractor (Pneumatic) over 80 HP	4.25	4.45	4.90	5.10	5.75
Traveling Mixer	3.90	4.00	-	4.10	5.25
Trenching Machine, Light	3.75	5.10	4.90	4.00	5.00
Trenching Machine, Heavy	-	5.50	6.50	4.45	6.50
Wagon Drill, Boring Machine or Post Hole Driller Operator	4.75	4.30	4.75	4.00	5.10
TRUCK DRIVERS:					
Single Axle, Light	3.50	3.50	4.20	4.00	4.75
Single Axle, Heavy	-	4.00	4.30	4.25	4.90
Tandem Axle or Semitrailer	3.50	4.25	-	5.00	5.00
Lowboy-Float	4.35	4.50	-	4.80	5.90
Transit-Mix	-	-	-	-	5.00
Winch	3.50	4.50	-	-	5.75
Vibrator Man (hand type)	3.50	3.50	-	-	-
Welder	5.45	5.85	6.50	5.00	6.00
Welder Helper	4.20	3.75	-	3.60	-

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	$ 4.00	$ -	3.80	$ 3.50	$ 4.60
Asphalt Heaterman	4.75	4.75	4.00	-	4.35
Asphalt Raker	6.00	5.10	5.45	4.10	5.50
Asphalt Shoveler	4.00	3.50	4.75	-	4.00
Batching Plant Scaleman	5.75	5.00	6.00	4.00	4.75
Batterboard Setter	4.00	-	-	-	5.75
Carpenter	6.25	5.65	6.05	6.05	7.15
Carpenter Helper	4.45	4.60	4.55	4.55	5.05
Concrete Finisher (Paving)	6.30	6.00	5.50	6.00	6.80
Concrete Finisher Helper (Paving)	5.10	4.85	4.00	5.50	5.10
Concrete Finisher (Structures)	6.00	6.00	5.65	6.00	6.80
Concrete Finisher Helper (Structures)	4.85	4.65	4.25	5.00	5.00
Concrete Rubber	4.00	5.00	4.50	-	5.00
Electrician	8.70	9.00	5.00	8.50	9.70
Electrician Helper	6.30	-	-	6.10	7.85
Fireman	4.50	-	3.70	-	-
Form Builder (Structures)	5.80	5.50	5.55	6.00	6.15
Form Builder Helper (Structures)	4.60	5.00	4.00	4.75	5.50
Form Liner (Paving and Curb)	5.40	6.00	6.25	-	6.00
Form Setter (Paving and Curb)	5.90	6.05	5.00	5.00	6.25
Form Setter Helper (Paving and Curb)	4.00	4.05	4.00	4.00	4.00
Form Setter (Structures)	5.85	6.00	6.05	6.75	6.20
Form Setter Helper (Structures)	4.55	4.00	4.75	5.00	4.70
Laborer, Common	4.00	3.50	3.50	3.50	4.00
Laborer, Utility Man	4.10	4.00	4.00	4.55	4.80
Manhole Builder, Brick	5.50	-	6.50	-	6.10
Mechanic	6.40	6.25	6.00	5.50	7.15
Mechanic Helper	4.55	4.50	5.50	5.10	5.85
Oiler	5.45	4.50	5.40	4.75	5.95
Serviceman	5.20	5.50	4.90	4.00	5.90
Painter (Structures)	5.50	5.25	-	-	7.00
Painter Helper (Structures)	4.00	-	-	-	5.40
Piledrivermen	-	5.25	7.35	5.00	6.00

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Pipelayer	$ 5.25	$ 4.75	$ 4.80	$ 4.60	$ 5.60
Pipelayer Helper	4.75	4.00	-	4.00	4.75
Pneumatic Mortarman	-	-	-	-	-
Powderman	5.00	4.25	-	-	-
Powderman Helper	-	-	-	-	-
Reinforcing Steel Setter (Paving)	4.50	4.80	-	-	5.40
Reinforcing Steel Setter (Structures)	5.55	4.75	6.00	6.00	6.25
Reinforcing Steel Setter Helper	4.00	4.00	4.00	-	4.00
Steel Worker (Structural)	4.50	5.35	-	-	7.00
Steel Worker Helper (Structural)	4.00	-	-	-	4.75
Sign Erector	6.00	-	-	-	5.00
Sign Erector Helper	5.00	-	-	-	-
Spreader Box Man	5.00	5.00	5.00	4.40	5.90
Swamper	4.00	-	-	-	-
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor	5.75	5.00	5.75	4.65	5.65
Asphalt Paving Machine	6.45	5.45	6.00	4.85	6.35
Broom or Sweeper Operator	4.00	4.70	4.00	4.25	4.20
Bulldozer, 150 HP & less	5.35	5.00	5.50	4.75	6.00
Bulldozer, over 150 HP	6.20	5.90	6.00	5.50	7.00
Concrete Paving Curing Machine	6.00	5.00	6.00	-	6.20
Concrete Paving Finishing Machine	5.95	5.25	-	-	6.00
Concrete Paving Form Grader	6.35	6.00	-	-	4.25
Concrete Paving Gang Vibrator	-	5.25	-	-	-
Concrete Paving Grinder	6.00	-	-	-	-
Concrete Paving Joint Machine	-	4.50	-	-	6.00
Concrete Paving Joint Sealer	5.75	4.75	-	-	5.50
Concrete Paving Longitudinal Float	6.00	-	-	-	6.00
Concrete Paving Mixer	6.00	4.50	-	-	6.75
Concrete Paving Saw	5.10	4.50	-	-	6.00
Concrete Paving Spreader	5.10	4.00	-	-	6.00
Paving Sub Grader	5.75	4.00	-	-	5.75

POWER EQUIPMENT OPERATORS: (CONT'D)	ZONE 11 Basic Hourly Rates	ZONE 12 Basic Hourly Rates	ZONE 13 Basic Hourly Rates	ZONE 14 Basic Hourly Rates	ZONE 15 Basic Hourly Rates
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 5.70	$ 5.70	$ 5.55	$ 5.85	$ 6.50
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and over)	6.65	6.00	7.25	7.00	7.50
Crusher or Screening Plant Operator	4.50	4.50	-	5.25	5.00
Elevating Grader	-	4.25	-	-	-
Form Loader	5.75	3.75	-	-	-
Foundation Drill Operator (Crawler Mounted)	6.50	-	-	-	8.50
Foundation Drill Operator (Truck Mounted)	6.40	7.50	7.25	-	5.95
Foundation Drill Operator Helper	4.75	6.45	-	-	-
Front End Loader (2½ CY and less)	5.25	5.05	4.80	5.00	5.60
Front End Loader (over 2½ CY)	6.25	6.00	6.00	5.75	6.55
Mixer (Over 16 CF)	5.85	-	-	4.50	5.00
Mixer (16 CF and less)	-	-	-	4.50	4.60
Motor Grader Operator, Fine Grade	7.00	7.00	7.00	7.00	8.00
Motor Grader Operator	6.00	5.50	6.00	5.35	7.00
Pump Crete	-	-	-	-	5.00
Roller, Steel Wheel (Plant-Mix Pavements)	5.50	4.70	5.00	4.50	5.35
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	5.15	4.55	4.75	4.25	4.95
Roller, Pneumatic (Self-propelled)	5.15	4.55	5.40	4.00	4.75
Scraper (17 CY and less)	5.00	5.00	5.50	4.70	5.40
Scrapers (over 17 CY)	6.00	5.65	6.15	6.00	6.00
Self-Propelled Hammer	-	-	-	-	-
Side Boom	-	4.00	5.00	-	-
Tractor (Crawler type) 150 HP and less	4.75	4.50	4.00	-	5.15
Tractor (Crawler type) over 150 HP	5.60	4.90	5.75	4.00	6.00

POWER EQUIPMENT OPERATORS: (CONT'D)	ZONE 11 Basic Hourly Rates	ZONE 12 Basic Hourly Rates	ZONE 13 Basic Hourly Rates	ZONE 14 Basic Hourly Rates	ZONE 15 Basic Hourly Rates
Tractor (Pneumatic) 80 HP and less	$ 4.50	$ 4.25	$ 4.50	$ 3.65	$ 4.50
Tractor (Pneumatic) over 80 HP	5.65	4.50	5.25	4.70	5.00
Traveling Mixer	5.05	4.00	4.55	4.50	5.75
Trenching Machine, Light	4.60	-	-	-	5.60
Trenching Machine, Heavy	5.25	5.00	-	-	6.50
Wagon Drill, Boring Machine or Post Hole Driller Operator	4.50	6.50	-	3.75	5.25
TRUCK DRIVERS:					
Single Axle, Light	4.75	4.00	5.00	5.00	5.15
Single Axle, Heavy	5.15	5.25	-	-	5.50
Tandem Axle or Semitrailer	-	-	5.00	-	-
Lowboy-Float	5.70	-	5.75	-	6.50
Transit-Mix	-	-	-	-	5.50
Winch	-	-	-	-	-
Vibrator Man (hand type)	4.00	4.50	-	-	-
Welder	6.00	6.25	4.50	4.75	6.00
Welder Helper	4.00	-	-	4.35	5.00

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	$ -				
Asphalt Heaterman	5.00				
Asphalt Raker	5.00				
Asphalt Shoveler	-				
Batching Plant Scaleman	-				
Batterboard Setter	-				
Carpenter	7.00				
Carpenter Helper	5.45				
Concrete Finisher (Paving)	7.25				
Concrete Finisher Helper (Paving)	5.50				
Concrete Finisher (Structures)	7.00				
Concrete Finisher Helper (Structures)	5.80				
Concrete Rubber	-				
Electrician	10.00				
Electrician Helper	5.25				
Fireman	-				
Form Builder (Structures)	5.75				
Form Builder Helper (Structures)	5.35				
Form Liner (Paving and Curb)	-				
Form Setter (Paving and Curb)	6.00				
Form Setter Helper (Paving and Curb)	-				
Form Setter (Structures)	5.50				
Form Setter Helper (Structures)	-				
Laborer, Common	4.95				
Laborer, Utility Man	5.85				
Manhole Builder, Brick	-				
Mechanic	8.00				
Mechanic Helper	4.95				
Oiler	6.00				
Serviceman	4.95				
Painter (Structures)	8.00				
Painter Helper (Structures)	5.00				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Piledrivermen	$ 6.00				
Pipelayer	5.85				
Pipelayer Helper	5.50				
Pneumatic Mortarman	-				
Powderman	-				
Powderman Helper	-				
Reinforcing Steel Setter (Paving)	6.00				
Reinforcing Steel Setter (Structures)	6.00				
Reinforcing Steel Setter Helper	-				
Steel Worker (Structural)	-				
Steel Worker Helper (Structural)	-				
Sign Erector	-				
Sign Erector Helper	-				
Spreader Box Man	5.00				
Swamper	4.95				
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor	6.00				
Asphalt Paving Machine	5.50				
Broom or Sweeper Operator	4.95				
Bulldozer, 150 HP and less	7.00				
Bulldozer, over 150 HP	7.50				
Concrete Paving Curing Machine	-				
Concrete Paving Finishing Machine	7.50				
Concrete Paving Form Grader	-				
Concrete Paving Gang Vibrator	-				
Concrete Paving Grinder	-				
Concrete Paving Joint Machine	-				
Concrete Paving Joint Sealer	-				
Concrete Paving Longitudinal Float	-				
Concrete Paving Mixer	-				
Concrete Paving Saw	6.05				

POWER EQUIPMENT OPERATORS: (Cont'd)	ZONE 16 Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Concrete Paving Spreader	$ -				
Paving Sub Grader	-				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	7.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and over)	8.00				
Crusher or Screening Plant Operator	-				
Elevating Grader	-				
Form Loader	-				
Foundation Drill Operator (Crawler Mounted)	-				
Foundation Drill Operator (Truck Mounted)	-				
Foundation Drill Operator Helper	-				
Front End Loader (2½ CY and less)	6.50				
Front End Loader (Over 2½ CY)	7.00				
Mixer (Over 16 CF)	5.50				
Mixer (16 CF and less)	-				
Motor Grader Operator, Fine Grade	7.50				
Motor Grader Operator	7.00				
Pump Crete	-				
Roller, Steel Wheel (Plant Mix Pavements)	6.00				
Roller, Steel Wheel (Other Flat Wheel or Tamping)	5.25				
Roller, Pneumatic (Self-Propelled)	5.50				
Scrapers (17 CY and less)	5.50				
Scrapers (Over 17 CY)	6.00				
Self-Propelled Hammer	-				
Side Boom	-				

POWER EQUIPMENT OPERATORS: (CONT'D)	ZONE 16 Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Tractor (Crawler type) 150 HP and less	$ 5.25				
Tractor (Crawler type) over 150 HP	6.00				
Tractor (Pneumatic) 80 HP and less	-				
Tractor (Pneumatic) over 80 HP	-				
Traveling Mixer	6.50				
Trenching Machine, Light	-				
Trenching Machine, Heavy	-				
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
TRUCK DRIVERS:					
Single Axle, Light	5.50				
Single Axle, Heavy	-				
Tandem Axle or Semi-trailer	5.75				
Lowboy-Float	8.35				
Transit-Mix	7.10				
Winch	-				
Vibrator Man (hand type)	-				
Welder	7.30				
Welder Helper	-				

AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 2 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 3 - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane, Crockett, Eastland, Ector, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Taylor, Tom Green, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 4 - Brewster, Culberson, El Paso*, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams), Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)

*Not to be used for Heavy Projects in El Paso County

ZONE 5 - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 6 - Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work.

ZONE 7 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio & Victoria Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

ZONE 8 - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Lee, Llano, Mason, Travis & Williamson Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 9 - Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, McLennan & Navarro Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 10 - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Somervell, Tarrant* & Wise Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams), Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)

*Not to be used for Heavy Projects in Tarrant County

ZONE 11 - Collin, Dallas, Ellis, Grayson & Rockwall Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Projects (does not include building structures in rest area projects)

ZONE 12 - Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties

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DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 13 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Cos.

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

ZONE 14 - Brazos, Burleson, Grimes, Leon, Madison, Milam, Robertson, Walker & Washington Cos.

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 15 - Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Waller & Wharton Counties

DESCRIPTION OF WORK: Highway Projects (does not include building structures in rest area projects)

ZONE 16 - Chambers, Hardin, Jefferson*, Liberty & Orange* Counties

DESCRIPTION OF WORK: Heavy Projects (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

*Not to be used for Heavy Projects & Incidental Shore Work in Jefferson & Orange Cos.

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: Bee, Kleberg, Nueces & San Patricio

DECISION NO.: TX81-4003 DATE: Date of Publication

Supersedes Decision No. TX78-4089, dated September 15, 1978, in 43 FR 41363.

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 MECHANICS	$ 3.50				
BRICKLAYERS	5.00				
CARPENTERS	5.14				
CEMENT MASONS	6.25				
ELECTRICIANS	12.53	.60	3%		3/4%
LABORERS:					
Laborers	3.35				
Pipelayers	3.59				
PAINTERS, BRUSH	6.00				
PLUMBERS	6.00				
ROOFERS	5.00				
SHEET METAL WORKERS	6.22				
SOFT FLOOR LAYERS	4.25				
TRUCK DRIVERS	3.35				
POWER EQUIPMENT OPERATORS:					
Backhoes	3.50				
Bulldozers	3.35				
Loaders	3.66				
Motor graders	4.09				
Scrapers	3.66				
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 COUNTY: Bexar
DECISION NO.: TX81-4004 DATE: Date of Publication
Supersedes Decision No. TX79-4013, dated January 5, 1979, in 44 FR 1685.
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 INSTALLERS	$ 3.50				
BRICKLAYERS	7.27	.30	.30		.05
CARPENTERS	4.89	"			
CEMENT MASONS	4.00				
DUCT INSTALLERS	4.60				
ELECTRICIANS:					
Single or multiple family dwellings or apartments up to & including 8 units not exceeding 2 stories	6.35	.30	1%		1/2%
Over 8 units or over 2 stories	9.23	.30	1%		1/2%
FORM SETTERS	4.50				
GLAZIERS	5.60				
INSULATION INSTALLERS	4.50				
LABORERS	3.35				
LATHERS	7.955				
PAINTERS	4.63				
PLASTERERS	6.65				
PLUMBERS & PIPEFITTERS	7.70				
ROOFERS	4.53				
SHEETROCK INSTALLERS	5.00				
SOFT FLOOR LAYERS	5.00				
TAPERS	4.00				
TILE SETTERS	4.73				
TRUCK DRIVERS	3.35				
POWER EQUIPMENT OPERATORS:					
Foundation drill operator (crawler mounted)	3.35				
Front end loader	3.60				
Tractor	3.75				
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 COUNTY: Bexar
DECISION NO.: TX81-4005 DATE: Date of Publication
Supersedes Decision No.: TX80-4032, dated June 6, 1980, in 45 FR 38254.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to and 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	$13.70	.70	.90		.08
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS	12.08	.57	.30	.25	.05
CARPENTERS:					
Carpenters	11.19	.48	.60	.40	.05
Millwrights	11.49	.48	.60	.40	.05
CEMENT MASONS	10.25	.45		.65	.02
ELECTRICIANS:					
Electricians	12.99	.60	5%		1%
Cable splicers	13.24	.60	5%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	12.30	1.195	.95	a+b	.035
Helpers	70%JR	1.195	.95	a+b	.035
Helpers (Prob.)	50%JR				
GLAZIERS	6.80				
IRONWORKERS	10.75	.55	1.30	.50	.12
LABORERS:					
GROUP 1 - General laborers	7.12	.57	.50		.05
GROUP 2 - All power tools & equipment operators; cutting torch man; power buggy op.; wagon drill op.; well driller; drilling rig tender; cement finisher tender; handling creosoted materials; scale man on batch plants asphalt raker; concrete & clay & all non-metallic pipe laying; plasterer tender; brick tender; lather tender	7.37	.57	.50		.05
GROUP 3 - Mortar mixer man; grout machines; pumpcrete machines; gunnite mixing machines; running sand dryer & loading; operating sand blaster; bell hole man; blaster, powderman; gunnite nozzleman	7.62	.57	.50		.05

DECISION NO. TX81-4005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Lineman	$ 14.63	.60	3%		½%
Cable splicer	14.88	.60	3%		½%
Groundman	8.05	.60	3%		½%
MARBLE SETTERS	10.52	.57	.03	.25	
MARBLE SETTERS' FINISHERS	7.67				
PAINTERS:					
Brush; paperhanger; taper & floater; hand roller	10.25		.40		.05
Brush on all structural steel; spray on any other surface other than steel	10.50		.40		.05
PLUMBERS & PIPEFITTERS	14.80	.60	.55		.10
ROOFERS:					
Roofers; deckman	8.21	.50			
Kettlemen	7.27	.50			
Waterproofers	7.72	.50			
SHEET METAL WORKERS	13.67	3%+.45	1.20		.09
SOFT FLOOR LAYERS	6.35				
SPRINKLER FITTERS	13.71	.85	1.20		.08
TERRAZZO WORKERS	10.52	.57	.30	.25	
TERRAZZO WORKERS' FINISHERS:					
Terrazzo finishers	7.67				
Floor machine operators	7.87				
Base machine operators	8.02				
TILE SETTERS	10.52	.57	.30	.25	
TILE SETTERS' FINISHERS	7.67				
TRUCK DRIVERS	3.64				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

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

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 years. - 6%; over 5 yrs. - 8% of basic hourly rate
b - Paid Holidays A thru G

DECISION NO. TX81-4005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$11.37	.75	1.00		
GROUP 2	10.14	.75	1.00		
GROUP 3	8.56	.75	1.00		
GROUP 4	8.22	.75	1.00		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - All foundation drilling rigs; all rollers (5 tons or over); backfiller; backhoe; blade graders (self-propelled); bull clam; bulldozers; cableway; clamshell operator; crane (power operated, all types); derricks (power operated, all types); draglines; DW-10 caterpillar and similar tractors; elevating graders (self-propelled); euclid; fork lift used on construction; gasoline or diesel-driven welding machines (7 to 12); gradall; heavy duty mechanic; high lifts; hoist (two drums or more); locomotives; mixer (14 cu. ft. or over); mixmobile; paving mixers (all sizes); piledriver; pumpcrete machine operator; rock crusher operator on job; scoopmobile; scrapers; shovel (power operated); turnapulls; trenching machines (all sizes); winch truck
GROUP 2 - Air compressor (any time there are three or more attachments operating on a 125 cu. ft. air compressor or less, a light equipment operator shall be employed. Any compressor over 125 cu. ft. shall have a light equipment operator); blade graders (towed); building elevator used on construction; flex planes; form graders; hoist (single drum); mixer (less than 14 cu. ft.); pneumatic roller; pulsometers; pump (2½ or larger shall require a light equipment operator); three to six welding machines or any three pieces or equipment of equal or similar nature
GROUP 3 - Fireman
GROUP 4 - 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)).

STATE: Texas COUNTY: Brazos
DECISION NO.: TX81-4006 DATE: Date of Publication
Supersedes Decision No. TX80-4034, dated June 6, 1980, in 45 FR 38255.
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	$13.12	1.00	1.08		.05
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS	13.60	.89	.90		.06
CARPENTERS	11.80				
CEMENT MASONS	12.90	.68	.97		.08
ELECTRICIANS	12.825	1.00	12%		.08
ELEVATOR CONSTRUCTORS:					
Mechanics	12.56	1.195	.82	a+b	.035
Helpers	70%JR	1.195	.82	a+b	.035
Helpers	50%JR				
GLAZIERS	13.39	.67	.875		.03
IRONWORKERS	13.26	.55	1.70		.10
LABORERS:					
GROUP 1	6.29	.47	.41		.02
GROUP 2	6.39	.47	.41		.02
GROUP 3	6.49	.47	.41		.02
GROUP 4	6.44	.47	.41		.02
GROUP 5	6.54	.47	.41		.02
GROUP 6	6.69	.47	.41		.02

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Construction labor, including excavation, concrete work, reinforcing, mason handler & wheeler (stock pile), asphalt ironer & raker, pipe layer (non-metallic), pump crete pipe (handling & laying) & all building construction labor excepting that hereinafter classified; carpenters tender, cement mason tender, vibrator operator, other mechanic tender (except as otherwise classified); dumper & spotter
GROUP 2 - Air tool operator
GROUP 3 - Well driller
GROUP 4 - Cutting torch man; mason tender; mason handler & wheelers handling from first stock pile; concrete pipe (handling & laying); sand blaster; power buggy operator; plasterer tender & hod carrier; lather tender; well driller tender
GROUP 5 - Tool room tender; mortar mixer (hoe or otherwise); blaster, powder man; gunnite worker
GROUP 6 - Gunnite nozzleman

LINE CONSTRUCTION:					
Lineman & cable splicer	13.40	.60	3%		½%
Groundman	7.77	.60	3%		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE MASONS	$12.42	.89	.30		.06
PAINTERS:					
GROUP 1 - All brush painting, hand roller, steam cleaning, all pneumatic tools	13.095	.765	.60	.40	.05
GROUP 2 - All spray painting, sandblasting, waterblasting	13.47	.765	.60	.40	.05
GROUP 3 - Tape, float & dr wall	13.22	.765	.60	.40	.05
GROUP 4 - Steeple jack wor hot materials	13.72	.765	.60	.40	.05
PIPEFITTERS	13.70	.70	.80		.06
PLASTERERS	13.50	.92	.45		.02
PLUMBERS	15.12	.75	.80		.10
SHEET METAL WORKERS	12.86	3%+.45	.74	.42	.10
SOFT FLOOR LAYERS	12.92	.60	.55		.14
TERRAZZO WORKERS	12.42	.89	.30		.06
TILE SETTERS	12.42	.89	.30		.06
WELDERS - receive rate prescribed for craft performi operation to which welding is incidental.					

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

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 months - none; 6 months to 5 years - 6% over 5 years - 8% of basic hourly rate
b - Paid Holidays A thru G

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))

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.34	.75	1.25		.07
GROUP 2	11.48	.75	1.25		.07
GROUP 3	10.85	.75	1.25		.07
GROUP 4	10.64	.75	1.25		.07

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic; blade grader, self-propelled; bull clam; back filler; derrick-power operated (all types); clam shell; draglines; push cat operator; bull dozer & all types cat tractors; cable-way; backhoe; shovel; power operated; crane, power operated (all types); elevating grader, self-propelled; hoist, motor-driven, two drums or more; mix mobile; water well drilling machines, used on construction; building elevator, used on construction; tug boat operator, assigned to construction; winch truck; locomotive crane; concrete mixer, 14 cubic feet or more; paving mixer (all types); pile driver; scraper, heavy type, over 3 cubic yards; trenching machine (all sizes); gradall; high-lift; foundation boring machine; gasoline or diesel-driven welding machines, 7 or more; pump-crete machine operator; turnapulls; DW-10 Caterpillar, S-18 euclid and similar tractors; asphalt plant mixer operator on job; crusher operator on job; scoopmobiles; forklift used on construction (not including warehousing); well point pump; concrete batch plant operator; pneumatic rollers, self-propelled;

GROUP 2 - Air compressors; blade grader, towed; flex plane; form grader; concrete mixer, less than 14 cubic feet; pumps; pulsometer; truck crane driver; gasoline or diesel driven welding machines (on 3 or more, up to 6 machines); hoist, single drum; scraper, 3 cubic yards or less; wagon drill operator; conveyor; generator, gasoline or diesel driven, over 1500 watts; rubber tired farm tractor with attachments; a light equipment operator may run 1 or 2 105 cfm compressors

GROUP 3 - Fireman
GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Ector & Midland
DECISION NO.: TX81-4007 DATE: Date of Publication
Supersedes Decision No. TX80-4036, dated June 20, 1980, in 45 FR 1980.
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	$12.50	.80	1.35		.02
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS & STONEMASONS	10.70	.57	.30		.03
CARPENTERS	11.48				.07
CEMENT MASONS	6.00				
ELECTRICIANS:					
ZONE 1 - shall include that area covered by the city limits of Midland & Odessa & extend out 20 miles therefrom	12.00	.60	3%		1/10%
ZONE 2 - shall include that area extending from the outer limits of Zone 1 out to & including 50 miles from the city limits of Midland & Odessa	12.70	.60	3%		1/10%
ZONE 3 - shall include that area extending from the outer limits of Zone 2 & shall extend to the outside limits of the Union jurisdiction	13.00	.60	3%		1/10%
GLAZIERS	5.48				
IRONWORKERS:					
Structural, ornamental & reinforcing	11.00	.55	1.70		.10
All ironworkers on jobs 30 miles or more from Terminal (midway Odessa-Midland)	11.125	.55	1.70		.10
LABORERS	3.94				
LATHERS	9.45				
PAINTERS:					
Brush	8.35		.35		
Spray	9.225		.35		
PLASTERERS	8.20				.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - shall be 15 miles or less from the Courthouse of either Odessa or Midland	11.25	.45	.55		.02

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & PIPEFITTERS (CONT'D):					
ZONE 2 - shall be more than 15 miles but less than 30 miles	$11.35	.45	.55		.02
ZONE 3 - shall be more than 30 miles but less than 45 miles	11.45	.45	.55		.02
ZONE 4 - shall be more than 45 miles	11.75	.45	.55		.02
ROOFERS	5.65				
SHEET METAL WORKERS	6.32				
TILE SETTERS	5.25				
TRUCK DRIVERS	3.94				
POWER EQUIPMENT OPERATORS:					
Asphalt paving machines	4.25				
Asphalt rakers	4.00				
Backhoes	4.90				
Bulldozers	4.50				
Cranes, derricks, draglines	5.59				
Foundation drills	4.12				
Front end loaders	4.00				
Motor graders	5.25				
Scrapers	4.00				
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)).

SUPERSEDES DECISION

STATE: Texas COUNTY: Taylor
DECISION NO.: TX81-4009 DATE: Date of Publication
Supersedes Decision No. TX79-4041, 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.
AIR CONDITIONING MECHANICS	$ 4.00				
ASBESTOS WORKERS	12.99	.70	1.00		.03
BOILERMAKERS	12.70	1.275	1.00		.03
BRICKLAYERS	7.20				
CARPENTERS	6.00	.25	.30		
CEMENT MASONS	5.41				
ELECTRICIANS:					
Electricians	11.75	.60	3%		1/4%
Cable splicers	12.00	.60	3%		1/4%
GLAZIERS	4.50				
IRONWORKERS	6.65	.55	.50		.10
LABORERS:					
Laborers	3.35				
Mason tenders	3.80				
LINE CONSTRUCTION:					
Lineman	11.75	.60	3%		1/4%
Cable splicers	12.00	.60	3%		1/4%
Groundman	8.81	.60	3%		1/4%
Equipment operator	9.64	.60	3%		1/4%
Flat bed truck driver	7.29	.60	3%		1/4%
PAINTERS:					
Brush, tape & bedding, paperhanger	8.35		.35		
Spray	9.225		.35		
PLASTERERS	6.60				
PLUMBERS & PIPEFITTERS	10.68	.50	.70		.05
POWER EQUIPMENT OPERATORS:					
Backhoes	4.75				
Cranes, derricks, dragline	5.575				
Drilling	5.575				
Oilers	4.65				
ROOFERS	3.94				
SHEET METAL WORKERS	6.26				
SOFT FLOOR LAYERS	3.75				
TILE SETTERS	4.00				
TRUCK DRIVERS	3.35				

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 COUNTY: Smith
DECISION NO. TX81-4008 DATE: Date of Publication
Supersedes Decision No. TX79-4043, dated September 28, 1979, in 44 FR 56109.
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.
AIR CONDITIONING MECHANICS	$ 4.63				
BRICKLAYERS	7.75				
CARPENTERS	9.72				
CEMENT MASONS	5.92				
ELECTRICIANS:					
Electricians	10.65	.60	3%		1/4%
Cable splicers	11.05	.60	3%		1/4%
GLAZIERS	5.25				
IRONWORKERS	8.50	.30	.35		.04
LABORERS:					
Laborers	3.35				
Mason tenders	4.00				
Mortar mixers	4.10				
Plasterers' tenders	4.40				
LATHERS	7.15	.30	.10		.01
PAINTERS	4.50				
PLASTERERS	11.325				
PLUMBERS:					
On projects $200,000 or more	7.59				.03
On projects less than $200,000	6.76				.03
ROOFERS	4.50				
SHEET METAL WORKERS	7.78	.62	.50		.03
SOUND INSTALLERS	6.00	.40	1%		
SPRINKLER FITTERS	13.71	.85	1.20		.08
TRUCK DRIVERS	3.35				
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)).

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Part V

Department of Health and Human Services

Office of Human Development Services

Guidelines for Development of State Child Welfare Services Plans; Final Guidelines

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Guidelines for Development of State Child Welfare Services Plans

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Final Guidelines for Development of State Child Welfare Services Plans.

SUMMARY: This Notice contains the final amended Guidelines for Development of the State Child Welfare Services Plan, under the authority of Sections 420–425 of the Social Security Act (title IV–B).

The Guidelines describe the elements of the State Plan and the revised process by which the Children's Bureau of the Administration for Children, Youth and Families and each State agency will jointly develop the Plan. The required elements of the State Plan are revised in part in response to comments on the proposed guidelines and to the provisions of Pub. L. 96–272 which amended title IV–B.

There are three major sections: (1) the final guidelines for development of the State Child Welfare Services Plan; (2) a list of the regulations comprising the Assurances which specify the basic requirements the State must meet in providing child welfare services under title IV–B of the Social Security Act and the regulations; and (3) the interpretations of the Assurances which discuss and clarify the meaning and intent of the regulation but do not change the content of the regulation which is controlling.

In summary, the Basic Plan now in effect is changed from a single descriptive document with attachments to a four part document: a preprinted commitment to meet the regulatory requirements (Assurances); a Long Range Strategy; an Annual Operating Plan, all of which emphasize the joint State-Federal planning process; and an Annual Budget Request which simplifies the paperwork and emiminates delays in making payments of title IV–B funds.

These Guidelines were first published in proposed form in the **Federal Register** on February 22, 1980 [45 FR. 12050]. The Notice recognized that the then proposed Adoption Assistance and Child Welfare Amendments of 1980 [H.R. 3434] were pending and that the title IV–B regulations would have to be revised if the Amendments became law. The Adoption Assistance and Child Welfare Services Act of 1980, Pub. L. 96–272, was enacted on June 17, 1980. New regulations are being developed which will make some changes in title IV–B State Plan requirements. However, the joint planning requirement, the elements of the State Plan and the basic nature of the title IV–B plan remain the same. The Guidelines are being published in final form to allow States to implement the FY 1981 State Child Welfare Services Plans and to support title IV–B activities until the new regulations are developed.

In those few instances where the amended Act is in conflict with the current regulations, the corresponding provision has been deleted from the Assurances.

EFFECTIVE DATE: New State Plans were developed during 1980, to be effective October 1, 1980 for FY 1981. The first year plans will be effective for approximately one year or until they are superseded by FY 1982 plans developed under new regulations based on Pub. L. 96–272.

Discussion of Major Comments and Changes

The following is a summary and discussion of the major comments received concerning the State Child Welfare Services Plan (CWSP) Guidelines. This summary is subdivided to correlate with the sections in the proposed guidelines published on February 22, 1980.

Relationship of CWSP to Other Planning Process

Proposed Guideline

The Department proposed that the CWSP must include all child welfare services in a State without regard to their funding sources.

Comment

Most commenters supported the need for integrated planning for all child welfare services. Some States opposed the concept, believing that the planning process should not include child welfare services wholly funded with title XX dollars.

Discussion

The final Guideline is published as proposed.

The Department believes that integrated planning for child welfare services is essential to induce coherent, effective and lasting improvements in the provision of child welfare services. Neither the existing title IV–B State plans nor the title XX Comprehensive Annual Services Plan [CASPs] are designed to promote the quantifiable, operational goals and objectives necessary for integrated child welfare services planning.

CWSP Plan Submittal

Proposed Guidelines

The Department proposed that the CWSP be a clear, free standing document that must be submitted apart from the CASP. We also proposed a schedule of submission that was correlated with the CASP date of submission.

Comments

Most comments favored the concept of a separate and identifiable plan for all child welfare services. However, some commenters believe that the CWSP should be a part of the CASP. A few comments suggested the plan should not be a unified plan of child welfare services, that the current CASP adequately provides the information required in the CWSP. Some commenters requested simplification of the submittal procedures as they relate to the CASP.

Discussion

The Department accepts the recommendation that the CWSP may be contained in the CASP, if it is a separate, identifiable section that can be extracted as a unit from the CASP.

However, the Department cannot accept the recommendations that the CASP with minor changes can suffice as the CWSP. The structure and format of the CASP varies from that proposed for the CWSP. The amount and reliability of available data differs among States. The goals and objectives contained in the CASP often are not time-limited, measurable, or easily adaptable to specific outcomes. Consequently, the intent and content of the current CASP is not easily adaptable or sufficient for carrying out the purposes of the CWSP.

Reliable and relevant data contained in the CASP may, of course, be transposed to the CWSP.

In response to requests for simplification of submittal procedures, the guidelines now require submittal 30 days before the effective date of the CWSP but in no event later than thirty [30] days preceding the State or Federal fiscal year whichever is selected by the State.

Assurances

Proposed Guidelines

The Department proposed a simplified procedure for State certification of adherence to CWSP requirements drawn from the Social Security Act and the current regulations. The procedures include certifying a preprint of the

Assurances, maintaining documentation supporting compliance with the Assurances, and developing a plan for correcting deficiencies in the State's compliance with the Assurances.

Comment

There were no comments regarding the process of certifying a preprint of the requirements. Most comments related to the Assurances in general, that they were too detailed, and that many States would not be in compliance with the Assurances. Some comments related to specific Guidelines for the Assurances which are discussed later in this section.

Discussion

The process of certifying a preprint of the Assurances remains unchanged, except that there was no certification of a Preprint required for FY 1981. The content of the Assurances, is based in the law and regulation and the Department believes that they are appropriate minimum benchmarks in the provision of child welfare services. In those few instances where the amended Act is in conflict with the current regulations, the corresponding provision has been deleted from the Assurances.

The Department has reviewed the interpretation of the single organizational unit requirement and determined that its extension to title XX is not supportable under the law. The provision has been revised to apply only to title IV–B.

Section 1392.5, Use of Professional Staff has been deleted from the listing of the regulations comprising the Assurances. Pub. L. 96–272 requires only a description of the staff development and training plans, therefore, the requirement is no longer applicable under title IV–B as amended. However, in the interpretations to the Guidelines, discussion of this provision has been retained in order to provide guidance to the States in developing staff development and training plans. Since successful execution of the case plan and the services provisions of the child welfare program will require skilled staff, the Department strongly urges State application of these standards.

Section 205.70, Availability of Agency Program Manuals, is retained although it is not specified in the provisions of Pub. L. 96–272. The availability of program manuals and other agency program issuances seems necessary to assure recipients knowledgeable participation in the program and informed exercise of their fair hearing rights.

The reference to 1968 workload standards in § 1392.5 of the Assurances is no longer applicable.

The section of the Assurances regarding services to runaway youth has been dropped from the Act. However, services to runaway youth are still allowable costs under title IV–B.

Long Range Strategy

Proposed Guidelines

This section defined the structure and content of the planning process. It proposed a process which includes a needs analysis, specification of unmet services needs of children, youth and families based on the needs analysis, and development of long range goals and objectives.

Comment

Most commenters supported the concept of the planning process. Those critical noted the following concerns: The process is too detailed and costly; justification, barrier, and resource statements for each goal are unnecessary; States with county administered programs may have problems gathering information; the statement of the process requires clarification.

Discussion

The Department agrees that the barriers statement should be deleted. However, the justification and resource statements are essential to understanding the rationale for goal selection and the resources required to achieve the State goal. This information is important to State and Federal planners and others interested in the Plan.

The Department has edited the Long Range Strategy in an attempt to clarify the process. The revisions do not alter the content of the Long Range Strategy.

Annual Operating Plan

Proposed Guidelines

The Department proposed that the State submit an annual update of the CWSP. The annual update would include a status report on the goals and objectives and a summary of the child welfare services.

Comment

Most commenters did not reference the Annual Operating Plan. Those who did comment on the Annual Summary, fell into three categories: Those that supported the need for the information as essential to a productive planning process; those that supported the need but suggested that some data may not be available; those that opposed the summary suggesting that either much of the data was unavailable in the requested form or too costly to obtain.

Discussion

The seven columns requesting information on various types of State, local and donated funds have been reduced to one column. The Services/Activities column has been changed to reflect the requirements of Pub. L. 96–272. The Glossary has been incorporated into the Instructions for Preparation of the Form.

The Department recognizes that the information requested may not be available in the manner suggested in the instructions. In that case, the State may give its estimates for the coming year according to its own definitions and using its own planning and budgeting terminology.

If adequate data are not available on which to base such projections, the State and the Department may jointly decide to develop a plan for gathering the appropriate information.

Governor's Review

Proposed Guidelines

This section proposed a procedure for the States' compliance with the A–95 process.

Comment

Comments indicated that the A–95 review process was incorrectly stated.

Discussion

The final Guidelines were corrected.

The Fiscal Year 1981 Plan

Proposed Guidelines

The Department proposed an abbreviated format for the FY 1981 plan which eliminated the Annual Status Report and slightly modified the Long Range Strategy. However, the State was required to certify in the FY 1981 Plan that it meets the Assurances.

Comments

Some States proposed that the Guidelines not be implemented in FY 1981 because either the time available for preparation of the CWSP was insufficient or the impending enactment of H.R. 3434 warranted postponing the CWSP implementation.

Discussion

The Department believes that the FY 1981 CWSP planning process was valuable for States and the Department. It aided and supported the Federal-State partnership in the joint planning process to improve their performances in FY 1982 and to be aware of program needs in preparing for Pub. L. 96–272. The Department cannot ignore the widespread concern among the Congress, advocacy groups and the

States for immediately improving child welfare services. Further, the FY 1981 planning process will provide for the first time national data to guide the federal priority-setting for training and technical assistance to the States for FY 1982.

However, the Department recognized the need to promote a realistic effort in the critical first year of this process. Consequently, the "best effort" of each State was accepted and no fiscal sanctions were applied based on adherence to the Plan and program requirements in the FY 1981 Plan. The Department believes that this first year will define program difficulties and provide opportunities for the State and federal staff to constructively make necessary modifications to assure that the process is efficient and effective.

Guidelines to the Assurances

Proposed Guidelines

The phrase "Guidelines to the Assurances" was used to describe the section of the Guidelines which clarified and discussed the intent of the Assurances.

Comment

There were no comments regarding the phrase "Guidelines to the Assurances."

Discussion

The Department has determined that the phrase was potentially confusing since it referred to "guidelines" within the Guidelines. The phrase has been changed to "Interpretations of the Assurances."

Section 1392.3 Full Time Staff for Services

This guideline discusses the staffing needed to establish an effective system for delivery of child welfare services.

Comments:

Some commenters suggested that there be more guidance on the determination of staff needs and workload size. Numerous letters were received in support of recommended minimum personnel qualifications for child welfare service workers of a Bachelors Degree in Social Work at the entry level and a Masters Degree in Social Work at the first line Supervisory level. Some commenters believed such qualifications would be unnecessarily restrictive.

Discussions:

The Department believes that the recommended personnel qualifications are important to improve the quality of child welfare services. The Department believes that formal training in social work is most desirable. The ability of State agencies to ensure delivery of appropriate, effective services to children will depend greatly on the ability of staff to correctly analyze the services needs of children and their families and to determine the appropriate intervention. Further, Pub. L. 96-272 specifies services requirements for permanency planning and pre-placement prevenitve services which are very unlikely to be met in many agencies, under current staffing pattern.

Advisory Committee

Proposed Interpretation

The proposed guideline explains the purposes, nature of involvement, and composition of the advisory committee.

Comments

Commenters supporting the proposal emphasized the important role of advisory committees in representing the constituencies receiving child welfare services. Issues raised included the statutory base for the Assurance, the need to avoid any duplication in advisory structures day care and child welfare services, the necessity for the detailed requirements for the composition of the committees, and the potential need for additional funds to support such a committee.

Discussion

The role of the advisory committee in the joint planning process is supportive of the established Department commitment to citizen particiaption in the planning process. Consistent with this commitment and the regulatory base contained in 45 CFR 1392.4, we are retaining the requirement including the provision that the advisory committee be involved in the important phases of the joint planning process. We have deleted the Advisory Committee requirement in regard to day care to reflect the statutory change which applies title XX requirements with respect to day care services.

Section 1392.10 Staff Development

Proposed Interpretation

A section of this requirement states that there will be increases each year in the number of educational leaves for professional training to assure an adequate number of professional staff for child welfare services.

Comment

Some commenters found this section unrealistic and unworkable.

Discussion

The proposed Interpretation did not discuss this specific section. The final Interpretation indicates that States should show annual progress in increasing the number of educational leaves until there are sufficient numbers of staff adequately prepared to carry out child welfare services functions in the context of § 1392.3 and consistent with maintaining sound caseload practice ratios.

Section 1392.40(b)(2) Services to Children in Their Own Homes

Proposed Interpretation

This Interpretation discusses the need for the State agency to develop supportive and supplementary services where an assessment of the circumstances of the child and family indicate that the family could remain intact through the provision of such services.

Comment

Some commenters stated there was not enough specificity in the guidelines to be useful in developing such home-based services.

Discussion

The final guideline is more specific on what the State agency should do to provide supportive and supplementary home-based services.

Supplementary Information

A. Introduction

The Administration for Children, Youth and Families, Children's Bureau (ACYF/CB) undertook two major activities during 1980 in the title IV-B (Child Welfare Services States Grant) Program: (1) Under the authority of the regulation at 45 CFR 1392.71 instructions on the form and subject matter of the State Plan were revised; and (2) States were required to jointly develop new State Plans with ACYF/CB to be effective October 1, 1980.

B. Background

The purpose of State grants for child welfare services under title IV-B is to assist State agencies:

(1) To develop a greater capability to provide child welfare services;

(2) To foster development of comprehensive and coordinated services;

(3) To better serve those children and their families in need of these services by:

(a) Extending the scope and resources of the services;

(b) Improving the quality of the services through qualified staff and innovative methods; and

(c) Extending community planning and participation in the provisions of services.

The Child Welfare Services Program has been a part of the Social Security Act since the Act's inception. The Program is conducted under title IV–B (Sections 420–425) of the Act (42 U.S.C. 620–625). Historically, the program has provided Federal grants to establish, extend and strengthen child welfare services in the States. Grants are made to State agencies on the basis of a plan developed jointly by the Children's Bureau and the State agency. A partnership was firmly established between the Federal and State governments for the provision of child welfare services by the State.

Under title IV–B, formula grants are allocated to the States for providing and improving child welfare services to children and their families in need of services without regard to income.

In most States, the primary use of the funds in recent years has been for foster care. Other services provided with title IV–B funds include adoption, day care and protective services to abused and neglected children.

State Plans currently in force are those which were developed in 1969. Since that time States have submitted some amendments (the last in 1975) and an annual budget, which has been the basis for awarding the grants.

For the purpose of describing them, the State Plans now in effect are referred to in this notice as "existing State Plans", while the State Plans to be developed under these Guidelines are referred to as "new State Plans."

Wide recognition of the problems in the child welfare services system led the Administration and the Congress to propose amendments to title IV–B (and to the closely related areas of AFDC-Foster Care Maintenance and Adoption Subsidies). These Amendments, Pub. L. 96–272, strengthen the title IV–B program. The regulations and guidelines for title IV–B will be fully revised concurrent with the development of regulations for the new law. Meanwhile substantial progress in strengthening families and improving children's lives may be made through joint state-federal development of new child welfare service plans, with a clear analysis of the services needs of children and families, and measurable goals and objectives for meeting these needs.

C. Fiscal Yeal 1981 State Plans

The Guidelines served as the basis for the development of new State Plans to be effective October 1, 1980 for a period of approximately one year. The State may have the Plan begin either July 1 or October 1, 1980 and end June 30 or September 30, 1981. This first Plan will not, of course, include a status report of last year's activities. The Long Range Strategy for this Plan may cover two or three years, or it may be limited to one year at State option.

The more limited duration of this first Plan allowed Plans to be developed for FY 1981 through the joint planning process. It also will allow the requirements of Pub. L. 96–272 to be incorporated readily and quickly into subsequent State Plans when new regulations are developed.

The Department recognizes that the implications of implementing these guidelines will vary from State to State according to the current status of each State's child welfare services. It was the intent of the Department to encourage States to use the first year to focus on the planning process and practice issues in an effort to establish a sound planning base from which to improve child welfare services in future years and to prepare for integrating the changes resulting from Pub. L. 96–272. To ensure that this constructive purpose is not diluted through concerns over issues of compliance, the Department was prepared to accept each State's best effort in preparing the FY 81 plan and in meeting the Assurances. If a State chose not to submit a FY 81 plan, the Department accepted as satisfactory the submission of a Budget Request as its "best effort." The spirit of the joint planning effort is to define the current status of child welfare services within each State, and to plan for improving on that base. States and the Department learned from this first year and are better prepared to channel common commitments to improving child welfare services toward constructive and realizable expectations in FY 82.

In an attempt to reinforce the construtive purpose of the joint planning process, the States were not required to certify adherence to the Assuances in the FY 81 plan. The intent of this moratorium for the first year was to remove the threat of sanctions as applied to the Assurances, and to utilize the Assurances, as benchmarks in the provision of child welfare services. States unable to meet the Assurances were required to develop a plan for doing so in this first year, but faced no penalty for existing deficiencies. The Assurances, including those required by Pub. L. 96–272, will be certified by the State beginning in FY 82.

D. Changes in the Format of State Plans

The existing State plan consists of two parts, the Basic Plan and the Annual Budget. The existing Basic Plans are detailed, narrative descriptions of how the State agency meets each of the requirements of 45 CFR, Part 1392. Most of these descriptive Plans have not been updated for several years. They do not provide a view of the child welfare services system within the State. Thus, the existing Basic Plans are not effective vehicles for improving the child welfare services system.

The Annual Budget is primarily a mechanism for awarding funds to States. It provides minimal information about service provision. It is generally completed by a fiscal official and is rarely reviewed by a program official. It is frequently not linked to planning for the improvement of child welfare services.

The existing State Plan format also requires State agencies to complete a request for funds each quarter. Thus, States completed five fiscal documents, none of which were aids to improved plans for the next year.

In order to make the State Plan and the planning process more useful for improving services, Plans will be developed under new instructions which encourage a more rational manageable and measurable plan. The regulation provides clear authority for these changes under paragraphs (a), (b) and (d) of 45 CFR 1392.71. The new format requires the State agency to make changes necessary to meet the ongoing specific requirements stated in the regulation. It also requires development of goal-oriented plans for future years that specify how the goals will be reached.

The regulations, at 45 CFR 1392.7(b), make clear that the Plan will include "the total State program of child welfare services." Thus, the State Plan will include all child welfare services in the State under the administration or supervision of the State agency designated to carry out the State's responsibilities. This will include the child welfare services reimbused under title XX of the Social Security Act as well as under title IV–B.

The title IV–B legislation, regulations, and State Plan Guidelines are directed toward development of a plan to improve all child welfare services, not only those supported by one funding source. However, where the provisions of the Assurances are in conflict with title XX or title IV–A requirements, the title XX or IV–A regulations control if no title IV–B funds are involved. Where the State and ACYF/CB are unable to

jointly develop a Plan or where the State fails to adhere to the Plan, ACYF sanctions would affect only title IV–B funds.

States will have the latitude to coordinate their planning processes for title IV–B and title XX to avoid unnecessary duplication of effort. These processes may include development and submission of the Plans at the same time and use of information for determining needs for child welfare services for both programs.

Under the new State Plan Guidelines, the CWSP will include: (1) the Assurances; (2) the Long Range Strategy; (3) the Annual Operating Plan; and (4) the Annual Budget Request.

(1) *The Assurances:* The Assurances do not alter the substantive requirements that States must meet. They continue to be based on the Act and Regulations. ACYF has however, simplified the format. In FY 1982 and subsequent years, the State Administrator will sign a preprinted form to assure the State agency's commitment to meeting the Assurances. However, in FY 1981, the States were not required to certify adherence to the Preprint of the Assurance in the FY 1981 plan, but instead signed the entire plan. Supporting documentation must be available for monitoring compliance with the Assurances but does not need to be submitted with the State plan.

Explanation of the Assurances has also been developed to clarify meaning and to provide the basis for a common understanding.

(2) *The Long Range Strategy:* The Long Range Strategy expresses the State agency's goals for establishing, strengthening, extending and otherwise improving child welfare services over the two or three year period of the CWSP. The State agency jointly develops the Strategy with the ACYF/CB. The process should include participation of the Advisory Committee. The Long Range Strategy consists of three sections; the need analysis, selection of unmet needs to be addressed in the Long Range Strategy; and long range goals and objectives.

(3) *The Annual Operating Plan:* The Annual Operating Plan provides a status report on the goals of the Long Range Strategy, and includes an Annual Summary of Child Welfare Services.

The status report reviews the State's activities and progress in meeting the goals and objectives during the previous year. It includes accomplishments and identification of problems and efforts to resolve them. This report must include any changes or amendments to the Long Range Strategy.

The Annual Summary of Child Welfare Services provides an overview of the State child welfare services program for the coming year. It gives estimates of State child welfare services expenditures and clients to be served during the next State planning year, by source of funds and by service. It should describe the participation of the Advisory Committee (1392.4).

(4) *The Annual Budget Request:* The Annual Budget Request is a request for title IV–B funds. It replaces the four Quarterly Requests for Funds (CWS–10) and Annual Budget (CWS–2) with a single, simplified form.

E. Applicability of Guidelines to Under Secretary's Demonstration States

Those States which have included title IV–B in the Undersecretary's Consolidated State Plan Demonstration Project are exempted from meeting the format requirements of the new IV–B guidelines.

The demonstration States, however, must comply with the requirement for joint planning and their plan must provide information of the type requested by the Administration for Children, Youth and Families. The same exemption will apply to States which participate in the Plan Simplification Project sponsored by the Office of Human Development Services.

Dated: December 12, 1980.

John A. Calhoun,

Commissioner for Children, Youth and Families.

Approved: December 23, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Guidelines for Development of the State Child Welfare Services Plan

CONTENTS

Introduction

Title IV–B of the Social Security Act (Sec. 421) requires that a State submit a Child Welfare Services Plan (CWSP) jointly developed by the State agency and the Administration for Children, Youth and Families (ACYF) in order to receive its allotted share of Federal funds for child welfare services.

Joint planning for child welfare services is the process of State-Federal review and analysis of the State child welfare program in relation to the service needs of children and their families, the selection of unmet needs to be addressed in a plan for program improvement, and the development of measurable goals and objectives to assure the State's ability to meet these needs.

The CWSP describes the State agency's total child welfare services program—the basic services, program deficiencies and plans for improvement, and resource allocation by type of service. The CWSP must include all child welfare services provided by the State agency without regard to their funding sources.

The CWSP contains the following components:

I. *Assurances:* The Assurances constitute the State agency's commitment to meet the basic requirements of the law and the regulations. The preprinted form is submitted only once, unless otherwise required by the Commissioner of ACYF.

II. *Long Range Strategy:* The Long Range Strategy incorporates the needs analysis, selection of unmet needs to be addressed, and the goals and objectives developed through the joint planning process. These become the State's focus for program improvement. The Strategy will be in effect for two or three years at the discretion of the State Agency.

III. *Annual Operating Plan:* The Operating Plan provides a status report updating and reporting on progress in the Long Range Strategy, and an Annual Summary of Child Welfare Services. It is submitted annually.

IV. *Annual Budget Request:* The Budget Request will be the basis for disbursing title IV–B funds. It is submitted annually, replacing existing quarterly budget requests.

Relationships of the CWSP to Other Planning Processes

Since the CWSP must include all child welfare services provided by the State Agency without regard to their funding source, the CWSP requirements are

sufficiently flexible to permit the State Agency to coordinate all its planning activities for child welfare services. Thus, a State may, if it chooses, develop the plan for Child Welfare Services while developing the title XX Comprehensive Annual Services Plan (CASP). Concurrent development of plans may enable a State to coordinate needs analyses, community participation, program evaluations and analyses, and planning cycles for the two plans. Whatever planning procedures the State chooses, the CWSP must provide accurate and reliable information and should not be considered a general statement of intention. The State also has the option with the CWSP, as with the CASP, of determining whether its planning year will coincide with the Federal fiscal year or the State fiscal year.

CWSP Plan Submittal

Two copies of the Child Welfare Services Plan must be submitted to the ACYF Regional Office no less than 30 days before its proposed effective date. The Plan may be submitted as a separate document or may be contained in the CASP if the Plan is presented as a separate, identifiable section that can be extracted as a unit from the CASP. After the first plan is accepted, only the Annual Operating Plan (Part III) and the Annual Budget Request (Part IV) will be submitted annually.

The Long Range Strategy (Part II) will be submitted in two or three year cycles; and the Assurances (Part I) will be submitted only once, unless otherwise required by the Commissioner of ACYF. The Plan must be certified by the Administrator of the State agency and submitted to the ACYF Regional Office for review and concurrence before a grant can be awarded. The ACYF Regional Program Director must review the material to determine that the CWSP requirements are met and that the document accurately represents the agreements reached through the joint planning process.

I. Assurances

The Assurances specify the basic child welfare services requirements which the State must meet under the Act. The Assurances are drawn from the Social Security Act, the program regulations, and policy interpretations. These requirements concern the organization and administration of the child welfare services system within the State and the provision of basic services. The Assurances also contain commitments related to the structure and procedures for State operation of the child welfare services program.

The Preprint

The Assurances are contained in the first section of the Child Welfare Services Plan in a preprinted format for ease of certification. The preprint is to be signed by the Administrator of the designated State Agency, committing that Agency to adhere to the specified requirements. This preprint will be submitted only once, with the submission of the first State Plan, and will not be resubmitted unless otherwise deemed necessary by the Commissioner of ACYF. It will remain in effect until revoked, amended, or superceded by other requirements.

Documentation

The State Agency must maintain documentation of the arrangements and services required in the Assurances. The documentation supporting the State's commitments made in the Assurances will be subject to Federal review to assure that the State is meeting the requirements as specified. Federal staff will also conduct reviews at the service level to assure that the services in the State's plan are actually provided to children and families in need of services and are provided in the manner and using the criteria prescribed by the State.

Program Deficiencies

If the State is not meeting all of the requirements specified in the Assurances or if its services are not sufficient to meet the needs of families and children throughout the State, the State must develop goals in its Long Range Strategy for correcting these deficiencies.

II. Long Range Strategy

In the Long Range Strategy, the State develops the goals for establishing, strengthening, extending, and otherwise improving its child welfare services program over a period of two or three years. The Strategy section of the CWSP must be jointly developed by the State agency and the Children's Bureau. It must be submitted by the State agency to the ACYF Regional Office every two or three years as appropriate.

The Long Range Strategy consists of three discrete processes: analysis of the services needs of children, youth and families, selection of unmet program needs to be addressed in the State plan, and the long range goals and objectives. These three processes are interdependent. In most States, the needs analysis will reveal significant program deficiencies in the nature, scope and quality of services. Determination of which of these unmet needs will be goals for long-range program improvement are critical decisions in the joint planning process.

Needs Analysis

The needs analysis process is the base from which the State develps the Long Range Strategy for improving delivery of effective, appropriate services. It is an analysis of the deficiencies in existing services and of discrepancies between the services needed and the services provided in the State. The purpose is to analyze available information on the need for services in the State in relation to information on what services are available and proposed under the State's child welfare services program. The process involves identifying the services needs of children, youth and their families; developing an accurate profile of current services, particularly those required under the regulation; identifying gaps and deficiencies between needs and current services and determining which deficiencies will be the focus of program improvement activities during the next two or three years; and involving citizens in this process.

This needs analysis process should utilize current information and studies related to unmet needs, gaps in the service delivery system, the quality and quantity of available services, and problems and deficiencies in the provision and managment of child welfare services throughout the State. A significant absence of such information about the State's program may itself be the basis for including as a goal the conduct of an assessment of the services needs of children and families in the State and the adequacy of the services being provided. Information gathered in the course of a self-assessment using the *State Child Welfare Program Self-Assessment Manual** is an example of the kind of data that could be valuable in the needs analysis.

Selection of Unmet Needs To Be Addressed in the Long Range Strategy

After completing the needs analysis, States must select the unmet needs that will be addressed in plans for program improvement. These unmet needs must be included in the goals and objectives of the Long Range Strategy. State and federal staff developing the Long Range Strategy must discuss the needs analysis findings and jointly determine which unmet needs will be addressed. The

*Copies of this Manual, published by the Children's Bureau, have been made available to each State Social Service Agency. Additional copies may be obtained from the Children's Bureau.

following factors should be considered in making these decisions:

The State's capacity to meet the program requirements identified in the Assurances

Significant deficiencies in basic child welfare services such as foster care and services to children in their own homes

Lack of basic child welfare services throughout the State

Deficiencies in program management and administration which interfere with the quality and effectiveness of services.

States must explain the reason why certain unmet service needs identified in the needs analysis were not addressed in the long range strategy. A brief statement of the rationale for these decisions must be submitted as part of the Long Range Strategy. The participation of the Advisory Committee should be defined.

Long Range Goals and Objectives

The long range goals express the expected results of efforts to improve child welfare services within the State. Meeting the major unmet needs should be a fundamental consideration in establishing the State's long range goals. The goals should reflect specific priorities for action evolving from the needs analysis and the selection of unmet needs and an analysis of current and potentially available resources. Each goal should generate objectives, to be accomplished within the duration of the Plan.

Goals

Each goal must include a brief justification and approach, indicating why the goal has been established and how meeting the objectives will achieve the goal. The goal section must also include a resource statement which estimates the total cost of accomplishing the goal and indicates what dollar portion of the goal will be supported by IV–B funds (Federal, State and local).

Objectives

Objectives are necessary to document what is involved in goal attainment and to provide a framework for assessing progress in achieving the goal. Objectives must reflect those specific initiatives necessary to achieve the goal. They may, as circumstances require, cover a period of several months, or a year or more. An objective consists of an objective statement and a brief narrative.

The objective statement indicates in measurable terms a major focus of the State child welfare services activities for a specified period of time. It should relate to a single issue, specify a time for completion and be quantifiable.

The narrative is a brief description of how the objectives will be achieved and what criteria will be used to determine whether it has been achieved.

III. Annual Operating Plan

The Annual Operating Plan is the yearly update of the State Child Welfare Services Plan. It will report the current status of the long range goals and objectives, indicate changes and new initiatives, and present an Annual Summary of Child Welfare Services.

Status Report

The status report in the Annual Operating Plan summaries and reviews the goals and objectives of the previous year, including accomplishments and descriptions of slippage or problems and efforts to resolve them. It must briefly indicate the progress toward achievement of objectives scheduled for completion at a later date. Anticipated problems and their proposed solutions should be identified. The report must also identify changes or amendments to the Long Range Strategy of the State Child Welfare Services Plan. Changes may be new goals, objectives or strategies related to funding, legislative mandates, court orders or changes in State or national policy.

Annual Summary of State Child Welfare Services

The Annual Summary of State Child Welfare Services (Annual Summary) estimates the State Child Welfare Services expenditures for the State planning year according to funding sources and the anticipated number of clients to be served. This form replaces the current Annual Budget the Child Welfare Services (CWS–2). (The form appears at Appendix A.)

IV. Annual Budget Request

The Annual Budget Request replaces the Quarterly Estimate of Expenditures and Request for Grant Award Form (CWS–10) and the Annual Budget for Child Welfare Services (CWS–2) with a simplified form. The Budget Request will be prepared by the State agency and signed by the Administrator of the State agency and the Director of the designated Single Organizational Unit. It must be submitted with the Annual Operating Plan to the designated ACYF/CB Regional Representative. (The Budget Request Form appears at Appendix B.)

Quarterly disbursement of funds will be based on requests made and approved on the form. These requests may be modified by the State through submission of a revised form with a brief explanation for the requested change at least thirty (30) days before the beginning of the affected quarter. Quarterly payments will be made without submission of additional forms.

Governor's Review

Each year the State Agency must submit with its State plan a signed document certifying that the Plan being submitted has been sent to the Governor's office or his designated agency for review in accordance with the Office of Management and Budget Circular A–95. The document must indicate either that the comments or approval are attached, or that no comments were received during the 45-day (some States may have less) comment period.

If a State plan is sent to ACYF prior to or simultaneously with its submittal to the Governor's office or his designated agency for clearance, the Plan will be reviewed, but will not be officially acted upon until the document certifying adherence to the review procedures or the results of the review are received. It will be assumed that the intent of the A–95 process was met if the Governor signs the State plan submittal.

The Fiscal Year 1981 Plan

The differences between the FY 81 Plan and the standard format are discussed in Appendix C.

BILLING CODE 4110-92-M

Form Approved
O.M.B. No. 085-R0367

ANNUAL SUMMARY OF CHILD WELFARE SERVICES

Page 1 of 2

State of _____ for Fiscal Year _____ 19__ to _____ 19__

SERVICES/ACTIVITIES	ESTIMATED EXPENDITURES BY PROGRAM ($ THOUSANDS)					ESTIMATED NUMBER OF CLIENTS TO BE SERVED
	FEDERAL FUNDS				STATE, LOCAL & DONATED	
	IV-B	XX	IV-E/IV-A	OTHER*		
1) Preventive/Supportive Services						
2) Foster Care Maintenance Payments a) Foster Family Care b) Group/Institutional Care						
3) Foster Care Services a) Reunification b) Other						

* OTHER FEDERAL PROGRAMS _____

ANNUAL SUMMARY OF CHILD WELFARE SERVICES Page 2 of 2

State of _____ for Fiscal Year _____ 19__ to _____ 19__

SERVICES/ACTIVITIES	ESTIMATED EXPENDITURES BY PROGRAM ($ THOUSANDS)					ESTIMATED NUMBER OF CLIENTS TO BE SERVED
	FEDERAL FUNDS				STATE, LOCAL & DONATED	
	IV-B	XX	IV-E/IV-A	OTHER*		
4) Adoption a) Assistance Payments b) Medical Services for Adoption Assistance c) Other Adoption Services						
5) Training & Staff Development						
6) Administration and Management						
7) Other Child Welfare Service Activities						
8) Day Care Related to Employment or Training for Employment						

* OTHER FEDERAL PROGRAMS _____

BILLING CODE 4110-92-C

Instructions for Preparation of the Annual Summary of Child Welfare Services

General: This form summarizes the State agency's child welfare services program for the next year by service, by source of funds, and by number of clients to be served. The form is an integral part of the State Child Welfare Services Plan and must be a part of joint planning by Children's Bureau and State agency representatives. It is a document of major significance since it presents an overview of the State agency's planned program for the next year.

Specific: *Services or Activities.*—For each of the services or activities listed, include the type of information specified:

1. *Preventive or Supportive Services (Home Based Services):* Services to strengthen and support intact families and to prevent family disruption and unnecessary removal of children from their homes. These may include but are not limited to casework or counseling, day care and respite care, child protective services, homemaker services with a parent education component, family planning, legal services, services to unmarried parents, transportation, emergency shelter for families and access to emergency funds.

2. *Foster Care Maintenance Payments:* Payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

3. *Foster Care Services:* Include services to the child, to the natural families and to the foster parents, including case plan development and periodic review of the placement.

Reunification services are those designed to help children, where appropriate, return to their families.

4. *Adoption:*

(a) Adoption Assistance Payments are the funds provided to adoptive parents on a recurring and periodic basis to assist in the support of special needs children.

(b) Medical Services for Adoption Assistance are provided to children who are adopted or are in the process of being adopted.

(c) Adoption services include the range of services provided for the purpose of obtaining and maintaining a permanent family for a child who is, or is expected to be, legally free for adoption.

5. *Training and Staff Development:* Activities designed to improve or enhance the capability of child welfare agency personnel and volunteers to provide or arrange for the administration, management and delivery of services. This includes orientation of new staff, a program of continuing in-service training opportunities, conferences, institutes and educational leave.

6. *Administration and Management:* Includes costs of supervisors and staff whose activities support child welfare services and which cannot be allocated under other services or activities.

7. *Other Child Welfare Services Activities:* Include other activities which are not included above, such as planning and evaluation, licensing, information systems, recruitment and training of foster parents and adoptive parents, etc.

8. *Day Care Related to Employment or Training for Employment:* This refers to day care purchased for the purpose of employment of one or both of the parents.

Estimated Expenditures for Child Welfare Services by Program Federal Funds: Indicate for each service or activity the amount to be expended from the Federal program indicated. Do not include the State or local match. If other Federal funds will be used by the State agency, specify the other Federal programs in the space at the bottom of the page.

State, Local and Donated: List all State, local and donated funds, whether or not they are used to match Federal funds.

Estimated Number of Clients to be Served: Estimate as accurately as possible the number of clients to be served during the next year with these funds. Indicate whether clients are individuals or families.

BILLING CODE 4110-92-M

ANNUAL BUDGET REQUEST FOR TITLE IV-B FUNDS

Form Approved
O.M.B. No. 085-R0367

Fiscal Year 19____

State of_____ October 1, 19____ through September 30, 19____ Revision #_____

COMPUTATION OF FEDERAL GRANT AWARD

A) Total estimated title IV-B expenditures: _____

B) Enter Federal Share (75% of A up to maximum listed in Action Transmittal): _____

II. REQUEST FOR GRANT AWARD

Indicate the total request for the year and the request for each of the four quarters. (Funds totaling more than the State's share of the $141 million allotment will not be released to the State until there has been verification that the State meets the conditions of P.L. 96-272 for those funds.)

Total (from line I.B)	1st Q (Oct.-Dec.)	2nd Q (Jan.-Mar.)	3rd Q (Apr.-Jun.)	4th Q (Jul.-Sept.)
_____	_____	_____	_____	_____

CERTIFICATION BY STATE AGENCY

The State Agency submits the above estimate and request of grant award under title IV-B of the Social Security Act, as amended, and agrees that the estimated expenditures will be made in accordance with the Child Welfare Services Plan, agreed to by the Agency and the Administration for Children, Youth and Families, for the fiscal year ending _____, 19_____.

_____ _____
(Signature) Administrator, Social Services Agency Date

_____
(Title--please type)

_____ _____
(Signature) Director, Single Organizational Unit Date

_____
(Title--please type)

DO NOT WRITE IN THIS SPACE

Regional Office Approval

_____
Regional Program Director

_____
Date

Other State Official (OPTIONAL)

_____ _____ _____
Signature Title Date

BILLING CODE 4110-92-C

Appendix B—Annual Budget Request of Title IV–B Funds

Instructions for Completion of Form———, Annual Budget Request for Title IV–B Funds

I. *Computation of Federal Grant Award.* Each State should base its request on its share of funds appropriated under title IV–B up to $141 million allotment until it has been certified as meeting the criteria establishing its eligibility to receive its share of funds beyond the $141 million level (Section 427 of the Act).

A. This is the total the State expects to spend during the year based upon its current eligibility.

B. This figure is 75% of the amount in A, but is limited by the State's allotment as specified in the appropriate Action Transmittal.

II. Funds will be awarded to each State based on the amount requested for each quarter. No quarterly submissions are required except to amend the original request.

III. The signatures of both the Administrator of the Single State Agency and the Director of the State Single Organizational Unit are required.

Note.—This budget request is subject to the A–95 approval process.

Appendix C—Procedures for Development of FY 1981 State Child Welfare Services Plans

The Fiscal Year 1981 State Child Welfare Services Plan

The FY 81 plan differs from the standard format described in the guidelines in the following areas:

- States had the option of developing goals for a 9–12 month period or for the standard 2–3 year period.
- The status report was not required to be included.
- States were not required to certify adherence to the Assurances in the FY 81 plan.

I. Assurances

In the FY 81 plan, the preprint for the Assurances did not need to be signed.

II. Long Range Strategy

This section differs from the FY 82 format for the Long Range Strategy only in that goals may be developed either for a period of 9–12 months (the period of coverage for the FY 81 Plan) or for the 2–3 year cycle required in the standard format. Whichever period of time is chosen, goals should extend over the period necessary to achieve the State's priorities. Objectives under this Plan may encompass only one year.

The FY 81 Long Range Strategy must contain the following elements:

A. *Needs Analysis:* The needs analysis is an analysis of information currently available within the State to determine the services needs of children and families, geographic areas in which service needs are greatest, areas in which services are deficient and areas with greatest need for expanded and strengthened State child welfare services.

B. *Selection of Unmet Needs to be Addressed in the Long Range Strategy:* Unmet services needs identified in the needs analysis were jointly discussed by the State and federal planners to determine which of these unmet needs would be incorporated in the goals for program improvement in FY 81 or in the FY 82 plan if the State chose. The rationale for not developing goals in response to an unmet need must be explained in a brief statement to be submitted in the Long Range Strategy.

C. *Goals and Objectives:* The content and process for developing goals and objectives are the same as in the FY 82 format. Goals by their nature tend to be long range; therefore, for the FY 81 plan, goals should extend over the period necessary to achieve the stated priorities, even though they may extend for more than one year. On the other hand, the objectives under the FY 81 plan may be limited to the life of this plan (about one year) or they may extend beyond FY 1981, if the extension provides a clearer, more complete explanation of how the goal will be met.

III. The Annual Operating Plan

The status report reviewing the previous year's goals, objectives and achievements is not included in the FY 81 plan. It will be incorporated into all Plans thereafter.

The Annual Summary of State Child Welfare Services is included in the FY 81 Plan.

IV. The Annual Budget Request

The Budget Request is included in the FY 81 Plan, using the same procedures required for FY 82.

Governor's Review: The procedures required for the FY 82 Plan are required for the FY 81 Plan.

Assurances

The Assurances specify the basic requirements which the State must meet in providing child welfare services under title IV–B of the Social Security Act and the regulations. They are a preprinted form in the State Child Welfare Services Plan (CWSP) through which the State agency Administrator submits a commitment that the State will meet the requirements of the regulations and the Act. They remain in effect until there is a need for revision or amendment because of changes in legislation, regulations, policies or program operations.

The Assurances are directed toward the improvement of all child welfare services delivered under the CWSP regardless of funding source. However, when the provisions of the Assurances are in conflict with title XX or title IV–A requirements, the title XX or title IV–A statute and regulations control. No funds other than title IV–B funds would be at issue where the State and ACYF/CB are unable to jointly develop a plan or where the State fails to adhere to the Plan. Nonetheless, in the opinion of ACYF the Assurances represent fundamentally sound, universally recognized elements of good social work practice and therefore, States are urged to apply the provisions of the Assurances to all child welfare services delivered in the State.

The Assurances concern the provision of basic services. They also provide a number of commitments related to the structure, procedures and administration of the child welfare program. Assurances which the State agency does not meet must be addressed in the Long Range Strategy of the CWSP.

The State agency must maintain documentation of the arrangements and services required in the Assurances. The documentation will not be submitted with the State plan. However, all documentation must be available for review to assure that the State has made arrangements to provide the services certified in the Assurances, and that the arrangements conform with the requirements in the regulations and the Act. Federal staff will also conduct reviews at the service level to assure that the services are actually provided to children and families in need and in the manner and using the criteria prescribed by the State.

Relevant sections of the Social Security Act, regulations, and Federal policy govern the State agency's administration of child welfare services.

Following the listing of the regulations comprising the Assurances are the Interpretations of the Assurances which discuss and clarify the meaning and intent of the regulations but do not change the content of the regulations.

The Assurances

List of Regulations Comprising the Assurances

45 CFR Section and Title

1392.1—General Provisions
1392.2—Single Organizational Unit
1392.3—Full Time Staff for Services

Effective Date and State Officials Signature

I hereby certify that, with the exception(s) indicated below, the State complies with the requirements of law and regulation listed above in the Assurances.

The State agency is including in this Plan goals and objectives which will enable it to meet those Assurances which, as indicated below, are not being met.

(List by number and title those Assurances with which the State agency is not in compliance.)

Dated:_____

Certified by:_____
Administrator, Social Service Agency

Dated:_____

Reviewed by:_____
ACYF/CB Representative

Interpretations of the Assurances Governing Child Welfare Services

Title IV-B of the Social Security Act

Table of Contents

Introduction

This document contains interpretations of the Assurances in the State Child Welfare Services Plan (CWSP), under title IV-B of the Social Security Act. These interpretations do not change the content of the regulations which it is controlling. Rather, they are intended to assure a common understanding by Federal, State, and local agencies of the purpose, scope and meaning of the regulations; the specific expectations placed on the States and the options that are available to States. These interpretations are intended to assist States in planning their child welfare services programs and in determining their conformity to the requirements in the Assurances.

The Children's Bureau of ACYF in some instances has made good practice recommendations based on exemplary practices in existing programs and demonstrations and research projects. These recommendations, along with publications of the Children's Bureau, other Federal agencies and national standard setting agencies should be utilized in extending and improving the child welfare services provided under the State Child Welfare Services Plan.

The interpretations have been developed to correspond with sections of the regulations and efforts have been made to avoid repetition of the language of the Assurances and the regulations. Therefore, these interpretations must be read with reference to the related section of the Assurances and regulations. Where the Assurances seem self-explanatory, no guidelines are provided.

Section 1392.1 General Provisions

(a) The requirements in this section establish the framework for implementation of the mandatory provisions of Subpart A of Part 1392. In this section, States assume responsibility for each of the requirements specified in the provisions. Within this framework each State must determine the scope of its services program for children, youth and families and plan the actions necessary to broaden the scope and improve the effectiveness of services.

(b) In this section, States will also agree to submit implementation and progress reports necessary to document adherence to the requirements.

(c) The State agency must have clearly stated and promulgated policy, standards, practices and procedures for all requirements, and methods to monitor and assure adherence to the requirements.

Section 1392.2 State Organizational Unit

(a) *State Organizational Unit:*

(1) At the State level there must be a unit which is responsible for the development of policy pertaining to child welfare services for children, youth and families. It is not intended that the unit head be necessarily responsible for making final policy decisions. Rather, the Chief executive officer or agency administrator should look to the unit head for advice, counsel and recommendations on policy, planning and program development for State's programs for serving children, youth and families.

(2) There should be, at a minimum, one full-time person responsible for planning, policy and program development, implementation and review, and standards development.

(3) The unit should be responsible for development of the Child Welfare Services State Plan and for assuring collaboration with title XX planning, coordination and program development. In most States, these functions will require a unit with specialized staff.

(4) The unit should be responsible for the universally accepted child welfare services which supplement or substitute for parental care and supervision, such as protective services, placement and after care services. Other related activities such as supportive services to families, day care, regulatory services, respite care and homemaker services may be lodged in another unit of the agency. There should be arrangements, however, through which the single organizational unit maintains responsibility for policy formulation and implementation regarding these services to children, youth and families.

(5) The organizational structure of the State agency should facilitate and assure effective communication and cooperation between the unit administering child welfare services to children, youth and families, the executive decision-making unit of the agency, and all units providing related and supporting services.

(b) *Local Organizational Unit:*

(1) Single organizational units should also be established at the local level. These units should be responsible for development, supervision and provision of child welfare services. The unit may be located in a county, city, district, or regional agency.

(2) There should be at least one-full time person with responsibility for planning, policy and program development and implementation of child welfare services in locally administered agencies. In some States these functions will require a large unit with specialized staff. In counties with a small population where full-time assignment for child welfare services delivery is not feasible, a multicounty or district plan for a full-time services worker may be needed.

(3) Some States may need to reassess or re-design methods of supervision of locally administered programs to assure uniformity of policy and program implementation. There should be sufficient support staff in the State level unit to provide sustained program assistance to local agencies whether they are locally or State administered.

(4) Single organizational units may arrange for provision of services through purchases of service arrangements or other methods such as agreements with other public or voluntary agencies. However, the unit must retain responsibility for policy setting and implementation.

(5) Where appropriate, State or local agencies and Indian tribes and organizations should make agreements regarding provision of services to Indian children and their families to assure availability and provision of services and to avoid jurisdictional disputes which can prevent children and families from receiving needed services.

(6) The State agency should have clearly articulated policy (standards, practices and procedures) that spell out how it meets its responsibility under this requirement.

Section 1392.3 Advisory Committees on Child Welfare Services

(a) This requirement calls for establishment of:

(1) A State-wide advisory committee on all phases of CWS programs; and

(2) Committees in local administrative jurisdictions where the program is locally administered.

Such committees may be combined or be part of a larger State or local advisory committee on the total public welfare program.

(b) Well-organized advisory committees can serve a number of purposes including:

(1) Increasing policy and administrative officials' awareness of problems in programs, and the opportunities for improvement;

(2) Increasing the client's sense of participation in development and operation of the program;

(3) Increasing the public's understanding and support of programs; and

(4) Increasing understanding and cooperation among groups within a community or State.

(c) Advisory committees should have adequate opportunity for meaningful participation in both policy and program development including:

(1) Recommendations on priorities for the use of funds and changes in levels of funding;

(2) Recommendations for candidates to senior level positions and the opportunity to express views on the qualifications of candidates considered for such positions, (within the limits of merit system regulations);

(3) Participation in development of administrative policies relating to provision and scope of services, and priority areas to be served.

(4) Review of the operation of the agency personnel system and suggestions for modifications;

(5) Participation in evaluations of program operations and the effects of policy; and

(6) Review of the effectiveness of grievances and appeals systems.

(d) To function effectively committee members should be adequately trained, have access to information on a wide array of areas including services delivery, the mission and policies of the agency, and the availability of resources, and be able to seek alternative views and judgments.

Section 1392.4 Full-time Staff for Services

(a) This requirement recognizes that an effective system for delivery of social services for children and their families, including program planning, supervision, and case management, requires staff assigned full-time to these functions at both State and local levels. At each level of responsibility, there should be:

(1) A staffing plan which identifies and describes the staff to be used in the delivery of each type of service;

(2) Position descriptions describing the work to be performed by each staff member with respect to activities, responsibilities, and standards of performance;

(3) Standards defining the education and experience required for each position; and

(4) Standards defining the workload size and level of supervision for each type of client service operation. In determining staff needs and workload size, the following factors should be considered:

(i) the potential number of children, youth and their families in need of child welfare services;

(ii) the kinds and intensity of needs presented by families and children;

(iii) the amount of time required to comply with mandated agency policies and procedures;

(iv) the results of experiments and special studies which measure the time required to work successfully with various kinds of client problems;

(v) the kind of case management and service delivery structure which the agency has established;

(vi) the results of studies which define the activities which constitute a particular social service.

(vii) the kinds and range of services which the agency expects its workers to provide. For example, if the agency uses a generalist approach to service delivery and expects direct service workers to provide all of the services a family may need, the worker may be able to handle fewer cases than one might expect if specialized staff such as intake/assessment workers, parent educators, and home finders, are employed;

(viii) the environment in which services are to be provided. For example, in sparsely populated rural areas, travel time may be considerable and reduce the number of hours available to provide services.

(b) The State agency should establish personnel policies and procedures to implement this requirement which are consistent with standards of good practice as defined by the Child Welfare League of America, or the American Public Welfare Association or for service delivery criteria developed by the Children's Bureau in its *Detailed Design for a System of Social Services for Children and their Families.*

Section 1392.5 Use of Professional Staff

Use of professional staff has been deleted from the assurances to reflect the amended statute. This discussion, as contained in the February 22, 1980 **Federal Register**, is retained as advisory to State agencies.

(a) This requirement emphasizes the need for adequate numbers of suitably qualified personnel drawn from social work and other appropriate disciplines to plan, develop, supervise and provide specialized services to children, youth and families. Decisions affecting the future of children and their families

should be made by persons with training which prepares them to recognize and effectively respond to the complexities of the problems often encountered in delivering child welfare services.

(b) Generally, three types of personnel are required for effecitve delivery of child welfare services to clients:

(1) *Caseworker.*—The primary responsibility of the child and family caseworker is to ensure the care and protection of the child, whether the client is defined as an individual child or a family, and to improve family functioning. The caseworker must provide a variety of services directly to the client or on his behalf, but this person is especially critical for the primary function of developing a supportive and therapeutic relationship with the child or family to effect changes in problem behaviors or to help them accept and utilize other service elements to their benefits.

The caseworker's role is a comprehensive one requiring a variety of responsibilities and skills. Caseworker's must have the skills to:

(i) devleop a supportive and therapeutic relationship with the child or family;

(ii) study and assess the family's situation, and develop a case plan;

(iii) select and employ appropriate treatment approaches to different types of client problems;

(iv) implement a variety of therapeutic techniques such as role modeling and counselling to individuals or groups;

(v) coordinate the delivery of services to ensure services continuity and integration; and

(vi) engage in advocacy, for example, intervening on a client's behalf during threatened eviction or ensuring the protection of his/her rights in consumer or legal disputes.

The Bachelors degree in social work (BSW) is the recommended minimum acceptable level of training for caseworkers.

(2) *Supervisor.*—Supervisors should be highly skilled and accessible to support and direct the activities of workers who, in turn, must be able to respond to serious human problems and make high risk decisions. The worker's ability to handle the stress of participating in a client's often urgent and upsetting problems, and to help the client make difficult and appropriate decisions can be strengthened by the supervisor-caseworker relationship. Supervisors should supervise a maximum of 5 caseworkers.

Supervisors should have sufficient knowledge and skills about child welfare services to:

(i) perform the dual role of teacher and administrator;

(ii) be sensitive to each worker's capabilities and level of skill; and

(iii) be able to develop basic casework capability in less skilled workers and enhance the abilities of more skilled workers.

Supervisors should have a Masters of Social Work (MSW) degree and training in supervision and management or administration.

(3) *Specialist.*—Specialists are staff who serve a particular function or a specific type of client need. They may function as consultants or be part of the Agency staff.

Specialist staff support agency functions through:

(i) assisting caseworkers and supervisors in decisions on difficult cases;

(ii) providing specialized training to improve and expand service delivery skills;

(iii) providing policy and programmatic direction to the service delivery process; and

(iv) introducing improved techniques and knowledge to the service delivery process.

The types and numbers of specialists required to support agency needs will vary in terms of the volume and nature of client problems. Currently, the following types of specialized consultation are necessary and appropriate to client service needs:

(i) home-based services, to avoid separation of child from family;

(ii) protective services, to assess the risk and assist in treatment of parents who have abused and neglected their children;

(iii) substitute care, to determine the most suitable type of placement for a particular child;

(iv) permanent planning, to move children into permanent care arrangements; and

(v) psychiatric or clinical social work, to assist in the diagnosis and treatment of child, parental, marital, or family anomalies.

Specialized staff to perform these functions should have MSW degrees and specialized training and experience.

Consultative services of physicians, psychiatrists, lawyers, psychologists and other such specialists should be available to assist staff where their services are appropriate.

Section 1392.6 Use of Paraprofessional Personnel

(a) This provision requires agencies to utilize paraprofessionals. Paraprofessionals include all of those persons performing work related to professional activities, such as day care aides, parent aides, homemakers, health aides, and social service outreach workers. Clerical and janitorial positions or other positions of this type are not included.

(b) One of the most beneficial and effective uses of paraprofessional staff is in the capacity of homemakers and emergency caretakers. Emergency caretakers are staff carefully selected and trained to provide short term adult care and supervision for children in their homes during a crisis precipitated by the absence, desertion or incapacity of parents.

Homemakers perform emergency caretaker functions but also do role modeling, assist the parent(s) with household chores, and assist the parent(s) in better performance of parental roles. Generally, homemakers are part of an overall plan to assist children and families; therefore, the homemaker's work may not be limited to a specific crisis.

Agencies which do not utilize paraprofessionals in this manner should consider developing units of homemakers to be staffed by paraprofessionals.

(c) This requirement recognizes that persons with less than professional education have knowledge and skills to complement (but not substitute for) the skills of professional staff.

Other activities paraprofessionals may perform as part of a team or with other professional supervision include:

(1) Specialized or individualized interpretation of service programs to ethnic or cultural groups and to help such groups or individuals express their needs;

(2) Helping to overcome language barriers, case-finding in the community, and encouraging eligible persons to use available services;

(3) Acting as liaison between an agency and a defined group or organization in the community;

(4) Assisting individuals or groups with day-to-day problems such as job-finding, locating sources of assistance, or organizing community group to work on specific problems; and

(5) Transporting children to clinics and hospitals.

Section 1392.7 Use of volunteers

(a) Interested citizens can make a major, distinctive contribution in providing services to children, youth and families and in advisor capacities to State and local agencies. Volunteers should be recruited from all income levels and from all parts of the community including clients. Where expenses, such as transportation or

baby-sitting costs, limit the availability of volunteers, the State agency should assist with these costs.

(b) Volunteers have been effective in providing services such as parent-aides and homemakers, aides in day care facilities and institutions, care for children at agency intake, and promoting community support for special service projects or interagency coordination. Volunteers with special skills may also be useful in carrying out surveys and studies and in assembling information for advisory committees.

(c) The State agency should have a plan for the use of volunteers, and a designated coordinator for volunteer activities to assure effective leadership and planning and selection, training and supervision of volunteers.

The plan should include:

(1) A recruitment program to secure volunteers in all areas where they can assist the agency's services.

(2) Orientation to agency policies and procedures.

(3) Provision of office space, equipment and materials necessary to complete assigned tasks.

(4) Reimbursement of costs incurred by volunteers.

(5) Guide materials relating to requirements and descriptions of tasks.

Section 1392.8 Relationship and Use of Other Agencies

(a) The requirement emphasizes the importance of maximum coordination with other public and voluntary agencies to provide effective and comprehensive services to all children, youth, and families in need. States are expected to develop agreements with public and voluntary agencies and to provide guides and supervision to local departments regarding responsibilities for similar arrangements.

(b) The purpose of inter-agency coordination is to develop a services network which ensures availability of necessary services and maximum utilization of each agency's resources. The roles of each agency must be clear and relationships must be established which avoid duplication, fragmentation and gaps in services.

(c) Effective State level arrangements for ensuring coordination of child welfare programs with other agencies and programs that serve children and their families include:

(1) A unit or designated person responsible for coordination of child welfare services.

(2) Established arrangements for information exchange among agencies providing child welfare services and those providing other social services, e.g., AFDC, and Medicaid.

(3) Established polices and procedures for sharing information, where legally possible, on clients and families among referring agencies. Such policies must assure appropriate arrangments to assure confidentiality of information and safeguards for privacy as required under § 205.50.

(4) Written agreements regarding services responsibilities with State agencies serving children and their families, e.g., mental health, public health, juvenile justice.

(5) Assistance to local public social services agencies in developing cooperative agreements including written guidelines to assure:

(i) Provisions for inter-agency referrals.

(ii) Reports to referring agencies to confirm client contracts.

(iii) Annual review of agreements.

(iv) Joint funding of projects and joint staff development where appropriate

(6) Assistance to local agencies in developing and implementing agreements.

Section 1392.10 Staff Development

(a) The State agency should have a plan for ensuring that State and local child welfare personnel are trained to the maximum extent feasible. The plan should describe the State's staff development and training activities including orientation, in-service training and educational leave. States should make efforts to increase the number of staff provided educational leave for professional training and other activities to improve the level of staff capability until they can assure there are sufficient numbers of staff adequately prepared to carry out child welfare services functions and to maintain sound caseload practice ratios.

(b) State child welfare administrators and staff development specialists are ultimately responsible for development of programs that address the sepcific skills and knowledge needed by administrators, supervisors, case managers, specialists, direct service workers, volunteers and paraprofessional staff.

Effective statewide staff development programs require:

(1) Methods of identification of local agencies staff development and training needs.

(2) A person or unit responsible for coordination and provision of identified staff development needs.

(3) Utilization of title XX funds for training child welfare staff.

(4) Specialized management training programs for child welfare staff.

(5) Training for personnel in provider agencies.

(6) Assistance to local area colleges and universities in developing curricula for child welfare training programs.

(7) Educational leave and funding for workshops, seminars, special courses, professional conferences and meetings.

(8) Training programs for staff sensitivity to special clients and community cultural, ethnic and language considerations.

(9) Provision for purchase of professional journals and other related material for staff use.

(10) Assessment of staff development and training programs including:

(i) availability of training programs

(ii) number of staff attending

(iii) evaluation of staff satisfaction and program relevance, and impact on quality and outcome of service.

(c) Personnel management policies shall be designed and implemented to ensure effective and appropriate services to children and their families and shall include the following provisions:

(1) Allocation and deployment of personnel resources capable of rendering an immediate, full-time (twenty-four hour) response to time-critical needs of children and their families.

(2) Recruitment policies to provide ethnic, cultural and racial diversity appropriate to the nature of the client population, at all staff levels.

(3) Standards and systems to evaluate staff performance and ensure accountability for achieving service goals.

(4) Educational opportunities through structured agency programs to enable professional advancement for staff along the entire career ladder.

(5) Recruitment, selection and promotion policies in accordance with ojective criteria and established systems.

(6) Skilled and accessible supervision to support and direct activities of workers and to provide consultation upon their request, at a rate of one supervisor to five social workers.

(7) Long-range planning strategies to support program development and to determine staffing requirements based on assessment of target population needs and community resources.

(8) Opportunities for all staff to participate through established channels in development of procedures and in program planning in order to build a common purpose and common goals.

(9) Opportunities for professional staff to attend and participate in national and community meetings related to child welfare, and encouragement of communication and contacts with

counterparts in the private child care sector.

(10) Empirical workload standards for all aspects of service for better workload management and staff projection.

(11) Employment of paraprofessionals and utilization of community volunteers under appropriate agency supervision.

(d) Long-range planning is necessary to determine staff development needs. Some significant factors to be analyzed in personnel projections are:

(1) Periodic and systematic needs assessment based on current and projected target population service needs, and current and projected resources.

(2) Service goals and priorities; service delivery standards.

(3) New knowledge, methods and theories associated with meeting the special needs of children, with implications for agency practice.

(4) Program development required to implement new legislation or new policy.

(5) Workload measurements and standards for each function or service.

(6) Professional qualifications of staff to meet standards proposed by the social work profession.

(7) Purchase of service availability.

(8) Agency setting (rural or urban).

Section 1392.11 Appeals, Fair Hearings and Grievances

(a) This requirement is intended to protect the rights of individuals to request a fair hearing to appeal:

(1) denial of or exclusion from the services to which they are entitled under the State plan;

(2) actions that negate the individual's rights of choice with respect to specific service programs; and

(3) actions to force involuntary participation in a service program.

(b) Agencies must have procedures for handling grievances on any matter raised by an individual or individuals and must make the procedures readily accessible to individuals.

(c) Agencies must assure staff and client understanding of distinctions between agency out-reach efforts to offer services and coercion of acceptance of services.

(d) The results of appeals hearings should be available to the State Advisory Committee so that the Committee is aware of the nature and frequency of recipient grievances and can advise and assist the agency when grievances about policies and procedures indicate the need for review and possible changes. This requirement to make the results appeals available to the Advisory Committee is limited to reports and results and does not include provision of actual case records, recipients names, or other confidential information.

Section 1392.40(a) Child Welfare Services Statewide

(a) As the foundation of a comprehensive plan of public child welfare services, every county or other political subdivision should have available a full range of services for children, youth and their families whose home conditions or individual needs require special attention. This requirement reinforces the purpose of the law to assist the States in establishing, extending and strengthening public child welfare services. Thus, the purpose of title IV–B can be realized through progressive, continuing and consistent expansion until the State is able to adequately meet the needs of children, youth and their families for child welfare services.

(b) Conformity with this requirement should lead to systematic development of all essential child welfare services throughout the State. These services should include:

(1) preventive or supportive services to strengthen intact families and when necessary to avoid the need for foster care;

(2) protective and rehabilitative services;

(3) foster care services, reunification and after care services and adoption services, including adoption subsidies.

These services should be coordinated and provided through a mix of public and voluntary agencies.

(c) This requirement calls for extending and strengthening child welfare services in one or more of the following three dimensions:

(1) reaching additional children in need of services,

(2) expanding the range of services provided, and

(3) improving the quality of services through additional trained child welfare personnel.

Section 1392.40(b)(1) Needs Assessment

(a) The State agency should develop a plan for periodic identification and assessment of needs, problems and resources relating to its provision of child welfare services. Needs assessment should be directed toward the total services program, not just to specific problems or special services.

(b) There should be a uniform assessment system throughout the State for defining needs and services to minimize program gaps and to avoid duplication of services. Needs assessment should produce clear definitions of populations at risk who are not receiving services as well as assess the adequacy of current services.

(c) Inability to meet currently identified needs should not deter the process of continuously assessing services needs.

(d) States' arrangements for identification and assessment of the need for child welfare services should meet the following criteria:

(1) Written procedures for assessment of the need for child welfare services;

(2) An individual or unit responsible for needs assessment;

(3) Criteria and procedures for a variety of methodologies to identify and assess needs for services, e.g., citizens survey, client services data, special studies and surveys;

(4) Schedule for periodic needs assessment;

(5) Arrangements to compare data among counties and regions;

(6) Methods for involving relevant community groups, e.g., services clients, advocate groups; and

(7) Arrangements to coordinate needs assessment studies with activities of other agencies and organizations.

Section 1392.40(b)(2) Services to Children in Their Own Homes and Foster Care

(a) *Services to Children in Their Own Homes:* The State agency should develop procedures and criteria to assure that the circumstances of children referred for child welfare services are assessed in order to develop an appropriate plan to strengthen, support and improve family functioning. Home-based supportive and supplementary services should be provided where the assessment indicates that the family could remain intact through the provision of such services. The specific supportive and supplementary services to be provided should be described in the individual case plan. The requirement for child welfare services to children in their own homes is intended to reinforce the conviction that the family is the first and best resource for the child. It emphasizes a major goal of child welfare services which is to preserve, strengthen and support family life and prevent family disruption and unnecessary removal of children from their homes. When the State or local agency provides home-based services directly or by purchase, it should:

(1) Assure that there are policies, practices and procedures that reflect the agency's commitment to providing services to strengthen and preserve the family and the child in the home.

(2) Assure that services are complete, comprehensive and intensive. They should include: casework or counseling; day care and respite care; homemaker services with a parent education component; family planning; legal services; services to unmarried parents; transportation; emergency shelter and funds. Services should be available in the amount and for the length of time needed.

(3) Assure that there are written guidelines defining the target population, determining when a child should remain at home, specifying the information needed to formulate a case plan, determining what services can and should be provided, and making agreements with other agencies for the provision of specified services.

(4) Assure that staff is sufficiently trained to assess when families can remain intact with the provision of services, be able to develop a case plan based on that assessment, and have the skills necessary to work with dysfunctional families.

(5) Assure that community support systems are developed such as ties with relatives, neighbors, community organizations, self-help groups and volunteers.

(6) Assure that there is a case managment system for coordination of services and for monitoring provision of services and client progress.

(b) *Provision of Foster Care:* (1) The requirement regarding foster care is intended to assure appropriate placement and adequate agency supervision and emphasizes the important of efforts to return children to their own homes or to develop an alternative permanent plan as early as possible. It emphasizes timely decision making as well as services in thr foster care process.

(2) When the State or local agency provides foster care directly or by purchase, it should:

(i) Assure that the foster family home group home or child care institution in which the child is placed is licensed by the State or has been verified by the State licensing staff as meeting the State standards for such licensing;

(ii) Assure that the placement is appropriate to the needs of the child, using criteria specified by the State which are based on standards recommended by the American Public Welfare Association (APWA) or the Child Welfare League of America (CWLA);

(iii) Assure that the child receives proper care in the placement using criteria specified by the State which are based on standards recommended by the APWA or CWLS;

(iv) Assure that the child and family will receive services to improve the conditions in the home from which the child was removed so that the child may be reunited with the family;

(v) Assure that where reunification services are inappropriate, the agency will place the child in the home of a relative, in an adoptive home, or, if necessary in planned long-term foster family care; and

(vi) Describe in the case plan how it plans to meet or is meeting the requirements of this section.

(3) When the State provides foster care services through purchase of service agreements, there should be written clarification of the responsibilities of agencies from which the State or local agency purchases services for foster care placement, including case supervision and case review specification of the responsibilities retained by the State or local agency. The State should assure that the responsibilities described in the agreement are met.

Section 1392.40(b)(3) Case Plans and Case Reviews

(a) *Case Plans:*

(1) The development of a case plan for a child and his family is an essential part of the process of child welfare service delivery. Without a plan, goals are difficult to define, and unplanned services may provide only a transient remedy to chronic problems. A case plan, developed jointly by the family and the agency, with decision making at critical points and periodic review, will provide the structure for achievement of short and long range goals, and an opportunity to assess the appropriateness of services and quality of care.

(2) The State agency should have clearly stated and promulgated policy (standards, practices and procedures) that all children receiving child welfare services must have a written plan that is developed in cooperation with the family. The State agency should have a method to monitor and assure compliance with this policy.

(3) A structured plan should be developed for each child who is to receive services within thirty days following the agency's decision to provide services. It should contain sufficient information to guide the delivery and monitoring of services, and to assess services outcomes. The case plan should summarize the conditions of the home, and analyze the behaviors and needs of the family and the child(ren), and specify the services required to rectify or resolve major problems.

(4) The following are considered essential components of a case plan in a goal-oriented child welfare program:

(i) A written plan developed in cooperation with the family, for each child and family provided child welfare services;

(ii) An assessment of the circumstances which necessitate the provision of child welfare services;

(iii) The actions to be taken to resolve the identified problems within a specified period of time;

(iv) The services outcomes to be achieved; and

(v) A specific permanent goal for the child.

(5) The agency should develop and implement policies and procedures to ensure that the planned services are provided to achieve the goals established for the child and his or her family and to ensure that all possibilities for arranging a suitable permanent plan, when appropriate, are explored and acted upon expeditiously.

(b) *Case Plan Review:*

(1) The case plan should be reviewed at least semiannually to assure its continued appropriateness, to review the delivery of the services specified in the case plan, and to revise when necessary, according to its continuing relevance to the needs of the child. If the child is in foster care, the review should access the continued necessity of placement outside the home and the appropriateness of the particular placement, using criteria specified by the State based on standards such as those developed by the Children's Bureau/American Public Welfare Association (APWA), the Child Welfare League of America (CWLA), or other recognized standard setting agencies.

(2) The review should include participation by State or local agency staff not directly delivering services to the child and family. This may include the first level supervisor or other reviewer(s) designated by the State or local agency.

(3) Another method of case review is the use of a team of agency personnel with direct responsibility for case action, other administrative staff, and consultants to the agency who are knowledgeable in the practice of child welfare. Other methods of review may involve the courts and citizen advocates. If information on the placements of children in foster care is to be shared with citizen or court review groups, the State's intention to use such a review group should be described in the State Plan and appropriate measures instituted to ensure safeguarding of confidential information.

(4) Case reviews serve as a casework support and an administrative control on all major decisions and actions in a case, ensuring that a client's needs are met appropriately and in an manner consistent with agency policies and standards. They can also be a valuable teaching device, used to develop and improve the skills of all service delivery personnel. Through family involvement in the planning process, case reviews also provide a vehicle for exercising the rights and responsibilities of all parties to participate in the planning and achievement of mutual goals.

Section 1392.40(b)(4) The Availability of Child Welfare Services

(a) The only test of eligibility for child welfare services is the need of the child and his family for these services. Thus, child welfare services are to be available to all children without regard to financial need, legal residence, social status, race, religion or national origin.

Children in intact families, as well as those in disrupted families, may have a range of needs requiring the services of child welfare agencies. Physical, mental and emotional handicaps, neglect and abuse, dysfunctioning family relationships, poor school adjustment, alcohol and drug abuse and unmarried adolescent parents are major problems which transcend financial and social status, legal residence, race or religion.

(b) Provision of services to all groups in need of them may require the development of new types and combinations of services, such as outreach activities, comprehensive child welfare services in a single location, neighborhood centers, agency or multi-agency teams, client self-help groups, and staff training for services to special or target groups.

Section 1392.47 Implementation; Local Agencies and Service Contractors

(a) The State agency has continuing responsibility to assure that local agencies and service contractors are meeting service responsibilities appropriately and effectively and in accordance with the State Plan. Assisting and monitoring local agencies is not a new responsibility to State agencies, but the scope and nature of the services and accountability for results under the regulation requires careful assessment of the adequacy of current methods and staffing for this activity.

(b) State agencies should assist and monitor local agencies through:

(1) Promulgation and dissemination of standards, guidelines and licensing criteria for child welfare programs.

(2) Staff development and training for local agencies and offices providing child welfare services.

(3) Establishment of appropriate personnel policies and procedures for child welfare staff.

(4) Utilization of data from management information systems, monitoring and evaluation studies to assist in correction of deficiencies and improving child welfare programs.

(5) Determination of compliance with criteria for using licensed contractors.

Section 1392.56 Day Care Services

(a) This provision pertains to all day care services supported by title IV-B funding and must meet the requirements described in the Assurances. Specific Federal regulations and guidance pertaining to provision of day care can be found in 45 CFR, Part 71.

(b) Day Care refers to a wide variety of organized care and supervision that supplements parental care and guidance for a part of the day, in or outside the home. Responsibility for such supplementary care is delegated by parents and generally provided in their absence. The home and family remain the central focus of the child's life, and the parent(s) retain(s) primary responsibility for rearing their child(ren).

(c) Day Care is an integral part of a system of supportive and supplemental child welfare services to children and families and, as such, should receive increased emphasis in planning. Day Care services should be available as a respite for the child(ren) of parents experiencing extreme stress: a resource for care of the child(ren) while the parent(s) is relieved temporarily of their care. Such child care services are clearly supplemental in nature and generally should be one component of a more complete service network to support and strengthen families especially during times of crisis.

(d) Day Care, like homemaker services, should be viewed as one of the service options available to prevent out-of-home placement of children. Before decisions are made to remove children from their homes, consideration should be given to day care as an alternative supportive service.

Section 1392.92 Child Abuse and Neglect

(a) Child protective services are vital social services for children who are neglected, abused or exploited and whose conditions are such that community intervention is necessary.

(b) Extensive technical assistance, publications, training and other forms of assistance are available on this subject from the Child Abuse and Neglect Resource Centers, as well as from the regional and central office staff of ACYF. Detailed guidance is available in the draft *Federal Standards for Child Abuse and Neglect Prevention and Treatment Programs and Projects* and the User Manual Series. However, of the many significant issues of concern in delivering child protective services, the following six areas have been identified as especially critical:

(1) There should be clear designation of roles and responsibilities for receipt of reports, investigation and assessment, and service delivery in child abuse and neglect cases.

(2) Prompt investigation is crucial to protect the health and welfare of the abused or negected child. The National Center on Child Abuse and Neglect (NCCAN) recommends immediate investigation of crisis or emergency situations and investigation within 24 hours of all reports.

(3) Following resolution of any emergency situation, the worker should engage in a more detailed and comprehensive assessment of the family's needs and strengths. During this process the worker, with family members and relevant service providers (e.g., schools, hospitals, mental health agencies) should identify the elements of a case treatment plan for the family which describes the changes required to alleviate the family's problem(s).

(4) Effective child protective services require close coordination with courts, law enforcement, health and medical systems, schools, mental health agencies and other service providers, for identification, and follow-up in cases of child abuse and neglect.

(5) The need for more staff development and training opportunities for child welfare staff has been repeatedly emphasized. This need for basic child welfare skills is particularly important for child protective service workers, who also need skills in investigation, case assessment and court presentation.

(6) Policies and procedures which will assure that protective service staff will coordinate their efforts with those of placement and licensing staff, when abuse is alleged to have occurred in licensed facilities.

Section 205.70 Availability of Agency Program Manuals

There should be public involvement in planning child welfare services in the States. State and local agencies should maintain and make available program manuals and other policy issuances, including the State Plan. To make child welfare services as effective as possible,

the State should seek comments and recommendations for individuals and groups, from the general public and from affected target populations. The State agency will gain more public involvement and support for its programs through making materials available. The availability of program manuals and policy issuances is a minimum requirement for informing the public about the State's child welfare program.

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Part VI

Department of Commerce

Office of the Secretary

Federal Interaction With Voluntary Standards Bodies; Procedures

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 19

Federal Interaction With Voluntary Standards Bodies; Procedures

AGENCY: Assistant Secretary of Commerce for Productivity, Technology and Innovation, Commerce Department.

ACTION: Final procedures.

SUMMARY: Under the provisions of Circular A–119 issued by the Office of Management and Budget on January 17, 1980, entitled, "Federal Participation in the Development and Use of Voluntary Standards," the Department on June 2, 1980, proposed procedures required by the Circular to implement its policy relating to Federal agency participation in and support of voluntary standards organizations. The Secretary requested comments on the proposed procedures for listing and delisting voluntary standards bodies and their standards-developing groups and on the proposed procedures for a voluntary dispute resolution service for the rapid handling of procedural complaints by interested parties against voluntary standards bodies listed by the Department.

Some 165 comments were received and considered by the Department. After carefully analyzing these comments, and after further consideration of the proposed procedures, the Department has made changes in the proposed procedures and herein publishes the final procedures under Part 19 of the Code of Federal Regulations.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–3221; or Mr. Donald R. Mackay, Office of Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–4562.

SUPPLEMENTARY INFORMATION: In the matter of Implementation of Federal Voluntary Standards Policy; Procedures for Listing Voluntary Standards Bodies Eligible for Federal Agency Support and Participation; Procedures for a Department Sponsored Voluntary Dispute Resolution Service for Procedural Complaints Against Listed Voluntary Standards Bodies.

Policy

The OMB Circular emphasizes Federal policy of relying on voluntary standards with respect to Federal procurement whenever feasible and consistent with law and regulation. The OMB Circular establishes a policy encouraging the participation of Federal agencies and their representatives in voluntary standards bodies which conduct their standards activities in accordance with specified due process and other criteria, and which are listed by the Department of Commerce after certifying that they comply with all of the due process and other criteria established in the Circular. The Circular also facilitates the coordination of Federal agency participation in voluntary standards activities so that the most effective use can be made of Federal resources.

The Department's final procedures in Subpart A of this Part 19 emphasize the basic philosophy expressed in the Circular that voluntary standards bodies desiring Federal support and participation will self-certify that they conform to the requirements established herein. These final procedures also have been modified to provide the maximum amount of flexibility for individual voluntary standards bodies to meet the requirements for due process and other criteria established in the Circular. The Department has been careful not to establish any requirements that were not authorized by the provisions of Circular A–119.

Further, it is not the intent of the Department to initiate any investigations as to the applicants' compliance with the requirements for listing. Consistent with the Department's intention to rely entirely on the self-certification provisions of the listing requirements whereby applicants will be required to certify publicly that they have met the requirements, the Department ordinarily will not question the veracity of any such self-certification statement.

The Department wishes to emphasize the fact that these procedures apply only to voluntary standards bodies that wish to obtain Federal agency support and participation in their voluntary standards activities. Voluntary standards organizations, having no interest in or involvement with Federal agencies in their development of voluntary standards, are not required to follow the procedural requirements for listing. Further, these procedures do not have to be followed by voluntary standards organizations in order to have their standards considered for use by Federal agencies.

Background

The Department of Commerce, in response to the directives contained in OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Standards," January 17, 1980, published proposed procedures for (1) the listing and delisting of voluntary standards bodies eligible for Federal agency support and participation (Subpart A of Part 19), and (2) a Department-sponsored voluntary dispute resolution service for procedural complaints against listed voluntary standards bodies (Subpart B of Part 19). These proposed procedures were published in the **Federal Register** (Vol. 45, 107, pp. 37374–37383) on June 2, 1980.

The Department originally provided a 60-day period for public comment. However, in response to several requests, the Department on July 10, 1980 extended the comment period from August 1, 1980 until September 2, 1980. Additionally, the Department in response to several requests held a public hearing on August 27, 1980, to allow interested parties to present oral arguments concernig the published procedures. The Department provided a 30-day period following the close of comments on September 2, 1980, for interested parties to review the comments filed and to submit statements of rebuttal. The closing date for receipt of rebuttal statements was October 2, 1980.

The Department received 107 written statements in response to the publication of the proposed procedures. Thirteen additional written statements were filed, as required, prior to the August 27, 1980, public hearing held by the Department, and thirteen oral presentations were made at that hearing. In addition, the Department has considered letters transmitted to the Department by Senators and Representatives on behalf of their constituents concerning the proposed procedures the same as if they were prepared statements. Thirty-three such letters have been included in the review and analysis of the comments, as well as two letters received directly from Congressional offices. The vast majority of the comments filed addressed the proposed procedures for listing and delisting voluntary standards bodies.

The written comments are part of the public record which is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The comments filed in response to the publication of the proposed procedures (15 CFR Part 19) in the **Federal Register** on June 2, 1980, have been carefully reviewed and evaluated. A "Summary

and Analysis of Comments" has been prepared by the Department and is also available for inspection and copying at the Department's Central Reference and Record Inspection Facility mentioned above.

Pending formal revision of Department Organization Order 10–1, which delegates various authorities of the Secretary of Commerce to the Assistant Secretary for Productivity, Technology and Innovation, the Secretary on December 22, 1980, approved an interim delegation of authority to the Assistant Secretary as follows:

> Exercise the function of the Secretary of Commerce concerning Federal participation in the Development and Use of Voluntary Standards under Circular A–119 of the Office of Management and Budget (45 FR 4326–4329, Jan. 21, 1980) except for the function of submitting the annual report required by section 8 of the Circular.

Principal Concerns Expressed in Comments on Subpart A of Proposed Part 19 and the Responses of the Department to Those Concerns

1. Increased Costs

The single most common reason stated in comments opposing the implementation of the procedures proposed by the Department concerned the increased costs of developing voluntary standards under the due process and other basic criteria established by the OMB Circular. Many of the comments suggested that strict compliance with the requirements for adequate public notice of all standards meetings and other standards actions and adequate public notice of all standards actions would be very expensive. Some statements addressed the increased costs associated with the requirement for ensuring the opportunity for all interested parties to attend the meetings associated with standards development activities.

The Department has carefully considered each of these expressed concerns and has addressed them not only in the "Summary and Analysis of Comments" (referenced in the "Background Information" section above) but has provided a discussion of these concerns below under items numbered 16, 17 and 18. The Department believes that the additional costs of meeting the due process requirements established in these procedures will not significantly increase the costs of developing voluntary standards, as evidenced by the fact that the major voluntary standards bodies presently conform to most of the procedural requirements. Further, the Department firmly believes that the potential additional costs to other organizations developing voluntary standards will be outweighed by the public benefits to be derived from the standards development process as it may be modified by the implementation of these procedures.

2. Potential Antitrust Implications

Several statements expressed concerns about the potential antitrust implications of the procedures if the implementation of the procedures significantly reduced the number of organizations developing voluntary standards. Some statements suggested that the Department's procedures would force many of the smaller organizations out of the standards business, allowing the few larger organizations to become even larger.

The Department recognizes that there exists a possibility that some small organizations, and particularly trade associations, may transfer their standards-development activities to nationally recognized standards organizations rather than attempt to comply with requirements established in the procedures. The Department believes that the potential for antitrust problems arising from voluntary standards which are developed (i.e., restraint of trade, anti-competitive effects, discrimination against small manufacturers, etc.), will decrease rather than increase as a result of the implementation of the procedural requirements. This antitrust advantage is believed to outweigh any disadvantages which might result from any impact of the due process and other criteria upon the total number of voluntary standards organizations.

3. Potential Product Liability Problems

Several statements expressed the concern that the imposition of a requirement that the standards development process be open to all interested parties would likely result in product liability problems due to the establishment of inferior standards and thus, inferior and perhaps hazardous products. These statements generally came from trade associations representing manufacturers of specific types of products.

The Department is not convinced and has seen no evidence to date to support the premise that opening the standards development process to interested persons will result in the development of inferior standards and inferior products. on the contrary, the experiences of several large consensus organizations in developing voluntary standards for consumer products have not supported this theory.

4. Preservation of the Canvass Method

Numerous statements expressed serious concern about the possible inability of standards organizations to utilize the so-called "canvass method" of the American National Standards Institute (ANSI) under the provisions of the procedures. Much of this concern was expressed about the provision in the Department's proposed procedures which was interpreted to require voluntary standards bodies to conduct meetings. This was a significant issue because many organizations develop standards through the canvass method without conducting formal meetings. Additional concern was expressed about the need to conduct "open" meetings.

The Department recognizes its error in translating the provision of the OMB Circular "that meetings are open" into the proposed requirement that voluntary standards bodies "shall conduct open standards meetings." The Department has deleted from these final procedures any requirement to hold meetings. (This matter is discussed in further detail under item number 18). The Department had no intent, and has no intent, of discriminating against the canvass method or any other standards development procedure that meets the due process criteria established in the OMB Circular.

5. Need for Future Public Hearing

One statement was made during the public hearing conducted by the Department on August 27, 1980 which recommended that the Department hold another public hearing within a year or two after the promulgation of the procedures implementing the OMB Circular to evaluate the operation of the program and the problems that may be introduced by the final procedures.

The Department agrees with this recommendation and hereby declares its intent to hold a public hearing on the implementation of these procedures within two years of their effective date.

6. Special Exceptions

Several statements expressed serious concern about the need to include in the procedures a provision which would allow the Secretary of Commerce to grant special exceptions to Federal agencies to allow them to support and participate in specific standards-development activities with unlisted voluntary standards bodies or with unlisted standards-developing groups. These statements expressed the concern that it might be in the public interest to authorize such special exceptions.

The Department acknowledges the possibility that it may be in the public interest to grant, in special cases, exceptions to the general policy, but notes that the Circular provides no authority to the Secretary to grant such exceptions.

7. Acceptability of Voluntary Standards

Several statements expressed a concern that the proposed procedures did not point out that, for Federal procurement purposes, voluntary standards could be utilized by Federal agencies regardless of the fact that they were developed by organizations that were not listed by the Department, or regardless of the fact that they were developed outside of the due process requirements established by the Circular.

The Department acknowledges this concern and has included statements in §§ 19.1 and 19.2 of Subpart A of these final procedures to clearly express the policy established within the Circular that Federal agencies are to rely on voluntary standards regardless of the procedures utilized in developing those standards.

8. Inclusion of Activities Related to International Standards

Many statements expressed concern about the Department's proposal to subject to the provisions of the procedures the activities of technical advisory groups (TAGs) established for the purpose of developing national positions relating to international standards activities. This proposal, in § 19.3, also explained that the procedures did not apply to "direct participation in multinational organizations, including regional and international organizations, which develop and issue international standards, in accordance with Section 6 of Circular A–119."

The Department, upon legal review, agrees that the above-cited exception for Federal agency participation in multinational organizations should also apply to the activities relating to preparation for participation in international standards activities. Therefore, the Department has revised § 19.3 of Subpart A to delete any reference to participation of Federal agencies in the development of U.S. positions relating to international standards activities. Nevertheless, the Department encourages the private sector to apply the due process criteria to the extent feasible to the development of U.S. positions regarding international standards.

9. Exclusion of Certain "Building Code Organizations"

Many comments expressed concerns about the provision in § 19.3, "Coverage", that excluded building code organizations from the requirments of the procedures if they met one of two specific conditions. The first condition required the voting membership of such private organization to be composed entirely of government officials. The second condition related to the referencing or adoption of voluntary standards by such organizations rather than to the development of such standards.

The Department has concluded that it inadvertently established, in this provision, an exclusion for "non-governmental" organizations. The provisions contained in the OMB Circular clearly were established to pertain to non-governmental bodies, (regardless of the membership criteria) when these bodies develop, establish or coordinate voluntary standards. Therefore, the Department, upon reconsideration of this issue, has deleted from § 19.3, of Subpart A, the parenthetical exclusion for certain building code organizations.

10. Format

One statement suggested that the format of the final procedures could be improved by rearranging and consolidating the requirements for listing and the requirements for the application for listing.

The Department has decided to rearrange the contents of these final procedures to provide a format which will be easier to follow and which will be more convenient to use. The revised format establishes: (1) the procedures for listing voluntary standards bodies and their standards-developing groups in Subpart A; (2) the procedures for delisting voluntary standards bodies and their standards-developing groups in Subpart B; (3) the due process and other basic criteria in Subpart C; (4) the categories for listing voluntary standards bodies and their standards-developing groups in Subpart D; (5) the definitions in Subpart E; and (6) the procedures for a voluntary dispute resolution service in Subpart F (formerly Subpart B of proposed Part 19).

11. Definition of "Standards Developing Groups"

Several statements expressed concerns about the Department's intent in applying the term "standards-developing groups" in subsection 19.4(e) to the various organizational levels and units (i.e., subcommittees, task groups, ad-hoc task forces, etc.) of a voluntary standards body.

The Department's intent in the proposed procedures was to apply the Circular's due process requirements only to the voluntary standards bodies and their standards-developing groups, defined in the Circular as the principal subdivisions of the bodies. The Department interprets the term "principal subdivisions" as those organizational units immediately below the parent body. The Department did not intend to require conformance to the procedural criteria by all of a body's organizational units (subgroups, task forces, etc.).

However, the requirements established in the OMB Circular are applicable to the standards development *activities* of voluntary standards bodies rather than to specific organizational levels. Nevertheless, as a practical matter the Department believes that the procedural requirements for listing voluntary standards bodies would have to apply to organizational units at specific levels of a voluntary standards body rather than to standards-development activities, *per se*. Deeming it impractical to subject all of a voluntary standards body's organizational levels to all of the due process requirements, the Department instead has applied those requirements only to the voluntary standards body, to the standards-developing groups of that body, and to the organizational units one level below the standards-developing groups. These are the significant decisional levels within most voluntary standards bodies and the application of the due process criteria to these levels will assure that significant decisions are made at those levels. The Department has implemented this decision in the revision of § 19.6(b)(1), (2), (3), (4), (5), (7) and (11), as contained in § 19.24(a)(1), (2), (3), (4), (5), (7) and (11) of Subpart C of these final procedures.

12. Time to Meet Requirements

Several comments expressed serious concern that insufficient time was provided between the publication of the final procedures and the date that Federal participation in voluntary standards activities would be restricted, to those organizations that are listed by the Department under these procedures. Concerns were expressed that more time was required by voluntary standards bodies to modify their procedures to conform to the due process requirements. Several comments suggested different approaches to achieving compliance with these requirements, including "provisional

listings" and "temporary listings" (discussed below).

The Department had provided in the proposed procedures an eight-month period between the publication of the final procedures and the imposition of the restriction on Federal participation with voluntary standards bodies. This was expressed in terms of a 90-day period following the publication of the first notice of listed standards bodies which was planned to occur within five months after publication of these final procedures. Upon reconsideration, the Department recognizes the possible need to provide more time to allow voluntary standards bodies to modify (as may be necessary) their existing procedures and therefore has extended, in § 19.5 of Subpart A, the 90-day period to six months. This extension of time will effectively delay the imposition of the listing as a prerequisite to Federal participation in voluntary standards activities until eleven months after the publication of these final procedures.

In addition, the Department has simplified the requirements for applying for listing by accepting statements, which will be available publicly, from voluntary standards bodies certifying that they conduct their standards activities entirely in accordance with the applicable due process and other basic criteria set forth in Section 6c of the OMB Circular as interpreted in Subpart C below.

13. Provisional Listings

Several statements recommended the use of "provisional listings" or "temporary listings" of voluntary standards bodies to allow the participation of Federal agencies in voluntary standards activities before the listing requirements were fully implemented.

The Department recognizes that the OMB Circular does not provide any authority for granting either "temporary listings" or "provisional listings." The Department believes that the extension of the time period (discussed above in item 12) for imposing the restrictions on Federal participation to listed voluntary standards bodies will address many of the concerns expressed about the need for "temporary listings" and "provisional listings."

14. Categories A and B

Several statements expressed concern about the two categories proposed by the Department for voluntary standards bodies seeking Federal participation and support. A "Category A Listing" had been proposed for voluntary standards bodies having all of their standards-developing groups in conformance with the requirements of the due process criteria. A "Category B Listing" had been proposed for voluntary standards bodies that had some, but not all, of their standards-developing groups in conformance with the due process requirements. It was the Department's intent to restrict Federal participation in standards activities, in the case of voluntary standards bodies which did not qualify for a "Category A Listing", to those standards-developing groups of such bodies that fully complied with the listing requirements.

The Department recognizes the problems that some organizations (particularly trade associations and some technical societies and professional organizations) will have in making the changes necessary so that those bodies which wish to do so could fully comply with the listing requirements. The Department realizes that without a "Category B Listing" all standards organizations would have to subject all of their standards-developing groups to the listing requirements, even those not interested in Federal support and participation.

The Department believes that the spirit and intent of the Circular call for full conformance by all standards-developing groups with all of the listing requirements of the Circular, but is of the view that standards-developing organizations wishing to have all of their standards groups listed should be given a reasonable opportunity to make the changes necessary to their procedures which will make those groups eligible for listing. Accordingly, there has been provided in § 19.34(a)(2) of Subpart D of the final procedures, a three year period for the use of "Category B Listings." At the end of that period, Category B listings will be dropped, and voluntary standards developing bodies/groups in Category B will no longer be listed by the Department unless they qualify for a Category A listing. Additionally the procedures have been revised to state clearly that Federal agencies may provide support to and participate in the non-standards related activities of such bodies, including activities of their Boards of Directors (or other similar governing or advisory units).

15. Category C Listing

Several statements supported the need for a third category to include voluntary standard bodies that function as "coordinators", rather than as "developers" of voluntary standards.

In view of the provision in the Circular that voluntary standards bodies which coordinate the development of voluntary standards are eligible for Federal support and participation, the Department agrees with the need to establish a third type of listing for voluntary standards bodies that do not develop standards but function as coordinators of voluntary standards. Thus, the final procedures, in § 19.34 of Subpart D, contain such a provision in a "Category C Listing." This new type of listing does not preclude any voluntary standards body from applying for listing as both a standards developer (under a Category A or B listing) and a standards coordinator (under a Category C listing).

16. Notice of Meetings

Many comments were received which expressed concern about the proposed requirements in § 19.6(b)(1) pertaining to public notice of standards meetings and other standards activities. Numerous comments expressed concern that such notice requirements would be burdensome and prohibitively costly. Some of the comments seemed to have been based on very stringent interpretations of the requirements for "adequate notice." Several comments questioned the organizational level within a standards body to which the meeting notice applied.

The Department, in attempting to provide maximum flexibility to voluntary standards bodies in conforming with the due process requirements, had chosen not to provide unduly restrictive language regarding compliance with those requirements. However, the question concerning the applicability of the notice requirement is one that the Department believes needs clarification. In an effort to establish a reasonable requirement, the Department has provided in § 19.24(a)(1) of Subpart C that the notice requirement will apply to meetings of voluntary standards bodies, to meetings of standards-developing groups (i.e., organizational units immediately below the parent body) and to meetings of organizational units one level below the standards-developing groups.

The Department received several suggestions concerning the development of a system for periodically publishing a list of all standards meetings requiring notice, in a manner which will comply with the requirements for adequate notice in an appropriate and timely fashion through media selected to reach persons reasonably expected to have an interest in the subject of the meetings. One of these suggestions involved the commercial publication of a list of all standards meetings and standards activities at a cost to voluntary standards bodies which appears to be reasonable. The Department wishes to encourage such a commercial venture as

being in the public interest in helping to meet a requirement of the Circular at minimal expense to the participants.

17. Notice of Standards Actions

Many comments were provided expressing concern about the proposed public notice requirements in § 19.6(b)(2) pertaining to standards actions, including the initiation, final review, adoption or approval of all new and revised voluntary standards and the proposed withdrawal of voluntary standards. These comments reflected special concern about applying the notice requirements to the initiation of voluntary standards. This concern is of particular importance because such actions are frequently taken by suborganizational units of a voluntary standards body without the knowledge or the approval of the body.

The Department recognizes the problems associated with meeting the due notice requirements pertaining to standards initiation actions, and therefore has included in § 19.42(a)(12) of Subpart E a definition for the "formal initiation of a voluntary standard" which pertains to decisions of a voluntary standards body, a standards-developing group, and organizational units one level below the standards-developing group, to initiate the development of voluntary standards. The Department believes that the incorporation of this requirement is reasonable and will not be unduly burdensome to voluntary standards bodies. Subsection 19.24(a)(2) of Subpart C has been revised to include the reference to "formal initiation."

18. Meetings of Voluntary Standards Bodies

Many comments expressed serious concern about the provisions the Department proposed in § 19.6(b)(3) pertaining to meetings of voluntary standards bodies and the requirements for "open" meetings. Numerous comments supported the canvass method of developing voluntary consensus standards used by the American National Standards Institute (ANSI) which does not generally require the holding of meetings. Several comments expressed opposition to the provision that all meetings of voluntary standards bodies be open and several comments questioned whether the open meeting requirement pertained to all levels of standards-development organizations.

The Department, in interpreting subsection 6c(3) of the OMB Circular ("that meetings are open"), inaccurately proposed that "voluntary standards bodies shall conduct open meetings." The Department's language has been interpreted by many commentators as requiring voluntary standards bodies to conduct meetings, even those organizations utilizing the ANSI canvass method of standards development and which may not have a need or desire to hold meetings. The Department recognizes this problem and has revised the wording of proposed § 19.6(b)(3) in § 19.24(a)(3) of Subpart C to indicate that meetings are not, *per se*, required to be held.

The Department also recognizes that it would be extremely burdensome to many voluntary standards bodies, particularly trade associations and other organizations involving specific interest membership, which are not primarily voluntary standards development organizations, to meet the requirements for open meetings and to insure the opportunity for attendance at these meetings to interested parties. Therefore, the Department has provided in § 19.24(a)(3) of Subpart C that if meetings requiring notice under the provisions of § 19.24(a)(1) of Subpart C are held, they will be open, and opportunities will be provided for interested parties to attend such meetings. This provision thus requires that meetings relating to standards development activities held by voluntary standards bodies, standards-developing groups, and organizational units that are one level below standards-developing groups, to be open meetings.

19. Records

Many comments were received which expressed concern about the requirements proposed by the Department pertaining to records and record-keeping. Many of these concerns were directed to the provisions proposed for accessibility of these records to all interested persons.

The Department recognizes the potential burden that the proposed record-keeping provisions might place on voluntary standards bodies and has therefore revised § 19.6(b)(7) to include in § 19.24(a)(7) of Subpart C provisions for accessibility of records that are similar to those provisions applying to Federal records under the Freedom of Information Act.

20. Periodic Review of Procedures

Numerous comments expressed opposition to the provision in the Department's proposed procedures that would have subjected the standards development procedures of voluntary standards bodies to a periodic review similar to that required by the OMB Circular for the review of voluntary standards.

The Department admittedly exceeded the provisions of the Circular and therefore has revised § 19.6(b)(10) in § 19.24(a)(10) of Subpart C to delete the requirement for periodic review of the standards development procedures of voluntary standards bodies.

Principal Concern Expressed in the Comments on Subpart B of Proposed Part 19 and the Response of the Department

Processing of Complaints Under the Voluntary Dispute Resolution Service

Several comments expressed concern about the Department's reference in § 19.27(c) to the submission of complaints having potential legal implications to the Federal Trade Commission and the Department of Justice. One comment objected specifically to the implication that the Department would "police" the activities of voluntary standards bodies.

The Department, in proposing the procedures, had no intent whatsoever to "police" the activities of voluntary standards bodies or to enlist the services of the Federal Trade Commission or the Department of Justice in any such activities. The Department has therefore deleted from § 19.27(c) (now § 19.57(c) of Subpart F) the reference to both the Federal Trade Commission and the Department of Justice.

Other Information

The Department has also made numerous other changes in the proposed procedures to accommodate meritorious suggestions and recommendations contained in the statements filed with the Department following the publication of the proposed procedures on June 2, 1980. The Department has also made editorial and other changes in these final procedures during the internal deliberations that preceded the publication of these final procedures.

Changes have been made in the following sections and subsections of the proposed Part 19–:

19.1(b), 19.2, 19.3, 19.4(b), 19.4(c), 19.4(d), 19.4(h), 19.4(i), 19.5, 19.6(a), 19.6(a)(1), 19.6(a)(2), 19.6(a)(3), 19.6(b)(1), 19.6(b)(2), 19.6(b)(3), 19.6(b)(4), 19.6(b)(5), 19.6(b)(6), 19.6(b)(7), 19.6(b)(10), 19.6(c), 19.6(e), 19.7(a), 19.7(b)(1), 19.7(b)(2), 19.7(b)(3), 19.7(b)(4), 19.7(b)(5), 19.7(c), 19.7(e), 19.8(a), 19.8(c), 19.8(d), 19.8(e), 19.8(f), 19.8(i), 19.9, 19.10, 19.21(b), 19.23(e), 19.23(f), 19.23(m), 19.26(a), 19.27(a), 19.27(c), 19.30(d), 19.30(f), and 19.30(g). Section 19.32 has been deleted.

Note.—For convenience in comparing the contents of the final procedures with the

contents of the proposed procedures, a "Derivation Table" has been provided at the end of this notice.

Effective Date: February 5, 1981.

Issued: December 31, 1980.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

Title 15, Subtitle A, of the Code of Federal Regulations is amended by adding a new Part 19 to read as follows:

PART 19—FEDERAL INTERACTION WITH VOLUNTARY STANDARDS BODIES

Subpart A—Procedures for Listing Voluntary Standards Bodies and Their Standards-Developing Groups

Subpart B—Procedures for Delisting Voluntary Standards Bodies and Their Standards-Developing Groups

Subpart C—Due Process and Other Basic Criteria

Subpart D—Categories for the Listing of Voluntary Standards Bodies and Their Standards-Developing Groups

Subpart E—Definitions

Subpart F—Procedures for a Voluntary Dispute Resolution Service for the Rapid Handling of Procedural Complaints by Interested Parties Against Voluntary Standards Bodies Listed by the Department of Commerce

Authority: Section 7 of the Office of Management and Budget Circular A–119, issued pursuant to Section 6 of Pub. L. 93–400 (41 U.S.C. 405).

Subpart A—Procedures for Listing Voluntary Standards Bodies and Their Standards-Developing Groups

§ 19.1 Purpose.

(a) The purpose of this subpart is to develop and implement the procedures for listing voluntary standards bodies and their standards-developing groups as required by Section 7a of the Office of Management and Budget Circular A–119 of January 17, 1980, entitled, "Federal Participation in the Development and Use of Voluntary Standards" (45 FR 4326, January 21, 1980). To be listed, voluntary standards bodies must certify adherence to certain due process and other basic criteria. These criteria are set forth in Section 6c of Circular A–119, and are interpreted in Subpart C below.

(b) It is not a purpose of this subpart to restrict agencies, in any way, from adopting and using voluntary standards from any source, whether or not that source is listed by the Secretary of Commerce under the procedures of this subpart.

(c) Nothing in these procedures shall be used or interpreted to provide any party with an opportunity to unreasonably delay, inhibit, or otherwise interfere with the normal and lawful process of voluntary standardization, or any action available under the law with respect to any matter involving the establishment or use of voluntary standards.

§ 19.2 Goal of procedures.

In accordance with OMB Circular A–119, the goal of these procedures is to promote the development of voluntary standards that are responsive to National needs as well as to the needs of the several Federal agencies thereby providing opportunities for reducing government costs and increasing government efficiency through the adoption and use of those standards by the Federal government. (The OMB Circular requires Federal agencies to give preference to voluntary standards in Federal procurement that will serve the agencies' purposes and are consistent with applicable laws and regulations, regardless of whether such standards were developed in accordance with the due process criteria described in Section 6c of the Circular.)

§ 19.3 Coverage.

As specified in Section 3 of Circular A–119, the procedures of this subpart apply to all executive agency participation in U.S. domestic voluntary standards activities. The procedures do not apply to participation in multinational organizations, including regional and international organizations, which develop and issue international standards, in accordance with Section 6 of Circular A–119.

§ 19.4 Definitions.

The terms used in this subpart are defined in Subpart E below.

§ 19.5 Effective date.

This subpart shall become effective thirty (30) days after the date of publication of the final procedures in the **Federal Register**. The Secretary will publish the first **Federal Register** notice of listed bodies and their listed groups within approximately four months after the effective date of this subpart. Federal agencies will not participate in or otherwise support (as defined in § 19.42(a)(8) of Subpart E below) the standards activities of any voluntary standards body or standards-developing group which is not listed (unless such participation is otherwise specifically mandated by law), beginning one hundred and eighty (180) days after the Secretary publishes the first **Federal Register** notice which identifies listed voluntary standards bodies and their listed standards-developing groups, and as prescribed by Section 7b(2)(a) of Circular A–119. A voluntary standards body which submits its request for certification within ninety (90) days immediately following the effective date of these procedures will be included in the first list which will be issued by the Secretary, approximately four months after the effective date.

§ 19.6 Listing requirements.

(a) Any voluntary standards body which wishes to be listed must certify in writing to the Secretary that it complies with all of the due process and other basic criteria identified in Section 6c of OMB Circular A–119, as interpreted in Subpart C below, and that it meets the definition of "voluntary standards bodies" as set forth in § 19.42(a)(4) of Subpart E below. This certification must contain a statement, in any form that is legally binding upon the voluntary standards body, that the standards body conducts the standards activities of the body and of the standards-developing groups included in the request for listing

entirely in accordance with the applicable due process and other basic criteria identified in Section 6c of the Circular as interpreted by Subpart C below. The voluntary standards body must make that statement publicly available on a reasonable basis. A voluntary standards body which wishes to be listed must, in its request for listing, specify the category(ies) established in Subpart D below in which it wishes to be listed. If a voluntary standards body certifies that it conforms to the criteria set forth in Section 6c of the Circular as interpreted in Subpart C, the Secretary will list it. Requests to be listed, and accompanying certifications, shall be signed by a person who, in the normal course of the requestor's business, has the authority to make binding statements on the requestor's behalf. Requests shall be addressed to the Secretary of Commerce, U.S. Department of Commerce, Washington, D.C. 20230.

(b) Each voluntary standards body listed by the Secretary under subsection 19.6(a) above will be notified that it has been listed within two weeks of the date of such listing. Simultaneously, the Secretary will send a notice to all members of the Interagency Committe on Standards Policy for transmittal to the heads of their agencies identifying the names of the listed voluntary standards bodies and their listed standards-developing groups. The Secretary will also transmit such information to any other agencies which indicate a desire to be informed.

(c) The Secretary, within approximately four months after the effective date of these Procedures, will publish in the **Federal Register** an informational notice which identifies the listed voluntary standards bodies and their listed standards-developing groups. Subsequent listings will be published on a quarterly basis for approximately two years, and semiannually thereafter. Such notices will identify a specific location in the Department where interested persons may inspect the self-certification statements, and any information or materials submitted in connection with the applications for listing.

(d) Voluntary standards bodies and their standards-developing groups which are listed by the Secretary of Commerce will be eligible for the types of Federal support defined in § 19.42(a)(8) of Subpart E below.

(e) The Secretary wil provide, upon request or when he otherwise determines it to be necessary and appropriate, guidance as to whether specific procedural requirements of voluntary standards bodies or their standards-developing groups will meet the due process and other cirteria established in Section 6c of the Circular as interpreted in Subpart C below. Such guidance will be puslished through notices in the **Federal Register**, either in full, or in summary form. If published in summary form, the notice will specify the manner in which persons may obtain copies of the full guidance provided.

§ 19.7 Voluntary termination of listing.

A voluntary standards body may have its name removed from the list without prejudice upon its request in writing to the Secretary. Removal of the name of the voluntary standards body shall result automatically in removal of all standards-developing groups of that body from the list. In the event that a voluntary standards body desires to have removed from the list any of its standards-developing groups, it may have such groups removed upon written notification to the Secretary. The **Federal Register** notice of such delisting actions and the Department's notice of such actions to Federal agencies will state that the delisting action resulted from a voluntary termination of listing status, and that such removals from the list were without prejudice of any kind.

§ 19.8 Reapplication.

If the Department delists a voluntary standards body or group thereof, or if the name of a voluntary standards body or any standards-developing group is removed from the Department's list as a result of a request for voluntary termination of such listing, that body may reapply for listing at any time, with the provision that such reapplications shall not be accepted or acted upon by the Department more than once in a period of twelve (12) consecutive months, unless waived by the Secretary. Such reapplication must conform to the relevant requirements and, if appropriate, be responsive to the corrective actions identified pursuant to a delisting decision under Subpart B, below.

§ 19.9–19.10 [Reserved]

Subpart B—Procedures for Delisting Voluntary Standards Bodies and Their Standards-Developing Groups

§ 19.11 Purpose.

The purpose of this subpart is to develop and implement procedures for delisting voluntary standards bodies and their standards-developing groups as required by Section 7a of OMB Circular A–119 (identified fully in § 19.1(a) of Subpart A). Subsections 19.1(b) and (c) of Subpart A also apply to this subpart.

§ 19.12 Coverage and effective date.

The coverage and effective date of this subpart are the same, respectively, as are specified for Subpart A by §§ 19.3 and 19.5 of that subpart.

§ 19.13 Definitions.

The terms used in this subpart are defined in Subpart E below.

§ 19.14 Delisting process.

(a) Any interested party may petition the Secretary to remove a voluntary standards body or one or more of its listed standards-developing groups from the list. Such a petition shall be in writing and shall cite the specific provision(s) in Subpart C which the petitioner believes have not been met by the body or groups. As a precondition for a petition to delist, the petitioner shall have exhausted all remedies available within the voluntary standards body regarding the subject matter of the petition. All available supporting documentation and other relevant information shall be provided in support of the petition. To the extent possible, the petition should also provide the names, employment addresses, and employment telephone numbers of all parties materially involved. Such petitions must be based on actions or inactions that occurred after the date that the voluntary standards body (or a group thereof) was listed by the Secretary. Any such petition should be addressed to the Secretary of Commerce, U.S. Department of Commerce, Washington, D.C. 20230. Within ten (10) working days after receiving any such petition, the Secretary shall send notice of it to the affected standards body. In addition, the Secretary may initiate investigations, on the basis of information received either from Federal agencies or from other sources, which subsequently may lead to delisting actions pursuant to the procedures of this subpart. The Secretary may find it appropriate to advise the petitioner of the existence of the Department's dispute resolution service described in Subpart F of this Part 19.

(b) The Secretary will evaluate and act as expeditiously as possible on all petitions for delisting. The Secretary may request additional information in evaluating such petitions, and will notify the petitioner in writing of the decision reached, after due consideration whether to process the petition, and the reasons therefor. The Secretary may, upon finding it appropriate to do so, request all records from a voluntary standards body that are pertinent to the review of a petition for delisting.

(c) If the Secretary determines that the petition warrants investigation, the Secretary will, within seven (7) days after the date of that determination, arrange for an investigation and notify the voluntary standards body of its scope. If the Secretary determines that the petition warrants no further action, the Secretary will so inform the petitioner and the voluntary standards body in writing, and the reasons therefor. That determination shall constitute the final review by the Department, unless the petitioner elects within thirty (30) days after receipt of the Secretary's notification to request the Department's reconsideration of that decision by writing to the Secretary of Commerce, U.S. Department of Commerce, Washington, D.C. 20230. Within seven (7) days of receiving any such request for reconsideration, the Secretary shall send notice of it to the affected standards body. The decision of the Secretary on this request shall constitute the final administrative review of the executive branch of the Federal Government. This decision would not prohibit other Federal agencies from taking separate legal actions under their statutory authorities.

(d) If the investigation pursuant to subsection (a) or (c) of this section indicates non-compliance with any of the provisions identified in Subpart C, the Secretary will provide the voluntary standards body concerned with (1) a statement indicating the precise nature of the alleged non-compliance, and (2) a copy of the petition and the identity and location of all documents, materials, and other related information submitted with the petition or received or developed thereafter.

(e) Following receipt of the information provided by the Secretary in accordance with subsection (d) of this section, the standards body concerned shall have sixty (60) days in which to respond to the statement of alleged non-compliance. Upon receipt of a written request from the voluntary standards body accompanied by a reasonable showing of need for additional time, the Secretary may extend the time in which to respond to the statement of alleged non-compliance; however, no extension or extensions may exceed, in total, ninety (90) days beyond the original period of sixty (60) days. If the standards body fails to respond in the sixty (60) day period, or any extension of it which the Secretary has granted, or if the Secretary determines that the response received is not persuasive, the Secretary will issue, in writing, to that body and concurrently to the petitioner, a Preliminary Finding of Non-Compliance with the specified due process and other basic criteria identified in Subpart C. This Preliminary Finding of Non-Compliance will include a description of the corrective action(s) that must be taken by the body or standards-developing group concerned in order to have the Secretary withdraw the Preliminary Finding of Non-Compliance.

(f) If, within sixty (60) days following receipt of the notification of Preliminary Finding of Non-Compliance (or such extension(s) of that time period, not to exceed an additional ninety (90) days that the Secretary may grant in response to a written request from the voluntary standards body showing reasonable need for additional time), the voluntary standards body concerned does not provide adequate evidence that the prescribed corrective action identified in the Preliminary Finding of Non-Compliance has been taken by that body, or if the Secretary deems that the corrective action taken is insufficient, the Secretary will issue a Final Finding of Non-Compliance to the body concerned, and concurrently to the petitioner, unless a hearing has been requested under subsection (g) of this section. The notification of Final Finding of Non-Compliance shall constitute notification of the Department's decision to delist the body or standards-developing groups(s) thereof. Removal of a standards-developing group of a voluntary standards body will not in itself constitute cause for the removal from the list of any other groups of that body or of the body itself.

(g) The Secretary will refrain from issuing a Final Finding of Non-Compliance if the organization concerned requests a hearing under the provisions of 5 U.S.C. 556 within thirty (30) days following receipt of the notification of Preliminary Finding of Non-Compliance. A request for a hearing should be addressed to the Secretary of Commerce, U.S. Department of Commerce, Washington, D.C. 20230. In the event of such a request, an Administrative Law Judge will be designated by the Secretary to conduct a proceeding under 5 U.S.C. 556 and to recommend a decision. At that point in time, the petitioner will be provided with copies of all papers filed subsequent to the receipt of the petition for delisting for the purpose of participating in the hearing at the invitation of the Administrative Law Judge. Further action on the Preliminary Finding of Non-Compliance shall be stayed pending the outcome of that proceeding. The decision of the Secretary following the proceeding will be in writing, will be sent to the organization concerned and to the petitioner, and will constitute the final administrative action of the executive branch of the Federal Government.

(h) The Secretary will publish in the **Federal Register**, within thirty (30) days of the decision to issue a Final Finding of Non-Compliance and delisting notification, a notice of such a finding and shall, within one week of such delisting action, similarly notify in writing the members of the Interagency Committee on Standards Policy for transmittal to the heads of their agencies, and any other Federal agencies which indicate a desire to be notified, as well as the standards body and the petitioner. The delisting action resulting from the Final Finding of Non-Compliance will become effective thirty (30) days after the publication of the notice in the **Federal Register**. Such **Federal Register** notice and notification to Federal agencies will include a statement to the effect that all Federal executive agencies and their representatives shall cease, as of the effective date of the delisting action, any and all participation in, or the furnishing of any other form of support to, the voluntary standards activities of the delisted body or group thereof, unless such participation is otherwise required by law.

(i) The delisting of a voluntary standards body or a standards-developing group because of the issuance of a Final Finding of Non-Compliance against it under subsection (f) of this section will lead to termination of all Federal agency support for voluntary standards activities of that voluntary standards body or group. If the body itself is delisted, such termination will include cessation of all participation of Federal agencies in the standards and standards-related activities of all boards, councils and standards development committees and groups of that body.

(j) In order to facilitate termination of existing Federal agency contracts and grants with, or the provision of other support by the Federal agencies to, delisted voluntary standards bodies and groups, Federal agencies should ensure that future contracts, grants or other arrangements involving standards and standards-related matters bearing upon relations between the agencies and voluntary standards bodies, contain a provision which clearly entitles the Federal agency to terminate "for cause" (in contrast to termination "for the convenience of the government") any contract, grant, or other arrangement

with a voluntary standards body or group which, during the life of the contract, grant, or arrangement becomes and remains delisted by the Department.

§§ 19.15–19.20 [Reserved]

Subpart C—Due Process and Other Basic Criteria

§ 19.21 Purpose.

The due process and other basic criteria which voluntary standards bodies and their standards-developing groups must adhere to in order to be eligible for Federal agency participation and support in their standards activities are set forth in Section 6c of OMB Circular A–119. The purpose of this Subpart is to describe the Department's interpretation of each of the eleven due process and other basic criteria set forth in Section 6c of the Circular.

§ 19.22 Coverage and effective date.

The coverage and effective date for this subpart are the same, respectively, as are specified for Subpart A by §§ 19.3 and 19.5 of that subpart.

§ 19.23 Definitions.

The terms in this subpart are defined in Subpart E below.

§ 19.24 Due process and other basic criteria.

(a) The following provisions are the Department's interpretations of the due process and other basic criteria to which listed voluntary standards bodies and the listed standards-developing groups must adhere: (1) Voluntary standards bodies shall provide adequate public notice of standards meetings and other standards activities (e.g. regional conferences) sponsored or conducted by the bodies, their listed standards-developing groups, or any organizational units one level below those groups. Such notices shall be provided in an appropriate and timely fashion and should include a clear and meaningful description of the purpose of the meeting or activity. The media used for those notices shall be selected or devised to reach persons reasonably expected to have an interest in the subject including, for example: consumers; small business representatives; manufacturers; labor; suppliers; distributors; testing laboratories; industrial, institutional, and other users; environmental and conservation groups; Federal agency officials; and State and local regulatory, procurement and code officials. The notices shall also identify the name, address, and telephone number of a contact person or office in the voluntary standards body, group or organizational unit who/which will be able to provide, upon request, further information on the meeting or activity.

(2) Voluntary standards bodies shall provide adequate public notice in an appropriate and timely fashion of the formal initiation (§ 19.42 (a)(12) of Subpart E), final review, adoption or approval of all new and revised voluntary standards, and of the proposed withdrawal of voluntary standards as provided in paragraph (a)(1) of this section. Such notice must describe clearly the purpose and scope of the relevant standards. The same media, publications and format should be used for notices having the same or similar scope or impact.

(3) Voluntary standards bodies shall ensure that, if standards development or other standards-related meetings requiring notice under paragraph (a)(1) of this section are to be held, they will be open, and that the opportunity for attendance at such meetings and participation in standards development or related activities is available to interested parties. Voluntary standards bodies shall provide, at a minimum, an opportunity to all interested parties to participate in standards activities through the submission of written comments relating to the initiation, development, approval, review, revision, or withdrawal of standards. All such written comments received by a voluntary standards body should be acknowledged and transmitted to the appropriate standards-developing group for due consideration. Unreasonable restrictions on membership in standards-developing groups by means of requirements for professional or technical qualifications, or of trade requirements, or of unreasonable fees, or of other such restrictions must be avoided.

(4) Voluntary standards bodies shall assure that decisions reached in their standards activities represent substantial agreement, after a concerted effort to resolve objections, and that such agreements are reached by the body, the standards-developing group, and any relevant organizational unit one level below the group in accordance with the published procedures of the voluntary standards body and the judgment of the appropriate official(s) duly appointed by that body. Such agreements shall be reached by more than a simple majority, although they do not necessarily require unanimity.

(5) Voluntary standards bodies shall provide consideration of the views and concerns expressed in writing by all interested parties to the voluntary standards body, standards-developing group or organizational unit one level below such group, including proposals for new or revised standards, within a reasonable period of time, depending on the frequency of meetings scheduled by the particular standards-developing group or the appropriate standards committee, or other relevant circumstances.

(6) Voluntary standards bodies shall provide or otherwise make available for use by interested parties one or more adequate and impartial mechanisms for handling substantive and procedural complaints and appeals which are documented with sufficient evidence to support a legitimate issue of dispute. As an alternative, this requirement will be satisfied by a provision for ready access to such complaint/appeal mechanisms operated by an organization other than the one against which the complaint or appeal is lodged, provided that such mechanisms meet the requirements of this paragraph (a)(6).

(7) Voluntary standards bodies, their listed standards-developing groups and all organizational units one level below such groups, shall assure that appropriate records, in sufficient detail to enable one subsequently to review and understand what transpired, are made and maintained in the case of: formal discussions; decisions; standards and drafts of standards; technical or other rationale for critical requirements of standards (including test methods); complaints/appeals and their resolution; meeting minutes and balloting results. All such records must be retained in accordance with published procedures and be readily accessible to all interested parties on a timely and reasonable basis in response to written requests for specific documents or information. The requesting party may be held responsible for the reasonable costs of file search, reproduction and mailing. Retention of records for at least five (5) years after a standard is approved, reviewed, revised, or withdrawn, normally would be considered reasonable. The "rationale" referred to above should be prepared during the standards development process to document the decisions relating to (i) the need for the standard, (ii) the scope of the standard (including any limits or exclusions), (iii) the critical requirements established in the standard, and (iv) the test methods selected to determine conformance or non-conformance.

(8) Voluntary standards bodies shall publish a disclaimer clearly indicating that participation in any of their activities by Federal agency representatives does not constitute the endorsement by the Federal Government or any of its agencies of the

bodies or the standards which they develop. The disclaimer shall either: (i) be in the form of an official policy declaration by the standards bodies prominently set forth in their published official procedures; or (ii) be in the form of an official policy declaration by the standards bodies in any standards literature which they publish that mentions involvement or participation of Federal agency personnel in standards development, approval, or review activities. A voluntary standard which includes a list of its developers and identifies Federal agency representation must include this disclaimer.

(9) Voluntary standards bodies shall publish their official procedures regarding their standards activities, and make those procedures available to interested parties on a reasonable basis.

(10) Voluntary standards bodies shall ensure that their voluntary standards are periodically reviewed and revised, as necessary, and that participation in the review process is available to all interested parties in accordance with the other relevant due process and other criteria contained in this section. A review of each standard by the committee having jurisdiction or other appropriate committee or unit of the standards body should be initiated at least once ever five years. If a voluntary standards body provides for the withdrawal of a standard under procedures that cause the automatic termination of standards and are not either revised or reaffirmed, the standards body shall provide adequate public notice of the imminent termination in accordance with the requirements in paragraph (2) of this section.

(11) Voluntary standards bodies, their standards-developing groups and organizational units one level below such groups, shall give preference to the use of performance criteria, measurable by examination or testing, in standards development when such criteria may reasonably be used in lieu of design, materials, or construction criteria. For purposes of demonstrating compliance with this requirement, as a minimum, the published operating procedures of the voluntary standards body should contain a statement to the effect that "preference will be given to the use of performance criteria, measurable by examination or testing, in standards development when such criteria may reasonably be used in lieu of design, materials, or construction criteria."

(b) [Reserved].

§§ 19.25–19.30 [Reserved]

Subpart D—Categories for the Listing of Voluntary Standards Bodies and Their Standards-Developing Groups

§ 19.31 Purpose.

The purpose of this subpart is to specify the various categories under which voluntary standards bodies and their standards-developing groups may be listed by the Secretary of Commerce under Subpart A above.

§ 19.32 Coverage and effective date.

The coverage and effective date of this subpart are the same, respectively, as are specified for Subpart A by §§ 19.3 and 19.5 of that subpart.

§ 19.33 Definitions.

The terms used in this subpart are defined in Subpart E below.

§ 19.34 Categories for being listed.

(a) In any application to be listed under this Part, the applicant voluntary standards body must identify the category under which it is applying to be listed from among the following:

(1) *Category A. Listing.* For this category, all of the voluntary standards-developing groups of a voluntary standards body must meet the due process and other basic criteria identified in Section 6c of the OMB Circular as interpreted in Subpart C above. In applying for Category A listing, the voluntary standards body must, if it has standards-developing groups, state that all of those groups comply with such criteria, and must provide a list of all such groups. New standards-developing groups formed after the initial listing (under Category A) of a voluntary standards body by the Department must be reported to the Department by the standards body concerned as complying with the criteria in Section 6c of the Circular as interpreted in Subpart C. In a Category A listing, the voluntary standards body and all of its standards-developing groups (if any) will be separately listed. Voluntary standards bodies listed in Category A will be eligible for the types of Federal support described in § 19.42(a)(8) of Subpart E. Federal agency representatives will be able to participate in the activities of the committees, boards and councils of those voluntary standards bodies listed in Category A as well as in the activities of the standards-developing groups of those bodies.

(2) *Category B. Listing.* This category, which shall be available for use for a period of three years following the effective date of these procedures, allows for situations in which a voluntary standards body wishes to have only some of its voluntary standards-developing groups listed. Since not all of the groups are listed, the voluntary standards body itself cannot be listed except in conjunction with a particular standards-developing group thereof. In a Category B listing, the name of the voluntary standards body and the name of the standards-developing groups to be listed are identified together, for example, if the "Acme Standards-developing Body" has five standards-developing groups, but wishes that only the groups on "widgets" and "gidgets" should be listed, that body would apply for listing as follows:

(i) Acme Standards Body/Standards-Developing Group on "Widgets"

(ii) Acme Standards Body/Standards-Developing Group on "Gidgets"

An effect of this type of listing is that while Federal agencies may participate in and otherwise render support to the two listed groups (on "widgets" and "gidgets"), they may only participate in and render support to the standards activities of Acme Standards Body itself insofar as that participation and support relate to the standards activities of the two groups. Accordingly, Federal agencies may not participate, for example, in standards discussions of the Board of Directors (or similar governing or advisory unit) of the Acme Voluntary Standards Body itself, since some ot its standards-developing groups are not listed. In such cases, Federal agencies should endeavor to provide financial and other support directly to the listed groups. If for procedural or administrative reasons this is not possible, Federal agencies should only provide support to the standards body with the understanding that such contributions are to be expended directly on matters related to these two listed groups. When the period for use of this category expires, organizations still listed solely in it will automatically be delisted. Federal agencies may provide support or participate in any of the non-standards related activities of the Acme Standards body including activities of the Board of Directors (or other similar governing or advisory units).

(3) *Category C. Listing.* This category is for voluntary standards bodies which coordinate voluntary standards (including the establishment of a voluntary standard following coordination). Such a body may coordinate through activities such as: reviewing a voluntary standard developed by another organization; accepting, approving, reorganizing, or otherwise establishing the status of voluntary standards other than by

originally developing them; and performing appeals functions for any of the organizations for which it coordinates voluntary standards. Voluntary standards organizations which coordinate standards are expected to conform in their own activities to all of the due process and other basic criteria of Section 6c of the OMB Circular as interpreted in subpart C above, with the exception of paragraphs (a)(10) and (a)(11), in as much as these pertain specifically to the development of standards and not to the coordination of standards.

(b) [Reserved]

§§ 19.35—10.40 [Reserved]

Subpart E—Definitions

§ 19.41 Scope.

This subpart defines terms used in this part.

§ 19.42 Definitions.

(a) As used in this part:

(1) *Executive agency* (hereinafter referred to as "agency" or "Federal agency") means an executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation or other establishment of the Federal Government, including a regulatory commission or board, and also the municipal government of the District of Columbia. It does not include the legislative or judicial branches of the Federal Government.

(2) *Standard* means a prescribed set of rules, conditions, or requirements concerned with: the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, design, or operations; descriptions of fit and measurement of size; or measurement of quality and quantity in describing materials, products, systems, services, or practices.

(3) *Voluntary standards* are established generally by private sector bodies and are available for use by any person or organization, private or governmental. The term includes what are commonly referred to as "industry standards" as well as "consensus standards" but does not include professional standards of personal conduct, institutional codes of ethics, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

(4) *Voluntary standards bodies* are nongovernmental bodies which are broadly based, multi-membered organizations including, for example, nonprofit organizations, industry associations, and professional and/or technical societies which develop, establish, or coordinate voluntary standards.

(5) *Standards-developing groups* are committees, boards, or any other principal subdivisions of voluntary standards bodies, established by such bodies for the purpose of developing, revising, or reviewing standards and which are bound by the procedures of those bodies. (In the case of a voluntary standards organization that is completely autonomous, operates under its own procedures, and accepts responsibility for enforcing compliance with its procedural requirements as well as the responsibility for assuring the technical adequacy of its standards, such an organization will be considered as both a voluntary standards body and a standards-developing group, at the request of the organization. For the purpose of these procedures, such organizations will meet all of the due process and other criteria established herein.)

(6) *Department* means the Department of Commerce.

(7) *Secretary* means the Secretary of Commerce or the Secretary's designee.

(8) *Federal agency participation in listed voluntary standards bodies* means the direct and formal involvement in the standards development process or the provision for support to that process in terms of: (i) direct financial support such as grants, sustaining memberships, and contracts; (ii) administrative support such as travel costs, hosting of meetings, and secretarial functions; (iii) technical support such as cooperative testing for standards evaluation and participation of agency personnel in the activities of standards-developing groups; and (iv) cooperative planning with voluntary standards bodies to facilitate a coordinated effort in resolving priority standardization problems.

(9) *Consumer* means an individual consumer of the products or services for which a standard is developed, who purchases and uses products generally found in and around the home.

(10) *Person* means associations, companies, corporations, institutions, partnerships, societies, firms, government agencies at the Federal, State, and local level, and individuals.

(11) *Interested party* and *party* each mean a person having a reasonable basis for participation in a standards activity, including a business, professional, governmental, investment, employment, associational, or other significant interest in the outcome of that activity. When the activity is a proceeding under Subpart F (Voluntary Dispute Resolution Service), the terms refer to such a person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, to such a proceeding due to interest in allegations of procedural error(s) having been committed.

(12) *Formal initiation of a voluntary standard* means (i) a decision by a duly authorized officer or other designee of a voluntary standards body, standards development group, or an organizational unit one level below the standards-development group, to develop a voluntary standard, either through staff, or with persons other than staff of the body, group or organizational unit, or (ii) the formal approval by the body, group or organizational unit of the development of a voluntary standard, whichever occurs first. ("Staff" includes all persons in the temporary or full time permanent employment of the body, group or organizational unit.)

(13) *Complainant* means an interested party as defined in paragraph (a)(11) of this section who has submitted a complaint to the Secretary under Subpart F of these procedures.

(14) *Procedural complaint* refers to a complaint which relates to the procedural aspects of the standards development and/or review and/or approval process. It excludes complaints relating to substantive aspects of a standard such as, for example, the level of performance selected by the standards developing group for a particular component. Accordingly, a procedural complaint means a complaint that alleges denial of any of the due process and other basic criteria of Section 6c of the Circular or of Subpart C above in the development, review, or approval of standards or refusal to develop new or revised standards as well as a complaint that alleges denial of any other standards development and/or review and/or approval procedure established by the voluntary standards body or group concerned.

(15) *Circular* means OMB Circular A-119 entitled "Federal Participation in the Development and Use of Voluntary Standards," dated January 17, 1980 and effective on that date.

(16) *List or listed* means a compilation of voluntary standards bodies and standards-developing groups thereof which have been accepted by the Secretary as complying with the due process and other basic criteria cited in Section 6c of the Circular, and described in Subpart C above.

(17) *Sole and final administrative review by the executive branch* means that once a complaint has been processed under Subpart F, no Federal

Executive branch agency shall have any obligation to give any further administrative review to that complaint, except as otherwise may be provided by law. The term should not be interpreted to affect any subsequent judicial or quasi-judicial review of the complaint or review for law enforcement purposes as, for example, by a court of law, or by the Federal Trade Commission or the Department of Justice. Additionally, this term should not be interpreted as preventing the Department from considering a petition for delisting under Subpart B. Nor should this term be interpreted as obligating any party to implement any recommendations made by the representative of the Secretary (pursuant to the conciliation process) or the mediator, if any, under Subpart F of these procedures.

(18) *Due process and other basic criteria* has reference to requirements described in Section 6c of the Circular, as interpreted in Subpart C above.

(19) *Final action* with respect to the development of voluntary standards means the concluding step in the development and approval of such standards by the voluntary standards body in accordance with the published procedures of that body. Final action with respect to the approval or disapproval of a request for a new or revised standard means the final decision by the voluntary standards body on such a request.

(b) [Reserved.]

§§ 19.43–19.50 [Reserved]

Subpart F—Procedures for a Voluntary Dispute Resolution Service for the Rapid Handling of Procedural Complaints by Interested Parties Against Voluntary Standards Bodies Listed by the Department of Commerce

§ 19.51 Purpose.

(a) The purpose of this subpart is to establish procedures for the operation of a Department of Commerce-sponsored voluntary dispute resolution service regarding procedural complaints by interested parties against listed voluntary standards bodies, as specified in Section 7a(6) of OMB Circular A–119 which requires the Secretary of Commerce to:

"establish a program which shall make available a department-sponsored voluntary dispute resolution service for the rapid handling of procedural complaints by interested parties against listed voluntary standards bodies. As a precondition to invoking that service, a complainant must seek relief from, and have exhausted all available sources of remedy within, the affected voluntary standards body. Such a service shall have, among its requirements, the agreement of both complainant and respondent to use the service and their consent to accept the determinations of the service as the sole and final administrative review by the executive branch."

(b) Nothing in these procedures shall be used or interpreted to provide any party with an opportunity to unreasonably delay, inhibit, or otherwise interfere with the normal and lawful process of voluntary standardization, or any action available under the law with regard to any matter involving the establishment or use of the voluntary standards.

(c) These procedures will not be used to resolve any complaints which are based upon the provisions in Section 441 of the Trade Agreements Act of 1979 (P. L. 96–39).

§ 19.52 Objective of procedures.

(a) The objective of these dispute resolution service procedures is to facilitate the timely resolution of complaints pertaining to procedural errors allegedly committed by listed voluntary standards bodies.

§ 19.53 Definitions.

The terms used in this subpart are defined in Subpart E above.

§ 19.54 Precondition to submitting complaint.

Prior to submitting a complaint under these procedures, the complainant must have sought relief from and have exhausted all remedies available within the concerned voluntary standards body.

§ 19.55 Limitation.

The Department will not process any complaint where the final action on the provisions in question was taken by the voluntary standards body concerned before the effective date of these procedures.

§ 19.56 Submitting a complaint.

(a) Any interested party may request the Department to process a procedural complaint under this subpart. Such a request must be written and sent to the Secretary of Commerce, U.S. Department of Commerce, Washington, D.C. 20230. All requests shall:

(1) Identify the standard(s), proposed standard(s), and the procedures of the voluntary standards body involved;

(2) Describe fully the nature of the complaint including, to the extent known, the positions of any other parties who are or may become, directly or indirectly, affected by the matter which is the subject of the complaint. In such cases the complainant shall, where possible, provide the name, employment address, standards group affiliation, and employment telephone number of each such party;

(3) Describe fully all previous attempts made to resolve the complaint, including appeals within the voluntary standards body, and the results of those attempts;

(4) Describe in as specific terms as possible the consequences to the complainant or other interested party of the non-resolution of the complaint to complainant's satisfaction;

(5) Indicate agreement to accept the determination by the dispute resolution service as the sole and final administrative review of the complaint by the executive branch; and

(6) Provide any other available and pertinent supporting information.

(b) In addition to taking action under § 19.57, the Secretary will determine whether the complaint warrants investigation under the provisions for delisting in paragraph (a) § 19.14 of Subpart B.

§19.57 Action upon receipt of complaint.

(a) The Secretary will evaluate the complaint together with the supporting information received. The Secretary will seek information regarding the complaint from the voluntary standards body involved and will solicit the agreement of that body, as well as the complainant, to use this dispute resolution service and to accept the determination by that service as the sole and final administrative review of the complaint by the executive branch. If either party does not agree to utilize the dispute resolution service, there shall be no further action taken by the Department under Subpart F of this Part 19.

(b) The Secretary may request additional information, if needed, from the involved parties.

(c) When in the opinion of the Secretary the complainant's submission of information required by § 19.56 is complete, the Secretary may: (1) determine that the complaint merits processing under these procedures, or (2) decline to accept the complaint, in which case the Secretary shall indicate in writing to the complainant the reasons for so declining. Such declinations may be expected to occur in cases, for example: where, in the judgment of the Secretary based on the information submitted and obtained, it is unlikely that processing under these procedures will make a significant contribution to the successful resolution of the complaint; where the complaint is not "procedural" within the scope of this service; where the voluntary standards body concerned refuses to agree to use

the service or to consent to accept the determinations by the service as the sole and final administrative review by the executive branch. In the event of a declination by the Secretary to accept a complaint, the complainant may make a written request for reconsideration by the Department to the Secretary of Commerce, U.S. Department of Commerce, Washington, D.C. 20230, within 30 (thirty) days of receipt of the declination. The decision of the Secretary on such a request shall be final.

(d) A complainant whose complaint was not accepted by the Department may resubmit the complaint for processing by the Department whenever the complainant has new information or evidence of a significant nature. In resubmitting the complaint, the complainant must clearly identify the nature of the new information or evidence and how it relates to the reasons previously given for not accepting the complaint.

(e) If the Department accepts a complaint for processing under these procedures, the Secretary will so inform the complainant and the respondent voluntary standards body in writing. The Secretary may request copies of any relevant records, including the appeal record, from the voluntary standards body concerned. The Secretary's letters to the complainant and respondent standards body concerned will indicate that the dispute resolution service involves a two-step procedure. The first step consists of an informal investigation/conciliation process as set forth in § 19.59 of these procedures. If this investigation/conciliation process is unsuccessful, and if both the complainant and voluntary standards body agree, a mediator or mediation panel may be appointed in accordance with § 19.60 of these procedures, as the second and final step of this procedure.

§ 19.58 Responsibilities of complainant and respondent if a complaint is accepted by the Department.

If the Department accepts a complaint for processing under these procedures, the complainant and the respondent voluntary standards body shall:

(1) Cooperate fully and in good faith with the Department, the mediator (if any), and other parties involved to reach a mutually acceptable resolution of the complaint in a timely fashion;

(2) Provide, upon request by the Secretary, additional and available pertinent data or other information, except that there shall be no requirement to furnish proprietary information;

(3) Promptly inform the Department or mediator, as appropriate, regarding pertinent events or actions taken by the complainant or the voluntary standards body concerned which occur during the processing under the dispute resolution service but which occur without the Department's direct involvement or knowledge; and

(4) Inform the Department, upon request, of any action taken pursuant to recommendations, if any, of the Secretary made under this service.

§ 19.59 Investigation/conciliation.

(a) If the Department accepts a complaint under these procedures, the Secretary will designate a qualified representative who shall perform investigation and conciliation functions, including consultations with the complainant, the respondent voluntary standards body, and any other parties involved in an effort to clarify the areas of disagreement, and attempt to effect a mutually acceptable resolution of such areas within a two-month period following the representative's appointment. The Secretary's representative may seek assistance from any appropriate source. Such assistance, if any, may be provided on a reimbursable basis.

(b) At any appropriate point in the investigation/conciliation process the Secretary's representative may make recommendations to the party(ies) which appear to reflect a reasonable resolution of any or all of the areas of disagreement. The parties involved should consider those recommendations in good faith.

(c) If the parties reach a mutually acceptable agreement during the conciliation process, the Secretary's representative will record the specific nature of that agreement and will transmit copies of that record to the parties involved. If no agreement is reached, or if a partial conciliation is reached, the representative will record such results, including any issues which remain in disagreement, and will transmit a copy of that record to the parties. Copies of all documents prepared in these proceedings will, without unreasonable delay, be filed with the Secretary.

(d) In the event that the investigation/conciliation effort does not resolve all areas of disagreement, the representative, in transmitting the copy of the investigation/conciliation record to the parties, will inform the parties of their prerogative of requesting a mediator or mediation panel under these procedures.

§ 19.60 Mediation.

(a) If pursuant to subsection (d) of § 19.59, both parties indicate to the Secretary in writing that they desire a mediator or mediation panel, and if the Secretary believes that mediation may resolve the areas of disagreement, the Secretary may appoint a mediator or mediation panel in a further attempt to resolve the complaint. Selection of a mediator or mediation panel may be accomplished in consultation with the Federal Mediation and Conciliation Service. The mediator(s) so appointed may be one or more employees of the Federal Mediation and Conciliation Service, another Federal agency, individuals from the private sector, or other source, but shall not be employees of the Department of Commerce. The services of the mediator(s) may be subject to contract, which may include provisions for necessary clerical and other support costs. An effort will be made by the Secretary to secure one or more mediators who will be acceptable to the parties involved and who will avoid the appearance of a "conflict of interest" situation with respect to the subject matter and the parties involved in the dispute.

(b) The Secretary will provide the mediator(s) with the record of the investigation/conciliation process which shall identify all remaining areas of disagreement, including the positions of the parties on each such remaining area, and will transmit or otherwise make available to the mediator(s) all other available information pertinent to the resolution of the identified areas of disagreement. The Secretary's letter of appointment will also specify a target date for the completion of mediation. Such date generally will be not more than three months from the date of the appointment of the mediator(s).

(c) At the start of the mediation process, the mediator(s) will encourage the parties to agree in advance to be bound by the agreements reached during the mediation process. If such agreement from the parties is forthcoming, the mediator(s) will record such agreement and shall inform the secretary accordingly.

(d) The mediator(s) will endeavor forthwith and within the designated time frame to facilitate a mutually acceptable resolution of the remaining areas of disagreement identified by the Secretary. In so doing, the mediator(s) may hold meetings, may communicate with each party on an individual or group basis, and may utilize any other reasonable lawful means, including professional assistance in the interpretation of procedural

requirements, to resolve the areas of disagreement. Such professional assistance may be provided on a reimbursable basis.

(e) The Secretary may, for good and sufficient reasons, grant one extension of time for completion of mediation pursuant to the written request by the mediator(s). Such a request shall specify the reasons for the requested extension. Any extension generally shall be limited to a maximum of two months.

(f) If, during the mediation process, the parties reach agreement on all the areas of disagreement identified by the Secretary, the mediator(s) shall ensure that the nature of the agreement for each area is recorded, that each party signs and dates the agreement, and that copies of that record are transmitted to the Secretary and to the parties.

(g) If the time period (including any extension provided) for mediation expires with one or more areas of disagreement still remaining, the mediator(s) will terminate the mediation process and will record the areas of agreement (if any). With regard to each of the remaining areas of disagreement, the mediator(s) will record the specific nature of such disagreement and make a factual report of the mediation process. The report will be transmitted by the mediator(s) to the Secretary and to the parties involved. The report will not contain any information which was submitted to the mediator in confidence.

(h) Upon receipt of the report from the mediator(s), the Secretary, in appropriate cases, may develop and transmit to the involved parties recommendations to resolve the areas of disagreement. Such recommendations may include the submission of the unresolved issues on areas of disagreement to arbitration.

§ 19.61 Publication and records.

(a) The Secretary will cause to be published in the **Federal Register**, at least annually, a summary of each of the cases processed under these procedures, including any recommendations made by the Secretary to resolve any remaining issues, unless the parties in any case agree in writing that the dispute has been amicably resolved to their mutual satisfaction, and that agreement is filed with the Secretary.

(b) The Secretary will keep a record of each complaint received, including the action taken, if any, by the parties as a result of this dispute resolution service.

§§ 19.62–19.70 [Reserved].

Derivation Table

Final procedures		Proposed procedures	
Section and paragraph	Subpart	Section and paragraph	Subpart
19.1(a)	A	19.1(a)	A
(b) (*new*)	A		
(c)	A	(b)	A
19.2	A	19.2	A
19.3	A	19.3	A
19.4	A	19.4	A
19.5	A	19.5	A
19.6(a)	A	19.6(a)	A
		19.6(c)	A
		19.7(a)	A
19.6(b)	A	19.7(c)	A
(c)	A	19.6(e)	A
		19.7(d)	A
(d)	A	19.7(e)	A
19.7	A	19.9	A
19.8	A	19.10	A
19.9 (Reserved)	A		
19.10 (Reserved).	A		
19.11 (*New*)	B		
19.12 (*New*)	B		
19.13 (*New*)	B		
19.14(a)	B	19.8(a)	A
(b)	B	(b)	A
(c)		(c)	A
(d)		(d)	A
(e)		(e)	A
(f)		(f)	A
(g)		(g)	A
(h)		(h)	A
(i)		(i)	A
(j)		(j)	A
19.15 (Reserved)	B		
19.20	B		
19.21 (*New*)	C		
19.22 (*New*)	C		
19.23 (*New*)	C		
19.24(a)(1)	C	19.6(b)(1)	A
(2)	C	(2)	A
(3)	C	(3)	A
(4)	C	(4)	A
(5)	C	(5)	A
(6)	C	(6)	A
(7)	C	(7)	A
(8)	C	(8)	A
(9)	C	(9)	A
(10)	C	(10)	A
(11)		(11)	A
19.25, 19.30 (Reserved).			
19.31 (*New*)	D		
19.32 (*New*)	D		
19.33 (*New*)	D		
19.34(a)(1)	D	19.6(a)(1)	A
(2)	D	(2)	A
(3) (*New*)	D		
19.35, 19.40 (Reserved).	D		
19.41 (*New*)	E		
19.42(a)(1)	E	19.4(a)	A
(2)	E	(b)	
(3)	E	(c)	
(4)	E	(d)	
(5)	E	(e)	
(6)	E	(f)	
(7)	E	(g)	
(8)	E	(h)	
(9)	E	(i)	
(10)	E	(j)	
(11)	E	19.23(c)	B
(12) (*New*)	E		
(13)	E	19.23(d)	
(14)	E	(i)	
(15)	E	(j)	
(16)	E	(k)	
(17)	E	(l)	
(18)	E	(m)	
(19)	E	(n)	
19.43, 19.50 (Reserved).	E		
19.51(a)	F	19.21(a)	B
(b)	F	(b)	B
(c)	F	(c)	B

Derivation Table—Continued

Final procedures		Proposed procedures	
Section and paragraph	Subpart	Section and paragraph	Subpart
19.52(a)	F	19.22(a)	B
19.53	F	19.23	B
19.54	F	19.24	B
19.55	F	19.25	B
19.56(a)	F	19.26(a)	B
(b)	F	(b)	
19.57(a)	F	19.27(a)	B
(b)	F	(b)	B
(c)	F	(c)	B
(d)	F	(d)	B
(e)	F	(e)	B
19.58	F	19.28	B
19.59(a)	F	19.29(a)	B
(b)	F	(b)	
(c)	F	(c)	
(d)	F	(d)	
19.60(a)	F	19.30(a)	B
(b)	F	(b)	B
(c)	F	(c)	B
(d)	F	(d)	B
(e)	F	(e)	B
(f)	F	(f)	B
(g)	F	(g)	B
(h)	F	(h)	B
19.61(a)	F	19.31(a)	B
(b)	F	(b)	B
19.62, 19.70 (Reserved).	F	19.32 (Deleted)	B

[FR Doc. 81-254 Filed 1-5-81; 8:45 am]

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federal register

Tuesday
January 6, 1981

Part VII

Environmental Protection Agency

Carbon Monoxide and Oxides of Nitrogen; Motor Vehicle Emission Standards—Revisions and Decisions on Applications for Waiver

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-FRL 1719-4]

Revised Motor Vehicle Exhaust Emission Standards for Carbon Monoxide (CO) for 1982 Model Year Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation establishes CO emission standards for several 1982 model year light-duty vehicles belonging to engine families for which I have granted waivers from the standard otherwise applicable under section 202(b)(5) of the Clean Air Act, 42 U.S.C. 7521(b)(5).

EFFECTIVE DATE: February 5, 1981.

ADDRESSES: Information relevant to this rule is contained in Public Docket EN-80-16 at the Central Docket Section of the Environmental Protection Agency (EPA), Gallery I, 401 M Street, S.W., Washington, D.C. 20460, and is available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Varela, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION: Section 202(b)(1)(A) of the Clean Air Act ("the Act"), 42 U.S.C. 7521(b)(1)(A), requires that regulations applicable to CO emissions from light-duty vehicles or engines manufactured during or after the 1981 model year shall contain standards which require a reduction of at least 90 percent from CO emission levels allowable under the 1970 model year standards. Regulations implementing this requirement have established a CO standard, often referred to as the statutory standard for CO, of 3.4 grams per vehicle mile (gpm).

Section 202(b)(5) of the Act authorizes the Administrator, on application of any manufacturer, to waive the statutory CO standard for the 1981 and 1982 model years for any light duty vehicle model regarding which the Administrator can make certain findings. In these cases, the Act requires that I promulgate substitute CO standards for 1981 and 1982 model year light-duty vehicles as discussed below. Ford Motor Company (Ford), General Motors Corporation (GM), Chrysler Corporation (Chrysler), and American Motors Company (AMC) each submitted applications for certain light-duty vehicle models for the 1982 model year. The statutory criteria, my determinations regarding the criteria with respect to the vehicle models covered by the waiver applications, and my decisions to grant the waiver applications appear in the decision along with this rule and are published elsewhere in this issue of the **Federal Register**. In that decision, I granted a waiver covering the following vehicle models (engine families for purposes of that decision) for the 1982 model year only:

Manufacturer	Engine family
American Motors Company	151 CID
Chrysler Corporation	1.6L
	2.2L
	2.6L
	5.2L/2V
Ford Motor Company	1.6L
General Motors Corporation	1.8/2.0L

Once I have decided to grant the waiver applications for these 1982 model year vehicle models, the Act requires that I simultaneously promulgate regulations adopting emission standards not permitting CO emissions from 1982 model year vehicles of these models to exceed 7.0 gpm. Moreover, the Act further requires that I promulgate regulations establishing these standards no later than 60 days after I receive the waiver applications in question. The public has been afforded an opportunity to comment on the waiver applications at issue, and I have considered those comments in making the decision which requires the promulgation of this amended rule.

For these reasons, I find that providing notice and an opportunity to comment before final promulgation of any of the amendments contained in this rulemaking is impracticable and unnecessary.

Note.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Orders 11821 and 12044 and OMB Circular A-107.

In addition, because the decision accompanying this rulemaking already is based on a detailed analysis indicating that this rulemaking will have a negligible effect on air quality, the Environmental Protection Agency has not prepared an Environmental Impact Statement to accompany this rulemaking as well.

Dated: December 23, 1980.

Douglas M. Costle,

Administrator.

40 CFR 86.082-8(a)(1)(ii) is revised to read as follows:

§ 86.082-8 Emissions standards for 1982 light-duty vehicles.

(a)(1) * * *

(ii) Carbon monoxide—3.4 grams per vehicles mile (2.11 grams per vehicle kilometer), except that carbon monoxide emissions from light-duty vehicles of the following 1982 model year engine families shall not exceed 7.0 grams per vehicle mile (4.35 grams per vehicle kilometer):

Manufacturer	Engine family
American Motors Corp	151 CID.
	258 CID.
BL Cars, Ltd	215 CID.
	326 CID.
Chrysler Corp	1.6 liter.
	1.7 liter.
	2.2 liter.
	2.6 liter.
	3.7 liter.
	5.2 liter/2V.
	5.2 liter/4V.
Ford Motor Co	1.6 liter.
General Motors Corp	1.8/2.0 liter.
	2.8 liter/173 CID-2V.
	3.8 liter/231 CID-2V.
Toyota Motor Co, Ltd	86.6 CID.

* * * * *

(Sec. 202 and 301(a), Clean Air Act, as amended, 42 U.S.C. 7521 and 7501(a))

[FR Doc. 81-261 Filed 1-5-81; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EN-FRL 1719-4a]

Applications for Waiver of Effective Date of the 1982 Model Year Carbon Monoxide Emission Standard for Light-Duty Motor Vehicles—Eleventh Decision of the Administrator

I. Introduction

This is the eleventh decision I have issued under Section 202(b)(5) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b)(5), regarding applications from automobile manufacturers for waiver of the 3.4 grams per vehicle mile (gpm) carbon monoxide (CO) emission standard scheduled to apply to 1981 and 1982 model year light-duty motor vehicles and engines.[1]

As the introductions to the previous consolidated decisions explain, section 202(b)(1)(A) of the amended Act establishes a schedule for implementing standards applicable to CO emissions for 1977 and later model year light-duty motor vehicles and engines.[2] The 1977 amendments to the Act, however, included a new provision allowing the Administrator of the Environmental Protection Agency (EPA), under certain limited conditions, to delay for up to two model years implementation of the statutory 3.4 gpm CO standard scheduled to take effect for the 1981 and 1982 model years.[3] However, these amendments require the Administrator to promulgate interim standards in such cases which do not permit CO emissions over 7.0 gpm.[4]

From September 12 through October 10, 1980, EPA received CO waiver applications from General Motors Corporation (GM), Ford Motor Company (Ford), American Motors Corporation (AMC), and Chrysler Corporation (Chrysler). EPA held public hearings on these applications on October 10 and October 24, 1980.

In response to waiver applications received prior to those under consideration, EPA held seven sets of public hearings and issued ten decisions pursuant to section 202(b)(5)(A).[6] In those decisions, I denied waivers for certain engine families either because I determined that effective control technology[7] was available contrary to the requirement of section 202(b)(5)(C)(iii) of the Act or because the applicants failed to provide sufficient information to establish that effective control technology was not available. Furthermore, the applicants failed to establish that considerations of costs, driveability, or fuel economy gave me a basis for reaching a different conclusion. I granted the waiver applications covering the remaining engine families after determining for each of those families that the requisite technology was not available, considering costs, driveability, and fuel economy, and that each application met all of the remaining statutory criteria for receiving a waiver.

The transcript of the hearings on the waiver applications under consideration here, the materials submitted by the applicants in their waiver requests, and all other information upon which I have based my decision on these waiver requests are included in EPA Public Docket EN-80-16.[8]

This decision will address the waiver requests from these manufacturers on the basis of information from these manufacturers and from other sources.[9]

II. Summary

I am granting these waiver requests from Ford, GM, AMC and Chrysler for the 1982 model year for each of the seven engine families in question in these proceedings. I am therefore prescribing an interim CO emission standard of 7.0 gpm for the 1982 model year for these engine families.

I have determined that the public interest benefits from granting waiver requests for the six particularly fuel efficient models from manufacturers with severe economic problems under the circumstances I have identified here, outweigh the potential environmental benefits from denying these waivers. I have made these decisions because each of the applicants has established that it is essential to provide these manufacturers with sufficient production flexibility to improve the competitiveness of these six models under current market conditions by waiving the 3.4 gpm statutory CO standard for the 1982 model year.

In addition, I am granting a waiver request from Chrysler for its 5.2L/2V engine family because Chrysler established that technology would be

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[1] The preceding decisions were published as follows: 44 FR 53376 (Sept. 13, 1979); 44 FR 69417 (Dec. 3, 1979); 45 FR 7122 (Jan. 31, 1980); 45 FR 17914 (Mar. 19, 1980); 45 FR 37360 (June 2, 1980); 45 FR 40030 (June 12, 1980); 45 FR 49876 (July 25, 1980); 45 FR 53400 (Aug. 11, 1980); 45 FR 59396 (Sept. 9, 1980); 45 FR 67753 (Oct. 14, 1980).

[2] Regulations were promulgated on Aug. 24, 1978, setting a CO standard of 3.4 gpm for 1981 and later model year vehicles. 40 CFR 86.001-8(a)(1)(ii). This standard represents at least a 90 percent reduction in CO emissions from the CO standard applicable to 1970 model year vehicles.

[3] Section 202(b)(5)(C) of the Act provides, in part: The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

(i) such waiver is essential to the public interest or the public health and welfare of the United States;

(ii) all good faith efforts have been made to meet the standards established by this subsection;

(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

[4] As noted in previous decisions, Section 202(b)(5) of the Act requires that I make a separate assessment for each vehicle model covered by a waiver request. See, e.g., 44 FR 53376 (Sept. 13, 1979); 44 FR 69416 (Dec. 3, 1979); 45 FR 7122 (Jan. 31, 1980). Thus, my consplidated waiver decisions generally have included separate decisions for individual engine families. I have distinguished among engine families primarily on the basis of engine displacement. See note 17, second consolidated decision, 44 FR 69416, 69418 (Dec. 3, 1979).

[6] EPA has included testimony received at these seven hearings, as well as all other information considered in deciding these seven groups of waiver applications, in EPA Public Dockets EN-79-4, EN-79-17, EN-79-19, EN-80-1, EN-80-9, EN-80-13, and EN-80-14. Those dockets have been incorporated by reference into EPA Public Docket EN-80-16 for this decision.

[7] As was the case in the earlier consolidated decisions, I am using the term "technology" in this decision to encompass the statutory language "technology, processes, operation methods, or other alternatives" included as part of section 202(b)(5)(C)(iii) of the Act.

[8] This decision uses the following abbreviation:

Ford App.—Ford Application for Waiver of 1982 Carbon Monoxide Emission Standard dated October, 1980, for its 1.6 liter engine family.

GM App.—General Motors Application for Waiver of 1982 Carbon Monoxide Emission Standard dated September 12, 1980, for its 1.8/2.0 liter engine family.

AMC App.—American Motors Application for Waiver of 1982 Carbon Monoxide Emission Standard dated October 3, 1980, for its 151 CID engine family.

C. App.—Chrysler Application for Waiver of 1982 Carbon Monoxide Emission Standard dated October 10, 1980, for its 1.6L, 2, 2L, 2.6L, and 5.2L/2V engine families.

EPA Public Docket EN-80-16 can be found in EPA's Central Docket Section, Gallery I, 401 M St., S.W., Washington, D.C. 20460. Copies of materials in the docket may be obtained by writing to this address at Mail Code (A-130).

[9] See the discussion on my considerations of other sources of information in the previous waiver decisions, e.g., section III(B)(C), 44 FR 69416, 69422 (Dec. 3, 1979). I had decided to deny the GM waiver request at issue here, but after GM submitted some new contentions I announced that I would reconsider GM's request after giving the public an opportunity to comment on those contentions. 45 FR 79116 (Nov. 28, 1980). In response to this notice, EPA received comments from GM and Volkswagen of America. I will address the requests for reconsideration of earlier waiver denials included in GM's comments and VW's comments in future decisions. These comments are included in Public Docket EN-80-16.

unavailable to enable this engine family to meet the 3.4 gpm CO standard in the 1982 model year, considering cost, driveability, and fuel economy. I reached this decision primarily because of the continuing risk that, given Chrysler's current economic circumstances, Chrysler and the public could face severe adverse economic repercussions if, in light of the driveability characteristic of the 5.2L/2V engine family, I were to make an incorrect projection regarding the availability of effective emissions control technology.

III. Discussion

A. Available Technology and the Public Interest

The decisions I have made here on whether to grant or deny the requested waiver turn primarily on public interest considerations involved in marketing these engine families and what technology most likely would be available to enable the engine families in question to meet the 3.4 gpm CO standard for the 1982 model year. Section 202(b)(5)(C)(iii) of the Act expressly assigns an applicant the task of establishing that effective CO control technology is not available, taking into account costs, driveability, and fuel economy.

As was the case in the previous CO waiver decisions, this decision relies on information contained in the waiver application and other information found in the public record.[10] I conclude on the basis of this information that the applicants have adequately established that the risks that could rise were I to deny these waiver request at issue are significant enough that I must conclude that the requisite technology, considering costs, driveability , and fuel economy, is not available for the engine families in question, the GM 1.8/2.0L, Chrysler 1.6L, 2.2L, 2.6L, and 5.2L/2V, Ford 1.6L, and AMC 151 cubic inch displacement (CID) families.

As section 202(b)(5)(C)(iv) of the Act requires, I have considered the results of NAS studies and investigations conducted under section 202(c) of the Act regarding available technology, processes, or other alternatives. The findings of the available NAS studies do not contradict my assessment regarding the availability of technology for these engine families.[11]

1. *Applicants' Positions Summarized*

a. *Ford*

Ford applied for a waiver for its 1982 model year 1.6L engine family, which includes its "Sporty Coupe" models (LN7 and EXP) scheduled to begin production on February 1, 1981, and to be introduced in the early spring of 1981, and its Escort/Lynx models scheduled to begin production in August 1981, for the usual 1982 model year introduction in the fall of 1981.[12]

In support of its waiver request, Ford contends that current emission control technology will not enable its Sporty Coupe models to meet a 3.4 gpm CO standard for the 1982 model year, and that because of these models' early introduction date, Ford has sufficient lead time to develop alternative emissions control systems or components capable of achieving the 3.4 gpm CO standard.[13] With regard to its Escort/Lynx models, Ford states that it is unsure whether it can successfully incorporate ("pull ahead") aspects of its alternative high confidence 1983 system in time for its full 1982 production to achieve 3.4 gpm.[14] More important, however, Ford argues that even if it were able to achieve 3.4 gpm, it would be forced to calibrate its vehicles in a manner likely to result in unacceptable driveability for the vehicles equipped with automatic transaxles (ATX) and substantially degraded driveability for the vehicles equipped with manual transaxles (MTX).[15] Finally, for both models Ford contends that a waiver denial would substantially harm Ford's ability to compete with imported as well as other domestic models, resulting in economic hard to Ford and harm to the public interest.[16]

b. *Chrysler*

Chrysler contended it faced uncertain production risks and did not have sufficient lead time to develop and employ technology incapable of meeting the 3.4 gpm CO standard in a new 1.6L engine family it has recently arranged to purchase from Peugeot for use in 1982 model year vehicles. In addition, Chrysler asserted that the 2.2L, 2.6L, and 5.2L/2V models for which I granted waivers for model year 1981[17] are still capable of meeting the 3.4 gpm CO emission standard with a significant safety margin in production and with needed improvements in fuel economy and driveability in the 1982 model year. Finally, Chrysler stated that these engine families might experience difficulty in complying with the EPA high altitude regulations.[18]

c. *AMC*

AMC contended that its 151 CID engine family is incapable of meeting the 3.4 gpm CO standard with acceptable margins of safety and with acceptable driveability in the 1982 model year despite AMC's good faith efforts to improve the emissions control capabilities of this engine family. AMC further contended that, without a waiver, this family will not be capable of meeting EPA high altitude regulations, and AMC would then be unable to market this model.[19]

d. *GM*

In support of its waiver request, GM stated that, on the basis of available emission and fuel economy results, it was unable to guarantee that its 1.8/2.0L engine family could comply with the statutory emissions standard without suffering competitively disadvantageous fuel economy, driveability, and cost penalties.[20] GM contended that my granting waivers to some of GM's competitors while denying waivers to similar GM engine families resulted in an inequitable penalty for GM's good faith development of what is characterized as high technology emissions control systems (relative to other manufacturers).[21] Finally, GM asserted that the "substantial economic risk of erroneous denial" of its waiver request outweighed the risk of "insignificant impact on air quality" of an erroneous grant.[22]

2. *Waiver Applications Granted For Fuel Efficient Models: GM 1.8/2.0L, Chrysler 1.6L, 2.2L, and 2.6L, Ford 1.6L, and AMC 151 CID*

After due consideration of these arguments and the information submitted in support of them, I have concluded that each of the applicants has established that the applications covering the six small-displacement

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[10] See note 6, supra.

[11] Report of the Committee on Motor Vehicle Emissions by the National Research Council of the National Academy of Sciences, dated June 30, 1980. See also discussions of the applicability of earlier NAS studies in previous CO waiver decisions; e.g., 44 FR 53376, 53386 (Sept. 13, 1979) and 44 FR 69416, 69423, 69428 (Dec. 3, 1979). For further discussion of how the NAS findings are consistent with my determinations relating to section 202(b)(5)(C)(iii) of the Act, see, e.g., 45 FR 67753, 67756 (Oct. 14, 1980).

[12] Ford App., p. III B-1. Oct. 10, 1980 Transcript, pp. 169, 193. Letter from R. M. Gulau, Ford, to Robert E. Maxwell, EPA, Exhibit II, p. 3, dated Nov. 6, 1980 (hereinafter, "letter to Maxwell").

[13] Ford App., p. III B-1. Oct. 10, 1980 Transcript, pp. 169, 225. Oct. 17, 1980 supp. submission, p. 9.

[14] Ford App., p. III A-12, III B3. Oct. 10, 1980 Transcript, pp. 185, 203-204.

[15] Ford App., p. III A-10; Tr. p. 196, 225-228; Oct. 17, 1980 supplemental submission, 4, 5, 6, 14; Nov. 3, 1980 supp. submission p. 1-2; Letter to Maxwell, Exhibit II, pp. 2-3.

[16] Ford App. pp. II 1-2; Tr. p. 170, Oct. 17 supplemental submission, pp. I 1, II 1-3.

[17] 45 FR 17914 (Mar. 19, 1980).

[18] C. App., Sections I, II, III. Oct. 24, 1980 Transcript, pp. 9-16.

[19] AMC App., pp. 4-12 Oct. 10, 1980 Transcript, pp. 74, 75.

[20] Oct. 10, 1980 Transcript, p. 16.

[21] GM App., p. 13.

[22] Id., p. 11. GM supp. submission (letter Ancker-Johnson to Costle) dated Nov. 21, 1980. Letter, Thomas M. Fisher, GM, to EPA Administrator Costle, dated Dec. 8, 1980.

four-cylinder fuel-efficient engine families in question meet the necessary statutory requirements for receiving a waiver of the 3.4 gpm statutory CO emission standard for the 1982 model year. I have reached my determination primarily on the basis of my conclusion that it is essential to the public interest to grant waivers to allow these manufacturers, which are experiencing significant economic difficulties, additional flexibility to improve the competitiveness of the four-cylinder small-displacement fuel-efficient models under consideration here,[23] even though in some of these cases marketable technology may be available even considering costs, driveability, and fuel economy. My decision to grant these waivers also stems from the risk that waiver denials may turn out to be partially erroneous;[24] that is, waiver denials might result in reducing the competitive market position these fuel-efficient models (which are vital to these manufacturers' future viability at a time when these manufacturers are attempting to recover from their recent economic problems) could attain if these applicants were able to take advantage of the added flexibility a waiver might provide.

The applicants have provided information which indicates that these comparatively small-displacement four-cylinder engine families under consideration here are used in relatively fuel-efficient vehicles. For example, the applicants have demonstrated that the GM 1.8/2.0L, AMC 151 CID, Chrysler 1.6L 2.2L, and 2.6L, and Ford 1.6L engine families are all projected to achieve 1982 fuel economy ratings equal to or better than the 1982 Corporate Average Fuel Economy (CAFE) standards.[25] None of these engine families has been previously marketed under the 3.4 gpm statutory CO emission standard, either because they are new models for 1982 or because they were marketed under a waived CO standard of 7.0 gpm in the 1981 model year.[26] For this reason, these manufacturers have not had the opportunity to improve the competitive features (specifically, cost, driveability, and fuel economy) of any of the subject engine families produced in compliance with the 3.4 gpm standard, and introduce appropriate improvements. Hence, without waivers they may have insufficient lead time or flexibility to optimize competitive features of these engine families for the 1982 model year.[27]

The flexibility which temporarily relaxing the 3.4 gpm CO standard would afford manufacturers of these fuel-efficient engine families does not by itself necessarily justify granting these waivers, particularly in those cases in which it appears that technology is available to permit a manufacturer to market an engine family with marginally acceptable cost, driveability, and fuel economy.[28] With the waiver applications at hand, however, all of these small-displacement fuel-efficient four-cylinder engine families at issue are aimed at the future market paced by fuel economy demands and thus are extraordinarily important to the overall marketing plans of the respective manufacturers and essential to their economic recovery.[29] The manufacturers before me have provided information that indicates that each manufacturer is suffering severe economic problems at the present time.[30] Each of these manufacturers has experienced significant sales losses during the 1979 model year and extraordinary financial losses for the 1979 fiscal year.[31] These problems have resulted in significant adverse social and economic repercussions for the

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[23] Chrysler 1.6L, 2.2L, 2.6L; Ford 1.6L; AMC 151 CID; GM 1.8/2.0L.

[24] See, e.g., *International Harvester* v. *Ruckelshaus*, 478 F. 2d 615, 641, (D.C. Cir., 1973). See also, 45 FR 53400 (Aug. 11, 1980).

[25] The Corporate Average Fuel Economy standard is 24 mpg for the 1982 model year. 49 CFR 531.5; § 502, 503, Energy Policy and Conservation Act (EPCA), Pub. L. No. 94-63, 89 Stat. 871 (1975). The individual CAFE fuel economy figures for each model is an average which is weighted 55 percent urban cycle and 45 percent highway cycle. EPCA § 503(d)(1).

Information in the record indicates that these engine families will achieve the 24 mpg 1982 CAFE standard. See, e.g., the 1981 EPA Gas Mileage Guide (September 1980 edition), which lists fuel economy figures (for the urban cycle) for the following models (these figures should indicate the potential urban component of the CAFE value for that model): Ford 1.6; AMC 151 CID; Chrysler 2.2L, 2.6L, and 1.7L (the 1.6L engine family considered here will be used in the same vehicle models as the 1.7L engine family and should be expected to achieve similar fuel economy characteristics—see, e.g., Chrysler App., p. II-3; Oct. 24, 1980 Transcript, pp. 18, 26, 101, 103, 105, 106). GM projected 1982 combined fuel economy mileage figures of 27–30 mpg for its 1.8/2.0L engine family. Oct. 10 1980 Transcript, pp. 18, 18A, 44. Each of the applicants projects its respective models to achieve 1982 highway fuel economy substantially better that the urban figures and a composite fuel economy figure above the CAFE standard. See, e.g., Chrysler Application for waiver of the 1981–1982 Model Year Carbon Monoxide Standard, July 3, 1979, Vol. III B, section C, data on cars J–01, 02, 03, 05, 06; 1981 Model Year EPA Certification Test Log, vehicles D00–101B, D00–103B, D04–15B, D04–29B, D04–76B, D04–77B, D032R, D033, D181, at 13:18:43, 13:36:38, Nov. 21, 1980; Chrysler Petition for Reconsideration, Oct. 16, 1979, pp. A–11, 17, D–Z; Chrysler supp. submission, July 20, 1979, response to question 9; Nov. 3, 1979 Transcript of Proceedings—In the matter of Applications for Waiver of 1981 Model Year Carbon Monoxide Emissions Standards, pp. 191, 192; Oct. 10, 1980 Transcript pp. 18, 44, 64, 98, 139, and 170; AMC supp. submission Oct. 24, 1980 pp. 5–13; 24, 1980 Transcript, p. 14.

[26] The Chrysler 2.2L engine family is employed in Chrysler's new "K-car" model introduced in model year 1981. The 1.6L engine family is a new engine family Chrysler has purchased from Peugeot which Chrysler will be using in model year 1982 in addition to its presently marketed 1.7L engine. C. App., Section I. II. Chrysler has previously received waivers for its 2.2L and 2.6L engine families for the 1981 model year. 45 FR 17914 (Mar. 19, 1980). GM intends to use its 1.8/2.0L engine family in its new "J-car" model it will introduce early in 1981 for the 1982 model year. GM App., Section I. Ford plans to use its 1.6L family in its new 1982 model year "sporty coupe" model it will introduce in the spring of 1981 and in its Escort/Lynx model scheduled for normal 1982 model year introduction. Ford App., Section III. Oct. 10, 1980 Transcript, pp. 172–174. Ford received a waiver for the 1981 model year for this engine family. 45 FR 53400 (Aug. 11, 1980). AMC received a waiver for the 1981 model year for its 151 CID engine family. 45 FR 7122 (January 31, 1980).

[27] See letter from Thomas M. Fisher of GM, to EPA Administrator Costle, dated Dec. 8, 1980, at 3–4 (hereinafter Fisher-Costle letter). Manufacturers that have successfully certified and marketed vehicle models under the statutory 3.4 gpm CO standard have the flexibility to "carry over" 1981 certification results for the 1982 model year and avoid incurring the engineering expense and effort necessary for a certification program. In addition, those manufacturers could apply their engineering efforts toward improving competitive features of these vehicles meeting the 3.4 gpm standard using the production and marketing experience.

[28] For example, available information fails to indicate that marketable technology is unlikely to be available to permit GM's 1.8L/2.0L engine family to meet the 3.4 gpm CO standard, even considering cost, driveability and fuel economy. See my earlier decision on this engine family, dated Nov. 20, 1980.

[29] For App., Section II, Letter, Ancker-Johnson (GM) to Costle, dated Nov. 20, 1980. Fisher-Costle letter, dated Dec. 8, 1980 at 4. Oct. 10, 1980 Transcript, pp. 13, 70, 104, 105, 170. Oct. 24, 1980 Transcript, p. 14. Automotive News, Nov. 17, 1980, "Escort/Lynx" and K-Car in a Difficult New-Car Market", Joseph Bohn, pp. 1, 45.

These engine families (for which these manufacturers have applied significant resources in research, development, and retooling) make up a large and increasing proportion of the total sales of each of these manufacturers. See, e.g., Automotive News, Nov. 3, 1980, "1980 V-8 Output Cut in Half," Joseph Bohn, pp. 1, 54; GM App., pp. 12–13; Ford supp. submission, Oct. 17, 1980, exhibits I, III–G; C. App., pp. II–3, III–1. Oct. 10, 1980 Transcript, pp. 13, 14, 104–106, 169, 170; Oct. 24, 1980 Transcript, pp. 13, 14, 103, 105, 106. See also, generally, U.S. International Trade Commission Decision on Certain Motor Vehicles, Publication 1110, December 1980.

[30] AMC supp. submission, 1980 Quarterly Reports, Chrysler Nov. 4, 1980 supp. submission, Ford App., Section II, GM supp. submission, p. 15, Oct. 10, 1980 Transcript, p. 70, Oct. 24, 1980 Transcript, pp. 117–120.

[31] GM sales declined 22 percent compared to the same 12-month period last year, Wall St. Journal, Dec. 5, 1980, p. 29, while GM reported record losses of $824 million for the last four quarters, New York Times, Oct. 28, 1980, "Record Loss Listed by GM", Steve Lohr, p. 1. GM further reported that 1981 fourth quarter sales have been substantially lower than expected, Fisher-Costle letter, dated Dec. 8, 1980, at 4. AMC sales worldwide are down 14.9 percent and AMC has reported twelve month losses of $155.7 million, and layoff of 5,900 of 23,400 employees (AMC supp. submission, Oct. 24, 1980, p. 24). Chrysler's production is down 37 percent over last year (Wall St. Journal, Dec. 5, 1980, p. 29) and Chrysler lost $1.1 billion in 1979 and $1.5 billion in the first three quarters of 1980. Chrysler Nov. 4, 1980 supp. submission. Ford's production declined 29 percent over last year (Wall St. Journal Dec. 5, 1980, p. 29) and Ford also reported record losses of $1.51 billion for the last 12 months. Ford App., section II. Oct. 17, 1980 supp. submission, section I.

country, including extensive layoffs, increasing trade deficits and effects on suppliers and related industries.[32]

Granting waiver requests for the engine families at issue could allow these manufacturers the flexibility to improve the competitive marketability of some features [33] of these important engine families at a time when these financially troubled manufacturers are depending upon successful marketing of these particular engine families in order to achieve economic recovery. Each of these manufacturers has already expended a considerable amount of cost and effort in attempting to meet the 3.4 gpm CO emission standard [34] and to retool for these more efficient models, thereby further limiting the resources they have available to otherwise improve the competitiveness of these models.[35] In light of these circumstances, I have determined that it is in the public interest to grant all of these waiver requests for these fuel-efficient engine families because of the risk that denial of these waivers could limit the manufacturers' flexibility to improve the competitiveness of these important engine families and ultimately interfere with the future of these automobile manufacturers.[36]

In *International Harvester Co.* v. *Ruckelshaus*,[37] the United States Court of Appeals for the District of Columbia Circuit reviewed the Administrator's decision to deny manufacturers' requests for a one-year suspension (from 1975 to 1976) of the effective date of the statutory hydrocarbon (HC) and CO standards mandated by the 1970 version of the Act. The Court stated, among other things, that the Administrator should have considered the risks associated with the possibility of erroneously granting or denying those requests. The Court indicated that the Administrator should balance the economic costs (in terms of jobs lost and misallocated resources) possibly associated with an erroneous or only partially accurate denial versus the possible environmental benefits lost through an erroneous grant.

Under the current section 202(b)(5) of the Act, the gravity of the economic and other risks which both a waiver applicant and the public face from the possibility of an erroneous denial depends on the following two factors: (1) The likelihood that the denial, in fact, will turn out to be either erroneous or only partially accurate and (2) the severity of the adverse economic consequences which could occur as the result of an erroneous or partially accurate denial.[38]

In this case, I find that there is a significant likelihood that a decision denying any one of these waiver requests could turn out to be only partially accurate.[39] At a time when these manufacturers need to be as competitive as possible to effect an economic recovery, a partially accurate denial would risk diminishing their ability to adequately compete in this fuel economy oriented market of the future [40] thereby delaying planned recovery, continuing unemployment problems increasing economic stagnation, and potentially limiting the increase in the number of these fuel efficient vehicles in use.

Alternatively, the environmental benefits from denying waiver requests for any one or all of these engine families would be insignificant.[41] Vehicles using these engine families are projected to account for only about 15% of total 1982 model year domestic sales.[42] Adding the number of engine families which already have waivers for the 1982 model year increases this total to only 27% of projected 1982 model year U.S. sales. This is consistent with my previous findings that the CO waiver proceedings to date have generally shown that the 3.4 gpm CO emission standard is generally achievable with marketable cost, driveability and fuel economy, and that waivers are appropriate only in extenuating circumstances, such as those identified here. In addition, manufacturers have generally made significant efforts to reduce emissions even from those engine families under consideration here which have received waivers for the 1981 model year while preserving the ability of those families to maintain strong competitive positions in the domestic market. For example, the engine families considered here which already had waivers to the alternative 7.0 gpm CO emission standard generally exhibited CO emissions in production which were close to or marginally below 3.4 gpm.[43]

In addition, the air quality effect of granting waivers to other engine families, if any, which may share similar public interest considerations and incur similar adverse risks comparable to these fuel efficient engine families is also quite likely to be insignificant.[44] Finally, these engine families will continue to have to meet other regulatory requirements designed to control emissions of in-use vehicles and for which Congress provided no such flexibility to discriminately relax requirements.[45]

While Congress might not have envisioned the waiver process as a mechanism which could permit applicants to attain highly competitive technology (as opposed to reasonably marketable technology considering cost, driveability and fuel economy characteristics) when it prescribed the criteria under which I may grant a

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[32] See e.g., Wall St. Journal, October 30, 1980, p. 1, "Chrysler Posts 3rd Period Loss of $489.7 million," Leonard M. Apcar; Oct. 29, 1980, "Ford Reports a Loss of $595 million, Record for any U.S. Auto Concern, p. 1, New York Times, Oct. 30, 1980, "$490 Million Loss Listed by Chrysler"; November 3, 1980, "Ford Suffers Biggest Loss Ever . . . $567 Million Loss at GM Next Biggest and Chrysler Drops $490 Million" Edward Lapham, pp. 1, 54. United States International Trade Commission Decision on Certain Motor Vehicles, Publication 1110, December 1980, pp. A27–76. Oct. 17, 1980 Ford supp. submission, p. 2.

[33] A waiver to 7.0 gpm may allow a manufacturer flexibility to calibrate an engine family to achieve better fuel economy, driveability or costs, e.g., a waiver will allow Ford and AMC to optimize driveability. Oct. 17, 1980 Ford supp. submission, pp. 4, 7, Exhibits I–L. November 3, 1980, Ford supp. submission, Exhibit A. Oct. 10, 1980 Transcript, pp. 100, 128, 169, 222–228.

[34] See also section IIIC. All of these engines are already achieving emission levels close to or under the 3.4 gpm standard. See note 43, supra.

[35] See e.g. GM's contention regarding competitive disadvantage. GM App., p. 13. See also *International Harvester*, 478 F. 2d 615, 637–638 (D.C. Cir., 1973).

[36] See generally, *International Harvester*, 478 F. 2d 615, 633, 641 (D.C. Cir., 1973); 45 FR 53401, 53403 (Aug. 11, 1980).

[37] 478 F.2d 615 (D.C. Cir., 1973).

[38] *Cf. Ethyl Corp.* v. *Environmental Protection Agency*, 541 F.2d 1, 18 (D.C. Cir. 1976) (stating that the Administrator's finding under section 211 of the Act that lead particulates "will endanger the public health and welfare" is composed of reciprocal elements of probability and severity).

[39] *Cf., International Harvester, supra*, 478 F. 2d at 641: "[A] partially accurate decision would allow companies to produce but at a significantly reduced level of output." Here, companies are already producing at a lower output due to market conditions, and a waiver denial at this time likely could limit the flexibility these companies need to improve marketability (by improving driveability for example) and sales.

[40] See, e.g., Fisher-Costle letter, dated Dec. 8, 1980, at 3.

[41] See also section III–B.

[42] See, e.g., October 24, 1980 Transcript, p. 14. Oct. 10, 1980 Transcript, pp. 16, 144. Automotive News, Nov. 17, 1980, "Escort/Lynx and K-Car Star in a Difficult New-Car Market," Joseph Bohn, pp 1, 45. This projection assumes 1982 model year domestic sales of about ten million vehicles.

[43] Average CO emission results for production vehicles receiving waivers to a 7.0 gpm CO emission standard (from samples of various sizes which were tested by these manufacturers):

AMC: 151 CID—3.2 gpm.

Ford: 1.6L—1.61–4.14 gpm (range for four pre-production vehicles).

Chrysler: 2.2L–3.5 gpm; 2.6L–2.6 gpm; and 5.2L–3.3 gpm.

See, e.g., AMC App., p. 14; C. App., p. II–11, 12; October 17, 1980, Ford supp. submission, Exhibits E-L (confidential); Oct. 10, 1980 Transcript, p. 109.

[44] *Cf.*, discussion of a similar concern in my eight CO waiver decision, 45 FR 53401, 53404 (Aug. 11, 1980).

[45] See, e.g., Oct. 10, 1980 Transcript, p. 176. However, these engine families will receive a waiver of the high altitude standard consistent with the waivers granted here. 45 FR 66984 (Oct. 8, 1980).

waiver request, the current economic circumstances and business realities for many automobile manufacturers are significantly different from what they were when Congress adopted the CO waiver provision.[46] Under these circumstances, I find it unlikely that Congress intended me to deny applications where the benefits to the public of a waiver grant would outweigh the benefits of a waiver denial.[47] I believe the language of section 202(b)(5)(A) gives me the flexibility to provide the relief granted here.

2. *Other Waiver Applications Granted: Chrysler's 5.2L/2V Engine Family.*

In my fourth CO waiver decision published on March 19, 1980,[48] I granted Chrysler a waiver for its 5.2L/2V engine family for the 1981 model year. I granted the waiver because newly-available information indicated that Chrysler and the public risked incurring severe adverse economic repercussions if I were to make an incorrect projection regarding availability of technology to enable this Chrysler engine family to meet the 3.4 gpm CO standard. I concluded that these risks were the type which the *International Harvester* decision directed EPA's Administrator to consider in ruling on requests for statutorily-authorized delays in implementing emission standards.

Specifically, the new information indicated that because of Chrysler's relatively instable financial situation, incorrectly denying a waiver for this Chrysler engine family was likely to cause severe adverse economic repercussions to Chrysler and the public generally.

Moreover, the new information further indicated that this engine family faced potential driveability problems which Chrysler might have been unable to resolve in time for the 1981 model year. Given Chrysler's limited flexibility in applying alternative technology, driveability problems might have prevented Chrysler from producing these engine families under a 3.4 gpm CO standard in the 1981 model year in a manner that would be acceptable to consumers.

Thus, I further concluded there was then some potential that a determination that effective control technology, considering costs, driveability, and fuel economy, would be available to any of these three engine families for the 1981 model year might prove to be incorrect.

I determined at that time that the risks arising from the possibility of incorrect denial for the 1982 model year would diminish considerably because Chrysler would have additional time to deal with driveability problems it would be facing in the 1981 model year. I therefore denied Chrysler's request for a waiver for this engine family for the 1982 model year, on the basis that Chrysler had not adequately established that effective control technology, considering costs, driveability, and fuel economy, would not be available for this engine family for the 1982 model year.

Chrysler now argues that the possibility of an erroneous denial that existed when I issued my last Chrysler waiver decision in March, 1980, still exists today.[49] Chrysler states that its emissions control capabilities for model year 1982 are generally no greater than they were in 1981.[50] Specifically, for its 5.2L/2V engine family, Chrysler is utilizing the same emissions control system that it used on model year 1981 except for three minor improvements, two of which are primarily intended for better cold driveability.[51]

Chrysler contends that with this technology there is a risk that the 5.2L/2V engine family will not be able to meet a 3.4 gpm standard when driveability and fuel economy are considered.[52] Chrysler cites its 1981 model year first quarter "Federal Emissions Surveillance Data" and reports that for this engine family the deteriorated CO value averaged over 29 tests is 3.29 gpm.[53] Chrysler contends that this value is so close to the 3.4 gpm CO standard that this engine family does not have "adequate margins" of safety relative to a 3.4 gpm standard if, in fact, that were the standard this engine family were required to meet.[54]

a. *Likelihood of Erroneously Determining That Effective Control Technology Is Available*

As I stated earlier,[55] the *International Harvester* decision indicated that the costs of an erroneous denial which the Administrator should consider should include the costs from a denial which is only partially accurate. There is a small potential that my decision would be partially erroneous were I to deny Chrysler's waiver request for this engine family based on a determination that technology is available for it to achieve a 3.4 gpm standard considering costs, driveability, and fuel economy.

The risks that Chrysler faces in marketing this engine family in model year 1982 have diminished somewhat from March, 1980, when I last considered a waiver request for this engine family. Despite the fact that I had granted this engine family a waiver to 7.0 gpm CO, its 1981 model year certification vehicles achieved levels below the statutory standard with technology substantially similar to that which Chrysler plans to use on these vehicles for model year 1982.[56] The three certification emission data vehicles exhibit CO emissions that averaged 1.9 gpm (taking into account likely deterioration in emissions performance over extended mileage), with a range of 1.4 to 2.9 gpm.[57]

These test results indicate that effective control technology most likely is available to enable this engine family to certify to the 3.4 gpm CO standard. Moreover, Chrysler has not reaised any new facts or evidence establishing that, strictly on the basis of emission control capabilities, this engine family will not be able to comply with other emission-related requirements should I deny it a waiver for the 1982 model year.[58]

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[46] The Court in *International Harvester* adopted a similar approach in interpreting Congress' intent:

> The Court must seek to discern and reconstruct what the legislature that enacted the statute would have contemplated for the court's action if it could have been able to foresee the precise situation. It is in this perspective that we have not flinched from our discussion of the economic and ecological risks inherent in a "wrong decision" by the Administrator.

478 F. 2d 615, 648, citing *Montana Power Co.* v. *FPC*, 445 F. 2d 739, 746 (enbanc. 1970), cert. denied, 400 U.S. 1013 (1971).

[47] The flexibility which Congress explicitly afforded me through the waiver provision (which is similar to its legislative predecessor, the suspension provision) in implementing the 3.4 gpm CO standard, gives me a unique opportunity to accommodate these concerns which waiver applicants have raised here. See, e.g. the legislative history for the suspension provision in the 1970 act: 116 Cong. Rec. 33120. (Senator Baker); 33081 (Senator Griffin); 32905 (Senator Muskie) (1970).

[48] 45 FR 17914.

[49] Oct. 24, 1980 Transcript, p. 10. C. Nov. 4, 1980 supp. submission, p. 1.

[50] Oct. 24, 1980 Transcript, p. 11.

[51] Oct. 24, 1980 Transcript, pp. 29, 44, 69, 72. Chrysler stated it will use improved electronics for greater spark and fuel control, and a different location for its oxygen sensor to improve cold driveability for this engine family. This engine family will also be equipped with catalyst seals for better CO emissions control. Chrysler did not submit any driveability data for vehicles equipped with these improvements.

[52] Chrysler App., p. II-7.

[53] C. Oct. 17, 1980 supp. submission, Attachment E.

[54] Oct. 24, 1980 Transcript, p. 18, 109.

[55] See discussion accompanying footnote 37 of this decision, supra

[56] Oct. 24, 1980 Transcript, p. 67. Chrysler plans to apply for "carryover" certification for this engine family in 1982. Oct. 24, 1980 Transcript, p. 69.

[57] C. Oct. 17, 1980 supp. submission, Attachment A. Oct. 24, 1980 Transcript, p. 110. Certification emission data vehicles are tested at low mileage to determine compliance with emission requirements. See 40 CFR § 86.079-26 (1979).

[58] Assembly-line emission test results which Chrysler submitted as representative of its 5.2L/2V vehicles manufactured during the first production quarter of the 1981 model year exhibited a 17% (5 of 29) failure rate with respect to the statuory CO emission standard. See Chrysler's Federal Passenger Individual Vehicle C.V.S. Test Data Audit Report. On the basis of this failure rate, the

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Section 202(b)(5)(C)(iii) of the Act, however, requires that I also consider costs, driveability, and fuel economy before reaching my ultimate determination on availability of effective control technology to meet a 3.4 gpm CO standard.

In my decision granting Chrysler's waiver request for this and other engine families for model year 1981, I determined that some potential existed that Chrysler would not be able to produce vehicles in these engine families with both acceptable eminssions and marketable driveability.[59] I also determined that waiving the 3.4 gpm CO standard would permit Chrysler to develop calibrations for these engine families resulting in better driveability.[60] The driveability risks that were present during my consideration of that waiver request are no longer as significant with respect to this engine family for the 1982 model year, but the potential for driveability difficulties continues to exist.

Chrysler contends that because of the risk of driveability difficulties it needs a waiver for this engine family to maintain driveability at a competitive level.[61] Chrysler explains that its driveability targets for both cold and warm modes for this engine family is 7.0, on a scale of 10,[62] and that its 1981 certification data vehicles and 1981 first quarter production vehicles had driveability ratings of 6.4 for the cold mode and 7.1 for the warm mode.[63]

Chrysler states that when the driveability ratings of its development vehicles average 6.0, the actual ratings in production can range from 4 to 8.[64] While admitting that this much variance is unusual, Chrysler indicated that a one number range in driveability ratings on either side of the average driveability value was more representative of actual production experience.[65] Thus, this engine family, with an average cold driveability rating of 6.4, could experience actual production ratings as low as 5.4, which Chrysler describes as "marginal" and could result in decreased sales due to customer dissatisfaction.

To improve cold driveability, Chrysler has employed several relatively minor changes in hardware and calibration which Chrysler states will slightly increase CO emission.[66] Given the fact that Chrysler's 1981 first quarter surveillance data indicate that average CO emissions for this engine family is 3.29 gpm, Chrysler may not be able to implement its driveability improvement changes while remaining in compliance with a 3.4 gpm standard. Chrysler states that a CO waiver would provide it with the flexibility it needs to optimize driveability by implementing these and other possible changes.[67]

Chrysler also states that improving driveability by taking advantage of a CO waiver would enable it to save the costs associated with warranty claims arising from "carburetion/driveability" difficulties.[68] Information submitted by Chrysler comparing "Projected Lifetime Carburetion/Driveability Expense Per Unit Sold" for its 5.2L/2V engine family indicated that the 5.2L/2V family had expenses approximately one third as high as a larger engine family which exhibited lower driveability ratings.[69] Thus, a waiver would enable Chrysler to reduce its warranty costs associated with driveability difficulties.

Driveability considerations, therefore, although diminished from the time of my last waiver consideration for this engine family, still present some potential for an erroneous decision, were I to determine that effective control technology exists for this engine family to meet a 3.4 gpm CO standard.

With regard to costs of the technology needed to meet the 3.4 gpm CO standard, Chrysler stated generally that waivers would allow it to use its resources to, among other things, keep the cost of its products at a competitive level.[70] Chrysler did not provide information indicating that cost savings, if any, resulting from my decision to grant a waiver would be significant.[71]

With regard to fuel economy, Chrysler states that it expects a fuel economy benefit of approximately 2% when comparing vehicles receiving waivers to 7.0 gpm with those not receiving waivers.[72] Chrysler admitted, however, that this was simply a judgment applicable to several engine families in the aggregate, rather than specifically to its 5.2L/2V engine family.[73]

b. *Potential Adverse Economic Consequences of Erroneously Determining That Effective Control Technology Is Available*

While this potential for an erroneous decision alone would normally not give rise to sufficient concern to serve as a basis for concluding that effective control technology is not available, I must assess this risk in light of the severity of the adverse consequences which could occur if the decision indeed turned out to be erroneous. Thus, I have considered information provided by Chrysler and other information in the public record in determining possible risks to Chrysler and the public in denying a waiver for the 5.2L/2V engine family.

The general economic difficulties of the automobile industry, and Chrysler's unique position in the decline are well documented.[74] While the other automobile manufacturers are also experiencing economic difficulties, Chrysler remains the only corporation to have received a federal aid package including $1.5 billion in loan guarantees. Even with this aid, Chrysler describes its economic outlook as still highly uncertain.[75]

Specifically, although recent projections indicated Chrysler might have a profitable fourth quarter, Chrysler now projects that it will experience a fourth quarter loss.[76] One reason for this reversal is that sales of

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Footnotes continued from last page
probability of production vehicles failing a Selective Enforcement Audit (SEA) is quite limited. See 41 FR 31474 (July 28, 1976).

Chrysler argues that it is unable to achieve compliance simultaneously with a 3.4 gpm CO standard and the high altitude regulations, applicable in the 1982 model Year. Chrysler App., 1–3 and Oct. 24, 1980 Transcript, p. 88. Chrysler indicated, however, that the data on hand supporting this position was limited, that it was unsure of exactly how much difficulty high altitude regulations would present, and that the available data did not include test results of vehicles with improved electronic memory devices that Chrysler hopes will improve high altitude CO emissions control. See Oct. 24, 1980 Transcript, pp. 89–91.

[59] 45 FR 17919 (Mar. 19, 1980). I pointed out explicitly that this risk alone was not significant enough for me to grant those waivers, but that I could grant those waivers for model year 1981 only because Chrysler established both that severe adverse economic consequences could result if those driveability concerns indeed turned out to preclude the engine families in question from being able to meet the 3.4 gpm CO standards.

[60] Id.

[61] Chrysler App. p. II–12.

[62] Oct. 24, 1980 Transcript, p. 25. Chrysler also states that when a vehicle rates below 5.5, on a development or individual evaluation basis, it reviews the circumstances surrounding the vehicles in question to determine whether to continue production.

[63] Nov. 4, 1980 supp. submission, p. 12; Oct. 24, 1980 Transcript, p. 67.

[64] Oct. 24, 1980 transcript, p. 50.

[65] Id.

[66] Oct. 24, 1980 Transcript, p. 13.

[67] Oct. 24, 1980 Transcript, pp. 13–14, 15.

[68] Oct. 24, 1980 Transcript, p. 51.

[69] The projected expenses for the 5.2L/2V engine family were $5.53, while the expenses for the larger engine family were $14.44. C. Nov. 4, 1980 supp. submission, p. 3.

[70] Oct. 24, 1980 Transcript, p. 16.

[71] Chrysler stated that it was not running parallel 3.4 gpm and 7.0 gpm programs with different emission control designs and different costs. Oct. 24, 1980 Transcript, pp. 46, 48, 49, 72.

[72] Oct. 24, 1980 Transcript, p. 56.

[73] Id. Chrysler did not submit data substantiating its 2% figure.

[74] See e.g., my discussion of Chrysler's economic position in my Mar. 19, 1980 waiver decision, 45 FR 17917, and my discussion accompanying footnotes 30–32 of this decision.

[75] C. Nov. 4, 1980 supp. submission, p. 4. New York Times, Dec. 18, 1980, "Chrysler Expects $1.7 Billion Loss; Seeks Another $400 Million in Aid." Section A, p. 1.

[76] Id.

Chrysler's K-cars, upon which it publicly hinged its economic well being, have stalled recently, forcing Chrysler to stop production of its K-cars 7 working days earlier than its scheduled annual holiday close down and forcing the layoff of 10,000 workers.[77]

Moreover, the slump has caused a cash flow crisis which has forced Chrysler to adopt severe emergency measures. Chrysler will reportedly request $400 million in additional loan guarantees from the Federal Government, after having already drawn $800 million in authorized guarantees.[78] Chrysler has also requested its suppliers to freeze their prices, and has informed certain of its buyers that it will postpone paying its bills to ease its cash flow crisis.[79] Finally, Chrysler has asked the United Auto Workers to freeze its wage and fringe benefits package in order to realize a savings of $1.5 billion.[80]

Chrysler states that it cannot afford to lose the sales of an entire engine family.[81] Furthermore, Chrysler is already capacity limited with respect to its 5.2L/EFM engine family. Thus, the only available substitute were Chrysler unable to market this engine due to waiver denial is the 5.2L/4V, an engine family that Chrysler states has lower fuel economy and driveability ratings than the 5.2L/2V.[82]

I have determined that the lost sales and other economic consequences that may result from a partially inaccurate decision regarding availability of technology would only exacerbate Chrysler's serious economic situation. An incorrect waiver denial could set in motion a series of events which might affect Chrysler's viability as a manufacturer. If Chrysler's viability is ultimately threatened, even greater adverse impacts on employment, Chrysler's suppliers, and the national economy could result.

c. *Balancing the Risks of Erroneous or Partially Accurate Denial Against the Benefits of a Correct Denial*

The *International Harvester* decision requires that I balance the risk of adverse consequences posed by an erroneous waiver denial against the potential benefits lost by an erroneous grant.

The adverse effect on air quality from granting a waiver for Chrylser's 5.2L/2V engine family model is insignificant. Chrysler's projected 1982 sales for this model account for less than one percent of total 1982 U.S. automobile sales. In addition, the air quality effect of granting waivers to other engine families, if any, which may incur adverse risks and potential benefits comparable to those of the Chrysler 5.2L/2V engine family from a waiver denial also are quite likely to be insignificant.[83]

The driveability concerns expressed by Chrysler present the possibility that Chrysler would not be able to produce this engine family with both acceptable emissions and marketable driveability. This possibility alone does not provide a basis of my determining that Chrysler has established that effective control technology is not available, considering costs, driveability and fuel economy. Available information also indicates, however, that severe economic costs could arise as a result of an erroneous determination for Chrysler's 5.2L/2V engine family on the availability of technology criterion. The presence of both of these factors relative to the limited environmental benefits which a waiver denial under these circumstances would achieve compels me to determine that Chrysler has met its burden in establishing that effective technology is not adequately available for its 5.2L/2V engine family for the 1982 model year, considering costs, driveability, and fuel economy.

B. Protection of Public Health

Section 202(b)(5)(C) of the Act requires that before I grant a waiver covering a given engine family, I must find that protection of the public health does not require attainment of a 3.4 gpm CO standard by the vehicles of the engine family receiving the waiver. I have already examined this issue with respect to the relative consequences and risks involved in granting or denying the waiver requests for fuel efficient engine families and for the Chrysler 5.2L/2V engine family at issue here.

I have found as a result of this examination that any adverse health effects resulting from waiving the 3.4 gpm standard for the 1982 model year engine families discussed in this consolidated decision would be insignificant. The same statement is true regarding the combined health effects resulting from emissions from engine families receiving waivers under the previous consolidated CO waiver decisions. As a result, protection of the public health does not require attainment of the 3.4 gpm CO standard by the engine families here, for which I have determined that effective control technology is not available for the 1981 model year.[84]

While waiving the 1982 statutory CO standards for these engine families arguably would not significantly affect public health,[85] noticeable increases in ambient CO levels could result from granting waivers industrywide. In light of the fact that industrywide waivers would not be protective of the public health, it is reasonable to grant waivers covering only that portion of the industry consisting of engine families for when I have determined that effective control technology, considering costs, driveability, and fuel economy, is not available and which I have determined are essential to the public interest (presuming these families also meet the remaining statutory criteria).[86]

The National Automobile Dealers Association (NADA) submitted comments to the public docket claiming that EPA should grant all pending and future 1982 waiver requests on a manufacturer-by-manufacturer basis from the 3.4 gpm CO standard and cited as support for that position the June 30, 1980 National Academy of Sciences Report.[87] That NAS report concludes that the technology exists to meet the Congressionally-mandated 3.4 gpm CO standard. However, the study also

[77] Wall Street Journal, Dec. 10, 1980, "Chrysler To Cut K-Car Production Due to Poor Sales."

[78] See footnote 75, supra.

[79] Wall Street Journal, Dec. 8, 1980 "Chrysler Delays Paying Some Of Its Bills As Car Sales Slump Threatens Recovery."

[80] New York Times, Dec. 5, 1980, "Chrysler Drops '80 Profit Hope."

[81] Oct. 24, 1980 Transcript, p. 14.

[82] Oct. 24, 1980 Transcript, p. 107.

[83] I need not determine at this time whether continuing to grant waivers covering any further engine families which have a comparable balance between adverse risks and potential benefits associated with them would or would not eventually result in a significant impact on air quality. Granting a waiver for this Chrysler model would increase the coverage of waivers granted to approximately 30% of all scheduled 1982 U.S. automobile sales.

[84] See, e.g., my discussion of ambient air quality effects in my first consolidated CO waiver decision, App. B, 44 FR 53376, 53402, 53407 (September 13, 1979) and 44 FR 69416, 69146, 69458–69462 (Dec. 3, 1979). The engine families receiving waivers under my previous CO waiver decisions constitute less than 13% of the total projected 1982 model year light duty vehicle sales in the United States. 44 FR 69416, 69424, note 58 (Dec. 3, 1980). These manufacturer projected sales of about 1.4 million units of these models in the 1982 model year. See note 42, *supra*.

[85] For further discussion concerning this issue see the first decision, 44 FR 53376, 53381 and Appendix B at 44 FR 53402–53407 (Sept. 13, 1979).

[86] I discussed the ambient air quality effect of granting CO waivers in each Appendix B in two previous decisions, 44 FR 53376, 53402–53407 (Sept. 13, 1979) and 44 FR 69416, 69456–69462 (Dec. 3, 1979).

[87] National Automobile Dealers Association Comments on Motor Vehicle Pollution Control Waiver of Carbon Monoxide Standards, Public Docket EN–80–16, Oct. 24, 1980, p. 2. See also my statement regarding similar comments by NADA in my tenth CO waiver decision, 45 FR 67753, 67756 (Oct. 14, 1980).

recommended that the need for the 3.4 gpm standard be re-evaluated.[88]

NADA claims that a 7.0 gpm CO standard is adequate to protect public health, and it relies on the NAS June 30, 1980 recommendation to re-evaluate the statutory 3.4 gpm CO standard as support for this contention.[89] GM also contends that the 3.4 gpm CO emission standard is unnecessary to protect air quality and public health, and that this standard is not cost-effective compared to the cost benefits of other pollution control strategies.[90]

I have discussed in previous decisions the results of the air quality analysis which indicate that noticeable increases in ambient CO levels could result from a two-year, industry-wide waiver.[91] In further response to NADA's assertion that an industry-wide waiver would not adversely affect public health, I refer to Congress' intent in including the waiver provision in the Act. Congress specifically substituted the requirement that the Administrator make individual waiver determinations for each vehicle model at issue for the authority previously delegated in the 1970 version of the Act to consider suspension of CO emission standards on a manufacturer-by-manufacturer basis. In so doing, Congress made clear that it wanted the Administrator to relax the statutory 90 percent reduction requirement for CO only when appropriate and as narrowly and precisely as possible.

Indeed, discussions in Congress concerning the Act's current CO waiver provision include the explicit statement that "[t]he waiver is not a general waiver for all manufacturers, nor is it a general waiver for all models of vehicles produced by a single manufacturer."[92] Instead, the wavier provision is to be available for a manufacturer's particular model line which cannot meet the 3.4 gpm standard in the 1981 or 1982 model years.[93] Granting an industry-wide waiver, or a waiver covering all future waiver requests on a manufacturer-by-manufacturer basis as suggested by NADA, would conflict with this clear evidence of Congressional intent with respect to the application of the waiver provision.

Section 202(b)(1)(A) of the Act mandates that the CO emissions standards for light-duty vehicles manufactured during or after the 1981 model year be at least a 90 percent reduction from emissions of CO allowable in the 1970 model year; namely, 3.4 grams per mile. Congress established that standard (in conjunction with the other statutory emission standards and statutory requirements) at the level which it determined would best address public health concerns, given the number of regions which need to reduce ambient CO to levels which are protective of public health. Congress did not intend that I relax the requirement for attaining the statutory emission levels it prescribed if these levels were reasonably achievable. Congress established this comprehensive legislative scheme to achieve nationwide air quality goals, realizing that some air pollution control methods might be more cost-effective than others, but acting on the conclusion that comprehensive employment of all of the statutory control methods which it specified was necessary to meet these air quality goals.[94]

C. Good Faith

In order for me to grant a waiver to any applicant, section 202(b)(5)(C)(ii) of the Act requires that I determine that the applicant in question has made all good faith efforts to meet the established emission standards. As a result, I have examined information regarding these applicants' previous and projected efforts toward meeting a 3.4 gpm CO emission standard for the engine families in question.

Each of the applicants has provided engineering, financial and technical information to support the contention that it has acted in good faith in trying to meet the 3.4 gpm CO standard. In general, information in the record provides support for determining that each has made good faith efforts in developing emission control technology to meet the 3.4 gpm CO standard.

As I mentioned earlier, these applicants generally have already made significant progress in developing the technological capabilities of these engine families to meet the 3.4 gpm CO emission standard.[95] Evidence of such improved CO emissions control capabilities [96] substantiate these applicant's claims that they have exercised good faith efforts toward meeting the statutory standard and are therefore not benefiting from a potentially inequitable competitive advantage they might achieve by avoiding the good faith effort requirement of the Act and being unjustifiably granted a waiver.[97]

In the absence of any evidence supporting a contrary conclusion, I am unable to determine other than that these applicants have met the good faith criterion with respect to the engine families under consideration in this decision.

IV. Conclusion and Interim Standards

Each of the seven engine families which were the subject of this decision are covered by waiver applications which meet the requirements for receiving a waiver under section 202(b)(5)(C) of the Act. As a result, I am granting a waiver of the effective date of the statutory CO emission standard for the Ford 1.6L, GM 1.8/2.0L, AMC 151 CID, and Chrysler 1.6L, 2.2L, 2.6L, and 5.2L/2V engine families for the 1982 model year.

As required by section 202(b)(5)(A) of the Act, I am simultaneously promulgating regulations prescribing an interim CO emission standard for 1982 model year vehicles of 7.0 gpm for the engine families receiving a waiver. For these engine families, this action continues in effect for the 1982 model year the CO emission standard applicable to all 1980 model year light-duty vehicles.

Dated: December 23, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 81-282 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-33-M

[88] Report by the Committee on Motor Vehicle Emissions by the National Research Council of the National Academy of Sciences, June 30, 1980, pp. 15–16.

[89] Id.

[90] GM also contended that the cost of technology designed to meet the 3.4 gpm CO emission standard was unreasonable because it was not cost-effective when compared to other pollution control strategies. Oct 10, 1980 Transcript, pp. 10–11. GM's contentions regarding cost effectiveness do not support the position that the costs associated with technology needed to meet the 3.4 gpm CO standard are so great, by themselves, as to preclude all manufacturers from competitively marketing their engine families under a 3.4 gpm CO standard. I rejected a similar cost effectiveness claim by GM in my first consolidated decision. 44 FR 53376, 53385 (Sept. 13, 1979).

[91] 45 FR 67753 (Oct. 14, 1980).

[92] 123 Cong. Rec. S13703 (daily ed. Aug. 4, 1977) (remarks by Sen. Muskie).

[93] Id. at S13702–13703.

[94] See my first consolidated CO waiver decision at 44 FR 53387 (Sept. 13, 1979) (also addressing how the Act directs me to consider the issue of potential added costs relative to air quality benefits from waiver denial). See also, e.g., Comm. on Public Works, National Air Quality Standards Act of 1970, S. Rep. No. 1196, 91st Cong., 2nd Sess. 23, 24, 101 (1970); 116 Cong. Rec. 32904 (1970) (Sen. Muskie).

[95] See section IIIB(1).

[96] See e.g., note 43, *supra*.

[97] *International Harvester, supra*, 478 F. 2d 615, 637, 638 (D.C. Cir., 1973).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-FRL 1719-5]

Revised Motor Vehicle Exhaust Emission Standards for Oxides of Nitrogen (NO_x) for 1981 and 1982 Model Year Light-Duty Diesel Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation establishes oxides of nitrogen (NO_x) emission standards for 1981 and 1982 model year light-duty vehicles belonging to the diesel engine family for which I have granted a waiver from the standard otherwise applicable under section 202(b)(6)(B) of the Clean Air Act, 42 U.S.C. 7521(b)(6)(B).

EFFECTIVE DATE: February 5, 1981.

ADDRESSES: Information relevant to this rule is contained in Public Docket EN-80-15 at the Central Docket Section of the Environmental Protection Agency (EPA), Gallery I, 401 M Street SW., Washington, D.C. 20460 and is available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services.

FOR FURTHER INFORMATION CONTACT: Jerry Schwartz, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION: Section 202(b)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7521(b)(1)(B), requires that regulations applicable to NO_x emissions from light-duty vehicles or engines manufactured during or after the 1981 model year shall contain standards which provide that such emissions from vehicles or engines shall not exceed 1.0 gram per vehicle mile. Regulations implementing this requirement have established this NO_x standard.

Section 202(b)(6)(B) of the Act authorizes the Administrator, upon application by any manufacturer, to waive the statutory NO_x standard for the 1981 through 1984 model years for any light-duty diesel engine family for which the Administrator can make the required statutory findings. I must promulgate interim NO_x standards applicable to the subject light-duty diesel engine families for those model years for which I have granted waivers.

Nissan Motor Company, Ltd. has submitted an application for a waiver for one of its diesel engine families. The statutory criteria, my determinations with respect to the vehicle model covered by the waiver application, and my decision to grant or deny the waiver application appear in the decision published along with this notice. In that decision, I granted waivers covering the following engine families for 1981 and 1982 model years only:

Manufacturer, engine family and Model year
Nissan: 2.9 Liter—1981, 1982

Having decided to grant the waiver application for this diesel engine family, I am simultaneously promulgating regulations adopting emission standards not permitting NO_x emissions from 1981 and 1982 model year vehicles of this engine family to exceed 1.5 gpm. The public has received an opportunity to comment on the waiver application at issue, and I have considered those comments in making the decision which requires the promulgation of this rule. Also, the 1981 model year certification process is underway. For these reasons, I find that providing notice and an opportunity to comment on this rulemaking before final promulgation is impracticable and unnecessary.

Note.—The Environmental Protection Agency has determined that this action does not constitute a major proposal requiring preparation of a Regulatory Analysis under Executive Order 12044.

In addition, because the decision accompanying this rulemaking is based on a detailed analysis indicating that this rulemaking will have a negligible effect on air quality, the Environmental Protection Agency has not prepared an Environmental Impact Statement to accompany this rulemaking.

Dated: December 23, 1980.

Douglas M. Costle,

Administrator.

40 CFR Part 86 is amended as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, 1977 and Later Model Year New Light-Duty Trucks and 1977 and Later Model Year New Heavy-Duty Engines

1. 40 CFR 86.081-8(a)(1)(iii) is revised to read as follows:

§ 86.081-8 Emissions standards for 1981 model year light-duty vehicles.

(a) * * *

(1) * * *

(iii) Oxides of nitrogen—1.0 grams per vehicle mile, except that: (A) oxides of nitrogen emissions from 1981 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-duty diesel vehicles of the following 1981 model year engine families shall not exceed the prescribed levels:

Manufacturer	Engine family	NO_x (gpm)
General Motors Corp	5.7 liter (L)	1.5
Daimler-Benz AG	2.4L	1.5
	3.0L naturally aspirated (NA).	1.5
	3.0L turbocharged (TC).	1.5
AB Volvo	2.4L NA	1.5
Peugeot	2.3L-TC-XD2S	1.5
Volkswagen AG	1.6L-NA-2250 pounds inertia weight (I.W.).	1.3
	1.6L-NA-2500 I.W.	1.4
	2.0L-NA-3000 I.W.	1.5
Nissan Motor Co	2.8L	1.5

* * * * *

2. 40 CFR 86.082-8(a)(1)(iii) is revised to read as follows:

§ 86.082-8 Emissions standards for 1982 model year light-duty vehicles.

(a) * * *

(1) * * *

(iii) Oxides of nitrogen—1.0 grams per vehicle mile, except that: (A) oxides of nitrogen emissions from 1982 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-duty diesel vehicles of the following 1982 model year engine families shall not exceed the prescribed levels:

Manufacturer	Engine family	NO_x (gpm)
General Motors Corp	5.7 liter (L)	1.5
Daimler-Benz AG	2.4L	1.25
	3.0L naturally aspirated (NA).	1.5
	3.0L turbocharged (TC).	1.5
AB Volvo	2.4L NA	1.5
Peugeot	2.3L-TC-XD2S	1.5
Volkswagen AG	1.6L-NA-2250 pounds inertia weight (I.W.).	1.3
	2.0L-NA-3000 I.W.	1.5
	1.6L-TC-2250 I.W.	1.3
	1.6L-TC-2500 I.W.	1.4
	2.0L-TC-3000 I.W.	1.5
Nissan Motor Co	2.8L	1.5

* * * * *

(Secs. 202 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7601(a) (Supp. I 1977))

[FR Doc. 81-263 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-33-M

ENVIRONMENTAL PROTECTION AGENCY

[EN-FRL 1719-5a]

Application for Waiver of the 1981-1982 Model Year Oxides of Nitrogen Emission Standard for Light-Duty Diesel Motor Vehicles—Fourth Decision of the Administrator

I. Introduction

This is the fourth decision I have issued under section 202(b)(6)(B) of the Clean Air Act, as amended (Act) [1] regarding applications from automobile manufacturers for waiver of the 1.0 gram per mile (gpm) oxides of nitrogen (NO_x) emission standard scheduled to apply to 1981 and subsequent model year light-duty diesel vehicles and engines.[2]

As the introductions to the first three diesel NO_x waiver decisions explain, section 202(b)(1)(B) of the Act establishes the standards applicable to NO_x emissions from light-duty vehicles and engines manufactured during and after model year 1977.[3] This section requires the Administrator of the Environmental Protection Agency (EPA) to promulgate regulations containing standards which provide that NO_x emissions may not exceed 2.0 gpm for model years 1977 through 1980, and may not exceed 1.0 gpm for 1981 and later model years.

Section 202(b)(6)(B) of the Act provides that, upon the petition of a manufacturer, the Administrator may waive the 1.0 gpm NO_x standard to a level not to exceed 1.5 gpm, for any class or category of diesel-powered light-duty vehicles and engines manufactured during the four model year period beginning with model year 1981. In order to obtain a waiver, the manufacturer must show that the waiver is necessary to permit use of diesel engine technology in the class or category of vehicles or engines for which it has requested a waiver. Moreover, the Administrator must determine:

(i) That such waiver will not endanger public health,

(ii) That such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the energy Policy and Conservation Act (EPCA), and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under EPCA at the expiration of the waiver.[4]

On August 29, 1980, I received an application from Nissan Motor Company, Ltd. (Nissan) for waiver of the 1981 and 1982 1.0 gpm NO_x standard for its 2.8 liter (L) diesel engine family. EPA held a public hearing to consider this application on September 19, 1980. The transcript of this hearing, the materials submitted by the applicant in its waiver request, and all other information upon which I have based my decision on this waiver request, including the technical appendix cited below, are included in EPA Public Docket EN-80-15.[5]

II. Summary of Decision

A. Waiver Application Granted

The application which I have decided to grant covers the following engine family for the model years specified:

Waiver Applications Granted

Manufacturer	Model year	Engine family
Nissan	1981, 1982	2.8L

As discussed more fully below, I have concluded that Nissan's application covering this engine family meets each of the statutory criteria for receiving a waiver for the years noted. I am prescribing an interim NO_x standard of 1.5 gpm for Nissan's 2.8L engine family for model years 1981 and 1982.

III. Discussion

A. Assessing Need for Waivers

Section 202(b)(6)(B) of the Act expressly assigns to an applicant the burden of showing that the waiver is necessary to permit the use of diesel engine technology in a particular class or category of vehicles or engines. The major issue I must address under this criterion is whether the applicant has shown that unless I grant the waiver, the engine family which the waiver request covers will not be able to meet applicable emission standards, even with the addition of any device, equipment or aspect of diesel engine technology presently available or expected to become available during the period covered by the waiver request.[6]

1. *Decision Methodology*

The methodology this decision employs to assess an engine family's need for a waiver is the same as the methodology I used in my first three diesel NO_x waiver decisions.[7] This methodology includes an evaluation of the effect of NO_x emission controls on emissions of particulate matter. This evaluation relies on information supplied by Nissan in this proceeding, and by parties commenting in the diesel particulate rulemaking proceedings,[8] as well as on other information contained in the record for this decision.

2. *Nissan's Application*

Nissan has reached a stage in its development of NO_x emission controls at which it has narrowed the range of strategies it contemplates employing to meet the applicable emission standards[9] to, at most, a few alternative systems. To support its contention that a waiver is necessary to permit the use of diesel technology for its 2.8L engine family, Nissan has provided descriptions of the systems it has been considering in efforts to meet 1981 and later model year emission standards.

Nissan has concentrated its development efforts on the following two NO_x emission control techniques: engine modification, and exhaust gas recirculation (EGR). Nissan asserted that engine modifications resulted in a tradeoff between NO_x and HC that made simultaneous attainment of the statutory HC and NO_x standards impossible.[10] Nissan also stated that this tradeoff is most pronounced when NO_x is lowered to 1.5 gpm and below; thus, Nissan asserted it was impossible

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[1] 42 U.S.C. 7521(b)(6)(B) (Supp. I 1977).

[2] The first consolidated decision was published at 44 FR 5480 (Jan. 23, 1980) (hereinafter "Orig. decision"). The second consolidated decision was published at 45 FR 34718 (May 22, 1980) (hereinafter "Second decision"). The third decision was published at 45 FR 64590 (Oct. 2, 1980) (hereinafter "Third decision").

[3] 42 U.S.C. 7521(b)(1)(B) (Supp. 1 1977). See the first diesel NO_x waiver decision for a discussion of the statutory history leading to this provision. Orig. decision at 5480, n.1.

[4] For a discussion of the Congressional purpose behind this provision, see the discussion accompanying notes 2 and 3 of my original decision at 5480. EPA published guidelines for the submission of applications under this waiver provision at 43 FR 30341 (July 14, 1978) (hereinafter "Guidelines").

[5] EPA Public Docket EN-80-15 can be found in EPA's Central Docket Section, Gallery I, 401 M St., S.W., Washington, D.C. 20460. Copies of materials in the docket, including the technical appendix, may be obtained by writing to this address at Mail Code (A-130).

[6] Guidelines, at 30342. Beginning with the 1981 model year, applicable statutory standards are 0.41 gpm hydrocarbons (HC), 3.4 gpm carbon monoxide (CO), and 1.0 gpm NO_x. Beginning in the 1982 model year, the light-duty diesel vehicle particulate standard of 0.6 gpm takes effect. That standard becomes 0.2 gpm as of the 1985 model year. 45 FR 14496 (March 5, 1980).

[7] For a more complete discussion of the methodology employed, see Orig. decision at 5484-5485.

[8] EPA Public Docket No. OMSAPC-78-3.

[9] See footnote 6.

[10] Nissan Motor Co., Ltd. Application for Waiver of the 1981 and 1982 NO_x Emission Standard for Light-Duty Diesel Engines, dated August 29, 1980 (hereinafter "Nissan App.") 1-2; transcript of September 19, 1980 Public Hearing on Waiver of 1981 NO_x Emission Standards (hereinafter "Tr") 12. Engine modifications that Nissan has researched include changes in prechamber configuration, combustion chamber insulation and changes in fuel injection systems specifications. Nissan App. II-2.

to meet even a 1.5 gpm NO_x standard while meeting other applicable standards with engine modifications.[11] Nissan also noted that certain engine modifications adversely affected vehicle operation characteristics, such as increased smoke emissions and cold startability difficulties.[12]

As a result of the difficulties Nissan perceived in utilizing engine modifications as its primary method of NO_x control, Nissan stated that it has shifted the emphasis of its efforts to developing EGR systems, which it now considers its primary NO_x control strategy.[13]

Specifically, Nissan began its EGR; system development program with a mechanically controlled intake throttle system.[14] Nissan stated, however, that it encountered the following problems with this system: accelerator pedal that is difficult for the operator to depress, variability in EGR amounts, smoke, engine part wear, engine oil deterioration, and throttle valve deposits resulting from soot.[15] Nissan also asserted that this system was incapable of achieving its design targets for HC, CO and particulates. As a result of these concerns Nissan began development work on an electopneumatic EGR system. This system exhibits advanced electronic sensing capabilities, thereby enabling more precise control of the amount of EGR and engine operation modes where EGR is activated.[16]

Nissan asserts, however, that despite their development efforts, this "prime" EGR system is still encountering the following problems:

(1) NO_x reduction to levels that Nissan considers necessary to certify to a 1.0 gpm standard results in a significant increase in HC and particulate emissions, as well as visible smoke.

(2) the deterioration factors for HC and particulate emissions also increase significantly as NO_x emissions approach 1.0 gpm.

(3) An increase in EGR rate yields unacceptable engine wear. Specifically, when Nissan increases the EGR rate, more soot is produced with mixes with the engine oil, decreasing its lubricating capabilities.[17]

Nissan believes that the only way to avoid these engine durability problems is to employ a lower EGR rate than it is presently using on its development vehicles.[18] With a lower EGR rate, however, Nissan states that it will only be capable of achieving a 1.5 gpm NO_x level, thereby necessitating a waiver to that interim standard.[19]

My technical analysis of the data Nissan submitted shows the 2.8L engine family to be incapable of meeting both the 1.0 NO_x and 0.41 HC standards simultaneously in 1981, even employing Nissan's more advanced electropneumatic EGR system.[20]

Specifically, the Monte Carlo statistical simulation for a 2.8L prototype vehicle equipped with an advanced electropneumatic EGR system predicts that the vehicle will easily meet the 1.0 NO_x and 3.4 CO standards, but will fail the 0.41 HC standard.[21] Information in the record does not indicate that any other technological options are available that would be likely to enable this engine family to reduce HC emissions to the statutory level while still maintaining compliance with the statutory NO_x standard.[22] Granting Nissan a waiver, however, would also permit it to reduce HC emissions, smoke emissions, and engine wear using techniques that would be likely to have the effect of increasing NO_x.[23] Thus, I have determined that Nissan needs the waiver it has requested in order to use this diesel engine family in the 1981 model year.

With regard to the 1982 model year, Nissan has indicated that it does not expect to have solved all the problems with its EGR system so that it would be able to meet applicable standards.[24] There may be a number of approaches Nissan could use to reduce HC without failing to meet the NO_x and CO standards.[25] Nonetheless, if a waiver for model year 1982 is granted, Nissan will have the opportunity to further develop its emission control systems and to gain experience that will help it meet the emission standards in 1983.[26]

The data which Nissan has sumitted to support its position do not necessarily show that without a waiver to the maximum permissible NO_x standard of 1.5 gpm this engine family will not be able to meet in interim NO_x standard between 1.0 gpm and the maximum permissible 1.5 gpm in production. Nevertheless, a significant risk does exist that, were I to set an interim standard greater than 1.0 gpm but less than 1.5 gpm, Nissan may conclude that it needs to further reduce NO_x levels by using higher rates of EGR, thus potentially increasing particulate emissions.[27] As the public health discussion in this decision points out, I have concluded that increased particulate emission pose potentially greater health risks than increased NO_x emissions. As a result, I am setting an interim NO_x standard of 1.5 gpm because available information shows a significant risk that Nissan needs the waiver in order to keep down the rate of EGR it will use to meet the NO_x standard.

B. Endangerment to Public Health

In order to grant a waiver request, section 202(b)(6)(B)(i) requires me to determine that a waiver of the statutory NO_x standard of 1.0 gpm would not endanger public health. Congress intended my assessment of this criterion to include consideration of the potential health effects of unregulated pollutants from diesel engines as well as the health effects associated with increased NO_x emissions.[28]

1. Oxides of Nitrogen (NO_x)

In my first two decisions, I concluded that the potential impact on ambient NO_x levels resulting from NO_x waivers which I granted would not be significant.[29] Granting waivers for the vehicle classes listed above will not alter this conclusion. The potential impact on NO_x levels resulting from granting these additional waivers, even when combined with the impact from the waivers I granted earlier, will not be significant.

[11] Nissan App., p. I-2, II-18; Tr. 9.
[12] Nissan App., p. II-3, II-4, II-18, II-19; Tr. 10.
[13] Nissan App., p. II-80; Tr. 21.
[14] Nissan App., II-41.
[15] Nissan App., II-44 to II-48.
[16] Nissan App., II-66 to II-67.
[17] Nissan App. II-68; Tr. 26-29.
[18] Tr. 10, 35.
[19] Tr. 11.
[20] Summary of Nissan's Technological Capability, (hereinafter Appendix A) § V.
[21] Appendix A, § V.
[22] Nissan described attempts to reduce HC emissions in its prime electropneumatic EGR system but stated that no improvement has proven successful at achieving all emission standards simultaneously. Nissan App. at II-85. However, the EPA technical staff identified potential engine modifications that might be used by Nissan to reduce HC and particulates without having significantly adverse effects on NO_x. The technical staff could not fully evaluate these modifications since Nissan did not submit test data regarding these items that could be used to develop quantifiable projections of vehicle emissions. Appendix A § IV.
[23] Nissan App. at II-81.
[24] Tr. 23.
[25] See note 23, *supra*.
[26] Tr. 12-13. The waiver in 1982 will give Nissan an opportunity to phase-in its new NO_x control technology in that it will be able to use lower rates of EGR until it has eliminated problems associated with use of its electropneumatic EGR system at lower NO_x levels.
[27] Appendix A § IV.
[28] See, e.g., H.R. Rep. No. 294, 95th Cong., 1st Sess. 19, 237, 250-51 (1977); S. Rep. No. 127, 95th Cong., 1st Sess. 70 (1977).
[29] Orig. decision at 5488-89; second decision at 34722.

2. *Particulates*

My main health concern in these proceedings relating to emissions from diesel engines is over potential increased emissions of diesel particulates and focuses on the potential for an increase in the incidence of respiratory ailments, and the potential that organic components of the diesel particulates are carcinogenic.[30] These concerns warrant action, where appropriate, that would minimize particulate emissions from light-duty diesels. It is undisputed that the projected increase in diesel light-duty vehicle production will increase ambient total suspended particulates and consequently human exposure to respirable particulates.[31] This fact underscores my concern for action minimizing particulate emissions from light-duty diesels.

In my first two consolidated decisions, I noted that to the extent that waivers are granted, the applicants will be able to market diesel vehicles that emit more particulates than would gasoline-powered vehicles. However, my assessment of the risk posed by these emissions must be made in light of the potentially greater risk posed by the particulate emission levels that might result from waiver denial.[32] If I deny a waiver, an applicant may attempt to manufacture the diesels and successfully certify them in compliance with the 1.0 gpm NO_x standard. As part of an all-out effort to market vehicles complying with a 1.0 gpm NO_x standard, a manufacturer might decide to incorporate technology that places upward pressure on particulate emissions.[33]

Nissan indicated that without a waiver, it would not be able to market these diesel models in model years 1981 and 1982.[34] Upon further questioning, however, Nissan stated that because this engine family occupies a significant place in Nissan's marketing and sales plans, Nissan would continue its development efforts and attempt to market a diesel meeting the unwaived NO_x standard.[35]

Nissan indicated that it plans to use an EGR system to meet either a 1.0 gpm NO_x standard if the waiver is granted or a 1.5 gpm NO_x standard if the waiver is denied.[36]

Moreover, Nissan stated that at this point in its production schedule, the only modification it could make to bring NO_x emissions from its 1.5 gpm system down to 1.0 gpm is to increase the EGR rate.[37]

Nissan stated that vehicles in this engine family equipped with NO_x control systems employing a higher rate of EGR, emit more particulates than vehicles employing lower EGR rates.[38] EPA's technical analysis of the data submitted by Nissan confirms that for most of the vehicles in this engine family there is indeed an increase in particulate emissions when the EGR rate is increased.[39]

By granting a waiver and establishing a 1.5 gpm interim NO_x standard that Nissan will be able to meet without using increased EGR rate for its 2.8L engine family, I can avoid giving rise to the risk that Nissan will produce this engine family using the EGR system calibrated to a 1.0 gpm NO_x standard with higher particulate emissions. A waiver denial therefore could result in total particulate emissions being greater than if the waiver were granted. Because increased particulates pose potentially greater health risks than increased NO_x, I conclude that granting waivers for Nissan's 2.8L engine family, thereby precluding any need for Nissan to use increased EGR systems that exhibit higher particulate emissions, is more protective of the public health than waiver denial.[40]

C. Fuel Economy and Long Term Air Quality Benefit

Fuel economy and long term air quality considerations are contained in second and third criteria of section 202(b)(6)(B).[41] I conclude that Nissan's 2.8L diesel engine family will be capable of meeting or bettering Federal fuel economy standards both in the short and long term.[42] I also conclude that Nissan's engine family has the capability for long term air quality benefit.[43]

D. Final Decision and Amended Rule

Section 202(b)(6)(B) of the Act grants me the authority to waive the statutory standard of 1.0 gpm NO_x and to prescribe interim standards which provide that NO_x emissions may not exceed 1.5 gpm for any class or category of diesel light-duty vehicles or engines manufactured during model years 1981, 1982, 1983, and/or 1984 which meet the statutory waiver criteria. Based upon the foregoing discussion I am granting the requested waiver of the 1.0 gpm NO_x standard for Nissan's 2.8L engine family, for model years 1981 and 1982, and simultaneously promulgating an interim standard of 1.5 gpm for this engine family for model years 1981 and 1982.

Dated: December 23, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 81-264 Filed 1-5-81; 8:45 am]

BILLING CODE 6560-33-M

[30] Orig. decision at 5489; second decision at 34722. Although there is no current definitive epidemiologic evidence establishing cancer risk from exposure to diesel particulates, the uncertainty surrounding the potential health risk posed by diesel particulates warrants a cautious approach in regulating the vehicles which produce them.

[31] Diesel-powered vehicles emit particulates at a far greater rate than catalyst-equipped gasoline-powered vehicles. Orig. decision at 5489–5490; second decision at 34722.

[32] Orig. decision at 5489; second decision at 34722.

[33] Since the 0.6 gpm particulate standard does not take effect until 1982 (see footnote 6), a manufacturer could arguably increase the EGR rate in its 1981 model year diesel vehicles, thereby lowering the NO_x emissions from those vehicles below the 1.0 gpm standard, without concerning itself with violating any particulate standard. Moreover, the particulate standard I promulgated for the 1982 model year is a technology-based standard that reflects the greatest degree of particulate emission reduction achievable through the application of technology which I have determined will be available for a given model year, considering lead time and other constraints. 42 U.S.C. 7521(a)(3)(A)(iii). An upward pressure on particulate emissions from increasing the EGR rate still could present a risk to the public health, even though the increase in particulate emissions would not cause a manufacturer to be in violation of a particulate standard.

[34] Tr. 12, 16.

[35] Tr. 12, 15, 18, 23.

[36] Tr. 21, 23.

[37] Nissan App. I–7, 23.

[38] Nissan App. I–2, I–7; Tr–12, 13, 15, 16.

[39] Appendix A. § VI.

[40] I used the same reasoning in my Original decision at 5490–5492 and second consolidated decision at 34723 when granting waivers for Peugeot's and VW's engine families.

[41] Clean Air Act, as amended, § 202(b)(6)(B)(ii) and (iii), 42 U.S.C. 7521(b)(6)(B)(ii) and (iii) (Supp. I 1977). For a discussion of the methods by which I make the statutory determinations which these criteria require, see sections III(C) and III(D) of my original decision at 5493–5494.

[42] Appendix A. § IV, VI; Nissan App. 1–5, IV–1; and Tr. 13.

[43] Appendix A. § II. Nissan stated that with the aid of microprocessors that should be available by model year 1983, it believes it will be able to meet all applicable emission standards, including the 0.6 gpm standard EPA promulgated for particulates. Nissan App. I–7, Tr. 23, 36.

ENVIRONMENTAL PROTECTION AGENCY

[EN-FRL 1719-6]

40 CFR Part 86

Revised Motor Vehicle Exhaust Emission Standards for Oxides of Nitrogen (NO_x) for 1981-1982 Model Year Light-Duty Diesel Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation establishes oxides of nitrogen (NO_x) emission standards for 1981-1982 model year light-duty vehicles belonging to certain diesel vehicle classes for which I have granted waivers from the standard otherwise applicable under section 202(b)(6)(B) of the Clean Air Act, 42 U.S.C. 7521(b)(6)(B).

EFFECTIVE DATE: February 5, 1981.

ADDRESS: Information relevant to this rule is contained in Public Docket EN-80-21 at the Central Docket Section of the Environmental Protection Agency (EPA), Gallery I, 401 M Street, S.W., Washington, D.C. 20460 and is available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services.

FOR FURTHER INFORMATION CONTACT: Mike Randall, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION: Section 202(b)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7521(b)(1)(B), requires that regulations applicable to NO_x emissions from light-duty vehicles or engines manufactured during or after the 1981 model year shall contain standards which provide that such emissions from vehicles or engines shall not exceed 1.0 gram per vehicle mile. Regulations implementing this requirement have established this NO_x standard.

Section 202(b)(6)(B) of the Act authorizes the Administrator, upon application by any manufacturer, to waive the statutory NO_x standard for the 1981 through 1984 model years for any class or category of light-duty diesel vehicles or engines for which the Administrator can make the required statutory findings. I must promulgate interim NO_x standards applicable to the subject light-duty diesel classes for those model years for which I have granted waivers.

Both Isuzu Motors Limited (Isuzu) and General Motors Corporation (GM) have also submitted requests for a waiver for one engine family each. The statutory criteria, my determinations with respect to the vehicle models covered by the waiver applications, and my decision to grant the waiver applications appear in the consolidated decision published along with this notice. In that decision, I granted waivers covering the following engine family for the 1981 and 1982 model years:

Manufacturer and engine family
Isuzu—1.8L
GM—1.8L

Having decided to grant waiver applications for these diesel vehicle classes, I am simultaneously promulgating regulations adopting emission standards not permitting NO_x emissions from 1981 and 1982 model year vehicles of these vehicle classes to exceed the prescribed levels. The public has received an opportunity to comment on the waiver applications at issue, and I have considered those comments in making the decision which requires the promulgation of this rule. For this reason, I find that providing notice and an opportunity to comment on this rulemaking before final promulgation is impracticable and unnecessary.

Note.—The Environmental Protection Agency has determined that this action does not constitute a major proposal requiring preparation of a Regulatory Analysis under Executive Order 12044.

In addition, because the decision accompanying this rulemaking is based on a detailed analysis indicating that this rulemaking will have a negligible effect on air quality, the Environmental Protection Agency has not prepared an Environmental Impact Statement to accompany this rulemaking.

Dated: December 23, 1980.

Douglas M. Costle,
Administrator.

40 CFR Part 86 is amended as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, 1977 and Later Model Year New Light-Duty Trucks and 1977 and Later Model Year New Heavy-Duty Engines

1. 40 CFR 86.081-8(a)(1)(iii) is revised to read as follows:

§ 86.081-8 Emissions standards for 1981 model year light-duty vehicles.

(a) * * *
(1) * * *

(iii) Oxides of nitrogen—1.0 grams per vehicle mile, except that: (A) Oxides of nitrogen emissions from 1981 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-duty diesel vehicles of the following 1981 model year engine families shall not exceed the prescribed levels:

Manufacturer	Engine family	Standard (gpm)
General Motors Corp.	5.7 liter (L)	1.5
	1.8L	1.5
Daimler-Benz AG	2.4L	1.5
	3.0L naturally aspirated (NA).	1.5
	3.0L turbocharged (TC).	1.5
AB Volvo	2.4L NA	1.5
Peugeot	2.3L-TC-XD2S	1.5
Volkswagen AG	1.6L-NA-2250 pounds inertia weight (I.W.).	1.3
	1.6L-NA-2500 I.W.	1.4
	2.0L-NA-3000 I.W.	1.5
Nissan Motor Co.	2.8L	1.5
Isuzu Motors, Ltd.	1.8L	1.5

* * * * *

2. 40 CFR 86.082-8(a)(1)(iii) is revised to read as follows:

§ 86.082-8 Emissions standards for 1982 model year light-duty vehicles.

(a) * * *
(1) * * *

(iii) Oxides of nitrogen—1.0 grams per vehicle mile, except that: (A) Oxides of nitrogen emissions from 1982 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-duty diesel vehicles of the following 1982 model year engine families shall not exceed the prescribed levels:

Manufacturer	Engine family	Standard (gpm)
General Motors Corp.	5.7 liter (L)	1.5
	1.8L	1.5
Daimler-Benz AG	2.4L	1.25
	3.0L naturally aspirated (NA).	1.5
	3.0L turbocharged (TC).	1.5
AB Volvo	2.4L NA	1.5
Peugeot	2.3L-TC-XD2S	1.5
Volkswagen AG	1.6L-NA-2250 pounds inertia weight (I.W.).	1.3
	2.0L-NA-3000 I.W.	1.5
	1.6L-TC-2250 I.W.	1.3
	1.6L-TC-2500 I.W.	1.4
	2.0-TC-3000 I.W.	1.5
Nissan Motor Co	2.8L	1.5
Isuzu Motors, Ltd.	1.8L	1.5

(Secs. 202 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7601(a)(Supp. I 1977))

[FR Doc. 81-265 Filed 1-5-81; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[NEW-FRL 1719-6a]

Applications for Waiver of the 1981-82 Model Year Oxides of Nitrogen Emission Standard for Light-Duty Diesel Motor Vehicles—Fifth Decision of the Administrator

I. Introduction

This is the fifth decision I have issued under section 202(b)(6)(B) of the Clean Air Act, as amended (Act)[1] regarding applications from automobile manufacturers for waiver of the 1.0 gram per mile (gpm) oxides of nitrogen (NO_x) emission standard scheduled to apply to 1981 and subsequent model year light-duty diesel vehicles and engines.

As the introduction to the first diesel NO_x waiver decisions explains, section 202(b)(1)(B) of the Act establishes the standards applicable to NO_x emissions from light-duty vehicles and engines manufacturered during and after model year 1977.[2] This section requires the Administrator of the Environmental Protection Agency (EPA) to promulgate regulations containing standards which provide that NO_x emissions may not exceed 2.0 gpm for model years 1977 through 1980, and may not exceed 1.0 gpm for 1981 and later model years.

Section 202(b)(6)(B) of the Act provides that, upon the petition of a manufacturer, the Administrator may waive the 1.0 gpm NO_x standard to a level not to exceed 1.5 gpm for any class or category of diesel-powered light-duty vehicles and engines manufactured during the four model year period beginning with model year 1981. In order to obtain a waiver, the manufacturer must show that the waiver is necessary to permit the use of diesel engine technology in the class or category of vehicles or engines for which it has requested a waiver. Moreover, the Administrator must determine:

(i) That such waiver will not endanger public health,

(ii) That such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act ("EPCA"), and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under EPCA at the expiration of the waiver.[3]

On April 8, 1980, I received an application from Isuzu Motors Limited (Isuzu) for waiver of the 1981 and 1982 1.0 gpm NO_x standard for its 1.8 liter (L) diesel engine family. EPA held a public hearing on Isuzu's application on May 8, 1980. Based upon the transcript of that hearing and other information contained in the record on Isuzu's waiver request, I denied Isuzu's application because I concluded Isuzu had failed to establish that the waiver requested was necessary to permit the use of diesel engine technology for its 1.8L engine family. On October 24, 1980, I received from Isuzu a petition for reconsideration of my decision denying its waiver application.

On October 30, 1980, General Motors Corporation (GM) also applied for a waiver covering 1981 and 1982 model year vehicles using the same 1.8L diesel engine, which GM plans to purchase from Isuzu. GM intends to use this diesel engine in some of its 1981 and 1982 model year Chevettes. Both manufacturers' waiver requests included additional emission data on the 1.8L diesel engine family. EPA held public hearings on these waiver requests on November 17, 1980. The transcripts of these hearings, the materials submitted by the applicants in their original and follow-up waiver requests, and all other information upon which I have based my decision on this set of waiver requests are included in EPA Public Docket EN-80-21. The materials included in the dockets for all prior diesel NO_x waiver proceedings are incorporated by reference into this public docket.

II. Summary of Decision

A. Waiver Applications Granted

The applications which I have decided to grant cover the following engine families for the 1981 and 1982 model years:

Waiver Applications Granted

Manufacturer	Engine family
Isuzu	1.8L
GM	1.8L

As discussed more fully below, I have concluded that applications covering this engine family meet each of the statutory criteria for receiving a waiver for the years noted. I am prescribing an interim NO_x standard of 1.5 gpm for Isuzu and GM for these model years.

III. Discussion

A. Assessing Need for Waivers

Section 202(b)(6)(B) of the Act expressly assigns to an applicant the burden of showing that the waiver is necessary to permit the use of diesel engine technology in a particular class or category of vehicles or engines. The major issue I must address under this criterion is whether the applicant has shown that unless I grant the waiver, the engine family which the waiver request covers will not be able to meet applicable emission standards, even with the addition of any device, equipment or aspect of diesel engine technology presently available or expected to become available during the period covered by the waiver request.

1. *Decison Methodology*

The methodology this decision employs to assess an engine family's need for a waiver is the same as the methodolgy I used in my first two consolidated diesel NO_x waiver decisions.[4] This methodology includes an evaluation of the effect of NO_x emission controls on emissions of particulate matter. This evaluation relies on information supplied by applicants in this proceeding, and by parties commenting in the diesel particulate rulemaking proceedings, as well as on other information contained in the record for this decision.[5]

2. *Individual Applications*

a. *Isuzu Application*

Based upon technical analysis of the information in Isuzu's original waiver application, I denied Isuzu's waiver request because the analysis indicated that its 1.8L diesel engine without EGR NO_x control systems could still certify at a 1.0 gpm NO_x standard by incorporating the available technological improvement of advanced injection timing.[6] However, Isuzu has submitted information in its petition for reconsideration to show that this engine family will not be able to meet the 1.0 gpm NO_x standard. Isuzu's new information indicates that advancing injection timing on the 1.8L engine will

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[1] 42 U.S.C. 7521(b)(6)(B) (Supp. I 1977).

[2] The first consolidated decision was published at 44 FR 5480 (January 23, 1980) (hereinafter "Orig. decision"). The second consolidated decision was published at 45 FR 34718 (May 22, 1980) (hereinafter "Second decision"). The third decision was published at 45 FR 65490 (October 2, 1980). The fourth decision was signed on December 23, 1980.

[3] For a discussion of the Congressional purpose behind this provision, see the discussion accompanying notes 2 and 3 of my original decision at 5480. EPA published guidelines for the submission of applications under this waiver provision at 43 FR 30341 (July 14, 1978) (hereinafter "Guidelines").

[4] For a more complete discussion of the methodology employed, see Orig. decision at 5484-5485.

[5] EPA Public Docket EN-80-21 (EPA Public Docket OMSAPC-78-3 contains the record for the diesel particulate rulemaking).

[6] 45 FR 65491 (Oct. 2, 1980).

not result in a NO_x reduction.[7] Moreover, the data suggest that advancing injection timing can result in lower fuel economy and higher HC and particulate emissions.[8] Thus, I now have concluded that simply advancing injection timing will not enable this engine family meet a 1.0 gpm NO_x standard in model year 1981.

Without using a factor for advanced injection timing, a Monte Carlo statistical analysis of available extended-mileage emission data on prototype vehicles equipped with Isuzu's 1.8L engine projects that this engine family cannot certify for the 1981 model year at a 1.0 gpm NO_x standard.[9] In addition, Isuzu's prototype vehicle tested specifically for certification purposes for 50,000 miles failed to meet the 1.0 gpm NO_x standard.[10]

Some information in Isuzu's waiver application indicated that increasing this engine family's combustion chamber area ratio (i.e., the surface area of the combustion chamber compared to its volume) to 1.2 and advancing injection timing might help reduce NO_x emissions.[11] Isuzu explained, however, that increasing the combustion chamber area ratio to 1.2 and advancing injection timing in order to meet the 1981 NO_x standard will leave Isuzu's 1.8L engine unmarketable due to unacceptable levels of noise, smoke, and acceleration.[12] Moreover, my analysis of the record does not identify any other potentially available engine modifications that would be likely to enable this engine family to meet the 1981 model year statutory NO_x standard.

Isuzu has stated that its EGR NO_x control systems are very effective in meeting the 1.0 gpm NO_x standard, but they create engine durability difficulties and a 50% increase in particulates.[13] Although Isuzu believes its EGR technology will be sufficiently advanced by 1983 to meet the 1983 1.0 gpm NO_x and 0.6 gpm particulate standards, it stated it has no prospect of perfecting its EGR system for use on its 1.8L engine during the period covered by Isuzu's waiver request.[14] Since necessity for waivers is present when the only available emissions control technology capable of achieving necessary emissions reductions has the potential to cause unacceptable engine wear, I conclude that, despite the NO_x reduction capabilities of Isuzu's 1981 model year EGR system, a waiver is necessary for this Isuzu engine family for the 1981 model year.

For the 1981 model year, EPA's analysis projects that vehicles in this engine family could certify at a 1.2 gpm NO_x standard without incorporating any available EGR NO_x control system.[15] Isuzu, however, asserted that this engine family needs a waiver of the NO_x standard to 1.5 gpm in order for Isuzu to have adequate confidence that production vehicles of this engine family would meet applicable NO_x emission requirements.[16]

The data which Isuzu has submitted to support its position do not necessarily show that without a waiver up to 1.5 gpm this engine family will not be able to meet applicable NO_x emission requirements in production. Nevertheless, because of Isuzu's expressed position, a significant risk does exist that, were I to set an interim standard less than 1.5 gpm, Isuzu could conclude that it needs to further reduce NO_x levels by using EGR technology, thus tending to place an upward pressure on particulate emissions. As the public health discussion in this waiver decision points out, I have concluded that increased particulate emissions pose potentially greater health risks than increased NO_x emissions. As a result, I am setting an interim NO_x standard of 1.5 gpm because available information shows that a significant risk exists that Isuzu needs the waiver to minimize the likelihood that it will use EGR to meet any lower NO_x standard.[17]

With regard to the 1982 model year, Isuzu has indicated its intent to use California as a proving ground for technology designed to achieve NO_x emission levels below 1.0 gpm. Isuzu would then extend the technology of its 1982 California light-duty diesel vehicles to its 49-state models in the 1983 model year. I find that this phase-in period is necessary for Isuzu to identify and correct quality control problems that may arise with the application of the new control technology.[18]

b. *GM's Application*

GM intends to purchase Isuzu's 1.8L engine for use in its 1981 and 1982 model year Chevettes pursuant to a contractual agreement between GM and Isuzu.[19] Under this agreement, GM has no control over the design or development of the engine, and it may not make any substantial design changes to the engines after they have been purchased.[20] Isuzu develops and applies all calibrations on the engine.[21] Moreover, GM has indicated that due to design and tooling differences, EGR technology available for controlling NO_x on GM's V-8 diesel engines is inapplicable to the Isuzu 1.8L engine family.[22] Consequently, given the limited amount of lead time available to GM to explore other technological options for improving NO_x emission levels from the vehicles for which it plans to use diesel technology, the same analysis I used to assess Isuzu's waiver application applies to GM's application, and I conclude that a waiver of the 1981 and 1982 NO_x standard to 1.5 gpm is necessary to permit this engine family to comply with applicable NO_x emission requirements.

B. Endangement to Public Health

In order to grant a waiver request, section 202(b)(6)(B)(i) requires me to determine that a waiver of the statutory standard of 1.0 gpm NO_x would not endanger public health. Congress intended my assessment of this criterion to include consideration of the potential health effects of unregulated pollutants from diesel engines as well as the health effects associated with increased NO_x emissions.[23]

1. *Oxides of Nitrogen (NO_x)*

In my first two decisions, I concluded that the potential impact on ambient NO_x levels resulting from NO_x waivers which I granted would not be significant.[24] Granting waivers for the engine families listed above will not alter this conclusion. The potential

[7] The before and after emission tests results which Isuzu obtained on a vehicle from this engine family with and without the advanced injection timing support this conclusion. Transcript of Nov. 19, 1980 Public Hearing on the Reconsideration of Waiver Application of 1981 and 1982 Model Year Light Duty Diesel NO_x standards (hereinafter "Tr.") 112; Isuzu's Petition for Reconsideration p. 7.

[8] Tr. 59; Isuzu's Petition for Reconsideration p. 9.

[9] See unpublished Technical Appendix [Tech App.] to my third NO_x decision, p.3, EPA Public Docket EN-80-6.

[10] Isuzu's Petition for Reconsideration, p. 42.

[11] Isuzu Motors Application for Waiver of the NO_x Emission Standards for Light Duty Diesel Engines, April 1, 1980, Appendix B-15.

[12] Tr. 42. Isuzu also stated that insufficient lead time was available to permit it to change the area ratio for this engine family in time for its scheduled start of 1981 model year production. Tr. 13.

[13] Tr. 13, 59.

[14] Tr. 13.

[15] For a more complete discussion of the methodology employed, see Orig. decision at 5484-5485.

[16] Tr. 58, 59.

[17] Cf. Second decision at 34721.

[18] The California phase-in is necessary for Isuzu to mitigate the risks of national production, such as a recall of the national fleet, should it turn out that diesel vehicles with previously untried technology experience problems in complying with applicable emission standards in use. See discussion of the need for California phase-in in my original decision at 5485-5486, and my second decision at 34721.

[19] 45 FR 65491.

[20] Tr. 104.

[21] Tr. 52, 104.

[22] Tr. 120, 121.

[23] See, e.g., H.R. Rep. No. 294, 95th Cong. 1st Sess., 19, 237, 250-51 (1977); S. Rep. No. 127, 95th Cong., 1st Sess. 70 (1977).

[24] Orig. decision at 5488-89; second decision at 34722.

impact on NO_x levels resulting from granting these additional waivers, even when combined with the impact from the waivers I granted earlier, will not be significant.

2. *Particulates*

My main health concern in these proceedings relating to emissions from diesel engines is over potential increased emissions of diesel particulates and focuses on the potential that organic components of the diesel particulates are carcinogenic.[25] These concerns warrant action, where appropriate, that would minimize particulate emissions from light-duty diesels.

It is also undisputed that the projected increase in diesel light-duty vehicle production will increase ambient total suspended particulates and consequently human exposure to respirable particulates.[26] This fact underscores my concern for action minimizing particulate emissions from light-duty diesels.

In my first two consolidated decisions, I noted that to the extent that waivers are granted, the applicants will be able to market diesel vehicles that emit more particulates than would gasoline-powered vehicles. However, my assessment of the risk posed by these emissions must be made in light of the potentially greater risk posed by the particulate emission levels that might result from waiver denial.[27] If I deny a waiver, an applicant may attempt to manufacture the diesels and successfully certify them in compliance with the 1.0 gpm NO_x standard. As part of an all-out effort to market vehicles complying with a 1.0 gpm NO_x standard, a manufacturer might decide to incorporate technology that places upward pressure on particulate emissions.[28] This is the type of health risk I sought to avoid in my first two decisions.[29]

Isuzu has indicated that it and its dealers have made a substantial financial commitment to produce and promote this engine family for the domestic automobile market,[30] thereby creating a strong incentive for Isuzu to attempt to certify and market its 1.8L engine without a waiver. GM has stated that it has made a significant financial investment in tooling, engineering, and preparation costs to produce and market the 1.8L engine purchased from Isuzu, in the United States. Citing its quarterly financial statements, GM has also indicated that it is critical that it market a small fuel-efficient diesel engine at this time.[31] In order to remain on an equal footing with its competitors in this engine displacement class, GM has a strong incentive to attempt to certify and market the 1.8L engine even if a waiver is denied.

Isuzu has indicated that the technology it most likely would attempt to apply if I did not grant the waivers requested would involve adding currently available EGR NO_x control technology to the 1.8L engine Isuzu and GM intend to use for the U.S. market. Use of this technology would tend to place an upward pressure on particulate emission.[32]

By establishing a NO_x standard that Isuzu and GM will be able to meet without employing diesel technology using EGR for this diesel engine family, I can avoid giving rise to the risk that Isuzu and GM will market this diesel engine family or one like it under a 1.0 gpm NO_x standard with higher particulate emissions. Because increased particulates pose potentially greater health risks than increased NO_x, I conclude that granting waivers for Isuzu and GM, thereby precluding any need for the use of EGR systems that put upward pressure on particulates, is more protective of the public health than waiver denial.

C. Fuel Economy and Long Term Air Quality Benefit

Consideration of fuel economy and long term air quality benefit are required by the second and third criteria of section 202(b)(6)(B).[33] I conclude that the 1.8L engine families covered by the applications of Isuzu and GM are capable of meeting or bettering the fuel economy standards both in the short and long term.[34] Moreover, both Isuzu and GM have indicated that each 1.8L engine family covered by their respective applications has the potential to meet applicable standards at the expiration of the waiver period.[35] Therefore, I conclude that the 1.8L engine family covered by these applications has the capability for long term air quality benefit.

D. Final Decision

Section 202(b)(6)(B) of the Act grants me the authority to waive the statutory standard of 1.0 gpm NO_x and to prescribe interim standards which provide that NO_x emissions may not exceed 1.5 gpm for any class or category of diesel light-duty vehicles or engines manufactured during model years 1981, 1982, 1983, and/or 1984 which meet the statutory waiver criteria. Based upon the foregoing discussion I am granting the requested waiver of the 1.0 gpm NO_x standard for Isuzu's 1.8L engine family, and GM's 1.8L engine family for model years 1981 and 1982.

Dated: December 23, 1980.

Douglas M. Costle,

Administrator.

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[25] Orig. decision at 5489; second decision at 34722. Although there is no current definitive epidemiologic evidence establishing cancer risk from exposure to diesel particulates, the uncertainty surrounding the potential health risk posed by diesel particulates warrants a cautious approach in regulating the vehicles which produce them. See discussion in Orig. decision at 5490.

[26] Diesel-powered vehicles emit particulates at a far greater rate than catalyst equipped gasoline-powered vehicles. Original decision at 5489–5490; second decision at 34722.

[27] Orig. decision at 5490; second decision at 34722.

[28] Since the 0.6 gpm particulate standard does not take effect until 1982 (see footnote 6) a manufacturer could arguably increase the EGR rate in its 1981 model year diesel vehicles, thereby lowering the NO_x emissions from those vehicles below the 1.0 gpm standard, without concerning itself with violating any particulate standard. Moreover, the particulate standard I promulgated for the 1982 model year is a technology-based standard that reflects the greatest degree of particulate emission reduction achievable through the application of technology which I have determined will be available for a given model year, considering lead time and other constraints. 42 U.S.C. 7521(a)(3)(A)(iii). An upward pressure on particulate emissions from increasing the EGR rate still could present a risk to the public health, even though the increase in particulate emissions would not cause a manufacturer to be in violation of a particulate standard.

[29] For fuller discussion of this point, see pages 5490, 5492 of my original decision.

[30] Tr. 17.

[31] Tr. 107, 108.

[32] See text accompanying note 8, *supra*. Note also that if I were to deny this waiver request, GM might decide to procure diesel technology from another supplier of diesel engines which emit particulates at higher rates. Indeed, the particulate emissions data Isuzu supplied for its 1.8L engine family without EGR indicated that this engine family emits particulates at a very low rate compared to diesel engine families which other manufacturers plan to market. Isuzu's Petition for Reconsideration, p. 42.

[33] * * *

[34] See Tech. App. to my third NO_x decision, p. 21, EPA Public Docket EN-80-6.

[35] Tr. 54, 61–62, 135.

federal register

Tuesday
January 6, 1981

Part VIII

ACTION
Peace Corps

Volunteer Discrimination Complaint Procedure; Final Regulations

ACTION

PEACE CORPS

45 CFR Part 1225

Volunteer Discrimination Complaint Procedure

AGENCY: ACTION and Peace Corps.

ACTION: Final regulation.

SUMMARY: This regulation establishes a procedure for the handling of allegations of discrimination based on race, color, natural origin, religion, age, sex, handicap, or political affiliation which arise in connection with the enrollment or service of full-time Volunteers in Peace Corps and ACTION.

EFFECTIVE DATE: This regulation shall take effect on February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Bart Crivella, Director, Division of Equal Opportunity, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525 (202) 254–5940.

SUPPLEMENTARY INFORMATION: Section 12 of the Domestic Volunteer Service Act Amendments of 1979 (Pub. L. 96–143) extended to applicants for enrollment and Volunteers serving under both the Peace Corps Act (22 U.S.C. 2501 et seq.) and the Domestic Volunteer Service Act (42 U.S.C. 4951 et seq.) the nondiscrimination policies and authorities set forth in Section 717 of the Civil Rights Act of 1964, Title V of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. That section further directed that any remedies available to individuals under such laws, other than the right to appeal to the Civil Service Commission authorized by Section 717 of the Civil Rights Act of 1964, and transferred to the Equal Employment Opportunity Commission by Reorganization Plan Number 1 of 1978, shall be available to such applicants or Volunteers.

This amendment was necessary to ensure that such Volunteers were within the scope of the nondiscrimination provisions of the three cited Acts, since those Acts apply to either employees or recipients of Federal financial assistance. Under Section 5(a) of the Peace Corps Act and Section 415 of the Domestic Volunteer Service Act, Volunteers are not deemed Federal employees except for certain stated purposes. Furthermore, such Volunteers are not treated as recipients of Federal financial assistance.

However, aware of the unique status of domestic and international Volunteers, Congress, in extending the protection of the cited Acts to the Volunteers, did not require the *per se* adoption of the rules, regulations, and procedures extant under such Acts, but rather required that the Director, after consultation with certain designated entities, prescribe regulations specifically tailored to the circumstances of such Volunteers.

As required by statute in prescribing these regulations, ACTION and Peace Corps have consulted with the following entities: (1) The Equal Employment Opportunity Commission (EEOC) with regard to the application of the policies set forth in Section 717 of the Civil Rights Act of 1964; (2) the Interagency Coordinating Council and the Interagency Committee on Handicapped Employees with regard to the application of the policies set forth in Title V of the Rehabilitation Act of 1973; and (3) the Secretary of Health and Human Services, with regard to the application of the policies set forth in the Age Discrimination Act of 1975. This consultation process has been completed.

The proposed rule was published in the **Federal Register** for comment on September 19, 1980 (45 FR 62512). The Agency has considered the public comments received and has determined to adopt the proposed regulation with certain modifications. Discussed below are the provisions of the final regulation and the major public comments received in response to the proposed rule. While this regulation has been developed with consideration of comments from the public, as a matter involving Volunteers, it is exempt from the requirements of Executive Order 12044, "Improving Government Regulations."

I. Complaint Procedure

These regulations apply to the recruitment, selection, placement, service, or termination of Peace Corps or ACTION applicants, trainees, and Volunteers for full-time service in either a domestic or international program. They require that an aggrieved party who believes that he or she has been discriminated against must first meet with a Counselor to attempt an informal resolution of the matter. If this fails, a formal complaint may be filed with the Director of the Equal Opportunity Division of the Office of Compliance ACTION (EO Director). When the complaint is accepted, an investigation into the matter will be performed and submitted to both the EO Director and the complainant. The EO Director shall review the complaint file, including any additional statements provided by the complainant, and shall offer an adjustment of the complaint if it is warranted. If this adjustment is not acceptable to the complainant, or if the EO Director determines that such an offer is not warranted by the circumstances of the complaint, the file, including the EO Director's recommendation, will be forwarded to the appropriate agency Director for decision. The complainant will be notified of this action and of his or her right to appeal the recommendation. Upon receipt and review of the complaint file and any additional matter submitted by the complainant, the Director shall issue a final agency decision in writing to the complainant. If the complainant is dissatisfied with the final agency decision, the complainant may file in a timely manner a civil action alleging discrimination in the appropriate U.S. District Court.

II. Discussion of Comments Received

The Agency received a total of four (4) written comments—from one of the consultative agencies, from agency officials, and from a member of the public. The majority of such comments were of a technical nature and were incorporated into the final regulations. However, four (4) substantive issues dealt with in the proposed regulations were reviewed due to public comment.

Procedure for allegations of reprisal. The Interagency Coordinating Council in its role as a consultative agency recommended that the regulations should include a section that provides a procedure for persons alleging reprisal or retaliatory actions. The proposed regulation in § 1225.6 merely states that such persons will be free from restraint, coercion, discrimination, or reprisal at any stage of the complaint and pre-complaint procedure. Accordingly, § 1225.7 has been added which provides a procedure whereby such complaints will be handled.

Provision of Attorney Fees. A comment was received that suggested that the presently proposed section involving the provision of attorney fees (§ 1225.5) be expanded to authorize payment to representatives other than attorneys. After consideration, and discussion with the equal Employment Opportunity Commission, it was determined that the provision of fees should remain limited to attorneys. This is in accordance with the EEOC guidelines in this area (interim revised regulations published April 9, 1980; 45 FR 24130–33) issued to comply with several court decisions extending the statutory provision for attorney fees in a civil action to that work done during the administrative processing of a complaint. Therefore, this final

regulation has retained the authorization for attorney fees in accordance with the interim regulations of the EEOC, and in accordance with the courts' interpretation of Sections 706(k) and 717 of Title VII of the Civil Rights Act of 1964, as amended. (42 U.S.C. 2000e–16).

Time Limitations. A comment was received from the public that suggested that a fixed time limit should be imposed for the instigation and completion of investigations to insure even and prompt agency enforcement. The Agency does not believe a fixed time limit is necessary in this circumstance for two reasons. First, the aggrieved party has the option to file a civil action in the appropriate U.S. District Court after one hundred eighty (180) calendar days from the date of filing a complaint if there has been no final agency action (§ 1225.21). Second, given the diverse circumstances under which discrimination may be alleged due to the wide geographic area in which Peace Corps and domestic Volunteers serve, the Agency believes a fixed time limit would be impractical and that the commitment presently given in the regulations to investigate and promptly process complaints is a sufficient safeguard.

Corrective Action. As proposed, the section (§ 1225.10) states that although the agency is committed to placing the aggrieved Volunteer in the same position held prior to his or her early termination, several programmatic considerations such as the continued availability of the position or program, and acceptance by the host country to the placement may preclude such placement. The final regulation states that if the same position is deemed no longer available, the agency will attempt to place the aggrieved party in as similar a position as possible to the original position. However, this could result in an aggrieved party being required to undergo additional training and to make a new, full-term commitment to another volunteer position. In order to lessen the inconvenience that may result from such an extension of an aggrieved party's volunteer commitment, the final regulation will allow the Volunteer to exercise the option to resign for reasons beyond his or her control. This option will qualify the Volunteer, if in service for at least a year, for a certificate of satisfactory service, which entitles him or her to the benefits of non-competitive eligibility.

Accordingly, Part 1225 is added, as follows, to Title 45 of the Code of Federal Regulations:

PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Subpart A—General Provisions

Sec.

Subpart B—Processing Individual Complaints of Discrimination

Subpart C—Processing Class Complaints of Discrimination

Authority: Secs. 417, 402(14), 420, Pub. L. 93–113, 87 Stat. 398, 407, and 414; Sec. 5(a), Pub. L. 87–293, 75 Stat. 613; Executive Order 12137, issued May 16, 1979.

Subpart A—General Provisions

§ 1225.1 Purpose.

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of Peace Corps and ACTION applicants, trainees, and Volunteers for full-time service.

§ 1225.2 Policy.

It is the policy of Peace Corps and ACTION to provide equal opportunity in all its programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, in the recruitment, selection, placement, service, and termination of Peace Corps and ACTION Volunteers. It is the policy of Peace Corps and ACTION upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

§ 1225.3 Definitions.

Unless the context requires otherwise, in this Part:

(a) "Director" means the Director of Peace Corps for all Peace Corps applicant, trainee, or Volunteer complaints processed under this Part, or the Director of ACTION for all domestic applicant, trainee, or Volunteer complaints processed under this Part. The term shall also refer to any designee of the respective Director.

(b) "EO Director" means the Director of the Equal Opportunity Division of the Office of Compliance, ACTION. The term shall also refer to any designee of the EO Director.

(c) "Illegal discrimination" means discrimination on the basis of race, color, national origin, religion, age, sex, handicap or political affiliation as defined in Section 5(a) of the Peace Corps Act (22 U.S.C. 2504); Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000–16); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, et seq.); and the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR Part 1604; Religious Discrimination: 29 CFR Part 1605; National Origin Discrimination: 29 CFR Part 1606; Age Discrimination: 45 CFR Part 90; Handicap Discrimination: 29 CFR 1613.701–707.

(d) "Applicant" means a person who has submitted to the appropriate agency personnel a completed application required for consideration of eligibility for Peace Corps or ACTION volunteer service. "Applicant" may also mean a person who alleges that the actions of agency personnel precluded him or her from submitting such an application or any other information reasonably required by the appropriate personnel as necessary for a determination of the individual's eligibility for volunteer service.

(e) "Trainee" means a person who has accepted an invitation issued by Peace Corps or ACTION and has registered for Peace Corps or ACTION training.

(f) "Volunteer" means a person who has completed successfully all necessary training; met all clearance standards; has taken, if required, the oath prescribed in either Section 5(j) of the Peace Corps Act (22 U.S.C. 2504), or Section 104(c) of the Volunteer Service Act of 1973, as amended (42 U.S.C. 104(c)) and has been enrolled as a full-time Volunteer by the appropriate agency.

(g) "Complaint" means a written statement signed by the complainant and submitted to the EO Director. A

complaint shall set forth specifically and in detail:

(1) A description of the Peace Corps or ACTION management policy or practice, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of the Peace Corps or ACTION officials which resulted in the alleged illegal discrimination;

(3) The manner in which the Peace Corps or ACTION action directly affected the complainant; and

(4) The relief sought.

A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

(h) "Counselor" means an official designated by the EO Director to perform the functions of conciliation as detailed in this part.

(i) "Agent" means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in § 1225.3(g) of this part, the complaint must meet the requirements for a class complaint as found in Subpart C of these regulations.

§ 1225.4 Coverage.

(a) These procedures apply to all Peace Corps or ACTION applicants, trainees, and Volunteers throughout their term of service with the Peace Corps or ACTION. When an applicant, trainee, or Volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this Part. At the discretion of the appropriate Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in Subpart C.

§ 1225.5 Representation.

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances:

(a) Informal adjustment of a complaint. An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EO Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the appropriate Director to be determined in the manner detailed in § 1225.11 of this Part.

(b) Final Agency Decision. When discrimination is found, the appropriate Director shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under § 1225.11. In the unusual situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the appropriate Director in his or her final decision shall set forth the specific reasons thereof.

§ 1225.6 Freedom from reprisal.

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in § 1225.8 of this part, or any time thereafter.

§ 1225.7 Review of allegations of reprisal.

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may, if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand.

Subpart B—Processing Individual Complaints of Discrimination

§ 1225.8 Precomplaint procedure.

(a) An aggrieved person who believes that he or she has been subject to illegal dicrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. The process for notifying the appropriate Counselor is the following:

(1) Aggrieved applicants, trainees or Volunteers who have not departed for overseas assignments, or who have returned to Washington for any administrative reason shall direct their allegations to the EO Director for assignment to an appropriate Counselor.

(2) Aggrieved trainees or Volunteers overseas shall direct their allegations to the designated Counselor for that post.

(3) Aggrieved applicants, trainees, and Volunteers applying for, or enrolled in ACTION domestic programs shall direct their allegations to the designated Counselor for that Region.

(b) Upon receipt of the allegation, the Counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution agreeable to all parties. The Counselor will keep a written record of his or her activities which will be submitted to the EO Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the Counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EO Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The Counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed once the agency has accepted a complaint of discrimination from the aggrieved party.

§ 1225.9 Complaint procedure.

(a) *EO Director.* (1) The EO Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein (a) when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or (b) the complainant shows that he or she was

prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or (c) for other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EO Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in § 1225.8 or is cancelled, the EO Director shall inform the aggrieved party in writing of this Final Agency Decision; that the Peace Corps or ACTION will take no further action; and of the right, to file a civil action as described in § 1225.21 of this part.

(2) Upon acceptance of the complaint and receipt of the Counselor's report, the EO Director shall provide for the prompt investigation of the complaint. Whenever possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EO Director and shall provide the complainant with a copy.

(3) The EO Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided the complainant. If the proposed adjustment of the complaint is not acceptable to the complainant, or the EO Director determines that such an offer is inappropriate, the EO Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendation of the proposed disposition of the complaint to the appropriate Director. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the appropriate Director. Within ten (10) calendar days of receipt of such notice, the complainant may submit his or her appeal of the recommended disposition to the appropriate Director.

(b) *Appeal to Director.* If no timely notice of appeal is received from the aggrieved party, the appropriate Director or designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the appropriate Director or designee, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the appropriate Director shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in § 1225.21 of this part, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

§ 1225.10 Corrective action.

When it has been determined by Final Agency Decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

(a) Selection as a Trainee for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to Volunteer service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a Volunteer will be placed in the same position previously held. However, reassignment to the specific country of prior service, or to the specific position previously held, is contingent on several programmatic considerations such as the continued availability of the position, or program in that country, and acceptance by the host country of such placement. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional two year commitment to volunteer service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the Director of Peace Corps or ACTION.

§ 1225.11 Amount of Attorney fees.

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the appropriate Director. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the appropriate Director shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: the time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

Subpart C—Processing Class Complaints of Discrimination

§ 1225.12 Precomplaint procedure.

An applicant, trainee or Volunteer who believes that he or she is among a group of present or former Peace Corps or ACTION Volunteers, trainees, or applicants for volunteer service who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in § 1225.8 of this part.

§ 1225.13 Acceptance, rejection or cancellation of complaint.

(a) Upon receipt of a class complaint, the Counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EO Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites.

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the Counselor's report, the EO Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he or she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the EO Director may decide to reject the allegation. If the explanation is satisfactory, the EO Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EO Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EO Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EO Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EO Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EO Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(f) The EO Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EO Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EO Director in a request under paragraphs (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

§ 1225.14 Consolidation of complaints.

The EO Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency.

§ 1225.15 Notification and opting out.

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint; (2) a description of the issues accepted as part of the class complaint; (3) an explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and (4) an explanation of the binding nature of the final decision or resolution of the complaint.

§ 1225.16 Investigation and adjustment of complaint.

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in § 1225.9 of this part shall apply.

§ 1225.17 Agency decision.

(a) If an adjustment of the complaint cannot be made the procedures outlined in § 1225.9 shall be followed by the EO Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The Final Agency Decision on a class complaint shall be binding on all members of the class.

§ 1225.18 Notification of class members of decision.

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the agency within ten (10) calendar days of the transmittal of its decision to the agent.

§ 1225.19 Corrective action.

(a) When discrimination is found, Peace Corps or ACTION must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with § 1225.10 of this part.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a Volunteer or received some other volunteer service benefit, the class member may file a written claim with the EO Director within thirty (30) calendar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or, in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EO Director.

§ 1225.20 Claim appeals.

(a) If the EO Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which

the claimant is entitled, the EO Director shall refer the claim, with recommendations concerning it to the appropriate Director for Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the appropriate Director concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The appropriate Director shall decide the issue within thirty (30) days of the date of referral by the EO Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision on the issue.

§ 1225.21 Statutory rights.

(a) A Volunteer, trainee, or applicant is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of notice of final action taken by the agency.

(2) After one hundred eighty (180) calendar days from the date of filing a complaint with the agency if there has been no final agency action.

(b) For those complaints alleging discrimination that occur outside the United States, the U.S. District Court for the District of Columbia shall be deemed the appropriate forum.

Signed at Washington, D.C., this 19th day of December 1980.

Sam Brown,

Director of ACTION.

Richard F. Celeste,

Director of Peace Corps.

[FR Doc. 81-231 Filed 1-5-81; 8:45 am]

BILLING CODE 6050-01-M

PEACE CORPS

22 CFR Part 306

Volunteer Discrimination Complaint Procedure

AGENCY: Peace Corps.

ACTION: Final regulation.

SUMMARY: This regulation establishes a procedure for the handling of allegations of discrimination based on race, color, national origin, religion, age, sex, handicap, or political affiliation which arise in connection with the enrollment or service of full-time Volunteers in both Peace Corps and ACTION programs.

EFFECTIVE DATE: This part shall take effect on February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Bart Crivella, Director, Division of Equal Opportunity, ACTION, 806 Connecticut Avenue NW., Washington, D.C. 20525 (202) 254-5940.

SUPPLEMENTARY INFORMATION: In a document published elsewhere in this part of today's **Federal Register**, ACTION issues a final regulation establishing a procedure for handling allegations of discrimination by volunteers. That regulation is codified at 45 CFR Part 1225. The proposed rule was published in the **Federal Register** for comment on September 19, 1980 (45 FR 62512). As detailed in the ACTION document today, the Agency has considered comments in the formulation of its final rule.

In this document, the Peace Corps adds a new part to its regulations in 22 CFR which indicates that the ACTION regulation in 45 CFR Part 1225 is applicable to Peace Corps volunteers.

Signed at Washington, D.C., this 19th day of December, 1980.

Richard F. Celeste,

Peace Corps Director.

Accordingly, a new Part 306 is added to 22 CFR Chapter III to read as follows:

PART 306—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Cross Reference: ACTION regulations concerning the volunteer discrimination complaint procedure, appearing in 45 CFR Part 1225, are applicable to Peace Corps volunteers.

(Secs. 417, 402(14), 420, Pub. L. 93-113, 87 Stat. 398, 407, and 414; Sec. 5(a), Pub. L. 87-293, 75 Stat. 613; Executive Order 12137, issued May 16, 1979)

[FR Doc. 81-345 Filed 1-5-81; 8:45 am]

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federal register

Tuesday
January 6, 1981

Part IX

Department of Energy

Residential Conservation Service Program

DEPARTMENT OF ENERGY

10 CFR Part 456

[Docket No. CAS-RM-79-101]

Residential Conservation Service Program

AGENCY: Department of Energy.

ACTION: Final amendments to Residential Conservation Service (RCS) Program Rule.

SUMMARY: The following notice amends the Final Rule which implemented the Residential Conservation Service Program and was issued as CAS-RM-79-101 in the Wednesday, November 7, 1979, issue of the **Federal Register**, Vol. 44, No. 217, Part II, pp. 64602-64727. This notice is issued to correct clerical, grammatical and typographical errors in the Final Rule which do not reflect policy changes of the Department as well as a small number of changes which reflect substantive changes to the Final Rule.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT:

James R. Tanck, Director, Residential Conservation Service Program, Office of Conservation and Solar Energy, Department of Energy, Room GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9161.

Laura Rockwood, Office of General Counsel, Department of Energy, Room 6B128, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction.

On November 7, 1979, the Department of Energy (DOE) published a Final Rule (44 FR 64602) to establish the Residential Conservation Service (RCS) Program to encourage and facilitate the installation of energy conservation measures and renewable resource measures. DOE also published on September 24, 1980, and September 25, 1980, as part of the Final Rule, material and installation standards. DOE was made aware of a number of amendments to the Final Rule which needed to be made to clarify DOE's position on several matters and to correct clerical errors. These amendments are incorporated here. Of the changes incorporated below, most are either typographical or grammatical. A number of non-clerical amendments are also included which affect no substantive change in the rule, but consist of clarifications or equivalents. Also included, however, are a small number of changes which substantively affect some portions of the Final Rule or a significant number of people.

In total, 35 comments were submitted. For most of the changes, no comments were submitted. A summary of the comments along with DOE's determination with respect to each applicable amendment follows below. For those amendments which are self-evident and which elicited no comment, no accompanying explanation is provided. Some comments were submitted which discussed issues not related to proposed amendments. These are outside the scope of this rulemaking and are not addressed here.

II. Discussion of Amendments.

Amendment 4: This amendment proposed adding a statement to the preamble regarding fire testing of organic cellular rigid board materials. The statement read "Only core materials, however, need be tested." This statement was added to the preamble to clarify our original intent as to how rigid board materials should be tested. Clarification of these testing procedures will permit the use of composite roofing materials with a foam plastic core. Because roofing materials are not installed adjacent to the living area of a house, fire safety requirements need not be as stringent. However, the foam plastic core in roofing material must meet the same fire safety requirements as foam plastic materials installed in other applications under the RCS program.

The one commenter who addressed this amendment also supported its adoption. This amendment is therefore incorporated into the preamble to the Final Rule.

Amendment 8: This amendment proposed adding a clarifying statement to the definition for ceiling insulation which read, "The term ceiling insulation also includes such material installed on the exterior of the roof." DOE never intended to exclude standard residential roof insulation from those applications where it is the most appropriate option. Installation standards were incorporated into § 456.907(m) for that purpose.

Many commenters addressed this amendment in the context of mobile home roofing insulation. However, since this amendment does not apply specifically to mobile homes, the treatment of mobile home roofing insulation is discussed under Amendment 16. Two commenters requested that the amendment be worded in such a way as to limit roofing insulation to mobile homes only. This is not DOE's intent. There are a few instances where exterior roof insulation is the only ceiling insulation option in buildings other than mobile homes and therefore this amendment is appropriate. DOE believes this change will cause little additional auditing burden. This amendment is added to the Final Rule.

Amendment 9: This amendment proposed correcting a typographical error by changing the recommended thermostat setting from 68°F in winter to 65°F.

Eleven utilities objected to this change because:

- 65°F is too low for the health and safety of many people including infants, the elderly, and the infirm;
- It would reduce the potential savings for all other *permanent* measures;
- It is unlikely that homeowners will comply and therefore the recommendation will result in a loss of credibility for the program;
- 65°F is outside the ASHRAE comfort zone;
- This is a major policy change and should therefore receive adequate notice and hearing; and
- This change will affect existing audit procedures and require changes in consumer publications.

DOE realizes that utilities have relied on the 68°F temperature setting printed in the November 7, 1979, Final Rule in developing their audits and, therefore, correction of this error would result in a substantive change to the RCS program. Also, 65°F is a recommended thermostat setting for commercial (not residential) buildings where occupancy is less than full-time and these buildings are clearly distinguishable from buildings subject to the RCS program. DOE also agrees with the utilities who commented that 65°F is not a practical recommendation on a national level. The recommendation for winter thermostat settings of 68°F will therefore be retained.

Amendment 10: This amendment proposed changing the term "Window Heat Gain Retardant" in § 456.105(v)(4)(iv) to "Window Heat Gain and/or Loss Retardants."

Two comments were submitted. One commenter pointed out that the amendment as proposed was grammatically incorrect. DOE proposed that the phrase "or wintertime heat loss" be inserted in § 456.105(v)(4)(iv) after the word "through." This was an error—the amendment should have said

"following the word 'gain', insert the phrase "or wintertime heat loss."

One utility commented that reflective films were not applicable in their service area where they were only interested in reducing summer heat gain. Window films are not affected by this proposal since they are separately treated as part of the measure "Heat Reflective and Heat Absorbing Window or Door Materials." If a negative cost-effectiveness of any measure can be substantiated under specified conditions, the State or nonregulated utility may propose in its plan to limit the applicability for that measure. (10 CFR 456.307(b)(2))

DOE will incorporate the corrected Amendment 10 in the Final Rule. DOE referenced the full range of benefits associated with window heat gain or loss retardants in the audit portion of the rule, and intended to be consistent when defining the term since both types of retardants (depending upon location and season) can be cost effective.

Amendment 12: This amendment addressed the treatment of requests for information submitted to DOE under the RCS program. The procedures proposed are consistent with DOE's Freedom of Information Act (FOIA) regulations, 10 CFR Part 1004 (44 FR 1908, January 8, 1979), and address the procedures by which an individual may make a claim of confidentiality.

One utility commented on this amendment by saying they wanted to maintain the confidentiality of their customers' billing information without fear of compromise. It is unlikely that utilities would need to request confidential treatment of information submitted to DOE in the context of the RCS program. However, should this be necessary, procedures in the DOE FOIA regulations accommodate this concern to the extent possible. The amendment will be incorporated in the Final Rule as proposed.

Amendment 13: DOE received a number of comments expressing concern that allowing the Secretary for "good cause" to waive submission requirements for plan amendments would prevent the public from providing adequate input to significant State plan amendments. It was requested that DOE either clarify what is meant by "good cause" or establish specific "good cause" criteria. DOE chooses not to itemize those circumstances in which the Secretary might waive some of the submission requirements because of the infinite hypothetical situations which can not be anticipated. However, DOE is concerned that the amendment reflect DOE's intention that submission requirements be waived only where the proposed amendment would not significantly affect the public. Therefore, DOE amends § 456.205(e)(2) with wording which is consistent with the DOE Organization Act notice and hearing provisions, 42 U.S.C. 7191(c)(1). Several commenters were concerned that DOE would waive notice and hearing requirements for submission of plan amendments that establish procedures for supply and installation of measures by utilities through independent subcontractors pursuant to section 216(c) of NECPA.

DOE does not intend to waive notice and hearing requirements for such plan amendments. This issue will also be addressed in the Final Rule concerning changes to the RCS regulations as a result of the passage of the Energy Security Act (ESA) (Pub. L. 96-294, 94 Stat. 611 *et seq.).*

Amendments 14, 28, 30, 38, 39, 42, 43, and 45: These proposed amendments are impacted by passage of the Energy Security Act (ESA). We are not finalizing them until the Proposed Rule implementing the ESA amendments (45 FR 66960, October 8, 1980) is finalized.

Amendment 16: This amendment proposed adding ceiling insulation for mobile homes as a program measure.

Eighteen utilities addressed this amendment. Most recommended deleting this amendment because:

- It would give a single manufacturer a price advantage since there does not appear to be a competitive market;
- No one has completed an objective, comprehensive cost-benefit analysis;
- There are no material or installation standards;
- Safety and effectiveness of the product has not been demonstrated in areas of very high temperatures, humidity, and winds;
- The product is not available in all areas of the country;
- Utilities have not had the opportunity to evaluate the product themselves; and
- Auditors will not be able to determine the presence of existing insulation in mobile homes to evaluate its cost effectiveness.

Several utilities recommended that if the amendment is adopted, that it should only apply to mobile homes without existing insulation. One utility recommended that the measure be applicable only to mobile homes built before 1976. Two utilities and two manufacturers submitted the results of a payback analysis which showed ceiling insulation in mobile homes to be a viable option when no existing insulation is present.

DOE still maintains that all energy conserving measures which reduce energy costs of low-income mobile home occupants are important. However, in light of the comments received, DOE will postpone any action on mobile home ceiling insulation until a comprehensive cost benefit analysis is completed, applicability criteria established, and standards developed. DOE agrees with the majority of the commenters who suggested that it may be premature to require mobile home ceiling insulation on a national basis without more analysis. In the meantime, DOE encourages States to consider incorporating this measure as a State measure.

Amendment 17: This amendment changes the applicability criteria for determining when an auditor must provide cost and savings estimates for a wind energy device in the customer's home. Several of the commenters responding to the proposed revision of the applicability criteria recommended retention of the criteria in the original form. These commenters stated that the original criteria was reasonable and provided at least indirect assurances of public safety, public access, and adequate room to properly install and maintain a wind system. In addition, some commenters believed that the original provisions would reduce potential noise complaints and avoid conflict with local codes and ordinances.

A significant number of the comments received suggested use of the proposed criteria with some revision. Several of these commenters requested the addition of set-back provisions ranging from a 50 foot set-back to one tower height plus one rotor radius. Others requested provisions for set-back from overhead utility lines.

The majority of the comments received requested provisions for conformance with local codes and ordinances, expressing concern for auditor liability and the cost of performing wind audits where local codes and ordinances would prevent the installation of a wind energy device.

Commenters, most extensively the State of Wisconsin, questioned the use of average annual wind speed as a criterion, stating their belief that use of the DOE sponsored wind resource data base would not yield credible estimates specific to individual site anomalies. DOE wishes to note several observations regarding these comments. First, the use of such data in support of a screening tool as to the general applicability of these devices on a broad scale appears reasonable to DOE. Second, the use of such data in support of the estimates generated through the audit process can be reasonable

provided that the audit does not yield a positive purchase recommendation for this measure but rather an indication to the homeowner as to the merit of pursuing further investigations including actions such as acquisition of extended site specific resource data or consultation with listed vendors prior to purchase. Finally, for States, such as Wisconsin, who wish to propose some method, believed to be analytically sound, specific to their jurisdiction, DOE is willing to review such proposals on a case specific basis provided that small energy wind conversion systems coverage under RCS is not adversely impacted.

One commenter suggested the addition of a space requirement criterion in order to assure that audits are performed only when there is sufficient room on the customer's property to properly install and maintain a wind energy device. One commenter suggested that there was insufficient time and data for DOE to properly evaluate the impacts of the propose change. The latter requested that no change be made until more is known about the effects of the proposed criteria, however, presented no data which conflicted with that utilized by DOE in making the proposal nor substantially refuted DOE's logic expressed the preamble to the proposed rule.

In response to the suggestions for revision of the proposed applicability criteria, substantial and constructive comments were received and considered. DOE believes, however, that the issues of safety operation and installation of a wind system, setback provisions for public access or overhead utility line clearance, and noise or electromagnetic interference, are dealt with to a reasonable degree in the Final Standard for Wind Energy Devices (§ 456.705(f)) published in the **Federal Register**, Vol. 45, No. 187, Wednesday, September 24, 1980. As stated in the preamble to that rulemaking, DOE believes that improvements upon that standard will be forthcoming from the consensus standards process, and intends to review such consensus standards at such time as they become available.

With regard to the comment requesting a minimum lot size to accommodate installation and maintenance of a wind system, DOE believes that this criterion is appropriate to the audit procedure and has included such a provision in the DOE model audit.

Promulgation of a criterion for a standard minimum space necessary to install and maintain a wind energy device is not possible without discrimination against either smaller wind systems or larger residential-sized wind systems. Therefore, DOE has not included this as an applicability criterion.

With respect to comments requesting an applicability criterion requiring compliance with local codes and ordinances, DOE wishes to note that § 456.307(b)(2)(ii) of the Final Rule addresses this issue as it relates to applicability criteria for all measures. The intent of DOE in promulgating this provision is that State and local laws that are more stringent than the RCS rules take precedence over the RCS rules. Local codes and ordinances which include a provision for exception or variance are not intended to be covered by this provision. However, DOE recommends that the RCS auditor advise the customer at the time of the audit if the installation of any RCS measure will require the customer to obtain a variance. DOE does not believe that the need for such a variance or exception procedure is grounds to exclude any program measure from the RCS audit. With increasing frequency, variances to local codes and ordinances have been obtained for residential wind energy devices in many States, including Oregon and Colorado, as well as the Virgin Islands.

With regard to comments regarding the availability of a credible wind data base, DOE believes that the final provisions of § 456.307(c)(10)(iii) provide sufficient technical criteria for data used to determine the wind resources criterion. DOE agrees, however, with commenters who requested some flexibility in the height at which the wind measurement is taken and has revised this provision to allow for the use of data adjusted to 10 meters as well as data collected at 10 meters. In order to insure uniform and credible data, DOE has prescribed the procedure for such adjustments to be consistent with § 456.505(d) (4) of the wind standards.

With respect to the commenter who requested a program measure exemption from performing wind audits due to the lack of qualified measuring stations recording 10 miles per hour (mph) average wind speed, DOE believes that such a request is appropriate to be made through the DOE State Plan review process and is not an issue pertinent to the proposed rule amendment. However, as expressed in the preamble to the Proposed Rule, there will be many occasions where installation of these devices in areas having lower than a 10 mph annual average wind speed can be economically justified depending upon local fuel or electricity prices, specific wind profiles contributing to the average value, and local product prices. Accordingly, lead agencies may elect to propose a resource criterion less than 10 mph in such circumstances. Further, as the body of resource data continues to expand, many areas (within general areas having less than the 10 mph average) will be established as having a wind resource in excess of the required minimum due to localized terrain features.

Amendment 21: This amendment was proposed to clarify that a State did not necessarily have to receive DOE audit validation *prior* to State plan approval. A State would, however, have to have requested DOE audit validation in a State Plan if a State elected not to validate its own audit.

One comment was submitted suggesting that the amendment implied that States no longer needed approval from DOE on audit procedures. This is not DOE's intent. We simply did not want to suspend plan approval until the audit procedure had been validated. The proposed amendment will be incorporated into the Final Rule.

Amendment 23: This amendment delineates the criteria for determining the average yearly wind speed as used in the applicability criteria for wind energy devices and defines a qualified measuring station for such determination. DOE received a number of substantive and useful comments regarding the proposed qualifications for a wind measuring station. The majority of the commenters supported the development of criteria which would qualify wind data for use in RCS. These commenters noted that credible data was necessary for a proper determination of the feasibility of a wind energy device.

A number of commenters pointed out that the criteria as proposed would exclude National Weather Service (NWS) measurement stations in their area. It was not the intent of DOE to promulgate criteria for qualification which would eliminate such credible wind data sources. In response to these comments, DOE has revised the criteria to establish what it considers the absolute minimum technical assurances for credible data collection. This revision includes lowering the required minimum anemometer height from 10 meters to 6 meters. DOE believes that data from recordings below this height are not routinely credible for the purpose of deciding whether an RCS audit for wind energy devices should be conducted. This change is accompanied by a revision of the applicability in § 456.307(b)(2)(iv) to allow for the use of

data adjusted upwards or downwards to 10 meters through the procedure described in 10 CFR 456.705(e)(4).

These two revisions will allow for the use of NWS data, as well as any other additional meaningful data sources identified by lead agencies. Finally, DOE and a number of States are considering establishment of anemometer loan programs which should yield additional data which is adequate for these criteria. Several utilities noted that there are areas within their service territory that are not close to a wind measuring station. These comments were received regarding the proposed applicability criteria, § 456.307(b)(2)(iv). DOE believes that the *Wind Energy Resource Atlases*, Volume 1 (GPO 061-000-00446-7) through 12 (NTIS-PNL3194-WERA-1 through 12), currently being prepared for publication by Battelle Memorial Institute, will provide a credible data source for such areas, and has allowed in the final rule the use of these atlases as an acceptable alternative data source in the audit procedure.

One commenter suggested that proof of certification of instrumentation at the time of purchase § 456.307(c)(1)(iii)(c), might not be sufficient to ensure accuracy of the instrument. This commenter suggested that the most current certification of calibration would be more useful since much of the instrumentation in use has been in place for many years. DOE agrees that the proposed amendment would be of questionable value for instruments more than one or two years old and has revised this provision to require that certification of the most current calibration be recorded and kept on file at the measurement station.

The revisions to the qualified measurement station definition and the addition of the *Wind Energy Resources Atlases*, Volume 1 (GPO 061-000-00446-7) through 12 (NTIS-PNL3194-WERA-1 thru 12) are consistent with the DOE intent to insure that credible wind data sources are used in the RCS audit process. DOE encourages any State wishing to augment these sources through additional procedures to submit such procedures for DOE review as part of their State plan.

Amendment 27: This amendment proposed that a covered utility or home heating supplier not arrange financing for the purchase and installation of vent dampers, IID's, load management devices and wind energy devices by an eligible customer unless that customer is qualified under § 456.314 to conduct the installation.

Five comments were submitted. Two utilities supported the amendment. Two utilities said the provision placed an unnecessary burden on them to determine which customers are qualified. One utility requested that loan management devices not be included in the amendment because such devices as simple time clocks, which are easily installed, are probably the most widely installed means of loan management today and may be installed safely by a homeowner.

DOE maintains that the potential for safety problems is sufficient enough that vent dampers, IID's, and wind energy devices should only be installed by a qualified installer. Utilities should assume that eligible customers, unless they are on the master list, are not qualified to install these devices, and utilities should therefore not offer to arrange financing for the installation of these devices until they are assured that the homeowner has met the qualifications in § 456.314. Prohibiting unqualified installations is consistent with DOE policy. It would be irresponsible not to ensure that every possible step was being taken to prevent potentially hazardous equipment from being installed by those who are unqualified or inexperienced.

DOE has therefore incorporated Amendment 27 into the Final Rule except that loan management devices are no longer specifically excluded from financing arrangements when homeowner-installed. DOE determined that because load management devices cover such a broad spectrum of equipment, improper installation may not be potentially as dangerous as was originally believed by DOE. It is, therefore, difficult to generalize and prohibit all homeowner installations of such devices. In addition, DOE has chosen not to single out load management devices (as we did with vent dampers, IID's, and wind energy devices) for specific installer requirements. (See § 456.314) DOE encourages utilities to actively discourage homeowner installations of those load management devices which require more sophisticated experience, but recognizes that many homeowners are capable of installing some of the more basic types of load management devices. In the meantime, DOE will consider the value of differentiating between various kinds of load management devices and establishing installer qualification criteria for them.

Because DOE does not prohibit homeowner installations of load management devices, a minor change must also be made to § 456.307(c)(2). Load management devices will be deleted from the provision which lists those measures for which the audit cannot provide do-it-yourself costs. (See Section III, Number 22.)

Amendment 29: DOE received one comment on § 456.311(a)(1) which, although it did not address the specific change proposed, pointed out some ambiguity in the section. The commenter was concerned that the section as written implied that all charges for RCS services (including those charged to all ratepayers) were to be listed separately on the utility bill. DOE intention in including § 456.311(a)(1) was to require, in accordance with section 215(c)(2)(B) of NECPA, that a residential customer who receives an audit, an arranging service, or a supply, installation, or financing service (including loan repayment through utility bills), and who is to be charged individually for that service, must be provided with a bill which itemizes separately the charges for such services. Neither congressional nor DOE intent was to require that all ratepayers of a covered utility receive bills which itemize separately the costs of the utility RCS program which are charged to all ratepayers.

Because this does not change the RCS rule, but merely clarifies DOE's position consistently with NECPA, DOE is issuing this amendment in final form.

Amendments 32 and 34: DOE received one comment expressing concern that, by amending the listing requirement for "a binding surety contact," DOE would reduce consumer protection in RCS without providing commensurate benefits. DOE never intended to specify the type or amount of bond to be required of the contractor. The words DOE chose in the November 7, 1979, rule were incorrectly interpreted to mean liability insurance for negligence while DOE intended the word "liability" to refer to liability for failure to perform the contract.

DOE does recognize the need for increased consumer protection in those instances where there is substantial risk of serious injury or damage as a result of improper installation of measures. Therefore, DOE believes it is appropriate to impose the burden of obtaining liability insurance, in addition to a performance bond, on installers of vent dampers, intermittent ignition devices, wind energy systems, urea-formaldehyde insulation. We stated in the preamble to the Proposed Rule that this requirement would apply to installers of urea-formaldehyde insulation if a standard for it was issued. Since an interim final standard for urea-formaldehyde insulation was issued on September 25, 1980,

Amendment 34, as finalized, applies also to installers of such insulation.

Amendment 37: This amendment describes a State's responsibility for training. It prevents States from shifting the ultimate responsibility for the qualification of auditors, installers and inspectors to other entities.

Eleven utilities and one State energy office commented on this amendment. Most felt very strongly that a utility must retain the authority and responsibility to train its own auditors, installers and/or inspectors. Many commenters expressed confusion over the intent of the provision.

DOE intended that the State establish standards and qualification criteria for training and certification and accept responsibility for the results. DOE did not intend that States must actually develop or conduct training and certification programs. These activities may be conducted by whomever the State deems acceptable. Because DOE believes that ultimate responsibility for all program elements must remain with the State, Amendment 37 will be incorporated into the Final Rule as proposed.

Amendment 49: This amendment corrects a reference originally shown as "HH–I–0215B" to "HH–I–1252B."

One commenter incorrectly suggested that the reference should read "HH–I–01252B." The amendment is incorporated as proposed by DOE.

Amendment 52: This amendment was proposed to clarify labeling requirements for loose-fill insulation. Manufacturers of cellulosic insulation are required to include on their bag labels the settled density for various R-values installed in both ceilings and walls. Manufacturers of other types of loose-fill are required to include their recommended installed density for various R-values on the bag label for both ceiling and wall applications. These clarifications are made in the Final Rule.

Amendment 61 and 62: These provisions proposed a change in label requirements to differentiate between the fire safety requirements for indoor and outdoor rigid board insulation applications. Products intended for interior applications must be installed with an appropriate fire barrier and away from heat producing devices. It was, therefore, proposed that products installed on the exterior need not be covered with a fire barrier, but must be labelled "intended for exterior application only." This proposed change was intended to clarify DOE's original intention in § 456.809. Comments submitted on this amendment, however, demonstrated that the proposed change failed to clarify our intent and, therefore, we are not finalizing the proposed changes.

Two comments were submitted on these amendments. Both suggested deleting the proposed labeling provision and substituting their own version. Both commenters supported interior installations of rigid board insulation without a fire barrier if "diversified tests" had been passed or if permitted by local codes. DOE considered and rejected both these options in earlier rulemakings. (See **Federal Register** March 19, 1979 and November 7, 1979.) Since there were no new comments or data on the issue, DOE maintains its position that the end point criteria and specific test procedures within category of "diversified tests" are too ill-defined to merit DOE support or endorsement.

Both commenters recommended not finalizing the proposed amendment but instead made recommendations that are a major departure from the proposed amendments. Therefore, DOE will retain the original provisions in § 456.808(b)(4)(iii) and 456.809(b)(3)(ii) as published on November 7, 1979.

Amendment 65: This amendment proposed a correction to the infiltration requirement for storm windows in § 456.813(b)(6) to correct a typographical error.

Two comments were submitted. The National Bureau of Standards (NBS) noted that our corrected amendment did not address the unit of time and that the proper notation should be either $0.00075 m^3/s$ or $2.7 m^3/h$. Another commenter suggested $.04645 m^3/min$. In order to keep the units consistent with the other window provision, DOE has elected to retain seconds as the unit of time and will finalize this amendment as corrected by NBS.

Amendments 74, 76, 77, 78, 79, and 80: These amendments were proposed to substitute language which would be more easily understood into the installation standard for rigid board insulation, § 456.907. The proposed language would have changed the requirement for a fire barrier from "a finish rating of not less than 15 minutes when tested in accordance with ASTM E–119–73" to "a cover of gypsum board ½ inch thick, or an equivalent fire barrier when tested in accordance with ASTM E–119–76."

Two comments addressed the substance of these amendments. One commenter supported the amendment. The National Bureau of Standards (NBS) opposed them because:

- The new language is too prescriptive, essentially limiting fire barriers to gypsum materials;
- All gypsum board does not necessarily meet the 15 minute fire rated finish.

Although DOE agrees with NBS, we maintain that a provision which addresses a 15-minute rating is not meaningful or helpful to end users. In addition, because ASTM E–119–73 tests the finish rating of a complete wall system, a contractor would have no way of determining or predicting how a particular product added to the existing wall structure would respond in a test set-up. In the Final Rule, DOE has therefore retained the original language requiring a 15-minute finish rating, but has also added a clarifying sentence to aid installers in interpreting the requirement. Section 456.907(c)(2) now reads: "For interior applications of rigid board insulation on walls and ceilings, install on all exposed faces and edges of the insulation material, a cover having a finish rating of not less than 15 minutes when tested according to ASTM E–119–76. For purposes of this standard, 12.5mm (0.5 inch) or thicker plaster board, installed according to the manufacturer's instuctions, is deemed to meet this requirement."

With this change, there is no longer a need to correct all subsequent provisions relating to the 15-minute finish rating. Amendments 76–80 are therefore deleted.

Amendment 75: This amendment addressed the water vapor permeability requirement of rigid board insulation when installed around the foundation perimeter. DOE originally permitted only the use of Type 3 polystyrene boards. Because "Type 3" lost its significance in the context of this regulation, DOE proposed, at industry suggestion, that the requirement for Type 3 boards be replaced with a specific remedial action. That action entailed covering the insulation board on all sides with 6-mil polyethelene or equivalent.

Three comments were submitted. One commenter suggested lmiting the moisture absorption rate on boards used to insulate foundation perimeter to .3 percent when tested in accordance with ASTM C–272–53. This, they claimed, would be compatible with a proposed Federal Specification (HH–I–524C) to be issued by the GSA. Another commenter recommended that a maximum moisture absorption of 4.0 percent be acceptable. The National Bureau of Standards (NBS) recommended that we limit moisture absorption to .1 percent when tested in accordance with ASTM C–272–53 and limit water vapor permeability to 2.0 perm/inch when tested in accordance with ASTM C–355–64.

DOE recognizes the importance of providing water absorption and water vapor permeability rates to maintain thermal performance in below grade insulation applications. The Government Services Administration (GSA) confirmed that they are preparing to issue a revision to HH–I–524B. Because this specification also addresses the characteristics that DOE is addressing in the proposed amendment, it is important that they be compatible. DOE believes that a maximum moisture absorption rate of 4 percent, as suggested by one commenter, is too great a departure from the original provision. A moisture absorption of .1 percent, however, is a requirement more stringent than any specified in the forthcoming GSA standard. DOE will therefore incorporate in the Final Rule the following provision in § 456.907(d)(1) which will be compatible with the new GSA specification: "Only insulation boards which have a moisture absorption rate no greater than .3 percent when tested in accordance with ASTM C–272–33 and a water vapor transmission rate no greater than 2.0 perm/inch when tested in accordance with ASTM C–355–64 may be used for this application."

Amendment 84: This amendment was proposed to substitute the DOE Installation Standards for Storm Windows, Thermal Windows, Multi-Glazing units, Storm Doors, and Thermal Doors (§ 456.911) with ASTM E–737–80, "Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-Glazing, Storm Doors and Replacement Doors." The two standards are essentially identical except for the use of the term "Thermal Window." What DOE has termed "thermal window", ASTM calls a "replacement window".

Two commenters supported adoption of this amendment. DOE will therefore finalize the amendment as proposed.

Amendments 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, and 93: These amendments proposed renumbering the figures throughout the installation standards to make them consecutive.

Amendments 82 and 83 will be finalized as proposed. Amendments 85, 86, 87, 88, 89, 90, 91, 92, and 93 will be changed to reflect the deletion of § 486.911 (including deletion of references to figures 1, 2, 3). Figures referenced in Amendments 85–93 will extend from figure 5 through figure 9.

Amendment 95: This amendment was intended to correct an error in the equation in Appendix A to determine burner efficiency.

One comment was submitted by the National Bureau of Standards (NBS) who correctly pointed out the original equation in the Final Rule was correct. DOE will therefore retain Appendix A as published in the November 7, 1979 **Federal Register.**

Amendment 102: This amendment is made to acknowledge the concerns of the American Society of Heating, Refrigeration, Air Conditioning Engineers (ASHRAE) on the way DOE referenced the condensation zone Map in Figure 1 of Subpart I in the November 7, 1979, **Federal Register,** and Figure 1 of § 456.909 of the September 25, 1980 **Federal Register.** The map in these figures is not identical to that published in the *ASHRAE Handbook and Product Directory—1977 Fundamentals,* as referenced by DOE. The map used by DOE was only an adaptation of ASHRAE's map and certain qualifications were not noted. Although this amendment was not in the Proposed Rule, DOE is issuing it in final as it has no substantive affect on the Final RCS Rule.

III. Regulatory Analysis and Urban Impact Assessment

The President, by Executive Order 12044, has directed agencies of the Executive Branch to conduct a Regulatory Analysis of regulations that they prepare that are likely to have a major economic impact. In accordance with OMB Circular A–116, an Urban and Community Impact Assessment should be prepared when the rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service Program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was a major action and required preparation of a Regulatory Analysis and an Urban and Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the publication of the Proposed Rule for the RCS Program on March 19, 1979 (44 FR 16546). These analyses were finalized for publication in conjunction with the Final Rule which was published November 7, 1979 (44 FR 64602). This rule does not constitute a major action since it does not significantly impact the November 7, 1979, regulation. DOE has analyzed the potential impact of the applicability criteria for wind energy devices and concluded that it would not have a substantial effect on the RCS program. See discussion in the Proposed Rulemaking, August 11, 1980.

IV. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, DOE prepared an Environmental Impact Statement for the entire Residential Conservation Service Program. The subject matter of this rulemaking was evaluated in the programmatic Environmental Impact Statement. A notice of availability of the Final Environmental Impact Statement was published in the **Federal Register** on November 7, 1979 (44 FR 64602). A copy of the final Environmental Impact Statement may be obtained by writing: Mr. James R. Tanck, Director, Residential Conservation Service Program, Office of the Assistant Secretary for Conservation and Solar Energy, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

V. Consultation with Other Federal Agencies

Consultation with other Federal agencies was done through the normal comment process. The National Bureau of Standards (NBS) was the only Federal agency to submit comments.

VI. Contractor Contributions

No contractors contributed to this rulemaking.

In consideration of the foregoing, the Department of Energy is amending Chapter II, Title 10 of Part 456 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., December 23, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

Amendments

1. On page 64626, third column, fourth full paragraph, delete the word "lender" and insert in lieu thereof the word "biller".

2. On page 64631, first column, at the end of the third full paragraph, add the following sentences:

"DOE's intent in including this section was to insure an adequate procedure by which a customer may have recourse against a contractor. DOE believes that new legislation would not be necessary in most jurisdictions where an injured party may rely on pre-existing negligence or contract laws. This section was not intended to require initiation of new laws affecting States' sovereign immunity."

3. On page 64636, third column, amend the sixth full paragraph to read as follows:

"Federal Specification HH–I–1030A is referenced for its requirement and test for corrosiveness. Federal Specification HH–I–515D is referenced for its requirements and tests for odor emission and fungi resistance. As with mineral fiber loose fill, requirements for moisture adsorption were deleted from the final rule."

4. On page 64639, amend the last paragraph, second sentence, by adding a period after the word "requirements". Delete the remainder of that sentence and insert a new sentence which reads as follows: "Only core materials, however, need be tested."

5. On page 64641, first full paragraph, amend the second sentence to read as follows: "The purpose of exterior storm windows is primarily to provide an insulating air space and not to reduce infiltration."

§ 456.105 [Amended]

6. On page 64662, third column, § 456.105(f)(3)(iii), insert following the words "Modification" and "modification" the phrases "(Vent Damper)" and "(vent damper)", respectively.

7. On page 64662, third column, § 456.105(f)(3)(iv), delete the phrases "Electrical or Mechanical Ignition System" and "electrical or mechanical ignition system" and insert in lieu thereof the phrases "Intermittent Pilot Ignition Device (IID)" and "intermittent pilot ignition device (IID)".

8. On page 64663, first column § 456.105(f)(5), add the following sentence at the end thereof: "The term 'ceiling insulation' also includes such material installed on the exterior of the roof."

9. [Deleted]

10. On page 64664, third column, § 456.105(v)(4)(iv), delete the phrase "South-facing (+ or 45° of True South)" and wherever the phrase "window heat gain retardant" appears insert the phrase "and/or loss" after the phrase "window heat gain". Following the word "gain" insert the phrase "or wintertime heat loss".

§ 456.106 [Amended]

11. On page 64665, first column, § 456.106, line 4, change the phrase "and eligible customer" to read "an eligible customer".

12. On page 64665, first column, insert a new § 456.107 as follows:

§ 456.107 Request for confidential treatment.

(a) Request. If you wish to file a document with DOE claiming some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, or is otherwise exempt by law from public disclosure, and if you wish to request that DOE not disclose information, you must comply with the DOE FOIA regulations set forth in 10 CFR 1004 [44 FR 1908, Jan. 8, 1979].

(b) Disposition of request. DOE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by DOE to deny such claim, in whole or in part, and an opportunity to respond thereto, will be given to the person claiming confidentiality of the information no less than seven days prior to the public disclosure of such information.

(c) Document by document identification. Each request for confidential treatment must be made with respect to each separately identified document and must be made at the time that document is first submitted to DOE.

§ 456.205 [Amended]

13. On page 64666, first column, § 456.205(e)(2), add the following sentence at the end: "Exception: The Assistant Secretary may waive any of the submission requirements for proposed amendments if the Assistant Secretary finds that no substantial issue of law or fact exists and that the amendment is unlikely to have a substantial impact on large numbers of individuals or businesses.

14. [Deleted]

§ 456.306 [Amended]

15. On page 64668, first column, § 456.306(a)(10), delete the phrase "finances the sale or installation of such measures" and insert in lieu thereof the phrase "is a lender listed in accordance with § 456.312(b)(3)".

16. [Deleted]

§ 456.307 [Amended]

17. On page 64669, first column, § 456.307(b)(2)(iv), delete the existing subsection (iv) and insert in lieu thereof the following paragraph:

* * * * *

(b)(2) * * *

(iv) With respect to wind energy devices: (A) the estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, adjusted to 10 meters (33 feet) above ground level using the formula provided in § 456.705(d)(4); and (B) there are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

18. On page 64669, first column, § 456.307(b)(2)(xii), delete the word "part" and insert in lieu thereof the word "pool".

19. On page 64669, first column, delete § 456.307(b)(2)(xvii).

20. On page 64669, second column, § 456.307(b)(6)(i), delete the phrase "has been" and insert in lieu thereof the phrase "will be".

21. On page 64669, second column, § 456.307(b)(6)(iii), delete the phrase "and received".

22. On page 64669, third column, § 456.307(c)(2), following the word "insulation" insert the phrase "and active solar space heating systems and combined active solar space heating and solar domestic hot water systems". Also, after the phrase "furnace efficiency modifications," delete "device associated with load management techniques."

23. On page 64670, second column, § 456.307(c)(10)(iii), delete the existing paragraph (iii) and insert in lieu thereof the following paragraph (iii):

* * * * *

(c)(10) * * *

(iii)(A) The average yearly wind speed as indicated by the appropriate Wind Energy Resource Atlas, Volume 1 (GPO 061–000–00446–7) through 12 (NTIS–PNL 194–WERA–1 thru 12) for the region, and the relationship between that data and the likely wind speeds at the residence; or

(B) The average yearly wind speed at the nearest qualified measuring station and the relationship between that data and the likely wind speeds at the residence. A qualified measuring station is one which meets the following minimum requirements:

(*1*) The anemometer is located no less than 6 meters (19.8 feet) above ground level;

(*2*) Data used to determine the annual average wind speed has been collected for one year or more; and

(*3*) A record is on file at the measurement station certifying the most current calibration of the data collection and recording instrumentation; and

24. On page 64670, third column, § 456.307(e)(2), second sentence, delete the phrase "supplies, installs or finances and sale or installation of program or State measures" and insert in lieu thereof the phrase "is a supplier, installer or lender listed in accordance with § 456.312(b).".

§ 456.308 [Amended]

25. On page 64671, second column, § 456.308(d), second sentence, delete the phrase "supply or install program measures" and insert in lieu thereof the

phrase "are listed in accordance with § 456.312(b) (1) or (2)".

§ 456.309 [Amended]

26. On page 64671, third column, § 456.309(d), second sentence, delete the phrase "finance program measures" and insert in lieu thereof the phrase "are listed in accordance with § 456.312(b)(3)".

27. On page 64671, third column, § 456.309, insert a new paragraph (h) as follows:

* * * * *

(h) Prohibit each covered utility and participating home heating supplier from arranging financing for the purchase or installation of furnace efficiency modifications and wind energy devices for installation by the eligible customer unless such customer is qualified to perform such installation pursuant to § 456.314.

28. [Deleted]

29. On page 64672, second column, § 456.311(a)(1), delete the existing phrase and insert in lieu thereof the following:

§ 456.311 [Amended]

(a)(1) Every charge by a covered utility or a participating home heating supplier to a customer for any portion of the costs of carrying out any activity pursuant to the State Plan which is charged to the residential customer for whom such activity is performed (including repayment of a loan) and included on a billing for utility service submitted by the utility or home heating supplier to such residential customer shall be stated separately on such billing from the cost of providing utility or fuel service and the customer shall be permitted to include such payment in such customer's payment for utility or fuel service; and * * *

30. [Deleted]

§ 456.312 [Amended]

31. On page 64673, third column, § 456.312(b)(1)(iv), delete the existing paragraph (iv) and insert in lieu thereof the following paragraph:

* * * * *

(b)(1) * * *

(iv) Comply with any applicable qualification requirements set forth in the State Plan pursuant to § 456.314.

32. On page 64673, third column, § 456.312(b)(1)(vii), delete the entire sentence and insert in lieu thereof the following sentence: "Have a performance bond sufficient in the judgment of the lead agency to aid in protecting eligible customers."

33. On page 64673, third column, § 456.312(b)(2)(ii), following the word "applicable" insert the word "material".

34. On page 64674, first column, renumber existing § 456.312(b)(4) as § 456.312(b)(5) and insert a new § 456.312(b)(4) as follows:

* * * * *

(b) * * *

(4) The State Plan shall require that all installers of vent dampers and IID's included in the Master Record have liability insurance sufficient in the judgment of the Governor to indemnify themselves against possible liability arising from installation when installing such measures under the circumstances described in the State Plan pursuant to § 456.305.

§ 456.313 [Amended]

35. On page 64674, third column, § 456.313(b)(1)(i), insert at the end thereof: "(F) Combined active solar space heating and solar domestic hot water systems."

§ 456.314 [Amended]

36. On page 64675, first column, § 456.314(a)(6), delete the phrase "steady state" and insert in lieu thereof the word "seasonal".

37. On page 64675, second column, § 456.314(f), insert the following sentences after the first sentence:

* * * * *

(f) * * * This description shall identify the State entity(ies) responsible for conducting training, testing or any other qualification methods. The State entity(ies) may assign duties to another person for the purpose of aiding in the performance of such duties, but the lead agency or another State entity and no other persons, shall be ultimately responsible for developing the qualification methods and for designating individuals as qualified.

38. [Deleted]

39. [Deleted]

§ 456.505 [Amended]

40. On page 64679, third column, § 456.505(a)(1), delete the word "covered" and insert in lieu thereof the word "regulated".

41. On page 64679, third column, § 456.505(b), amend the reference to "paragraph (a)(2)(i)" to read "paragraph (a)(2)(ii)".

42. [Deleted]

43. [Deleted]

44. On page 64680, first column, §456.507(b), delete the first sentence and insert in lieu thereof the following sentence:

§ 456.507 [Amended]

* * * * *

(b) In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exemption or waiver would be applicable, informing them that they have ten days from the date the application or petition is filed with the Assistant Secretary to submit comments to the Assistant Secretary on the application or petition. * * *

45. [Deleted]

§ 456.602 [Amended]

46. On page 64680, second column § 456.602(a), amend the reference to "§ 456.206" to read "§ 456.205".

§ 456.802 [Amended]

47. On page 64681, third column § 456.802(a)(1), delete the phrase "marked, 'Conforms to DOE Standards,' " and insert in lieu thereof the phrase "identified as conforming to DOE standards."

48. On page 64682, first column, § 456.802(b)(6), amend the reference to "ASTM 576–76" to read "ASTM E 576–76".

49. On page 64682, second column, § 456.802(b)(25), amend the references to "HH–I–0125B" to read "HH–I–1252B".

50. On page 64682, second column, § 456.802(b)(29), correct the word "preassemebled" to read "preassembled".

Tables I and II [Amended]

51. On page 64683, second and third columns, amend the Table I title to read as follows "Coverage Chart for Cellulosic Loose Fill Insulation", and amend Table II title to read "Coverage Chart for Loose-Fill Insulation (other than Cellulosic)".

52. On page 64683, second and third columns in Table I, after the word "Sidewalls", delete the asterisk (*). After the phrase "To obtain thermal resistance (R-value) of" insert an asterisk (*). Delete the sentence at the bottom of Table I following the asterisk and insert in lieu thereof: "The thermal resistance of loose fill cellulose thermal insulation shall be measured at the manufacturer's settled density." In Table II, after the word "Sidewalls," delete the asterisk (*) and after the phrase "To obtain thermal resistance (R-value) of," insert an asterisk (*).

§ 456.804 [Amended]

53. On page 64683, first column, § 456.804(b)(6), delete the phrase ", and shall include the following information:" and insert in lieu thereof the following:

* * * * *

(b)(6) * * * If a product is tested and meets the requirements of ASTM E–136 and is labeled as such, it need not be

labeled with the specific requirements of CPSC Part 1404 relating to vents and chimneys. Each bag shall also be marked with the following information:

. . . .

54. On page 64683, first column, § 456.804(b)(6)(iv), insert the following sentence after the word "different": "Products not intended for sidewall applications shall be labeled with a statement to that effect and need not carry the sidewall portion of the coverage chart."

55. On page 64683, second column, § 456.804(b)(6)(v), insert the phrase "or a CPSC approved label" following the word "statements".

§ 456.805 [Amended]

56. On page 64683, second column, § 456.805(b)(1)(i), delete the phrase "(known as Type I)".

57. On page 64683, third column, § 456.805(b)(1)(i), delete the phrase "(known as Type III)".

58. On page 64684, first column, § 456.805(b)(7), delete the phrase ", and shall include the following information:" and insert in lieu thereof the following:

* * * * *

(b)(7) * * * If a product is tested and meets the requirements of ASTM E-136 and is labeled or marked as such, it need not be labeled with the specific requirements of CPSC Part 1404 relating to vents and chimneys. Each bag shall also be marked with the following information: * * *.

59. On page 64684, first column, § 456.805(b)(7)(ii), insert the phrase "or a CPSC approved label" following the word "statements".

§ 456.806 [Amended]

60. On page 64684, second column, § 456.806 (b)(5)(v), amend the fifth line to read "of application if the coverage is".

61. [Deleted]

62. [Deleted]

§ 456.811 [Amended]

63. On page 64684, third column, § 456.811(a), insert the word "foil" following the word "aluminum".

§ 456.812 [Amended]

64. On page 64685, first column, § 456.812(a), delete the word "of" and insert in lieu thereof the word "or".

§ 456.813 [Amended]

65. On page 64685, third column, § 456.813(b)(6), delete the notation "/c" following the number "0.00075m^3" and insert in lieu thereof the notation "/s".

66. On page 64685, third column, § 456.813(b), insert the following new subsection (8):

* * * * *

(b) * * *

(8) As an alternative to meeting provisions (b)(1) through (b)(7), HUD Use of Materials Bulletin #39 may be substituted for use with aluminum windows, and HUD Use of Materials Bulletin #59 may be substituted for use with wood windows.

§ 456.814 [Amended]

67. On page 64686, first column, § 456.814(e), amend the reference to "UL 599" to read "UL 559".

68. On page 64686, first column, § 456.814(g)(1)(ii), amend the reference to "ANSI XZ 21.67–1978" to read "ANSI Z21.67–1978".

§ 456.903 [Amended]

69. On page 64687, third column, § 456.903(b)(26), Note 1, amend the word "draft" to read "kraft".

70. On page 64687, third column, § 456.903(b)(28), amend the phrase "frame spread" to "flame spread".

§ 456.905 [Amended]

71. On page 64688, third column, § 456.905(c)(3)(A), amend the reference to "1 ft 2" to read "1 ft^2".

72. On page 64689, first column, § 456.905(c)(3)(B), amend the references to "1 ft 2 " and "300 ft" to read "1 ft^2" and "300 ft^2", respectively.

§ 456.906 [Amended]

73. On page 64690, third column, § 456.906(c)(2)(i)(C), amend the reference to "(90^2 mm)" to read "(900 mm)".

§ 456.907 [Amended]

74. On page 64692, first column, § 456.907(c)(2), add the following sentence at the end: "For purposes of this standard, 12.5mm (0.5 inch) or thicker plaster board, installed according to the manufacturer's instructions is deemed to meet this requirement.

75. On page 64692, second column, § 456.907(d)(1), delete the last sentence and insert in lieu therof the following sentence: "Only insulation boards which have a moisture absorption rate no greater than 0.3 percent when tested in accordance with ASTM C–272–33 and a water vapor transmission rate no greater than 2.0 perm/inch when tested in accordance with ASTM C–355–64 may be used for this application."

76. [Deleted]

77. [Deleted]

78. [Deleted]

79. [Deleted]

80. [Deleted]

§ 456.908 [Amended]

81. On page 64696, third column, § 456.908(b)(1)(iii), Note 2, delete the word "approximate" and insert in lieu thereof the word "appropriate ".

§ 456.910 [Amended]

82. On page 64697, third column, § 456.910(a), amend the reference to "Figure 1 " to read "Figure 4".

83. On page 64698, the sample "Certification of Insulation" is "Figure 4", not "Figure 1".

84. On page 64699, § 456.911, delete the entire existing section, including the figures on page 64700. Replace with the following:

§ 456.911 Standard practice for the installation of storm windows, thermal windows, multi-glazing units and storm doors and thermal doors.

The installation of storm windows, thermal windows, multi-glazing units, and storm doors and thermal doors shall be done in accordance with ASTM E–737–80 "Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-glazing, Storm Doors, and Replacement Doors." For purposes of this installation practice thermal windows and doors shall meet the definition contained in § 456.105(f)(11) and be treated as replacement windows and doors.

§ 456.912 [Amended]

85. On page 64703, third column, § 456.912(b)(2), amend the reference to "Figure 7" to read "Figure 5 ".

86. On page 64703, third column, § 456.912(b)(3)(ii), amend the reference to "Figure 8 " to read "Figure 6".

87. On page 64703, third column, § 456.912(b)(3)(iii), amend the reference to "Figure 8" to read "Figure 6".

88. On page 64703, third column, § 456.912(b)(4)(i), amend the reference to "Figure 9" to read "Figure 7".

89. On page 64704, amend the references to "Figures 7", "8", and "9" to read "5", "6", and "7" respectively.

90. On page 64705, first column, § 456.912(b)(4)(ii), amend the reference to "Figure 9" to read "Figure 7".

§ 456.913 [Amended]

91. On page 64705, third column, § 456.913(b)(1)(xviii), amend the reference to "Figures 10 or 11" to read "Figures 8 or 9".

92. On page 64706, amend the reference to "Figure 10" to read "Figure 8".

93. On page 64707, amend the reference to "Figure 11" to read "Figure 9".

94. On page 64708, first column, § 456.913(d)(1), amend the word "handkbook" to read "handbook".

95. [Deleted]

*

Appendix A to Subpart I

96. On page 64709, second column, § 456.914, Appendix A to Subpart I, amend the first sentence to read as follows:

The steady state efficiency of the furnace may be determined directly from Figure 8 for furnaces using No. 1 fuel oil or from Figure 9 for furnaces using No. 2 fuel oil.

Appendix I to Part 456

97. On page 64710, first column, Appendix I, section (d), following the word "displayed" insert the phrase "by inclusion of an 'X'."

98. On pages 64711 to 64725, Appendix I, move all numbers listed next to the "X" in all columns labeled "Solar Domestic Hot Water Systems" to the columns labeled "Active Solar Space Heating Systems".

99. On page 64720, Appendix I, after the first row, which begins "New York (continued)", insert a new row (the same notation as for "South Carolina 2" on page 64722) as follows:

		Electricity	22	X		X	X	X"
	2	Gas	19	X				
"North Carolina		Oil	19	X			X	
		Electric Heat Pump	19	X				

100. On page 64720, Appendix I, after the fifth row, which begins "North Dakota", insert a new row for Ohio (indicating the same program measures as for "Oregon 5" on page 64721) as follows:

		Electricity	30	X	19	X	X	"
	5	Gas	30	X	11	X		
"Ohio		Oil	30	X	11	X		
		Electric Heat Pump	30	X	11	X		

101. On page 64726, second column, amend the address of BOCA to read as follows: "17926 S. Halsted Street, Homewood, Illinois 60430".

102. On page 64689 of the November 7, 1979 Final Rule and page 63804 of the September 24, 1980 Final Rule on material and installation standards delete the title "ASHRAE Handbook and Product Directory—1977 Fundamentals, Page 20.9".

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federal register

Tuesday
January 6, 1981

Part X

Department of Agriculture

Science and Education Administration

Plant Biology and Human Nutrition; Competitive Research Grants Program for Basic Research for Fiscal Year 1981; Solicitation of Applications

DEPARTMENT OF AGRICULTURE

Science and Education Administration

Plant Biology and Human Nutrition; Competitive Research Grants Program for Basic Research for Fiscal Year 1981; Solicitation of Applications

Notice is hereby given that under the authority contained in section 2(b) of the Act of August 4, 1965, Pub. L. 89–106, as amended by section 1414 of Pub. L. 95–113 (7 U.S.C. 450i(b)), the Science and Education Administration (SEA) through its Competitive Research Grants Office (CRGO) will award competitive grants for mission-oriented basic research in four areas of plant sciences (biological nitrogen fixation, biological stress on plants, photosynthesis, and genetic mechanisms for crop improvement) and human nutrition (nutrient requirements). Proposals may be submitted through their parent organizations by scientists associated with State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals.

The total amounts available for such grants during Fiscal Year 1981 are $12,610,000 for plant sciences research and $2,910,000 for human nutrition research.

The Guide to Proposal Preparation for these competitive grants consists of three parts:

I. Types of Research to be Supported in FY 1981;
II. Proposal Submission;
III. Proposal Review and Evaluation.

A Grant Application Kit has been developed which provides the forms, instructions, and other relevant information needed to apply for research grants under the programs described herein. To obtain a copy(ies) of the Grant Application Kit, write or call the Grants Administrative Management Office (Address and telephone number below):

Grants Administrative Management Office, Attention: Proposal Services Unit, Science and Education Administration, USDA, Suite 103, Rosslyn Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209, Telephone: (703) 235–2638.

Additional instructions relating to proposal preparation are included in Part II of the Guide to Proposal Preparation.

Proposals will be selected for funding after review of all proposals by a scientist serving as a CRGO Program Manager, by *ad hoc* reviewers, and by an assembled panel of scientists who constitute a spectrum of expertise for the program to which each proposal is assigned (See Part III of the Proposal Preparation Guide).

This Notice incorporates suggestions from various agencies of the U.S. Department of Agriculture (USDA), from liason representatives of other Federal agencies and prospective performing organizations, and from *ad hoc* groups on plant sciences and on human nutrition.

According to the requirements for Federal assistance program announcements under Pub. L. 95–220, The Federal Program Information Act, the following information is provided with respect to the areas of research described in this announcement for which project grants will be awarded:

(1) As outlined by OMB Circular No. A–89, the official program number and title for these grants are: 10.884, Grants for Agricultural Research, Competitive Research Grants.

(2) OMB Circular No. A–95, regarding State and local clearinghouse review of Federal and Federally assisted programs, does not apply.

The grants awarded under this Program will be administered in accordance with applicable OMB Circulars and Form SEA–638, General Provisions for Grants and Cooperative Agreements. A copy of Form SEA–638 is included in the Grant Application Kit.

The determination of allowable costs shall be made in accordance with the following applicable Federal Cost Principles in effect on the effective date of the Agreement:

Educational Institutions and Hospitals—OMB Circular A–21;

Nonprofit Organizations—OMB Circular A–122;

Commercial Firms—FPR 1–15.2;

State and Local Governments—FMC 74–4 (Formerly OMB Circular A–87).

Most of the grants awarded in Fiscal Year 1981 will be for a duration of one to three years. The total amount awarded for each of these grants will be from Fiscal Year 1981 funds. A number of continuation grants will be made for three to five years where longer term studies are required. The continuation grants will be funded in increments covering a one-year period. The initial increment will be funded from Fiscal Year 1981 appropriations.

When an original grant award includes a provision for more than one budget period within the project period, SEA presumes that continuation grants for the subsequent budget periods will be awarded subject to availability of funds, if the grantee:

(1) Has demonstrated satisfactory performance during all previous budget periods; and

(2) Submits no later than 90 days prior to the end of the budget period a continuation application which includes a detailed progress report; a financial statement for the current budget period, including an estimate of the amount of unspent, uncommitted funds which will be carried over beyond the term of the prior grant; a budget for the new budget period; an updated work plan revised to account for actual progress accomplished during the current budget period; and any other reports as may be required by the grant agreement.

Review of continuation applications will be conducted expeditiously. Generally, no extramural review will be required.

Neither the approval of a project nor the award of any grant shall commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

Section 2(b) of Pub. L. 89–106, as amended by Section 1414 of Pub. L. 95–113, states that these competitive grants shall be awarded without regard to matching funds by the recipient(s) of such grants.

It has been determined that, because of the need to implement this program so that research relating to plant production can be initiated in the Spring of 1981, compliance with the Notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest and, in accordance wth E.O. 12044, that it is not possible to publish this Notice in proposed form and allow 60 day for public comment.

Done at Washington, D.C., this 30th day, of December, 1980.

Anson R. Bertrand,

Director, Science and Education.

Guide to Proposal Preparation

I. Types of Research to be Supported in Fiscal Year 1981

The Science and Education Administration will award both standard research grants and a small number of continuation grants for periods not to exceed five years, on a competitive basis, to support basic research underlying the mission of the USDA. Basic research grants will be considered in selected areas of plant science and human nutrition, which have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the

long run, to applied research and development vitally needed on important food and nutrition problems. This grants program results from the recognition that new, innovative approaches and enhanced levels of funding are needed as we seek ways to increase food production and improve human nutrition.

Consideration will be given to research proposals which address fundamental questions in the areas noted below and which are consistent with the long-range missions of USDA. While a basic guideline is provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential investigators. Accordingly, it is hoped that innovative projects in the so-called "high-risk" category as well as those which may have a higher payoff potential will be submitted.

The following guidelines are thus provided as a base from which proposals may be developed:

A. Plant Science. 1. Biological Stress on Plants. Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This grants program will support research on stresses on plants arising from their interactions with other plants or with other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. The program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents, (b) how such interactions are influenced by environmental and other factors inherent to the interacting organisms, (c) how the interactions reduce plant productivity and usefulness to man, (d) how plants react to stresses generated by such interactions, and (e) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels; i.e., population, organismal, cellular and molecular; and by various approaches including genetics, molecular biology, and biochemistry. These may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, such studies should provide information that will be relevant to the understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches to reduction of plant stress caused by biological agents, approaches that will be both effective and compatible with social and environmental concerns.

2. Genetic Mechanisms for Crop Improvement. The major aim of this program area is to encourage innovative or unique genetic approaches directed to the development of genetically superior varieties of agricultural crops. The approaches should be aimed at obtaining novel genetic combinations or gene modifications difficult or impossible to achieve using conventional plant breeding techniques. This research area thus will emphasize the following: (a) Cell culture studies including the regeneration of plants from single cells, cell/protoplast fusion, mutagenesis, and incorporation of foreign DNA, chromosome, or organelle; (b) development of effective celular and molecular methods for identification of plant characteristics or genes which are significant targets for genetic manipulation; (c) development of methods for producing, selecting, and transferring desired genetic traits including both qualitative and quantitative traits; (d) acquisition of basic information on nuclear and organelle plant gene expression and diversity at the molecular, cellular, or developmental level to facilitate application to plant improvement; and (e) basic genetic studies on maintenance, alteration, and utilization of unadapted and wild germplasm. Proposals to conduct well-defined basic plant genetic studies in support of plant breeding programs and designed to improve understanding of basic genetic mechanisms of the crop are encouraged. These guidelines are not meant to exclude other new or unusual approaches to crop improvement.

3. Biological Nitrogen Fixation. The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen fixing mechanisms and related nitrogen metabolsim in both symbiotic and free living organisms as well as the fate of fixed nitrogen is of high priority.

In general, the objectives in this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen fixing association, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification (the oxidation of ammonia to nitrate), the assimulation and utilization of ammonia and nitrate, and denitrification (the reduction of nitrate to volatile forms of nitrogen which are lost from the soil) all play important roles in plant growth. Soil nitrogen, whether supplied by biological nitrogen fixation or as chemical fertilizer serves to increase food production only when it is present in an available form which is not lost from the plant-soil ecosystem.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action of nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by *Rhizobium* and conditions for effective nodulation; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) identification of additional organisms capable of nitrogen fixation and quantitation of their contribution; (e) relation between the fixation process and the processes of assimilation, nitrification and denitrification; (f) the development of methods for the *in situ* measurement of nitrification and denitrification, and determination of the actual extent of these processes in nature; (g) an analysis of the distribution of denitrifying bacteria and elucidation of control mechanisms operative on nitrogen transformations in the major species; (h) studies of the transfer and utilization of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants; and (i) the efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a thorough understanding of nitrogen cycling encompassing biochemistry, cellular and developmental biology, genetics and genetic manipulation, and other relevant

life science disciplines. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers and optimize their utilization in agriculture.

4. Photosynthesis. There are many indications that productivity of crop plants may be increased by increasing their photosynthetic efficiency. Basic research aimed toward providing an increased understanding of photosynthesis and associated carbon metabolism is an essential part in achieving that objective. Expansion of research is needed, but not exclusively, in three major sub-areas: (a) The identification of aspects of photosynthesis which limit the conversion of solar energy into stable chemical products which include such areas as the mechanisms of energy capture and conversion, structure, synthesis, and turnover of the photosynthetic apparatus, CO_2 fixation, photo-respiration and dark respiration; (b) the relation of plant development to photosynthesis including the development of photosynthetic competence, translocation and partition of photosynthetic productivity; and (c) the design of new methods of genetic and cellular manipulation to improve photosynthetic efficiency in plants to include studies of the chloroplast genome, of nuclear genes regulating photosynthesis, and analysis of regulatory steps controlling both nuclear and cytoplasmic genome expression and their interactions. Other research designed to generate new information in areas that relate to photosynthesis and its accompanying processes in the context of the objectives of the program area may also be considered a part of this area.

B. Human Nutrition. Proposals are invited in the following program area. Support will not be provided for clinical research nor for demonstration and action projects.

Human Requirements for Nutrients.—Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in the knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. as these relate to requirements. Special attention will be given to requirements for trace constituents. Innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of research results will be given special consideration.

Proposals dealing with processing techniques should be clearly oriented towards determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative (creative) fundamental (basic) research.

II. Proposal Submission

A. Proposal Purpose. The purpose of a proposal is to persuade the reviewing peer scientists and the CRGO staff that the proposed project is feasible and sufficiently meritorious to warrant support under the criteria enumerated in Part III B. It should be clear, concise, technically correct, and relevant to the competitive grants program. The qualifications for the investigator, the institution facilities, and the level of funding to be devoted to the proposed project should be clearly delineated.

B. Who May Submit Proposals. Proposals for support under the competitive research grants program may be submitted by qualified scientists associated with the State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support. Only in special situations, where it can be demonstrated that a proposed project will contribute directly to breakthroughs in the food and agricultural sciences, will proposals from unaffiliated scientists be given favorable consideration.

C. Where and When to Submit Research Proposals. Twenty copies of each research proposal must be submitted by the time limits set below to: Grants Administrative Management Office (GAMO), Attention: Competitive Research Grants Program, Science and Education Administration, USDA, Suite 103, Rosslyn Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209.

Proposals will be reviewed by peer panels (as described in Part III) which will assemble on specific dates. In order to be considered for funding during Fiscal Year 1981, the proposals must be postmarked by the following dates:

February 13, 1981 for Biological Nitrogen Fixation;
February 20, 1981 for Genetic Mechanisms for Crop Improvement;
February 20, 1981 for Photosynthesis;
February 27, 1981 for Biological Stress on Plants;
February 27, 1981 for Human Nutrient Requirements.

D. What to Submit. Your submission should include an original and 19 copies of the proposal and Form SEA–661, Grant Application, which is included in the Grant Application Kit. The Form SEA–661 submitted with the original proposal should have original signatures of the Principal Investigator(s) and the Authorized Organizational Representative. SEA must have original signatures on file for each application.

The applicable specific area of inquiry (program area) should be indicated in Block 8 of Form SEA–661 provided in the Grant Application Kit. *Select one program area only.* Indicating more than one program area does not mean the proposal will be considered under more than one. It only delays processing of the proposal in GAMO. The final determination of the area and change (if any) will be made by the program staff and/or the appropriate panel. The number assigned to the program area (see below) must also be cited in Block 8 of Form SEA–661.

Number and Program Area

1—Biological Stress on Plants
2—Genetic Mechanisms for Crop Improvement
3—Biological Nitrogen Fixation
4 Photosynthesis
5—Human Requirements for Nutrients

All copies of the proposal should be mailed in one package, if at all possible. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. If copies of the proposal *are* mailed in more than one package, the number of packages should be marked on the outside of each. It is mportant that *all packages be mailed at the same time.* The acknoledgement of receipt of the proposal will contain a proposal number, title, program, and program area. Later inquiries, addenda, etc., should include this information. However, every effort should be made to *assure* that the *proposal contains* all *pertinent information when initially submitted.* Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Grant Application Kit and instructions in Part II E, Format for Research Proposal, which follow.

E. Format for Research Proposal. The Grant Application Kit (available from GAMO) includes forms, instructions, and other information to be used in applying for research grants which will be awarded in the areas described in

Part I, Types of Research to be Supported in FY 1981.

Additional information and/or instructions relating to the format and content of the research proposal follow:

1. Title of Proposal.—The title (80 characters maximum) will be used for the USDA Current Research Information System (CRIS), for information to Congress and for press releases. Therefore, it should not contain highly technical words. Phrases such as "Investigation of" or "Research on" should not be used.

2. Approval Signatures of Appropriate Officials.—All proposals from a university, college, or institution must be signed by an authorized official.

3. Research Involving Special Considerations.—A number of situations frequently encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If special information or supporting documentation is involved, the proposal should so indicate. Since some types of research targeted for SEA support have a high probability of involving either recombinant DNA or human subjects, special instructions follow:

Recombinant DNA.—Principal investigators and endorsing performing organization officials must comply with the guidelines of the National Institutes of Health (See NIH "Guidelines for Research Involving Recombinant DNA Molecules" (43 FR 50108–60131) and subsequent revisions). A Memorandum of Understanding and Agreement and approval by the local Biohazards Safety Committee, must be provided before a grant can be awarded.

Human Subjects.—Safeguarding the rights and welfare of human subjects used in research supported by SEA grants is the responsibility of the performing organization. The informed consent of the human subject is a vital element in this process. Guidance is contained in Pub. L. 93–348, as implemented by Part 46, Subtitle A of Title 45 of the Code of Federal Regulations, as amended (45 CFR Part 46).

If the project involves human subjects at risk, the grantee must furnish SEA with a statement that the research plan has been reviewed and approved by the appropriate Institutional Review Board at the grantee organization, and that the grantee is in compliance with Department of Health and Human Services (DHHS)—formerly Department of Health, Education and Welfare (DHEW)—policies, as amended, regarding the use of human subjects. Form SEA–84, Protection of Human Subjects, may be used for this purpose.

4. Project Summary. The Research Proposal should include a one-page Project Summary to focus on: overall objectives and project goals; relevance and significance of the project; and experimental methods and approaches.

The Project Summary is not intended for the general reader so should be couched in language which will be meaningful to others in the field of science.

5. Project Description (15-page maximum). a. Introduction—State overall objective(s) and long-term goal(s) of the proposed research. Review the most significant previous work, including your own, and describe the current status of research in this field. Document with references.

b. Rationale and Significance—Present concisely the rationale behind the proposed research and list specific objectives for the total period of requested support. Show how these objectives relate to potential long-range improvements in food production or human nutrition. What is the potential importance of the proposed research? Discuss any novel ideas or contributions which the project offers.

c. Experimental Plan—State clearly your hypotheses or the questions you will ask and give details of the research plan. Include a description of the experiments or other work proposed; the methods and techniques to be employed and their feasibility; the kinds of results expected; and the means by which the data will be analyzed or interpreted. Include, if appropriate, a discussion of pitfalls that might be encountered, and limitations of the procedures proposed. Insofar as possible, describe the principal experiments or observations in the sequence in which it is planned to carry them out, and indicate, if possible, a tentative schedule of the main steps of the investigations within the project period requested.

d. Facilities and Equipment—Describe the facilities available for this project, including laboratories. Point out any procedures, situations, or materials that may be hazardous to personnel and the precautions to be exercised. List major items of instrumentation and those major items of nonexpendable equipment needed to complete the work.

e. Collaborative Arrangements—If the proposed project requires collaboration with other research organizations, describe the collaboration and provide evidence to assure the reviewers that the organizations involved agree. If separate written assurances are to be included, they should be placed after the References to the Project Description. Indicate specifically whether or not such collaborative arrangements might have the potential for any conflict of interest. Projects involving collaboration should indicate which organization is to receive the grant since only one submitting organization can be the recipient of a grant for each proposal. Subcontract arrangements of research work should be indicated under Item I of the Proposal Budget, Form SEA–55.

6. References to Project Description. These references should follow an accepted journal format.

7. Vitae and Publications List(s) of Principal Investigator(s). Vitae of the principal investigator, senior associates, and other professional personnel should be provided to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of all key persons who will work on the project, whether or not Federal funds are sought for their support. Provide for each person a chronological list of the most representative publications during the preceding 5 years including those in press. List the authors in the same order as they appear on the paper, the full title, and the complete reference as these usually appear in journals.

8. Additions to Project Description. Each project description is expected by the members of review committees and the staff to be complete in itself. Distribution of additional material, other than for the records, is limited to the principal reviewers. In those instances where additional material is necessary (as for example: photographs which do not reproduce well, and reprints or other especially pertinent material which are not suitable for inclusion in the proposal), 6 copies or sets, identified by title of the research project and name of the Principal Investigator, should accompany the proposal.

III. Proposal Review and Evaluation

A. Proposal Review.—Research proposals received by CRGO will be acknowledged and assigned to the appropriate program for scientific evaluation.

All proposals will be carefully reviewed by a scientist serving as a CRGO Program Manager and by additional scientists who are experts in the particular field represented by the proposal. Program Managers will also conduct discussions and obtain comments from assembled peer panels of scientists before recommending proposals for funding.

B. Criteria for Selection of Projects.—The following criteria or factors are considered in the evaluation of research proposals:

1. The scientific merit of the proposal, including the suitability and feasibility of the approaches and methodology.

2. The probability that the research will contribute to important discoveries or significant breakthroughs in food production or human nutrition in relation to the mission of this program.

3. The qualifications of the Principal Investigator and other senior personnel, such as training, demonstrated awareness of previous and alternative approaches to the problem, and performance record and/or potential for future accomplishment.

4. The probable adequacy of available or obtainable facilities, equipment, instrumentation, and technical support.

C. Revisions to Proposals During Review Process.—Prior to recommending whether or not SEA should support a particular project, the Program Manager may engage in discussions with the proposing Principal Investigator. Should such discussions result in proposed changes which exceed 10 percent of the proposed grant amount or $10,000, whichever is less, a revised proposal budget, signed by both the proposing Principal Investigator and by the Authorized Organizational Representative, must be submitted on Form SEA–55 in an original and two copies to the cognizant CRGO Program Manager for incorporation into the proposal file.

Should such discussions result in changes in the basic objectives or scope of the project as originally proposed, an appropriate proposal modification, signed and endorsed as above, must be submitted to the CRGO Program Manager.

D. Grant Awards.—The applicants submitting proposals judged most meritorious under the criteria in III B above will be awarded grants for periods not to exceed five years, within the limitations of available funds.

[FR Doc. 81–269 Filed 1–5–81; 8:45 am]

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federal register

Tuesday
January 6, 1981

Part XI

Department of the Interior

Bureau of Land Management

Exchange Procedures for Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2091, 2200, 2210, 2220, 2230, 2240, 2250, 2260 and 2270

[Circular No. 2482]

Exchange Procedures for the Public Lands

AGENCY: Bureau of Land Management, Interior

ACTION: Final rulemaking.

SUMMARY: The Federal Land Policy and Management Act of 1976 repealed a major part of the law that gave the Secretary of the Interior exchange authority and replaced it with more comprehensive authority. This final rulemaking sets forth the procedures that will be used by the Secretary in carrying out the exchange authority granted by section 206 of the Federal Land Policy and Management Act.

EFFECTIVE DATE: February 5, 1981.

ADDRESS: Any suggestions or recommendations should be sent to: Director (321), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David C. Hemstreet, (202) 343–8731, or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the **Federal Register** on June 20, 1980. Comments were invited for 60 days ending on August 19, 1980. Comments were received from 32 different sources, 17 from various Federal agencies, 13 from business interests, 1 from a State government and 1 from a local government. The discussion of the comments will be in two parts, general comments and specific comments. The latter will discuss each of the sections of the proposed rulemaking that received comments.

General Comments

Nearly all of the comments were favorable to the proposed rulemaking. Several of the comments commended the Bureau of Land Management for its efforts to develop a rulemaking that carried out the intent of section 206 of the Federal Land Policy and Management Act in an orderly and efficient manner.

One comment made the observation that the term "lands and interests in lands" is used in several places in the rulemaking and the term "lands or interests in lands" is used in other places. The comment expressed the view that only one or other of the terms should be used for consistency. Since the term "lands and interests in lands" is used in the Federal Land Policy and Management Act, the final rulemaking uses that term except where it is inappropriate.

Another comment suggested that the rulemaking should provide a procedure for review by the next higher decisionmaking level of decisions by the authorized officer on an exchange. The reason given for the suggestion was a concern that exchanges involving two or more Bureau of Land Management districts or benefitting an agency other than the Bureau of Land Management would never be given serious consideration. Employees of the Bureau of Land Management have the ability to make a determination that an exchange is in the public interest and to handle it accordingly. Further, if there is a difference of opinion between two districts regarding an exchange, the decision will be made by the State Director. No change has been made in the final rulemaking as it applies to this comment.

A comment correctly stated that the provisions of part 2200 will apply to parts 2210, 2240, 2250 and 2270. The comment suggested that language be included in the final rulemaking stating that part 2200 applies to all exchanges covered by the regulations in group 2200 of Title 43 of the Code of Federal Regulations unless it is specifically provided otherwise. This suggested language is not needed because language stating that exchanges made under parts 2210, 2240, 2250 and 2270 are to be handled in a manner consistent with the provisions of part 2200 already appears in parts 2210, 2240, 2250 and 2270.

A comment raised questions about the applicability of this rulemaking to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road lands. Section 705(a) of the Federal Land Policy and Management Act repealed the special exchange provisions of the Act of July 31, 1939 (53 Stat. 1144) and provided the more comprehensive authority of section 206 as a replacement for that authority. As a result of the changes made by the Federal Land Policy and Management Act, part 2260 is deleted from the Code of Federal Regulations by this rulemaking. The repeal of the Act of July 31, 1939, removed the authority of the Secretary of the Interior to treat lands exchanged under that authority as lands having the special character of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road lands. This rulemaking cannot grant the Secretary authority that is not granted by law. If a change needs to be made to protect the special nature of the involved lands, it will have to be done by legislation.

One comment suggested that the final rulemaking include a provision for cost reimbursement when an exchange is processed for an agency other than the Bureau of Land Management. This comment was not adopted at this time, but will be considered for possible future amendment.

One comment raised questions about the applicability of this rulemaking to exchanges authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and requested that language be included in this rulemaking regarding actions to be taken in the procedure leading to a determination of whether to make an exchange or not. A change has been made in the scope section to identify more precisely the section of the Coal Management regulations that is the basis for a determination of whether an exchange qualifies. Otherwise, no change has been made in this final rulemaking as it relates to exchanges under the Coal Management regulations in part 3400. Once the determination is made that an exchange qualifies and should be made, the exchange will be made pursuant to the procedures established by this rulemaking. Changes in the process of determining the eligibility of an exchange under the Surface Mining Control and Reclamation Act will be made when the Coal Management regulations are amended.

One final general comment questioned the use of the "Uniform Appraisal Standards for Federal Land Acquisition" as the basis of appraisals for exchanges made under this rulemaking, especially appraisals of mineral interests. The comment was of the view that the standards set in that publication were too limited and wanted the rulemaking to be changed to include other standards for appraisal. The rulemaking has not been changed to include other standards because the standard is considered to be adequate.

Specific Comments

Objective—The one comment on this section requested further elaboration on the process used to determine that the values and uses of the lands under Federal ownership are not greater than those of the lands under non-Federal ownership which will be received as a result of the exchange. This suggested change has not been adopted because the entire thrust of the rulemaking is to establish a procedure for determining whether an exchange meets the

requirements set out in the Federal Land Policy and Management Act and should be made.

Authority—One comment suggested that a reference to section 204 of the Federal Land Policy and Management Act should be included in this section. This suggestion was based on the fact the rulemaking provides for a 2-year segregation period from the date of issuance of the notice of realty action. No reference to section 204 has been made in the final rulemaking because it is not the basis for the segregation provided in the rulemaking. The basis for the segregation in this rulemaking is the general regulatory authority given by law to the Secretary of the Interior to allow for the orderly administration of the public land laws.

A comment suggested that the authority section be clarified with reference to its applicability to exchange proposals filed prior to October 21, 1976. The rulemaking clearly states that it applies to those exchange proposals filed after October 21, 1976. With the exception of State exchanges, all proposals filed prior to October 21, 1976, were terminated upon the passage of the Federal Land Policy and Management Act. Non-Federal proponents were given the opportunity to have their proposals processed under the procedures for exchanges established by the Federal Land Policy and Management Act. Proposals for State exchanges filed prior to October 21, 1976, will be processed in accordance with the regulations in effect on October 20, 1976.

A comment on the handling of exchange proposals pending at the time this rulemaking becomes effective wanted language included in the rulemaking that would require pending proposals to be processed in accordance with the administrative guidelines published after the passage of the Federal Land Policy and Management Act and not under this rulemaking. The comment expressed concern that pending proposals might have to start at the beginning of the exchange process if some language were not included that would permit them to continue. No change has been made in the section, but those proposals pending on the date of the issuance of this rulemaking will continue to be handled in accordance with the previously established procedures and administrative guidelines and this rulemaking. The administrative guidelines were issued pursuant to the Federal Land Policy and Management Act to allow orderly land management activity to continue while regulations were being promulgated. The issuance of this final rulemaking will not cause a duplication of effort on any pending exchange.

Definitions—A comment suggested that the term "conveyance" be defined in the final rulemaking. The suggestion was based on the fact that the term was used throughout the rulemaking and its meaning was not clear. The suggestion has not been adopted. The term has a clearly understood meaning, one that is accepted for land transactions. The comment appeared to be concerned about the type of conveyance document that would be issued by the United States rather than a lack of understanding of what "conveyance" means. At the time an exchange is consummated, the United States will issue either a patent if the land has never been in non-Federal ownership or another document of conveyance if the lands have previously been in non-Federal ownership. The type of conveyance document will be discussed prior to issuance.

Another comment on the definition section recommended that the term "person" be broadened to include an Indian tribe so that a tribe could participate in land exchanges. This comment has not been adopted because the term "person" is broad enough to include an Indian Tribe that is authorized by law to exchange land as expressed in 25 CFR 120a.2(b).

A couple of comments made recommendations for changes in the definition of the term "exchange." One of the comments wanted the words "private owner" changed to "person" so that the term would be consistent with other definitions. A second comment requested that the words "of lands and interests therein" be included in the definition to make clear what was being conveyed by the exchange. These two suggestions were adopted and the definition of the term "exchange" has been rewritten and clarified in the final rulemaking.

A couple of comments were concerned that someone below the District Manager might be delegated to act as the authorized officer and wanted the definition of the term "authorized officer" amended to limit the delegation to the District Manager level. The term "authorized officer" has not been changed. The Bureau of Land Management will delegate exchange authority to the District Manager and there are no plans to delegate decision authority below that level.

A final comment on the definition section suggested the addition of the term "segregation," because the term appears several times in the rulemaking and its definition would clarify the rulemaking. The term "segregation" has been defined in the final rulemaking.

Policy—A comment on this section correctly pointed out that paragraph (a) of section 2200.0-6 is procedural and should not be included in the policy section. As a result of the comment, paragraph (a) has been deleted from the policy section and now appears as section 2201.2 in the final rulemaking.

Another comment on the policy section expressed the view that the regulations should set out certain responsibilities of the Bureau of Land Management under existing Executive Orders. This suggestion has not been adopted. There are a number of Executive Orders that place responsibilities on the Bureau of Land Management in its role as manager of the public lands. Those responsibilities will be reflected in the manual sections on this subject rather than in this rulemaking.

Scope—A comment on the scope section raised questions about the status of lands that will be acquired under the authority of section 206 of the Federal Land Policy and Management Act. As the comment noted, prior to the passage of the Federal Land Policy and Management Act, lands that were acquired by exchange assumed the same character as the lands that passed into non-Federal ownership through the exchange. Public domain lands were exchanged for lands that became public domain lands and acquired lands were exchanged for lands that became acquired lands. Under section 206, all lands acquired by exchange assume the nature of public lands as that term is defined in the Federal Land Policy and Management Act. As a result, there is no need to refer in the rulemaking to the special nature of lands acquired under the procedure established in the rulemaking.

One comment suggested that the scope section be rewritten to specifically include the authorities covered by subparts 2212, 2271 and 2272, and parts 2240 and 2250 and to delete those parts and subparts from title 43. This suggestion has not been adopted because each of the mentioned parts and subparts has unique provisions that are a result of their specific legislative mandate and that authority is not provided by the Federal Land Policy and Management Act, the basis of this rulemaking.

In response to a comment asking for clarification on the point, a new paragraph has been added to the scope section of the final rulemaking which makes it clear that interests in the surface and subsurface estate may be exchanged independently of one another

if such exchange is found to be in the public interest.

Lands Subject to Disposal by Exchange—Several comments made the observation that it is impossible to specifically address exchanges with any degree of accuracy in the normal planning process except to identify lands that the United States wishes to dispose of or acquire under the provisions of the Federal Land Policy and Management Act. In recognition of this fact, the final rulemaking has been amended to make it clear that lands found suitable for disposal under the planning system may be exchanged under the procedure established by this rulemaking. The amendment process of the planning system does permit a specific finding that lands are suitable for disposal by exchange. In most instances, the normal planning process will be used and a management decision will be made to use lands identified as suitable for disposal as lands for an exchange.

A sizable number of comments pointed out the erroneous numbering of subsection (6) in § 2200.1 of the proposed rulemaking. This has been corrected. Some of those same comments also wanted subsection (c)(6) amended to provide a specific comment period. While this suggestion has not been adopted, § 2201.1(e), which does provide for a specific comment period, has been amended to increase the period for comments to 45 days.

One comment on this section wanted clarification of the assumption that the notice of realty action would not be published until the completion of a decision document under the provisions of the National Environmental Policy Act. An environmental analysis document in the form of either an environmental assessment or environmental impact statement will be completed on an exchange before the publication of the notice of realty action. This will be done in one of several ways. An environmental assessment or environmental impact statement is completed for each planning unit as part of the planning process provided for by subpart 1601 of this title. If the lands covered by the proposed exchange have been addressed in a current land use plan and found suitable for disposal, a determination will be made as to whether further environmental assessment is required when the lands are offered for exchange. If the lands are not covered in a current land use plan, an environmental assessment document will be completed during the process of amending the land use plan to accommodate the exchange. Therefore, an environmental assessment document will always be prepared prior to the publication of a notice of realty action covering an exchange, even though the environmental assessment may not be prepared immediately prior to publication of the notice.

Another comment on this section recommended the deletion of subsection (c)(4) of § 2200.1 from the proposed rulemaking. The reason given for this recommendation was that section 208 of the Federal Land Policy and Management Act excepts exchanges from the requirement to impose restrictions or covenants. Section 208 does exclude exchanges from its mandatory provisions. However, the public interest criteria of section 206 contains sufficient authority for the imposition of reservations, covenants or other restrictions that may be necessary to protect valid existing rights, the environment and the public health and safety.

A comment on this section suggested that the phrase "an offer to exchange lands" be substituted for the phrase "notice of realty action" because the notice of realty action is used in connection with other land disposal actions and notification of a pending exchange should be more specific. This suggestion has not been adopted and the notice of realty action continues as the instrument that will be used to notify the public of exchanges and other disposal actions by the Bureau of Land Management. Each notice of realty action will contain the information needed to enable the public to adequately assess the proposed action.

A final comment on this section recommended that paragraph (d) be deleted from the final rulemaking, or at the very least, that consideration of the unsuitability criteria of fee coal for disposal through exchange be discretionary rather than mandatory. This paragraph is just a reference to existing regulations in section 3437 of this title which prohibit the disposal of Federal coal in areas found to be unsuitable for mining. This rulemaking cannot be used to change existing requirements. If, in the future, section 3437 is changed, this paragraph will reflect those changes because the wording of the section has been amended to make it clear that the requirements of section 3437 will be applied.

Lands Subject to Acquisition by Exchange—Several comments were dissatisfied with the requirement of the rulemaking that exchange should be limited to the same state. This limitation is imposed by section 206 of the Federal Land Policy and Management Act and cannot be changed by rulemaking.

It was suggested by a comment that language be added to this section requiring that lands to be acquired by the United States through an exchange be determined suitable for acquisition under the land use planning provisions contained in subpart 1601 of this title. This suggestion has been adopted and the final rulemaking amended accordingly.

One comment asked how an appraiser would identify the acreage to be acquired for the purpose of established fair market value when an exchange is for unsurveyed school sections. Ordinarily, such acreage will be identified through reference to approved protraction diagrams.

Lands Acquired by Exchange—A number of comments on this section suggested that publication of the notice of realty action in the **Federal Register** should be discretionary with the authorized officer. Other comments suggested that the notice should be published only in the **Federal Register** or not at all. The Secretary of the Interior is required to give the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands. Publication in the **Federal Register** is constructive public notice of a pending disposal of public lands. The publication of the notice in the local papers will give the public in the area of the action a better opportunity to be aware of and participate in the action. No change has been made in the publication requirements of the final rulemaking.

Notice of Realty Action—A number of comments made the point that the section did not provide specific instructions as to which office would consider the public comments received in response to the notice of realty action. The section has been amended to provide a 45 day comment period and specific language as to where the comments should be sent and how they would be handled during the review process.

A few comments complained about length of time required for the publication of the notice of realty action in the **Federal Register** and local newspapers because a week would be lost in the process. This comment has been resolved by the addition of a requirement for a 45 day comment period. This will resolve all questions about the length of the comment period.

Several comments suggested including a provision allowing for an extension of the two-year segregation period if the exchange has not been completed within

the initial two-year segregation period. This suggestion was not adopted because the two-year period provided in the rulemaking should be adequate to complete the processing of an exchange. The notice of realty action should not be issued in connection with an exchange until sufficient action has been completed to determine if the exchange is in the public interest and can go forward. At this point, the remaining work on processing an exchange should be completed within the two-year period covered by the segregation.

One comment suggested that the rulemaking should provide discretion for the consideration of more than one proposal for an exchange of the same lands. The comment referred to an application for exchange, which is inappropriate in this rulemaking because there is no provision for an application for exchange. Further, the Secretary of the Interior has the discretion to determine which, if any, proposal for exchange should be accepted and processed. The suggested change has not been adopted.

A comment suggested that Federal interests such as mineral interests in the non-Federal lands that are subject to an exchange be segregated by the notice of realty action. The language in the proposed rulemaking is broad enough to allow for this type of situation. However, the section has been amended by the addition of a sentence to make it clear that such a segregation can be made.

It was suggested by a comment that language stating that the segregative effect terminates "upon issuance of patent or other document of conveyance to such lands," be added to those items in paragraph (b) of section 2201.1 that cause the termination of the segregative effect on lands covered by a notice of realty action. This result would follow as a matter of law as to those lands or interests the title to which was conveyed by the United States. However, for the sake of clarity, this suggestion has been adopted and the recommended language has been added to the final rulemaking.

Several comments inquired as to whether it would be necessary or appropriate to segregate the mineral and other interests in the lands covered by an exchange if the minerals or other interests are to be reserved to the United States or their use would not interfere with the exchange. After considering the issue raised by the inquiry, paragraph (b) of section 2201.1 of the final rulemaking has been amended to make the segregation action discretionary rather than mandatory and to make it clear that applications would be returned only if they involve uses covered by the segregation.

One comment wanted to know if, following the termination of the segregative effect, an opening order is necessary to open the lands to the public land laws. The answer is that publication of an opening order at the end of the two year period is necessary to open the public lands covered by a segregation to entry and to allow notation of the public land records. The publication of the opening order will give all members of the public an equal opportunity to enter the public lands in question.

The comments suggested that paragraph (c) of § 2201.1 is inconsistent with the requirements of section 402(g) of the Federal Land Policy and Management Act. Section 402(g) has been interpreted as requiring that notice be given in those instances when the permit or lease is cancelled in its entirety. In most instances, the notice of realty action, which will be constructive notice to a grazing permittee or lessee, will be published about two years prior to completion of action on an exchange. In every instance, the authorized officer will attempt to notify all users, including grazing users, of a proposed exchange at the earliest possible time in the process. In this same vein, a comment wanted to know what might constitute an "emergency." The word "emergency" is taken from section 402(g) of the Act and would be a situation where the national interest is involved and the lands are needed for the national interest on a short term basis, such as the building of a defense installation in time of war or national danger.

Two new paragraphs have been added to the section on notice of realty action as a result of questions raised in several comments about the adequacy of the notice. New paragraph (d) includes new information that must be included in the notice to give the public information needed to adequately comment on the proposed exchange. The information required by the paragraph reflects needs identified in the comments. New paragraph (e) is a rewritten version of the section called Notification in the proposed rulemaking. It requires that the notice be sent to individuals who have a specific interest in the lands subject to the exchange. This paragraph provides for personal service to those individuals and enhances their opportunity to comment on the proposed exchange. The provisions in both of these paragraphs should increase the public participation in the exchange process and result in better decisions.

Notification—Several comments suggested that this section be amended to add additional parties that must be notified about a proposed exchange. After studying the comments, it was determined that the requirements contained in the section were more properly a part of the notice of realty action section and, as stated earlier, the requirements contained in the section have been amended and added to the notice of realty action section of the final rulemaking.

The number for the section on notification, section 2201.2, is used in the final rulemaking for a new section on proposals. As discussed earlier, the procedural language of the policy section of the proposed rulemaking has been amended and moved to this new section. The new proposal section provides a complete procedure for consideration of exchange proposals, including a protest to the State Director by a proponent whose proposal has been found non-acceptable. Included in the review of an exchange proposal will be consideration of the availability of personnel and funds to carry out the exchange. As a policy, exchanges are a valuable component of Bureau land activity, however, they are extraordinary actions, and decisions concerning exchanges may be affected by personnel and budget limitations.

Appraisals—A comment on this section wanted the rulemaking to set a definite date when the valuation of the property subject to the exchange would be set and recommended the date of the publication of the notice of realty action. This recommendation has not been adopted because the valuation of the property must be equal, or equalized by the payment of the difference in valuation, at the date the exchange is made. The rulemaking provides for equalization on the date of the exchange and no change has been made.

Legal Description of Property—The comments on this section of the proposed rulemaking expressed concern about the limits placed on the legal description of Federal lands that can be used for the purposes of this rulemaking. The comments pointed out that the section did not appear to consider special survey situations on the public lands. There has been no change in the requirements as they relate to Federal lands since public lands cannot be transferred out of Federal ownership until they have been surveyed, unless there is specific authority to do so, such as is provided in the Alaska Native Claims Settlement Act for transfer of lands to the Alaska Natives.

In response to comments about the requirements for the legal description of

non-Federal lands considered for an exchange, the rulemaking has been amended to give additional latitude in the description that may be submitted, especially as it relates to lands that may have been transferred from Federal ownership under special authority without having been surveyed.

Final Requirements—One of the comments on this section objected to requirement that the non-Federal party to an exchange furnish acceptable evidence of title evidence before the Federal Government issues a document of conveyance. The comment suggested that the rulemaking provide a mechanism, such as a third party escrow, that would allow for simultaneous exchange of title evidence or the furnishing of an unexecuted deed for examination. This suggestion was not adopted. The concern raised by the comment is met by the provision in § 2201.7(b) which covers the question of what happens if the exchange is not consummated.

It was pointed out in one of the comments that some corporations do not have corporate seals because the State law in the State where they are located does not require them to have a seal. In recognition of this fact, the final rulemaking has been amended to cover the situation where a corporation has no seal.

A few comments expressed concern about the requirements in the rulemaking for acceptable title and requested some flexibility beyond that provided in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States." The rulemaking contains sufficient flexibility to meet the concerns of those commenting on this subject and no change has been made. A related comment suggested that the rulemaking be amended to include a guide as to the preparation of conveyance documents submitted to the United States. In response to this comment, the final rulemaking has been amended to provide such guidance.

A couple of comments wanted to include other entities in the provision that allows States that are exchanging lands that have never been in private ownership special rights as to the title evidence they are required to furnish. This special right is in recognition of the close cooperative relationship between the States and the Department of the Interior and is not extended to other entities by the final rulemaking.

A comment suggested that language be added to the rulemaking that provides for relinquishment of a State's inchoate rights to unsurveyed school sections when those sections are used by a State in an exchange. This suggestion has been adopted and language added in the final rulemaking.

A final comment on the section on final requirements pointed out that there is authority other than the Federal Land Policy and Management Act for making exchanges and the rulemaking does not provide a way for that to be shown. This comment was well taken and the section has been amended by the addition of language in several places requiring the statement of the authority for the exchange.

Exchange Agreement—Several of the comments on this section pointed out that a binding agreement cannot be entered into until rather late in the exchange process and questioned its value. It is clear that no party would enter into an agreement if there were several unknown factors. For this reason, if an agreement is made it will be at the time final appraisals have been approved and the exchange is otherwise in order. Entering into an agreement is not mandatory. The value of the agreement is that it binds all parties once all conditions have been determined. No change has been made in the final rulemaking as a result of these comments.

One comment suggested the addition of the words "no physical" to the last sentence in this section to make it clear that the loss or damage being considered was physical loss or damage. This comment was not adopted because the last sentence in section 2201.6 of the proposed rulemaking has been deleted since its requirements can be provided for in the exchange agreement itself.

A comment questioned the enforceability of the exchange agreement. The agreement can be enforced by either party through the courts.

Acceptance of Conveyance and Removal of Improvements—The one comment on this section wondered if the United States would want to have private improvements that were part of the basis of the valuation remain on the property after the exchange. If the improvements are part of the realty and were included in the valuation, they will be retained on the exchanged lands. Other improvements will be removed, since they would not have been part of the valuation.

Language has been added to this section to assure that the Governor and heads of affected local governments are notified when a conveyance of public lands is made as part of an exchange.

Title Evidence—The comments suggested that the language of this section does not relate to title evidence and should be placed under the exchange agreement provisions of the rulemaking. This suggestion was not adopted because the language of the section relates to a disclaimer of any right attaching to the United States' title to the public lands in an exchange prior to the issuance of the patent or other deed of conveyance.

One comment suggested eliminating the provision for return of title evidence and issuance of a quit-claim deed to a non-Federal party to an exchange where the deed has been recorded, because the action of the United States in accepting and recording the deed limits its authority to terminate the exchange. This suggestion has not been adopted because it is clear the United States can terminate the exchange for good cause even as late as the time of acceptance and recording of the deed. Editorial changes and corrections have been made as necessary.

The principal author of this rulemaking is David C. Hemstreet, Division of Land Resources and Realty, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

(Sections 205, 206 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1740). Group 2200, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below)

Guy R. Martin,

Assistant Secretary of the Interior.

December 31, 1980.

1. Part 2200 is revised to read as follows:

PART 2200—EXCHANGES—GENERAL PROCEDURES

Subpart 2200—Exchanges—General

Sec.

Subpart 2201—Exchanges—Specific Procedures

Subpart 2202—Exchanges—National Forest Exchange

Authority: Secs. 205, 206, 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740)

Subpart 2200—Exchanges—General

§ 2200.0-1 Purpose.

This part 2200 sets forth procedures for the exchange of public lands or interests therein for non-Federal lands and interests therein.

§ 2200.0-2 Objective.

The objective is the acquisition and disposal of lands and interests therein for the benefit of the public interest as provided in Part 1601 of this title, through use of the exchange authority granted by the Federal Land Policy and Management Act of 1976. When considering public interest, full consideration will be given to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. There must also be a finding that the values and objectives which Federal lands and interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands and interests and the public objectives they could serve if acquired.

§ 2200.0-3 Authority.

These regulations are issued under the authority of sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740), and apply to any proposed exchange filed after October 21, 1976.

§ 2200.0-4 Responsibility.

The Bureau of Land Management shall carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0-5 Definitions.

As used in this part, the term:

(a) "Secretary" means Secretary of the Interior.

(b) "Person" means any person or entity legally capable of conveying and holding land and interests therein, under the laws of the State within which the land or interests therein are located. A person shall be a citizen of the United States, or in the case of a corporation, shall be subject to the laws of any State or of the United States.

(c) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Lands" means any land and interests therein.

(e) "Notice of realty action" means publication of a determination as set out in § 2201.1 of this title, that certain lands are suitable for disposal by exchange under specified laws.

(f) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) "Exchange" means a conveyance of lands and interests therein from the United States to a person at the same time there is a conveyance of lands and interests therein from the person to the United States.

(h) "Equal value exchange" means an exchange of lands, or interests therein, where fair market value appraisals show that the interests being exchanged are of equal value.

(i) "Money equalization" means balancing the differences in the fair market value of the properties by a money payment made by either party.

(j) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of the Interior of regulatory authority as conferred by law to allow for the orderly administration of the public lands.

§ 2200.0-6 Policy.

(a) Exchange proposals shall meet policy objectives of the Federal Land Policy and Management Act and shall comply with all applicable Federal statutes, regulations and executive orders.

(b) Exchanges of interests in lands shall be considered on a case-by-case basis.

§ 2200.0-7 Scope.

(a) These regulations apply to all exchanges involving public lands and interests therein administered by the Secretary, through the Bureau of Land Management, except where an exchange is specifically authorized by Subparts 2212, Part 2240, Part 2250, and Subparts 2271, 2272, 2273 and 2274, noted in the regulations of Group 2200 of this title.

(b) Qualified requests for fee coal exchanges made under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3437 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3437 of this title.

(c) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either Federal or non-Federal lands.

§ 2200.1 Lands subject to disposal by exchange.

(a) Public lands may be disposed of by exchange under this part only if their disposal is in conformance with the land use planning provisions contained in subpart 1601 of this title.

(b) The public lands to be exchanged shall be located in the same State as the non-Federal lands or interests to be acquired.

(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment.

(d) As part of the consideration of whether public interest would be served by disposal of fee coal through exchange, the applicability of unsuitability qualifications of Subpart 3461 of this title to the Federal lands are relevant and will be applied.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Non-Federal lands and interests therein may be acquired only when their acquisition is consistent with the mission of the Department of the Interior. Both the non-Federal and public lands and interests therein shall be located in the same State.

(b) Acquisition of lands by exchange under this part may be made only if their acquisition is in conformance with land use planning provisions under subpart 1601 of this title.

(c) Unsurveyed school sections are considered as "non-Federal" lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived all rights to unsurveyed sections used in the exchange.

§ 2200.3 Lands acquired by exchange.

(a) Lands and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands. Such public lands are not available for location under the mining laws of application for sale, entry or mineral leasing. A notice of their availability shall be published in the **Federal Register**. The notice shall state the date and time of their availability and the forms of authorization. Such availability shall be noted on the public land records.

(b) Lands and interests in lands acquired by exchange within a grazing district established under section 1 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), shall become a part of that district.

(c) Lands and interests in lands acquired within the National Forest System may be transferred to the Secretary of Agriculture by the Secretary and thereby become National Forest System lands subject to all laws and regulations applicable to other National Forest System lands.

(d) Lands and interests in lands acquired under provisions of section 206 of the Federal Land Policy and Management Act and located within the National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails or any other Federal land System established by an Act of Congress may be transferred by the Secretary to the appropriate agency for administration in accordance with the laws, rules and regulations applicable to that system.

(e) The acquisition procedures for non-Federal lands and interests therein to be acquired by exchange shall be in strict adherence with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Notice of realty action.

(a) A notice of realty action offering to exchange certain lands which have, through the public land use planning process of the Bureau of Land Management, been determined suitable for acquisition and disposal by exchange, shall be published in the **Federal Register** and shall be published once a week for 3 weeks thereafter in a newspaper of general circulation in the area of the lands to be acquired and the lands to be disposed of by a proposed exchange. The notice shall provide 45 days after the date of issuance for comments by the public and interested parties. Comments on the notice of realty action shall be sent to the office issuing the notice.

(b) The publication of the notice of realty action on an exchange proposal in the **Federal Register** may segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. Any prior reserved Federal interests in the non-Federal lands may be segregated by the notice of realty action to the same extent the public lands are segregated.

(c) When the exchange of a tract of public lands requires the cancellation of a grazing permit or lease in its entirety notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (see 43 CFR 4110.4–2(b)). The publication of a notice of realty action shall constitute notice to the grazing permittee or lessee if notice has not been previously given. No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized improvements have been met.

(d) The notice of realty action shall list all reservations to be included in the conveyance to and from the United States, including, where the Federal lands are encumbered by a mineral lease or permit, a reservation to the United States for the duration of the mineral lease or permit of the mineral or minerals covered by the lease or permit.

(e) The notice of realty action shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographic area within which the public lands are located and the head of any political subdivision having administrative or public services responsibility in the geographic area within which the public lands are located not less than 60 days prior to the exchange of titles. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

§ 2201.2 Proposals.

(a) Exchange proposals may be submitted by a person who owns lands or interests in lands, by non-Federal entities, by Federal departments or agencies or by the Bureau of Land Management. When an exchange proposal is made to the Bureau of Land Management, it shall be made in writing to the District Manager for the district in which the Federal lands are located. The authorized officer shall publish a notice of initiation or receipt of an exchange proposal within 10 days of initiation or receipt of such proposal.

(b) An exchange proposal may, if found by the authorized officer to be in accordance with Bureau of Land Management policies, programs and the regulations in this part, be the basis of publication of a notice of realty action as provided in § 2201.1 of this title.

(c) Where an exchange proposal is not accepted by the authorized officer and made the basis of a notice of realty action, the proponent shall be so advised in writing with a statement of the reason(s) for the non-acceptance and advised of the availability of a protest to the State Director.

(d) If requested in writing by the proponent within 30 days of the mailing of the notification of non-acceptance, the decision of non-acceptance of the authorized officer shall be reviewed by the State Director to determine if it is in accordance with the Bureau of Land Management policies, programs and the regulations in this part. Such review shall be completed by the State Director and the proponent notified in writing of the action taken within 60 days of receipt of the written request by the State Director.

§ 2201.3 Appraisals.

Appraisals to determine current fair market value of lands and interests in lands to be exchanged shall be in accordance with the principles in the Interagency Department of Justice publication entitled "Uniform Appraisal

Standards for Federal Land Acquisition." Final determination of the value of lands and interests in lands proposed for exchange by either party rests with the Secretary.

§ 2201.4 Legal description of property.

The public lands and interests in public lands proposed for exchange shall be properly described and locatable under the survey laws and standards of the United States. The non-Federal lands may be described as part of a surveyed section or by a metes and bounds survey, tied to a township, range, meridian, and State, or may be described by the description contained in an approved protraction diagram of the Bureau of Land Management.

§ 2201.5 Final requirements.

At the end of the period provided in the notice of realty action and upon a determination by the authorized officer that a particular exchange is acceptable, the owner or holder of the non-Federal land and interest shall provide the following:

(a) *Evidence of title acceptable to the authorized officer.* (1) For private land owners, any one of the documents set forth in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970 ed.) that is acceptable to the authorized officer.

(2) For States, if the property was ever held in private ownership, a certificate of title as prescribed in § 2201.5(a)(1). If lands and interests in lands have not been in private ownership, either of the following shall be acceptable evidence of title: (i) A certification by the appropriate State officer that the property has not been sold or otherwise encumbered and a certification under the official seal of the recorder of deeds or other appropriate State officer that no instrument has been recorded or filed that would encumber title to the property or (ii) a certification by an abstractor or abstract company that no instrument has been recorded or filed that conveyed or would encumber title to the property.

(b) *Conveyance Documents.* All deeds to the United States shall be prepared in accordance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1968 ed.). (1) Private property owners shall submit a warranty deed or other document of conveyance which meets Department of Justice title standards for property acquired by the United States conveying the privately-owned property to the United States, and stating that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. Deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located.

(i) Any revenue stamps required by State law shall be affixed to the deed and cancelled.

(ii) A deed executed by an individual grantor shall disclose the marital status of the grantor. A married grantor shall join with the spouse to execute a deed to bar any right of courtesy, dower, community interest or any other claim to the property conveyed unless written evidence is submitted that shows that under the laws of the State where the conveyed property is located the grantor's spouse has no present or prospective interest in the lands.

(iii) Any deed executed by a partnership, association or other entity other than a corporation shall corrborate that the deed is executed pursuant to the articles of association or partnership or other similar document creating the entity. If there are none or if signing authority is not provided for in the document, the deed shall be signed by each member of the entity and each signor shall furnish a statement that he/she is a member. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(iv) Any deed executed by a corporation shall corroborate that the deed is executed pursuant to its bylaws or a resolution or order by the corporation's board of directors or other governing body. A copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(2) States shall submit a deed of conveyance that includes a statement that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. The deed shall be executed, acknowledged and recorded in accordance with the laws of the State. A certification that the State officer executing the conveyance is authorized to do so under State law shall accompany the deed. When unsurveyed sections are used as exchange lands by a State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(c) *Taxes and equalizing money.* (1) Where taxes constitute a lien on the non-Federal property, the owner of the non-Federal land or interest shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount at least 20 percent in excess of taxes paid on the property for the previous year or assure payment of taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the non-Federal lands and interests.

(2) A money payment for equalization of value shall not exceed 25 percent of the value of the public lands and interests being conveyed, but the amount of the money payment shall be reduced to as small an amount as possible.

§ 2201.6 Exchange agreement.

An exchange agreement may be entered into between the Bureau of Land Management, as represented by the authorized officer, and exchange party. The agreement shall identify the lands or the estate to be exchanged, all reservations and outstanding interests, any necessary cash equalization and all other terms, conditions, covenants and reservations.

§ 2201.7 Acceptance of conveyance and removal of improvements.

(a) *Acceptance of conveyance.* If the title and other evidence required of the owner of the non-Federal lands and interests in lands are in conformity with the law and regulations, the authorized officer may accept title to the non-Federal property conveyed to the United States. A patent or other document of conveyance for the property exchanged shall be issued and a notice of the issuance of said conveyance documents shall be published in the **Federal Register.** The Governor and the head of local governments shall be immediately notified of the issuance of conveyance documents for public lands located within their respective jurisdictions. A money payment, if required to equalize values, shall be made by the appropriate party prior to or at the date of conveyance.

(b) *Removal of improvements.* If any buildings, fencing or other movable improvements owned or erected by a party to an exchange on the non-Federal lands conveyed are not a part of the exchange proposal, the party may remove such improvements from the lands upon receipt of notice that the exchange has been approved: *Provided,* That such removal is accomplished with in the period specified in the notice or any reasonable extension that may be granted by the authorized officer.

(c) *Other improvements.* Where public lands to be conveyed under this part contain authorized improvements, other than those identified in § 2201.1(c) or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.8 Title evidence.

(a) If no exchange agreement is entered into, no action taken prior to issuance of patent or other document of conveyance shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

(b) If a party to a prospective exchange has submitted title evidence in connection with an exchange and processing of the proposal is terminated and the exchange will not be proposed again in the near future, the title evidence shall be returned to the exchange party. Where the deed has been recorded, a quitclaim deed for the land conveyed to the United States shall be issued under section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

Subpart 2202—Exchanges—National Forest Exchange

§ 2202.1 Applicable regulations.

(a) All proposals for exchange for the consolidation or extension of national forests, under the authority and provisions of the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture, in compliance with the regulations in 36 CFR Part 254.

(b) The filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from appropriation, location or entry under the general mining laws but not from the applicability of those public land laws governing the use of the National Forest System under leases license or permit, or governing the disposal of mineral or vegetative resources, other than under the general mining laws. The segregative effect of the offer notation on the public land records shall terminate upon issuance of patent or other document of conveyance to such lands, upon rejection or denial of the exchange offer or 2 years from the date of the notation whichever occurs first.

PART 2091—SPECIAL LAWS AND RULES

§ 2091.2-3 [Removed]; §§ 2091.2-4 and 2091.2-5 [Renumbered as §§ 2091.2-3 and 2091.2-4]

2. Subpart 2091 is amended by the removal of §§ 2091.2-3 and the renumbering of §§ 2091.2-4 and 2091.2-5 and §§ 2091.2-3 and 2091.2-4 respectively.

PART 2210—STATE EXCHANGES

§§ 2211.0-3—2011.2 (Subpart 2211) [Removed]

3. Part 2210 is amended to remove Subpart 2211 in its entirety.

§ 2212.1 [Amended]

PART 2240—NATIONAL PARK SYSTEM EXCHANGES

§ 2240.1 [Amended]

PART 2250—WILDLIFE REFUGE EXCHANGES

§ 2250.1 [Amended]

PART 2270—MISCELLANEOUS EXCHANGES

§ 2273.0-3 [Amended]

4. Sections 2212.1 in Subpart 2212, § 2240.1 in Part 2240, § 2250.1 in Part 2250 and § 2273.0-3(b)(3) in Subpart 2273 are amended by removing the words "in § 2200.0-8" and adding the words "in Part 2200" after the words "with the regulations" in the last sentence.

PART 2220—PRIVATE EXCHANGES UNDER TAYLOR GRAZING ACT [REMOVED]

PART 2230—NATIONAL FOREST EXCHANGES [REMOVED]

PART 2260—O & C EXCHANGES [REMOVED]

5. Parts 2220, 2230 and 2260 are removed in their entirety.

PART 2270—MISCELLANEOUS EXCHANGES

§ 2271.1 [Amended]

6. Section 2271.1 in Subpart 2271 is amended to make the last sentence of this section read as follows: "Any such transactions shall be handled in a manner consistent with the applicable statutes and with the general regulations in Part 2200."

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Tuesday
January 6, 1981

Part XII

Department of Health and Human Services

Office of the Secretary

Requirements and Procedures Applicable to Appeals Before the Departmental Grant Appeals Board

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 16 and 74

Requirements and Procedures Applicable to Appeals Before the Departmental Grant Appeals Board

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to delete the material currently set forth in 45 CFR Part 16, and substitute new requirements and procedures applicable to disputes arising under certain HHS grants and other programs. HHS also proposes to add certain related provisions to 45 CFR Part 74, which contains general requirements applicable to all HHS grants and cooperative agreements. These proposed provisions are intended to improve the Department's capability to provide a fair, quick and flexible process for appeal from final written decisions.

DATE: Comments received by March 9, 1981 will be considered in developing the final requirements and procedures. The Advisory Commission on Intergovernmental Relations (ACIR) will sponsor meetings in San Francisco and Chicago, at which this proposal, among other matters related to dispute resolution, will be discussed. In addition, the Department will hold a public meeting in Washington, D.C., during the comment period, and you may find out details by contacting one of the persons identified below.

ADDRESS: Send your comments to: Judy Ballard, Departmental Grant Appeals Board, Room 2004, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201. Copies of comments may be examined at this address.

FOR FURTHER INFORMATION CONTACT: John Settle, Chair, Departmental Grant Apeals Board, Room 2004, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201. Telephone: (202) 245-0222.

SUPPLEMENTARY INFORMATION:

I. Background

HHS was the first federal grantor agency to offer a structured process of adminisrative disputes resolution for its grantees on a large scale, when it established the Departmental Grant Appeals Board seven years ago. Since then, other agencies (among them the Department of Energy and the Environmental Protection Agency) have also developed such processes. The Office of Management and Budget (OMB) has recently developed a proposed circular which, when finally published, will set forth general principles to guide agencies in developing dispute resolution processes. Based on HHS' extensive experience, the experience of other agencies, and the material developed by OMB, HHS has developed new procedures designed to reflect what we have learned, to be easy to uderstand, and to be quick, fair and flexible. In developing this proposal, HHS circulated a draft widely among interested persons and organizations in and out of the federal government, and we believe it reflects the concerns of a broad cross-section of interests.

II. Design Considerations

A good process of adminsitrative dispute resolution has at least the following attributes:

—It generally produces a "final" decision faster than a court or regular bureaucratic process.

—It usually is conducted by people who have developed expertise about the program under which the dispute arises.

—It is less costly and less demanding of participants' time than other methods.

—It is more concerned with equity than with collateral procedural formalities.

—It reduces litigation, and if litigation occurs anyway, it will have produced a record which gives a court a better basis for review.

—It reduces the pressures of political intervention.

—It provides a fresh look within the agency at polarized problems, and thus enhances grantor/grantee relationships and avoids the embarrassment that might arise if flaws are exposed in a different forum.

An administrative dispute resolution process can only have these attributes if it is fair, quick, and flexible. Fairness is enhanced by procedures which the parties can understand and use easily. The proposed provisions below were designed with these considerations in mind.

III. Overview of the Procedures.

These are the principal parts of the process, and some of the underlying bases:

(a) The first step is a well developed and documented "final" decision (i.e., a written decision of an HHS component which is final unless appealed). The procedures (primarily the additions to 45 CFR Part 74, at the end of the materials) would require of Departmental components a greater degree of discipline than in the past in developing the "final" decision. The objective is to assure that the agency clearly identifies a matter in dispute, does what it can to resolve it, and, when it is clear that the agency and the grantee have reached an impasse, issues a written document containing a complete and concise factual and legal basis for the agency's action. The Board has found sometimes that the ostensibly final decision appealed from was issued prior to any attempt to resolve or clarify issues, or that the agency did not explain the basis of its decision very well. The proposed procedures hopefully will produce better final decisions and thus eliminate some appeals, make others easier to resolve, and better inform grantees in all cases.

(b) After the final decision, when an appeal is filed, the procedures require the parties to submit documents in an "appeal file." While in the past the accumulation of documents submitted to the Board over time effectively became an appeal file, the procedures now would make it clear that there is a responsibility early in the process for both parties to properly organize and submit relevant documents, and that the appeal file is the documentary heart of the record reviewed by the Board. The procedure is designed to reduce the need for the Board to later request extensive additional data, and so expedite review and encourage the parties to develop their respective positions better at an earlier point. Of course, the Board will **not** unfairly preclude a party from submitting necessary documents at some later point.

(c) The procedures would provide three basic ways for the Board to handle disputes, and would also provide for special expedited procedures. The first-anticipated to be applicable to most cases—would be a review of the appeal file and the statements (arguments) of the parties. The second would supplement the appeal file review with an informal conference designed primarily for the Board members to elicit information to clarify the written record. The third is an evidentiary hearing, available in limited circumstances. Finally, there are expedited procedures for cases of $25,000 or less. These procedures are self-explanatory (see §§ 16.7 through 16.12). All procedures are designed to be simple enough that a grantee need not feel it must have an attorney, although we do not want to lull grantees into thinking they may always dispense with the services of counsel, since many appeals involve complex facts and issues of law.

IV. Board Jurisdiction

Proposed Appendix A contains a description of the programs and types of disputes to which Board procedures and requirements apply. The Appendix basically is a shortened and simplified version of the Board's earlier jurisdiction statement, updated to reflect those disputes which agencies have chosen to submit to the Board. The Public Health Service (PHS) proposes to use Board procedures for resolution of disputes over disallowances in PHS formula grant programs. This would be consistent with Board review of disallowances under the public assistance titles of the Social Security Act. The question of whether the Board should review disallowances under Titles III and VI of the Older American Act (42 U.S.C. 3021–3030(g) and 3057 et. seq.) is currently under review by the Office of the General Counsel. The final regulation will reflect a decision on this matter.

The proposed Appendix also covers certain disputes arising under federal/state agreements in the Supplemental Security Income Program. The disputes clauses of some of these agreements already refer to Board review. The proposed provisions would clarify what Board procedures and requirements apply to these disputes.

The proposed Appendix also contains a provision designed to speed up determination whether the Board has jurisdiction in ambiguous cases.

V. Other Provisions to Note

(a) Comment is specifically invited concerning possible elimination of a right of appeal to the Board in very small cases, such as those under $5,000. This limitation might be restricted to circumstances where the HHS component offered a review process for these small cases. The Public Health Service has suggested such an approach.

(b) Proposed § 16.5(d) provides that Board personnel who have "recent, close business or professional affiliation" with a party or representative will not participate on a case. Some have suggested that we need to define what "recent" and "close" mean, perhaps with specific times and organizational details. Others feel the general description is enough to provide the Chair with guidance to exercise judgment in case assignments. Your comments are invited.

(c) The proposal also contains a provision under which the Board could provide mediation services at the request of an HHS agency (see § 16.18). Mediation involves group process skills and negotiation techniques, and if the section is retained in the final version, the Board will train several of its personnel in these skills. The purpose of the provision is to promote more informal dispute resolution, and thus further reduce the time and resource commitment involved in using the Board. Mediation is particularly useful in situations involving communication problems, personal antipathies, confused facts, or matters that can be compromised. Mediation generally is not useful when the dispute is over an issue of law.

(d) Section 16.22 contains proposed time goals for Board resolution of appeals. This new emphasis on avoiding unnecesssary delay is consistent with the Department's efforts elsewhere to make audit resolution faster and more efficient. Meeting the goals will require the cooperation of both appellants and HHS representatives.

Accordingly, the Department proposes to amend 45 CFR as follows:

1. By revising Part 16 as follows:

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

Sec.

Authority: 5 U.S.C. 301 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

§ 16.1 What this part does.

This part contains requirements and procedures applicable to certain disputes arising under the HHS programs described in Appendix A. This part is designed to provide a fair, impartial, quick and flexible process for appeal from written final decisions. This part supplements the provisions in Part 74 of this title.

§ 16.2 Definitions.

(a) "Board" means the Departmental Grant Appeals Board of the Department of Health and Human Services. Reference below to an action of "the Board" means an action of the Chair, another Board member, or Board staff acting at the direction of a Board member. In certain instances, the provisions restrict action to particular Board personnel, such as the Chair or a Board member assigned to a case.

(b) Other terms shall have the meaning set forth in Part 74 of this title, unless the context below otherwise requires.

§ 16.3 When these procedures become available.

Before the Board will take an appeal, three circumstances must be present:

(a) The dispute must arise under a program which uses the Board for dispute resolution, and must meet any special conditions established for that program. An explanation is contained in Appendix A.

(b) The appellant must have received a final written decision, and must appeal that decision within 30 days after recieving it. Details of how final decisions are developed and issued, and what must be in them, are contained in 45 CFR 74.304.

(c) The appellant must have exhausted any interim review or appeal processes required by regulation. For example, see 42 CFR Part 50 (Subpart D) for Public Health Service programs and Part 75 of this title for rate determinations and cost allocation plans. In such cases, the "final written decision" required for the Board's review is the decision resulting from the interim review or appeal process. Appendix A contains further details.

§ 16.4 Summary of procedures below.

The Board's basic process is review of a written record (which both parties are given ample opportunity to develop), consisting of relevant documents and statements submitted by both parties (see § 16.8). In addition, the Board may hold an informal conference (see § 16.10). The informal conference primarily involves questioning of the participants by a presiding Board member. Conferences may be conducted by telephone conference call. The written record review also may be

supplemented by a formal hearing involving an opportunity for examining evidence and witnesses, cross-examination, and oral argument (see § 16.11). A hearing is more expensive and time-consuming than a determination on the written record alone or with an informal conference. Generally, therefore, the Board will schedule a hearing only if the Board determines that there are complex issues or material facts in dispute, or that the Board's review would otherwise be significantly enhanced by a hearing. Where the amount in dispute is under $25,000, there are special expedited procedures (see § 16.12 of this part). In all cases, the Board has the flexibility to modify procedures to ensure fairness, to avoid delay, and to accommodate the peculiar needs of a given case. The Board makes maximum feasible use of preliminary informal steps to refine issues and to encourage resolution by the parties. The Board also has the capability to provide mediation services (see § 16.18).

§ 16.5 How the Board operates.

(a) The Board's professional staff consists of a Chair (who is also a Board member) and full- and part-time Board members, all appointed by the Secretary; an Executive Secretary; and a staff of employees and consultants who are attorneys or persons from other relevant disciplines, such as accounting.

(b) The Chair will assign a Board member to have lead responsibility for each case (the "presiding Board member"). The presiding Board member will conduct the conference or hearing, if one is held. Each decision of the Board is issued by the presiding Board member and two other Board members.

(c) The Executive Secretary and Board staff assist the presiding Board member, and may request information from the parties; conduct telephone conference calls to request information, to clarify issues, or to schedule events; and assist in developing decisions and other documents in a case.

(d) No Board or staff member previously associated with a case directly or by reason of recent, close professional or business affiliation with a party or representative in the case will participate in that case.

(e) The Board's powers and responsibilities are set forth in § 16.13.

§ 16.6 Who represents the parties.

The appellant's notice of appeal, or the first subsequent submission to the Board, should specify the name, address and telephone number of the appellant's representative. In its first submission to the Board and the appellant, the respondent (i.e., the federal party to the appeal) should specify the name, address and telephone number of the respondent's representative.

§ 16.7 The first steps in the appeal process: the notice of appeal and the Board's response.

(a) As explained in 45 CFR 74.304, a prospective appellant must submit a notice of appeal to the Board within 30 days after receiving the final decision. The notice of appeal must include a copy of the final decision, a statement of the amount in dispute in the appeal, and a brief statement of why the decision is wrong.

(b) Within ten days after receiving the notice of appeal, the Board will send an acknowledgment, enclose a copy of these procedures, advise the appellant of the next steps, and give the name and address of the respondent's representative. The Board will also send a copy of the notice of appeal, its attachments, and the Board's acknowledgment to the respondent. If the Board Chair has determined that the appeal does not meet the conditions of § 16.3 or if further information is needed to make this determination, the Board will notify the parties at this point.

16.8 The next step in the appeal process: preparation of an appeal file and written argument.

Except in expedited cases (generally those of $25,000 or less; see § 16.12 for details), the appellant and the respondent each participate in developing an appeal file for the Board to review. Each also submits written argument in support of its position. The responsibilities of each are as follows:

(a) *The appellant's responsibility.* Within 30 days after receiving the acknowledgment of the appeal, the appellant shall submit the following to the Board (with a copy to the respondent):

(1) An appeal file containing the documents supporting the claim, tabbed and organized chronologically and accompanied by an indexed list identifying each document. The appellant should include only those documents which are important to the Board's decision on the issues in the case.

(2) A written statement of the appellant's argument concerning why the respondent's final decision is wrong (appellant's brief).

(b) *The respondent's responsibility.* Within 30 days after receiving the appellant's submission under paragraph (a), of this section, the respondent shall submit the following to the Board (with a copy to the appellant):

(1) A supplement to the appeal file containing any additional documents supporting the respondent's position, organized and indexed as indicated under paragraph (a) of this section. The respondent should avoid submitting duplicates of documents submitted by the appellant.

(2) A written statement (respondent's brief) responding to the appellant's brief.

(c) *The appellant's reply.* Within 15 days after receiving the respondent's submission, the appellant may submit a short reply. The appellant should avoid repeating arguments already made.

(d) *Cooperative efforts.* Whenever possible, the parties should try to develop a joint appeal file, agree to preparation of the file by one of them, agree to facts to eliminate the need for some documents, or agree that one party will submit documents identified by the other.

(e) *Voluminous documentation.* Where submission of all relevant documents would lead to a voluminous appeal file (for example where review of a disputed audit finding of inadequate documentation might involve thousands of receipts), the Board will consult with the parties about using techniques to reduce the size of the file.

§ 16.9 How the Board will promote development of the record.

The Board may, at the time it acknowledges an appeal or at any appropriate later point, request specific additional documents or information; request briefing on legal issues in the case; issue orders to show cause why a proposed finding or decision of the Board should not become final; hold preliminary conferences (generally by telephone) to establish schedules and refine issues; and take such other steps as the Board determines appropriate to develop a prompt, sound decision.

§ 16.10 Using a conference.

(a) Once the Board has reviewed the appeal file, the Board may, on its own or in response to a party's request, schedule an informal conference. The conference will be conducted by the presiding Board member. The basic purpose of the conference is to give the Board an opportunity to clarify issues and question both parties about matters which the Board may not yet fully understand from the record.

(b) If the Board has decided to hold a conference, the Board will arrange a telephone discussion with the parties to schedule the conference, identify issues, and discuss procedures. Based on consultation with the parties, the Board will identify the persons who will be allowed to participate, along with the

parties' representative, in the conference. Although this normally will occur during the telephone discussion, the parties can submit with their briefs under § 16.8 a list of persons who might participate with them, indicating how each person is involved in the matter. If the parties wish, they may also suggest questions or areas of inquiry which the Board may wish to pursue with each participant.

(c) Unless the parties and the Board otherwise agree, the following procedures apply:

(1) Conferences will be recorded at Board expense. On request, a party will be sent one copy of the transcript. The presiding Board member will insure an orderly transcript by controlling the sequence and identification of speakers.

(2) Only in exceptional circumstances will documents be received at a conference. Inquiry will focus on material in the appeal file. If a party finds that further documents should be in the record for the conference, the party should supplement the appeal file, submitting a supplementary index and copies of the documents to the Board and the other party not less than ten days prior to the conference.

(3) Generally, the only oral communications of the participants will consist of statements requested by the Board or responses to the Board's questions. The Board will allow reply comment, and may allow short closing statements. On request, the Board may allow the participants to question each other.

(4) There will be no post-conference submissions, unless the Board determines they would be helpful to resolve the case. The Board may require or allow the parties to submit proposed findings and conclusions.

§ 16.11 Full hearing.

(a) *Electing a hearing.* If the appellant believes a full hearing is appropriate, the appellant should specifically request one at the earliest possible time (in the notice of appeal or with the appeal file). The Board will approve a request if it finds there are complex issues of fact or law in dispute the resolution of which would be materially aided by a hearing, or if the Board determines from its review of the record that its decision-making otherwise would be enhanced by oral presentations and arguments in an adversary, evidentiary hearing.

(b) *Preliminary conference before the hearing.* The Board generally will hold a prehearing conference (which may be conducted by telephone conference call) to consider any of the following: the possibility of settlement; simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; scheduling the hearing; and any other matter that may aid in resolving the appeal. Normally, this conference will be conducted informally and off the record; however, the Board, after consulting with the parties, may reduce results of the conference to writing in a document which will be made part of the record, or may transcribe proceedings and make the transcript part of the record.

(c) *Where hearings are held.* Hearings generally are held in Washington, D.C. In exceptional circumstances, the Board may hold the hearing at an HHS Regional Office or other convenient facility near the appellant.

(d) *Conduct of the hearing.* (1) The presiding Board member will conduct the hearing. Hearings will be as informal as reasonably possible, keeping in mind the need to establish an orderly record. The presiding Board member generally will admit evidence unless it is determined to be clearly irrelevant, immaterial or unduly repetitious, so the parties should avoid frequent objections to questions and documents. Both sides may make opening and closing statements, may present witnesses as agreed upon in the pre-hearing conference, and may cross-examine. Since the parties have ample opportunity to develop a complete appeal file, a party may introduce an exhibit at the hearing only after explaining to the satisfaction of the presiding Board member why the exhibit was not submitted earlier (for example, because the information was not available).

(2) The Board may request the parties to submit written statements of witnesses to the Board and each other prior to the hearing so that the hearing will primarily be concerned with cross-examination and rebuttal.

(3) False statements of a witness may be the basis for criminal prosecution under sections 287 and 1001 of Title 18 of the United States Code.

(4) The hearing will be recorded at Board expense.

(e) *Procedures after the hearing.* The Board will send one copy of the transcript to each party as soon as it is received by the Board. At the discretion of the Board, the parties may be required or allowed to submit post hearing briefs or proposed findings and conclusions (the parties will be informed at the hearing). A party should note any major prejudicial transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within a time limit set by the Board).

§16.12 The expedited process.

(a) *Applicability.* Where the amount in dispute is $25,000 or less, the Board will use these expedited procedures, unless the Board Chair determines otherwise under paragraph (b) of this section. If the Board and the parties agree, the Board may use these procedures in cases of more than $25,000.

(b) *Exceptions.* If there are unique or unusually complex issues involved, or other exceptional circumstances, the Board may use additional procedures.

(c) *Regular expedited procedures.* (1) Within 30 days after receiving the Board's acknowledgment of the appeal (see § 16.7), each party shall submit to the Board and the other party any relevant background documents (organized as required under § 16.8), with a cover letter (generally not to exceed ten pages) containing any arguments the party wishes to make.

(2) Promptly after receiving the parties' submissions, the presiding Board member will arrange a telephone conference call to receive the parties' oral comments in response to each other's submissions. After notice to the parties, the Board will record the call. The Board member will advise the parties whether any opportunities for further brefing, submissions or oral presentations will be established. Cooperative efforts will be encouraged (see § 16.8(d)).

(3) The Board may require the parties to submit proposed findings and conclusions.

(d) *Special expedited procedures where there has already been review.* Some HHS components (for example, the Public Health Service) use a board or other relatively independent reviewing authority to conduct a formal preliminary review process which results in a written decision based on a record including documents or statements presented after reasonable notice and opportunity to present such material. In such cases, the following rules apply to appeals of $25,000 or less instead of those under paragraph (c) of this section:

(1) Generally, the Board's review will be restricted to whether the decision of the preliminary review authority was clearly erroneous. But if the Board determines that the record is inadequate, or that the procedures under which the record was developed in a given instance were unfair, the Board will not be restricted this way.

(2) Within 30 days after receiving the Board's acknowledgment of appeal (see § 16.7), the parties shall submit the following:

(i) The appellant shall submit to the Board and the respondent a statement why the decision was clearly erroneous. Unless allowed by the Board after consultation with the respondent, the appellant shall not submit further documents.

(ii) The respondent shall submit to the Board the record in the case. If the respondent has reason to believe that all materials in the record already are in the possession of the appellant, the respondent need only send the appellant a list of the materials submitted to the Board.

(iii) The respondent may, if it wishes, submit a statement why the decision was not clearly erroneous.

(3) The Board, in its discretion, may allow or require the parties to present further arguments or information.

§ 16.13 Powers and responsibilities.

In addition to powers specified elsewhere in these procedures, Board members have the power to issue orders (including "show cause" orders); to examine witnesses; to take all steps necessary for the conduct of an orderly hearing; to rule on requests and motions, including motions to dismiss; to grant extensions of time for good reasons; to dismiss for failure to meet deadlines and other requirements; to close or suspend cases which are not ready for review; to order or assist the parties to submit relevant information; to remand a case for further action by the respondent; to waive or modify these procedures in a specific case with notice to the parties; to reconsider a Board decision where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

§ 16.14 How Board review is limited.

The Board shall be bound by all applicable laws and regulations.

§ 16.15 Failure to meet deadlines and other requirements.

(a) Since one of the objectives of administrative dispute resolution is to provide a final decision as fast as possible consistent with fairness, the Board will not allow parties to delay the process unduly. Extensions of time may be granted, but only if the party gives a good reason for the delay.

(b) If the appellant fails to meet any filing or procedural deadlines, appeal file or brief submission requirements, or other requirements established by the Board, the Board may dismiss the appeal, may issue an order requiring the party to show cause why the appeal should not be dismissed, or may take other action the Board considers appropriate.

(c) If the respondent fails to meet any such requirements, the Board may issue a decision based on the record submitted to that point or take such other measures as the Board considers appropriate.

§ 16.16 Parties to the appeal.

(a) The only parties to the appeal are the appellant and the respondent. If the Board determines that a third person is a real party in interest (for example, where the major impact of an audit disallowance would be on the grantee's contractor, not on the grantee), the Board may allow the third person to present the case on appeal for the appellant or to appear with a party in the case, after consultation with the parties and if the appellant does not object.

(b) The Board may also allow other participation, in the manner and by the deadlines established by the Board, where the Board decides that the intervenor has a clearly identifiable and substantial interest in the outcome of the dispute, that participation would sharpen issues or otherwise be helpful in resolution of the dispute, and that participation would not result in substantial delay.

§ 16.17 Ex parte communications (communications outside the record).

(a) Written or oral communications with a Board or staff member by one party without notice to the other about matters involved in an appeal are prohibited. If a prohibited communication occurs, the Board will disclose it to the other party and make it part of the record after the other party has an opportunity to comment. Board members and staff shall not consider any information outside the record (see § 16.21 for what the record consists of) about matters involved in an appeal.

(b) The above does not apply to the following: communications among Board members and staff; communications concerning the Board's administrative functions or procedures; requests from the Board to a party for a document (although the material submitted in response also must be given to the other party); and material which the Board includes in the record after notice and an opportunity to comment.

§ 16.18 Mediation.

(a) *In cases pending before the Board.* If the Board decides that mediation would be useful to resolve a dispute, the Board, in consultation with the parties, may suggest use of mediation techniques and will provide or assist in selecting a mediator. The mediator may take any steps agreed upon by the parties to resolve the dispute or clarify issues. The results of mediation are not binding on the parties unless the parties so agree in writing. The Board will internally insulate the mediator from any Board or staff members assigned to handle the appeal.

(b) *In other cases.* In any other grants dispute, the Board may, within the limitations of its resources, offer persons trained in mediation skills to aid in resolving the dispute. Mediation services will only be offered at the request, or with the concurrence, of a responsible federal program official in the program under which the dispute arises. The Board will insulate the mediator if any appeal subsequently arises from the dispute.

§ 16.19 How to calculate deadlines.

If a due date would fall on a Saturday, Sunday or federal holiday, then the due date is the next federal working day.

§ 16.20 How to submit material to the Board.

(a) All submissions should be addressed as follows: Executive Secretary, Departmental Grant Appeals Board, Room 2004, Switzer Building, 330 C Street SW., Washington, D.C. 20201.

(b) All submissions after the notice of appeal should identify the appellant and the Board's docket number (the Board's acknowledgement under § 16.7 will specify the docket number).

(c) Unless the Board otherwise specifies, parties shall submit an original and one copy of all materials. One copy of all materials submitted to the Board, other than the notice of appeal, must also be sent to the other party.

(d) Unless hand delivered, all materials should be sent to the Board and the other party by certified or registered mail, return receipt requested.

(e) The Board considers material to be submitted on the date when it is postmarked or hand delivered to the Board.

§ 16.21 Record and decisions.

(a) Each decision is issued by three Board members (see § 16.5(b)), who base their decision on a record consisting of the appeal file; other submissions of the parties; transcripts or other records of any meetings, conferences or hearings conducted by the Board; written statements resulting from conferences; evidence submitted at hearings; and orders and other documents issued by the Board. In addition, the Board may include other documents (such as evidence submitted

in another appeal) after the parties are given notice and an opportunity to comment.

(b) The Board will promptly notify the parties in writing of any disposition of a case and the basis for the disposition.

(c) The Secretary may review a decision of the Board and revise it in whole or in part. A copy of each Board decision will be delivered to the Secretary on the date the Board issues it. Within 30 days thereafter, the Secretary may determine to review the case further. If so, the Secretary will promptly notify the Board and the parties. If the Secretary affirms the decision, or does not within 30 days announce a determination to review the case, the Board's decision becomes the final decision of the Department.

§ 16.22 The effect of an appeal.

(a) *General.* Until the Board disposes of an appeal, the respondent shall take no action to implement the final decision appealed.

(b) *Exceptions.* The respondent may—

(1) Suspend funding (see § 74.114 of this title);

(2) Defer or disallow further payments questioned for reasons disputed in a pending appeal;

(3) Recover funds advanced solely on the basis of estimated rather than actual expenditures; or

(4) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

§ 16.23 How long an appeal takes.

The Board has established general goals for its consideration of cases, as follows (measured from the point when the Board receives the appellant's submission under § 16.8(a)):

—for regular review based on a written record under § 16.8, 6 months. When a conference under § 16.10 is held, the goal remains at 6 months, unless a requirement for post-conference briefing in a particular case renders the goal unrealistic.

—for cases involving a hearing under § 16.11, 9 months.

—for the expedited process under § 16.12, 3 months.

These are goals, not rigid requirements. The paramount concern of the Board is to take the time needed to review a record fairly and adequately in order to produce a sound decision. Furthermore, many factors are beyond the Board's direct control, such as unforeseen delays due to the parties's negotiations or requests for extensions, how many cases are filed, and Board resources. On the other hand, the parties may agree to steps which may shorten review by the Board; for example, by waiving the right to submit a brief, by agreeing to shorten submission schedules, or by electing the expedited process.

Appendix A—What Disputes the Board Reviews

A. What this Appendix covers.

This Appendix describes programs which use the Board for dispute resolution, the types of disputes covered, and any conditions for Board review of final written decisions resulting from those disputes. Disputes under program not specified in this Appendix may be covered in a program regulation or in a memorandum of understanding between the Board and the head of the approprate HHS operating component or other agency responsible for administering the program. If in doubt, call the Board's Executive Secretary. Even though a dispute may be covered here, the Board still may not be able to review it if the limits in paragraph F apply.

B. Mandatory grant programs.

(a) The Board reviews the following types of final written decisions in disputes arising in HHS programs authorizing the award of mandatory grants.

(1) Disallowances under Titles I, IV, VI, X, XIV, XVI(AABD), XIX, and XX of the Social Security Act, including penalty disallowances such as those under sections 403(g) and 1903(g) of the Act and fiscal disallowances based on quality control samples.

(2) Disallowances in mandatory grant programs administered by the Public Health Service, including Title V of the Social Security Act.

(3) Disallowances in the programs under sections 113 and 132 of the Developmental Disabilities Act.

(b) In some of these disputes, there is an option for review by the head of the granting agency prior to appeal to the Board. Where an appellant has requested review by the agency head first, the "final written decision" required by § 16.3 for purposes of Board review will generally be the agency head's decision affirming the disallowance. If the agency head declines to review the disallowance or if the appellant withdraws its request for review by the agency head, the original disallowance decision is the "final written decision." In the latter cases, the 30-day period for submitting a notice of appeal begin with the date of receipt of the notice declining review or with the date of the withdrawal letter.

C. Direct, discretionary project programs.

(a) The Board reviews the following types of final written decisions in disputes arising in any HHS program authorizing the award of direct, discretionary project grants or cooperative agreements:

(1) A disallowance or other determination denying payment of an amount claimed under an award, or requiring return or set-off of funds already received. This does not apply to discretionary agency determinations of award amount or agency selection in the assistance award document of an option for disposition of program-related income.

(2) A termination for failure to comply with the terms of an award.

(3) A denial of a continuation award under the project period system of funding where the denial is for failure to comply with the terms of an award.

(4) A voiding (a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained).

(b) Where an HHS component uses a preliminary appeal process (for example, the Public Health Service), the "final written decision" for purposes of Board review is the decision issued as a result of that process.

D. Cost allocation and rate disputes.

The Board reviews final written decisions in disputes which may affect a number of HHS programs because they involve cost allocation plans or rate determinations. These include decisions related to cost allocation plans negotiated with State or local governments and negotiated rates such as indirect cost rates, fringe benefit rates, computer rates, research patient care rates, and other special rates. The "final written decision" for purposes of Board review of these disputes is the decision issued as a result of the preliminary appeal process at Part 75 of this title.

E. SSI agreement disputes.

The Board reviews disputes in the Supplemental Security Income (SSI) program arising under agreements for Federal administration of State supplementary payments under section 1616 of the Social Security Act or mandatory minimum supplements under section 212 of Pub. L. 93–66. In these cases, the Board provides an opportunity to be heard and offer evidence at the Secretarial level of review as set out in the applicable agreements. Thus, the "final written decision" for purposes of Board review

is that determination appealable to the Secretary under the agreement.

F. Where Board review is not available.

The Board will not review a decision if a hearing under 5 U.S.C. 554 is required by statute, if the basis of the decision is a violation of applicable civil rights or nondiscrimination laws or regulations (for example, Title VI of the Civil Rights Act), or if some other hearing process is established pursuant to statute.

G. How the Board determines whether it will review a case.

Under § 16.7, the Board Chair determines whether an appeal meets the requirements of this Appendix. If the Chair finds that there is some question about this, the Board will request the written opinion of the HHS component which issued the decision. Unless the Chair determines that the opinion is clearly erroneous, the Board will be bound by the opinion. If the HHS component does not respond within a time set by the Chair, or cannot determine whether the Board clearly does or does not have jursidiction, the Board will take the appeal.

PART 74—ADMINISTRATION OF GRANTS

2. Part 74 of Title 45 of the CFR is amended as set forth below:

a. Subparts R and S are reserved as follows:

Subpart R—[Reserved]

Subpart S—[Reserved]

b. The table of contents is revised by adding entries for a new Subpart T, as follows:

* * * * *

Subpart T—Miscellaneous

Sec.

74.250–74.303 [Reserved]

74.304 Final decisions in disputes.

Subpart T—Miscellaneous

§§ 74.250–74.303 [Reserved]

§ 74.304 Final decisions in disputes.

(a) Granting agencies and other Departmental components attempt to promptly issue final decisions in disputes and in other matters affecting the interests of grantees. However, they do not issue a final decision adverse to the grantee until it is clear that the matter cannot be resolved informally through further exchange of information and views.

(b) Under various HHS statutes or regulations, grantees have the right to appeal from, or to have a hearing on, certain final decisions by Departmental components. (See, for example, Subpart D of 42 CFR Part 50 and 45 CFR Parts 16 and 75.) Paragraphs (c) and (d) of this section set forth the standards the Department expects its components to meet in stating a final decision covered by any of the statutes or regulations.

(c) The decision is brief but contains—

(1) A complete statement of the background and basis of the component's decision, including reference to the pertinent statutes, regulations, or other governing documents; and

(2) Enough information to enable the grantee and any reviewer to understand the issues and the position of the HHS component.

(d) The following or similar language (consistent with the terminology of the applicable statutes or regulations) appears at the end of the decision: "This is the final decision of the [title of grants officer or other official responsible for the decision]. It shall be the final decision of the Department unless, within 30 days after receiving this decision, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to [name and address of appropriate contact; e.g., the Departmental Grant Appeals Board, Department of Health and Human Services, Washington, D.C. 20201]. You shall attach to the notice a copy of this decision, note that you intend an appeal, state the amount in dispute, and briefly state why you think that this decision is wrong. You will be notified of further procedures."

(e) If a decision does not contain the statement, information, and language described in paragraphs (c) and (d) of this section, the decision is not necessarily the granting agency's final decision in the matter. The grantee should notify the granting agency that it wishes a formal final decision following any further exchange of views or information that might help resolve the matter informally.

Dated: December 29, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-338 Filed 1-5-81; 8:45 am]

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federal register

Tuesday
January 6, 1981

Part XIII

The President—Office of the United States Trade Representative

Executive Order 12260—Agreement on Government Procurement

Presidential Documents

Executive Order 12260 of December 31, 1980

Agreement on Government Procurement

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511–2518), and Section 301 of Title 3 of the United States Code, and in order to implement the Agreement on Government Procurement, as defined in 19 U.S.C. 2518(1), it is hereby ordered as follows:

1–1 *Responsibilities.*

1–101. The obligations of the Agreement on Government Procurement (Agreement on Government Procurement, General Agreement on Tariffs and Trade, 12 April 1979, Geneva (GATT 1979)) apply to any procurement of eligible products by the Executive agencies listed in the Annex to this Order (eligible products are defined in Section 308 of the Trade Agreements Act of 1979; 19 U.S.C. 2518(4)). Such procurement shall be in accord with the policies and procedures of the Office of Federal Procurement Policy (41 U.S.C. 401 *et seq.*).

1–102. The United States Trade Representative, hereinafter referred to as the Trade Representative, shall be responsible for interpretation of the Agreement. The Trade Representative shall seek the advice of the interagency organization established under Section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected Executive agencies, including the Office of Federal Procurement Policy.

1–103. The interpretation of Article VIII:1 of the Agreement shall be subject to the concurrence of the Secretary of Defense.

1–104. The Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units and shall publish that determination in the **Federal Register.** Procurement of less than 150,000 Special Drawing Right units is not subject to the Agreement or this Order (Article I:1(b) of the Agreement).

1–105. In order to ensure coordination of international trade policy with regard to the implementation of the Agreement, agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement.

1–2. *Delegations and Authorization.*

1–201. The functions vested in the President by Sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516) are delegated to the Trade Representative.

1–202. Notwithstanding the delegation in Section 1–201, the Secretary of Defense is authorized, in accord with Section 302(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(b)(3)), to waive the prohibitions specified therein.

Jimmy Carter

THE WHITE HOUSE,
December 31, 1980.

Billing code 3195-01-M

ANNEX

1. ACTION
2. Administrative Conference of the United States
3. American Battle Monuments Commission
4. Board for International Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Community Services Administration
9. Consumer Product Safety Commission
10. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
11. Department of Commerce
12. Department of Defense (Excludes Corps of Engineers)
13. Department of Education
14. Department of Health and Human Services
15. Department of Housing and Urban Development
16. Department of the Interior (Excludes the Bureau of Reclamation)
17. Department of Justice
18. Department of Labor
19. Department of State
20. Department of the Treasury
21. Environmental Protection Agency
22. Equal Employment Opportunity Commission
23. Executive Office of the President
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25. Farm Credit Administration
26. Federal Communications Commission
27. Federal Deposit Insurance Corporation
28. Federal Home Loan Bank Board

29. Federal Maritime Commission

30. Federal Mediation and Conciliation Service

31. Federal Trade Commission

32. General Services Administration (Purchases by the National Tool Center, and the Region 9 Office in San Francisco, California are not included)

33. Interstate Commerce Commission

34. Merit Systems Protection Board

35. National Aeronautics and Space Administration

36. National Credit Union Administration

37. National Labor Relations Board

38. National Mediation Board

39. National Science Foundation

40. National Transportation Safety Board

41. Nuclear Regulatory Commission

42. Office of Personnel Management

43. Overseas Private Investment Corporation

44. Panama Canal Commission

45. Railroad Retirement Board

46. Securities and Exchange Commission

47. Selective Service System

48. Smithsonian Institution

49. United States Arms Control and Disarmament Agency

50. United States International Communication Agency

51. United States International Development Cooperation Agency

52. United States International Trade Commission

53. Veterans Administration

[FR Doc. 81-476
Filed 1-2-81; 3:10 pm]
Billing code 3195-01-C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Application of Agreement on Government Procurement and Waiver of Discriminatory Purchasing Requirements

Section 1-103 of Executive Order 12188 delegates the functions of the President under Section 2(b) of the Trade Agreements Act of 1979 ("the Act") (19 U.S.C. 2503) to the United States Trade Representative ("Trade Representative"), who shall exercise such authority with the advice of the Trade Policy Committee. Section 1-201 of Executive Order 12260 delegates the functions of the President under Sections 301 and 302 of the Act (19 U.S.C. 2511, 2512) to the Trade Representative. Executive Order 12260 also provides in section 1-104 that the Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units.

Now, therefore, I, Robert D. Hormats, Acting United States Trade Representative, in conformity with the provisions of Section 2 of the Act, Sections 301 and 302 of the Act, and Executive Orders 12188 and 12260, do hereby determine, effective on the date of signature of this notice, that, with respect to the Agreement on Government Procurement ("the Agreement"):

1. The countries or instrumentalities listed in Annex 1 have become parties to the Agreement, and will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(1) of the Act, each of these countries is designated for purposes of Section 301(a) of the Act.

2. The countries listed in Annex 2 are least developed countries, as defined in Section 308 of the Act (19 U.S.C. 2518). In accordance with Section 301(b)(4) of the Act, each of these countries is designated for purposes of Section 301(a) of the Act.

3. With respect to eligible products (as defined in Section 308(4) of the Act) of the countries or instrumentalities designated above for purposes of Section 301(a) of the Act, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) to United States products and suppliers of such products; or

(B) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products, shall be waived.

This waiver shall be applied by all Executive agencies listed in Annex A of Executive Order 12260 in consultation with, and when deemed necessary at the direction of, the Trade Representative.

4. The designations in paragraphs 1 and 2 above and the waiver in paragraph 3 above are subject to modification or withdrawal by the Trade Representative.

5. (a) Pursuant to Section 302 of the Act, Executive agencies are prohibited after January 1, 1981, from procuring any products (A) which are products of a foreign country or instrumentality which is not designated under Section 301(b) of the Act, and (B) which would otherwise be eligible products. This prohibition will last until such foreign country or instrumentality is designated under Section 301(b) of the Act.

(b) The above prohibition shall be deferred for a two-year period beginning January 1, 1981, except for products of major industrial countries. Major industrial countries include the member countries of the European Communities, Canada, and Japan.

(c) The above two-year delay may be terminated at any time (causing the prohibition to come into effect) for any or all countries.

6. The dollar equivalent of 150,000 Special Drawing Right units is $196,000. This determination may be modified from time to time as appropriate.

Dated: January 1, 1981.

Robert D. Hormats,

Acting United States Trade Representative.

Annex 1

Austria	Italy
Belgium	Japan
Canada	Luxembourg
Denmark	Netherlands
Federal Republic of Germany	Norway
Finland	Singapore
France	Sweden
Hong Kong	Switzerland
Ireland	United Kingdom

Annex 2

Bangladesh	Malawi
Benin	Maldives
Bhutan	Mali
Botswana	Nepal
Burundi	Niger
Cape Verde	Rwanda
Central African Republic	Somalia
Chad	Western Samoa
Comoros	Sudan
Gambia	Tanzania U.R.
Guinea	Uganda
Haiti	Upper Volta
Lesotho	Yemen AR

[FR Doc. 81-477 Filed 1-2-81; 3:32 pm]

BILLING CODE 3190-01-M

Statement Concerning Executive Order 12260 on Agreement on Government Procurement

On December 31, 1980, the President signed Executive Order 12260 ("the Order") implementing the Agreement on Government Procurement (the "Agreement") and Title III of the Trade Agreements Act of 1979 (the "Act") (19 U.S.C. 2511-2518), effective January 1, 1981.

The Agreement is one of the trade agreements concluded during the Tokyo Round of Multilateral Trade Negotiations. The Agreement was approved by the Congress by Section 2 of the Act (19 U.S.C. 2503). The United States Trade Representative ("Trade Representative"), acting under Section 2(b) of the Act and Section 1-103(b) of Executive Order 12188, accepted the Agreement on behalf of the United States without reservation on December 30, 1980. The Agreement enters into force with respect to the United States on January 1, 1981.

The purpose of the Order is to delineate agency responsibilities for implementing the Agreement and to delegate certain authority for implementing the Agreement. Specifically,

Section 1-101 of the Order requires all agencies listed in the Annex thereto to observe the obligations of the Agreement in their purchases of "eligible products". The definition of "eligible products" is that contained in section 308(4) of the Act (19 U.S.C. 2518(4)). To qualify as an eligible product, a product must satisfy three criteria. The product must be:

1. From a country or instrumentality that is a party to the Agreement;

2. Procured for an Executive agency which is specified in the Order as being subject to the Agreement;

3. Procured in large enough quantities that the contract price exceeds 150,000 Special Drawing Right units.

Section 1-102 gives the Trade Representative the responsibility to interpret the Agreement. This responsibility follows the Trade Representative's broader authority granted in section 1(b)(3) of Reorganization Plan No. 3 of 1979 (44 FR 69173, 93 Stat. 1381), to "issue policy guidance to departments and agencies on basic issues of policy and interpretation * * *" relating to, *inter alia*, the implementation of international trade agreements.

Section 1-103 provides that interpretation of Article VIII:1 of the

Agreement, relating to national defense, shall be subject to the concurrence of the Secretary of Defense.

Section 1–104 gives the Trade Representative the responsibility to make a determination of the dollar equivalent of the 150,000 Special Drawing Right units threshold for coverage of procurement contracts. The Special Drawing Right is the unit of account of the international monetary fund, and is a weighted average of the values of a group of currencies including the U.S. dollar. This determination will be published annually in the **Federal Register**, or more often if appropriate.

Section 1–105 provides that agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement. The provision was included to ensure the coordination of international trade policy as it relates to the implementation, including negotiations relating to additional coverage, of the Agreement.

Section 1–201 delegates the functions of the President under Title III of the Act to the Trade Representative with the exception of the functions of the President under Section 303 of the Act (19 U.S.C. 2513), which were previously delegated to the Trade Representative in Section 1–103(b) of Executive Order 12188. These functions include:

—Waiver of discriminatory purchasing requirements under Section 301(a) of the Act (19 U.S.C. 2511(a));
—Designation of eligible countries and instrumentalities under Section 301(b) of the Act (19 U.S.C. 2511(b));
—Prohibiting procurement from non-designated countries or instrumentalities under Section 302 of the Act (19 U.S.C. 2512), as well as implementing the two-year delay and case-by-case waiver of purchases under the same Section;
—Reporting and consultation requirements under Sections 302(c), 302(d), 304, 305 and 306 of the Act (19 U.S.C. 2512(c), 2512(d), 2514–2516); and
—Other functions of the President enumerated in Title III of the Act.

Section 1–202 implements the provisions of Section 302(b)(3) of the Act (19 U.S.C. 2512(b)(3)), authorizing the Secretary of Defense to waive the purchasing prohibition of Section 302(a)(1) in the context of reciprocal procurement agreements.

For agencies not included in the Annex to the Order, no change in present procurement practices will be required. Furthermore, to the extent procurement by agencies listed in the Annex is outside the Agreement, the Order will not apply. Procurement not covered by the Agreement includes:

—Contracts of a value not over 150,000 SDR's;
—Procurement by agencies not in the Order, even if done through agencies listed in the Order.
—Contracts where the value of services exceeds 50% of the contract price.

Also, service contracts *per se*, including construction contracts, research and development and transportation or cargo preference schemes, will not be affected by the Agreement.

Under the terms of the Agreement, procurements involving eligible products may be set aside for small business concerns; however, procurements involving eligible products may not be set aside for labor surplus area concerns unless the set-aside is also for small business concerns. The priority of Sections 15(e) and (f) of the Small Business Act, as amended by section 117 of Pub. L. 96–302 (94 Stat. 839), shall prevail.

The provisions of the Act and this Order do not relieve agencies of their obligations to implement the requirements of Pub. L. 95–507 (92 Stat. 1757, 15 U.S.C. 683).

Robert C. Cassidy,

General Counsel.

[FR Doc. 81–478 Filed 1–2–81; 3:32 pm]

BILLING CODE 3190–01–M

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Vol. 46, No. 3

Tuesday, January 6, 1981

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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 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

INTERIOR DEPARTMENT

Land Management Bureau—

80828 12–8–80 / California: Partial revocation of Public Land Order No. 706

80827 12–8–80 / Nevada; Transfer of jurisdiction: Modification of Public Land Order No. 2555

80828 12–8–80 / Oregon; Partial revocation of Executive Order of November 24, 1903 in regards to 68.60 acres of land withdrawn as rock quarry sites for use by the U.S. Army Corps of Engineers

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing January 5, 1981

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

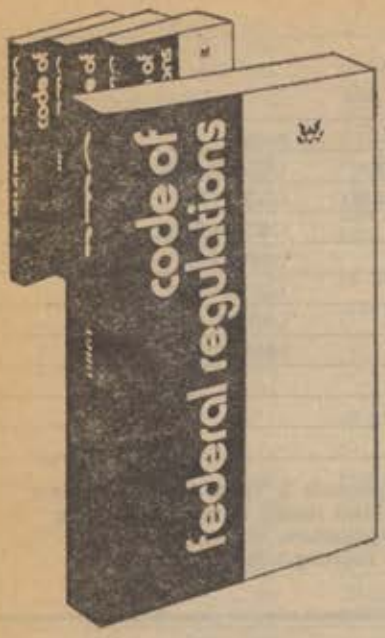
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: January 16 and 30; February 13 and 27; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202–523–5235.



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Revised as of July 1, 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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