AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-22-81
Vol. 46 No. 14
Pages 6863-7256

federal register

Thursday
January 22, 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.

7162 **Identification of Subjects in Agency Regulations** Administrative Committee of the Federal Register issues final rule on new requirements; effective 2-23-81 (Part III of this issue)

6998 **Selective Service System** Selective Service System proposes that alternative service be required only after induction of persons into the armed forces has been authorized; comments by 3-31-81

7072 **Medicare** HHS/HCFA invites hospitals and medical centers to participate in a study of heart transplants; apply by 3-30-81

6950, 7046 **Grants—Community Action Programs** CSA revises income poverty guidelines effective 2-23-81, and waives non-Federal share requirement for National Paralegal Institute (2 documents)

7011 **Grants—Public Assistance Programs** HHS/Sec'y proposes to revise rules concerning preparation, submission and approval of State agency cost allocation plans (2 documents)

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

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

Highlights

7075 **Grant Programs—Family Planning** HHS/HSA solicits applications by 4–1–81, for grants in the field of program implementation related to improved delivery of services

6949 **Child Welfare** HHS/Child Support Enforcement Office authorizes State agencies to use current rate of Federal matching to determine Federal share of collections; effective 1–22–81; comments by 3–23–81

7015, 7025 **Motor Vehicle Safety** DOT/NHTSA proposes establishment of new car crashworthiness performance ratings program and proposes new safety standard for passenger cars to protect pedestrians (2 documents)

6975 **Airports** DOT/FAA publishes letter to Congress concerning proposal to amend rules governing certification and operation of land airports

6982 **Surface Mining** Interior/SMO proposes to establish blasting standards to protect persons and property during coal mining operations; comments by 3–23–81

7078, 7084 **Continental Shelf** Interior/GS solicits information on and details of new technologies to assist in exploration and development of leaseable minerals and BLM calls for nominations and comments by 3–2–81, on areas in Gulf of Mexico for oil and gas leasing (2 documents)

6901 **Natural Gas** DOE/FERC publishes interim rule concerning temporary pressure buildup in qualifying stripper wells; effective 1–15–81; comments by 2–20–81

7182, 7193 **Air Pollution Control** EPA issues criteria for approval of 1982 ozone and carbon monoxide plan revisions and proposes to delete rollback as an acceptable ozone modeling methodology (Part VI of this issue) (2 documents)

6909–6931 **Taxes** Treasury/IRS issues various final regulations (7 documents)

7128 **Sunshine Act Meetings**

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7152 **Part II, Commerce/NOAA**
7162 **Part III, Administrative Committee of the Federal Register**
7166 **Part IV, HHS/PHS**
7176 **Part V, HHS/PHS**
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7196, 7206 **Part VII, ED (2 documents)**
7208 **Part VIII, Interior/SMO**
7214 **Part IX, Commerce/BEA**
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 505, Amdt. 1; Navel Orange Reg. 506]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 23–29, 1981, and increases the quantity of such oranges that may be so shipped during the period January 16–22, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective January 23, 1981, and the amendment is effective for the period January 16–22, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, (202) 447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 14, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on January 19, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is good on all sizes and all grades.

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

1. § 907.806 is added as follows:

§ 907.806 Navel Orange Regulation 506.

(a) The quantities of navel oranges grown in Arizona and California which may be handled during the period January 23, 1981, through January 29, 1981, are established as follows:

(1) District 1: 1,335,000 cartons;
(2) District 2: 135,000 cartons;
(3) District 3: Unlimited cartons;
(4) District 4: 30,000 cartons.

(b) As used in this section, "handle," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

2. Paragraphs (a)(1)–(4) in § 907.805 *Navel Orange Regulation 505* (46 FR 3493), are hereby revised to read:

§ 907.805 Navel Orange Regulation 505.

(a) * * *
(1) District 1: 1,513,000 cartons;
(2) District 2: 153,000 cartons;
(3) District 3: Unlimited cartons;
(4) District 4: 34,000 cartons.

* * * * * *

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

Dated: January 21, 1981.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-2007 Filed 1-21-81; 11:41 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 82

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Cayahuga County in Ohio from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: January 15, 1981.

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

SUPPLEMENTARY INFORMATION: This amendment will exclude a portion of Cayahuga County in Ohio from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in

9 CFR Part 82, as amended, will not apply to the excluded area.

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

§ 82.3 [Amended]

In § 82.3(a)(6), relating to the State of Ohio, paragraph (i) relating to the premises of Greene's Aviary, (Lorraine B. Greene), 1312 Richmond Road, Lyndhurst, Cayahuga County is removed.

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

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

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

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

Mr. James O. Lee, Jr., Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it removes the quarantine imposed due to exotic Newcastle disease concerning only one entity and, therefore, only has a significant economic impact on that one entity.

Done at Washington, D.C., this 15th day of January, 1981.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-2227 Filed 1-21-81; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

10 CFR Part 903

Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions; Corrections

AGENCY: Department of Energy, Resource Applications.

ACTION: Corrections to Final regulations.

SUMMARY: Notice is given of Minor clarifying corrections to the Final regulations as published in the **Federal Register** on December 31, 1980 (45 FR 86976).

DATE: The corrections to the regulations are effective December 31, 1980.

FOR FURTHER INFORMATION CONTACT:

James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, Room 3349, 12th and Pennsylvania Avenue, NW., Washington, DC 20461, (202) 633–8338

Richard K. Pelz, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–2918

SUPPLEMENTARY INFORMATION:

The corrections are as follows:

Preamble

1. Page 86977—First column:

In the penultimate paragraph, change the date of "December 31, 1981," to "December 31, 1980,".

Regulations

2. Page 86983—Third column:

In § 903.1(b), fifth and sixth lines, delete "these regulations become effective" and insert "December 31, 1980".

3. Page 86984—First column:

a. In § 903.2(e), first line, change "Major adjustment" to "Major rate adjustment".

b. In subsection (j), third and forth lines, delete "Bonneville Power Administration (BPA),".

4. Page 86984—Third column:

a. In § 903.13(4), third line, change "comment forum;" to "comment forum(s);"

b. In § 903.14, eighteenth line, which reads "other time as the administrator may," capitalize the first letter of the word "Administrator".

5. Page 86985—Third column:

In § 903.21(d), eighth line, which now reads "are confirmed and approved and placed", change to "are confirmed and approved on a final basis and placed".

6. Page 86986—Second column:

In § 903.23(b), at the end, delete "Q02". This symbol was added by the printer when published in the **Federal Register**.

Issued in Washington, D.C., January 16, 1981.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

[FR Doc. 81-2312 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 9

[Docket No. 81-1]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has amended 12 CFR Part 9 to eliminate the requirement that registered transfer agents file amendments to their registration statement on Form TA–1 to reflect changes in previously filed information listing securities for which the institutions act as transfer agents. This amendment anticipates future action by the OCC, The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Securities and Exchange Commission to substantially reduce information required by Form TA–1. It is anticipated that the revised Form TA–1 will not require the detailed information concerning individual issues which is presently required and thus no amendment requirement will be necessary. The OCC has determined that it is appropriate to eliminate the amendment requirement at this time in order to reduce the burden on those transfer agents that would otherwise be required to file an amendment by January 30, 1981.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:

Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1731.

SUPPLEMENTARY INFORMATION: 12 CFR 9.20(c) provides in pertinent part that:

Within thirty calendar days following the close of any calendar year * * * during which the information required by Item 7 of Form TA–1 becomes inaccurate, misleading or incomplete, the (registered transfer agent) shall file an amendment on Form TA–1 correcting the inaccurate, misleading or incomplete information.

The information required by Item 7 of Form TA–1 is shown on Schedule B of that form. Schedule B presently requires detailed information for each security issue serviced by the registrant as transfer agent, co-transfer agent, registrar, or co-registrar. This information consists of the name of the security, the type of security and class or series, the CUSIP number and the capacity in which the registrant acts on that issue. Schedule B also requires similar information for issues previously listed on Schedule B but no longer serviced by the registrant and for those situations in which the name of the issuer has changed or the capacity in which the registrant acts for the issuer has changed.

Staff of the OCC, the SEC and the other Federal bank regulatory agencies have agreed that the information presently required on Schedule B is too detailed. Staff of the agencies are near agreement on a revised Form TA–1 which would require only aggregate statistical information. It is expected that in early 1981 the SEC and the Federal bank regulatory agencies will adopt a revised Form TA–1 that will substantially reduce the information presently required.

The OCC has concluded that failure to revise 12 CFR 9.20(c) would result in an undue burden upon those national bank transfer agents that would be required to file amended Form TA–1 at a time when the OCC believes that the furnished information is unnecessary. Accordingly the OCC is amending 12 CFR 9.20(c) to eliminate the requirement to amend Form TA–1 within 30 calendar days of December 31 in order to update information presently required on Schedule B. Effective with this action, transfer agents may disregard the instruction on Form TA–1 that relates to the filing of this information (Instruction III–15).

Because this action facilitates the reduction of a reporting burden, the OCC for good cause finds that the notice and public procedure provisions of 5 U.S.C. 553 are unnecessary and that immediate implementation is in the public interest. Additionally, this amendment does not meet the Department of the Treasury criteria for a significant regulation.

Adoption of Amendment

12 CFR Part 9 is amended as follows:

1. The authority citation for Part 9 is as follows:

Authority: 12 U.S.C. 92a, 481, unless otherwise noted.

§ 9.20 [Amended.]

2. In § 9.20(c), the second sentence is removed.

Dated: January 15, 1981.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 81-2226 Filed 1-21-81; 8:45 am]

BILLING CODE 4810-33-M

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12 CFR Part 11

[Docket No. 81-2]

Securities Exchange Act Disclosure Rules

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rules.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is amending its securities disclosure rules ("Part 11 Regulations") promulgated under the Securities Exchange Act of 1934 ("Exchange Act"). The Part 11 Regulations are applicable to national banks and banks operating under the Code of Law of the District of Columbia (hereinafter collectively referred to as "national banks") having a class of securities registered under the Exchange Act. The amendments to the Part 11 Regulations concern, among other things, the regulation of tender offers, corporate governance, the furnishing of proxy voting advice, and insider securities purchases through dividend reimbursement plans.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: David G. Anderson, Attorney, Securities Disclosure Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, (202) 447–1954.

SUPPLEMENTARY INFORMATION: On November 17, 1980, the Office published for comment in the **Federal Register** (45 FR 75669) proposed amendments to the Part 11 Regulations ("November 1980 Proposals"). Interested persons were given until January 2, 1981 to submit comments regarding the proposed amendments. These proposed amendments, which were intended to conform the Part 11 Regulations to corresponding rules and regulations recently adopted by the Securities and Exchange Commission ("SEC") under the Exchange Act,[1] concerned the regulation of tender offers, corporate governance, insider securities purchases through dividend reinvestment plans, and the furnishing of proxy voting advice.

Section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) requires the Office to issue regulations applicable to national banks having securities registered under Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)) which must be substantially similar to those promulgated by the SEC under sections of the Exchange Act administered and enforced by the Office, unless the Office finds that the issuance of such rules or regulations is not necessary or appropriate in the public interest or for the protection of investors. Any such finding must be published in the **Federal Register**. In light of the requirements of Section 12(i) of the Exchange Act, and the public interest in timely promulgation of the foregoing amendments to the Part 11 Regulations, such amendments are effective on the date of publication in the **Federal Register**, in accordance with the provisions of section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)).

In response to the November 1980 Proposals, the Office received five letters of comment. The Office has given careful consideration to the views expressed by the commentators, and, particularly in light of the requirements of Section 12(i), has decided to adopt the amendments to the Part 11 Regulations, as proposed, with certain technical changes. A discussion of the adopted amendments to the Part 11 Regulations, certain of the comments with respect thereto and the Office's responses is set forth below.

As a general matter, the amendments to the tender offer rules, contained in the Part 11 Regulations provide specific filing, delivery and disclosure requirements, optional dissemination provisions and additional substantive protections. In addition, certain anti-fraud rules applicable to any tender offer have been adopted. These rules are considered as necessary and appropriate in the public interest and for the protection of investors because of the impact of tender offers on securities markets and on control of national banks. The dynamic nature of tender offers and the need to provide a balance between the interests of the person

[1] *See* SEC Release Nos. 34–15944 (44 FR 38810, July 2, 1979), 34–16075 (44 FR 46736, August 8, 1979), 34–16112 (44 FR 49406, August 22, 1979), 34–16356 (44 FR 68764, November 21, 1979), 34–16484 (44 FR 70328, December 6, 1979), and 34–16806 (45 FR 33957, May 21, 1980).

making a tender offer and the management of the national bank, which is the subject of the tender offer, as well as to ensue adequate disclosure and substantive protections to shareholders making investment decisions, necessitated revision of the previous regulatory framework.

The amendments concerning corporate governance provide a conditional "safe harbor" exemption from applicable provisions of the federal securities laws which may impose liability for statements that contain or relate to projections made in filings with the Office or in annual reports to shareholders of national banks. In addition, these amendments require that shareholders be provided with a proxy card which contains certain additional information and which allows a degree of flexibility in voting on the matters referred to in the proxy card.

The amendment to the insider trading rules set forth in the Part 11 Regulations provides an exemption from Section 16 of the Exchange Act (15 U.S.C. 78p) for acquisitions of equity securities through dividend reinvestment plans. As discussed in detail below, the amendment enables directors, officers and ten percent beneficial shareholders (commonly referred to as "insiders") of national banks to participate in such plans on the same basis as other shareholders in that "short swing profits" realized by the insiders as a result of purchases of a national bank's securities through such a plan will no longer be recoverable by the national bank issuer.

The amendment concerning the furnishing of proxy voting advice exempts from the coverage of § 11.5 of the Part 11 Regulations (12 CFR 11.5) certain activities of professional financial advisors maintaining a business relationship with the recipient of such advice.

For the reasons articulated in the November 1980 Proposals, the Office determined not to propose amendments to the Part 11 Regulations relating to issuer tender offers and "going private" transactions which would correspond to amendments recently adopted by the SEC to its Exchange Act rules. Such transactions occur with insufficient frequency to justify formal regulations. The banking laws and the Office's supervisory powers thereunder make national banks with classes of securities registered under the Exchange Act subject to more extensive regulatory oversight than most issuers subject to SEC jurisdiction. Thus, instead of conforming the Part 11 Regulations to the SEC amendments, the Office intends generally to deny approval of any issuer tender offer or "going private" transaction unless the requirements of the SEC's relevant regulations are substantially satisfied.

The following provides a more specific discussion of the amendments to the Part 11 Regulations:

I. Amendments to Part 11 Regulations

A. Tender Offers

The tender offer rules, as amended, apply to tender offers on the following bases. If the tender offer is subject to Section 14(d)(1) of the Exchange Act (15 U.S.C. 78n(d)(1)), Sections 11.5(l)–(n) and (o) of the Part 11 Regulations (12 CFR 11.5(l)–(n) and (o), respectively) would apply. If the tender offer is not subject to Section 14(d)(1), only § 11.5.(o) of the Part 11 Regulations (12 CFR 11.5(o)) would apply. The operation of the rules is triggered by the commencement of the tender offer, defined in § 11.5(l)(3) of the Part 11 Regulations (12 CFR 11.5(l)(3)) as the date the tender offer is first published, sent or given to security holders.

As amended, the tender offer rules set forth four general categories of requirements: (1) Filing requirements; (2) dissemination requirements; (3) disclosure requirements; and (4) substantive provisions. The filing requirements regarding Form F–13 (Tender Offer Statement) 12 CFR 11.54) are set forth in 11.5(l)(7) of the Part 11 Regulations (12 CFR 11.5(l)(7)). This section also requires a bidder to hand-deliver the initial filing and any amendments thereto to the national bank, which is the subject of the tender offer, and under certain conditions to give telephonic notice of certain information and to mail copies to national securities exchanges and to the National Association of Securities Dealers, Inc. A competing bidder is required to hand-deliver the initial filing to any previous bidder whose tender offer for the same class of securities has not yet expired.

Section 11.5(l)(10) of the Part 11 Requirements (12 CFR 11.5(l)(10)) provides for three alternative methods of disseminating a cash tender offer to security holders of national banks: (1) Long-form publication; (2) summary publication; and (3) the use of shareholder lists and security position listings ("stockholder lists"). Summary publication and the use of stockholder lists, (pursuant to Section 11.5(m) (12 CFR 11.5(m)), must comply with Section 11.5(l)(10)(ii) and 11.5(l)(10(iii) (12 CFR 11.5(l)(10)(ii) and 12 CFR 11.5(l)(10)(iii), respectively).

Section 11.5(m) allows a bidder to disseminate its tender offer materials to security holders pursuant to stockholder lists. The subject national bank has the option to retain the stockholder lists and itself distribute the bidder's tender offer materials, or to furnish the stockholder lists to the bidder, in which case the bidder would distribute such materials.

Although the dissemination provisions of § 11.5(l)(10) are not mandatory, the disclosure requirements of Section 11.5(m)(8) (12 CFR 11.5(m)(8)) apply to *any* tender offer subject to Section 14(d) of the Exchange Act (15 U.S.C. 78n). The application of the disclosure requirements depend on whether the tender offer is published or transmitted to security holders by means of summary publication under § 11.5(l)(10)(ii) or through the use of stockholder lists pursuant to § 11.5(m).

Where a tender offer involves consideration consisting solely of cash or securities exempt from registration under Section 3 of the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77c), or both, § 11.5(l)(10)–(12) and 11.5(m) operate together. Regardless of whether the subject bank effects the dissemination of the bidder's materials under § 11.5(m)(2) (12 CFR 11.5(m)(2)) or the subject national bank furnishes stockholder lists under § 11.5(m)(3) (12 CFR 11.5(m)(3)), tender offer materials have to include the disclosure required by § 11.5(m)(12)(i) of the Part 11 Regulations (12 CFR 11.5(m)(12)(i)).

Any tender offer is required to remain open for a minimum of twenty business days from the date of commencement and for ten business days from the date of any notice of increase in the offered consideration or soliciting dealers' fees. These periods operate concurrently. Thus, if the bidder increases the consideration within the first ten days of the offer, the separate ten-day period, running from the date of notice of the increase, would expire within the minimum twenty-day offering period.

The withdrawal rights set forth in § 11.5(n) of the Part 11 Regulations (12 CFR 11.5(n)) provide an initial withdrawal period of 15 business days. If a competing offer is made, an additional withdrawal period of ten days may be required. The additional time period, if required, runs concurrently with the initial period. Under § 11.5(n)(5) (12 CFR 11.5(n)(5)), the *pro rata* acceptance provisions of Section 14(d)(6) of the Exchange Act (15 U.S.C. 78n(d)(6)) may be extended so long as the minimum ten-day periods required under the Exchange Act are provided and the bidder's tender offer materials disseminated on the date of commencement of the offer disclose the different pro rata time periods. Section 11.5(o)(3) (12 CFR 11.5(o)(3)) requires

payment for, or the return of, the deposited securities promptly after the termination or withdrawal of the tender offer.

Under § 11.5(o)(5) of the Part 11 Regulations (12 CFR 11.5(o)(5)), the subject national bank must disclose and explain to security holders its position with respect to the tender offer within ten business days after the date the tender offer is first published or sent or given to security holders. The disclosure of such position, under § 11.5(n)(6) (12 CFR 11.5(n)(6)), requires the filing of Form F-14 (12 CFR 11.55) with the Office and delivery to certain designated persons.

B. Corporate Governance

As indicated above, the Office is adopting a number of amendments to the Part 11 Regulations regarding corporate governance issues. These amendments are described immediately below.

1. Sections 11.3(e) through 11.3(i) (12 CFR 11.3(e) through 11.3(i)) have been added to the Part 11 Regulations and provide a conditional "safe harbor" exemption from applicable provisions of federal securities laws which may impose liability for statements that contain or relate to projections made in filings with the Office or in annual reports to shareholders of national banks. The types of statements protected by such "safe harbor" exemptions are those contained in, or relating to:

a. Projections of certain financial items;

b. Management plans or objectives; and

c. Future economic performance included in management's discussion and analysis of the summary of earnings; and

d. Disclosed assumptions underlying or relating to these statements (if prepared with reasonable basis and disclosed in good faith).

Although this type of information is not presently required to be disclosed pursuant to the Part 11 Regulations, the "safe harbor" provisions are intended to further the goal of encouraging the disclosure of projections and forward-looking information.

2. Section 11.5 of the Part 11 Regulations, as amended, requires that shareholders be provided with a proxy card which (a) indicates whether the proxy is solicited on behalf of the issuer's board of directors, and (b) permits shareholders to vote for or against individual director nominees. The Office has also adopted an amendment requiring that shareholders be provided, under certain circumstances, with information concerning the votes cast for and against incumbent directors. Additionally, the amended rules require disclosure of the date by which shareholder proposals must be received in order to be included in a national bank's proxy statement for the subsequent year.

3. Section 11.5 has also been amended to provide that the requirements of such section generally do not apply to the furnishing of proxy voting advice by any person to any other person with whom the adviser has a business relationship. This amendment is designed to remove a possible impediment to the flow of information to shareholders from professional financial advisors who may be especially familiar with the affairs of national banks.

Commentators on the proposed rules suggested reconsideration or revision of proxy requirements and certain of the corporate governance proposals. First, it was suggested that the election of directors on an individual basis complicated the election process and would not enhance shareholder protection or their participation in corporate governance and, therefore, the proposal to that effect should be reconsidered. Second, a commentator suggested that the Office provide greater exemptive relief from the requirement to provide information concerning votes cast against incumbent directors (the proposal provided for a five percent threshold). Third, it was suggested that the Part 11 Regulations should not permit the inclusion in proxy materials of shareholder proposals unless a proposal had been submitted for inclusion in proxy materials by shareholders on one or more occasions in the preceding five years. Fourth, one commentator questioned the need for and effect of disclosure in proxy materials of the date by which shareholder proposals must be received by a national bank in order to be included in the proxy materials for the next annual meeting. Finally, one commentator voiced his general concern that the proxy requirements have become too complex and that adoption of the corporate governance proposals would make such requirements even more burdensome. The Office has considered carefully the foregoing comments. As a general matter, the comments (which are similar in nature to comments received by SEC) express concerns which are applicable to all issuers and do not raise issues which are peculiar to national banks. Accordingly, particularly in light of the requirements of Section 12(i) of the Exchange Act, the Office has decided not to adopt any of the revisions to the corporate governance proposals which were suggested by the commentators.

C. Insider Trading Exemption for Dividend Reinvestment Plans

The Office has amended the Part 11 Regulations by adding new § 11.6(j) thereto which exempts acquisitions under dividend reinvestment plans from the "short swing profits" provisions of Section 16(b) of the Exchange Act (15 U.S.C. 78p(b)).[2]

In recent years, many national banks have instituted dividend reinvestment plans for their shareholders. Typically, such plans enable shareholders to automatically reinvest cash dividends in additional shares on a periodic basis. Frequently, the price of additional shares is discounted and no brokerage commission or service fee is charged, as incentives to participate.

Insiders of a national bank are often confronted with the dilemma of being unable to sell any shares of the national bank as long as they acquire shares under the plan on a semiannual or more frequent basis without incurring liability for imputed trading profits under Section 16(b). That section provides that any profit resulting from a purchase and a sale or a sale and a purchase by an insider within a six-month period shall inure to the benefit of the national bank issuer.

Courts have interpreted Section 16(b) to require that a sale price be matched against the lowest purchase price occuring within six months before or after the date of such sale in order to determine whether a recoverable profit exists. Consequently, unless the market price is absolutely stable for a period of twelve months, or the insider sells at a time when the market price is lower than any acquisition price during the twelve-month period, at least one dividend reinvestment will probably exist at a price lower than the price at which the insider sold. In such a case, the insider would be liable to the national bank issuer for the difference between the market price at the time of sale and the acquisition price. New § 11.6(j) of the Part 11 Regulations is intended to alleviate such problems by

[2] One commentator suggested that an exemption from the "short swing profits" provisions of Section 16(b), similar to that now available to security acquisitions under a national bank's dividend reinvestment plan, should be provided with respect to employee stock purchase plans. The Office's rule proposal did not include a proposed exemption applicable to employee stock purchase plans. Therefore, an exemption for employee stock purchase plans cannot be adopted at this time. However, the Office intends to give further consideration to this commentator's suggestion.

exempting from Section 16(b) the acquisition of securities made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or payable on the securities of the same national bank.

II. SEC Amendments Not Adopted

A. Issuer Tender Offers

As discussed in the November 1980 Proposals, on August 16, 1979, the SEC adopted a new Rule 13e–4 and Schedule 13E–4 under the Exchange Act (17 CFR 240.13e–4 and 240.13e–101, respectively) relating to tender and exchange offers by certain publicly-held issuers (and affiliates) for their own securities ("issuer tender offers"). The rule defines certain fraudulent, deceptive and manipulative acts or practices in connection with such offers, and prescribes filing, disclosure, dissemination and other requirements designed to prevent such acts and practices.

An issuer with a class of equity securities registered under the Exchange Act is required to file an Issuer Tender Offer Statement on Schedule 13E–4 with the SEC prior to, or as soon as practicable after, the date of commencement of the issuer tender offer which discloses, *inter alia*, (1) information concerning the entity filing the Schedule 13E–4; (2) the source and amount of funds or other consideration to be used to effect the transaction; (3) the purpose of the tender offer and any plans or proposals of the issuer (or affiliate) that would materially change the business, financial structure or board of directors of the issuer; (4) annual and interim financial information; and (5) copies of any tender offer materials which are published, sent or given to security holders and other exhibits.

The information required by Schedule 13E–4, or a fair and adequate summary thereof, must be disseminated to shareholders by certain prescribed means. Rule 13e–4 also includes requirements covering withdrawal rights, provisions for the *pro rata* acceptance of tendered securities, payment for tendered and accepted securities, and a "best price" provision, as well as other matters.

As noted above, the Office has determined not to amend the Part 11 Regulations to conform to the SEC's "issuer tender offer" rules. This Office has longstanding statutory authority under 12 U.S.C. 59 to approve any reduction in the amount of capital of a national bank, or the retirement of any part of the outstanding common or preferred capital stock of a national bank. Moreover, under 12 U.S.C. 83, any such transaction could not be effected through the purchase by a national bank of its own stock. Therefore, in lieu of adopting requirements substantially similar to Rule 13e–4 and Schedule 13E–4, the Office will review any application by a national bank (which has a class of securities registered under the Exchange Act) for a reduction in the amount of its capital or the retirement of any part of its equity securities to determine whether it would be appropriate to condition approval of the application upon compliance with any or all of the requirements of Rule 13e–4 and Schedule 13E–4.

B. "Going Private" Transactions

As indicated in the November 1980 Proposals, on August 2, 1979, the SEC adopted a new Rule 13e–3 and Schedule 13E–3 under the Exchange Act (17 CFR 240.13e–3 and 240.13e–100, respectively) relative to "going private" transactions by public companies and their affiliates. Such rule and schedule prohibit fraudulent, deceptive and manipulative acts or practices in connection with "going private" transactions and prescribe new filing, disclosure and dissemination requirements designed to prevent such acts and practices.

A "going private" transaction is defined by Rule 13e–3 as any transaction or series of transactions involving one or more of the following: (a) A purchase of any equity security by the issuer or an affiliate of the issuer; (b) a tender offer or request or invitation for tenders of any equity security made by the issuer of such class of securities or by an affiliate of such issuer; or (c) a solicitation of shareholder proxies or consents in connection with: (1) Any merger, consolidation, reclassification, reorganization, or similar corporate transaction between an issuer and an affiliate; (2) a sale of substantially all the assets of an issuer to an affiliate or group of affiliates; or (3) a reverse stock split involving the purchase of fractional interests.

Rule 13e–3 applies where any of the above-described transactions has a reasonable likelihood or a purpose of causing any class of the issuer's securities subject to Section 12(g) of the Exchange Act to be held by fewer than 300 persons, thereby allowing the issuer to terminate certain of its reporting obligations under the Exchange Act, or causing a class of the issuer's securities to be delisted on any national exchange or to be no longer quoted on an inter-dealer quotation system.

Issuers and their affiliates engaging in a Rule 13e–3 transaction must file a Transaction Statement on Schedule 13E–3 with the SEC which discloses, *inter alia*, (1) information concerning recent purchases by the issuer, and its affiliates, of the issuer's equity securities; (2) information concerning the entity filing the schedule; (3) the purpose of the Rule 13e–3 transaction; (4) a determination of the consideration to be paid for the securities; and (5) a statement concerning the fairness of the Rule 13e–3 transaction to unaffiliated shareholders. Most of the information contained in Schedule 13e–3 must be disclosed to shareholders by means of a proxy statement, registration statement, request for tenders or other disclosure document. Such disclosure must take place at least 20 days prior to the transaction in question.

The Office has determined not to amend the Part 11 Regulations to conform to the SEC's "going private" rules at this time. As discussed above with regard to "issuer tender offer" transactions, the supervisory powers exercised by the Office under the national banking laws subject national bank issuers with classes of equity securities registered pursuant to the Exchange Act to more extensive regulatory oversight than most issuers subject to SEC jurisdiction. Under the national banking laws, the Office must approve substantially all of the transactions involving national banks which would be subject to the "going private" regulations. Therefore, rather than adopting the SEC regulations, the Office generally intends to condition approval of any "going private" transaction to require substantial compliance with the provisions of Rule 13e–3 and Schedule 13E–3.

III. Possible Format Revision of Part 11 Regulations

As discussed in the November 1980 Proposals, the Office solicited comments regarding the desirability of proposing a comprehensive revision of the format of the Part 11 Regulations. Two persons commented on this subject. One commentator expressed the view that a revision of the existing format would not serve any useful purpose for banking personnel; the other commentator suggested that such a revision would untimately be beneficial. Although the Office has not determined to propose revision of the Part 11 format at this time, it intends to give further consideration to that possibility.

Amendments to 12 CFR Part 11.

12 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 reads as follows:

(15 U.S.C. 78l, 78m, 78n, 78p, 78w)

2. 12 CFR 11.3 is amended by adding the paragraphs (e) through (i) as follows:

§ 11.3 Inspection and publication of information filed under the Act, notice of informal adjudications.

* * * * *

(e) A statement within the coverage of paragraph (f) of this section which is made by or on behalf of a bank filing any statement, report, or document under the Act or by an outside reviewer retained by the bank shall be deemed not to be a fraudulent statement (as defined in paragraph (h) of this section) unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(f) Paragraph (e) applies to (1) a forward-looking statement (as defined in paragraph (g) of this section) made in a document filed with the Comptroller or in an annual report to shareholders meeting the requirements of 12 CFR 11.5(c), (2) a statement reaffirming the forward-looking statement referred to in paragraph (f)(1) subsequent to the date the document was filed or the annual report was made publicly available, or (3) a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such forward-looking statement is affirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement.

(g) For the purpose of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings;

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (g) (1), (2), or (3) of this section.

(h) For the purpose of this section the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1934 or regulations promulgated thereunder.

(i) Notwithstanding any of the provisions of paragraphs (e) through (h) of this section, this rule shall apply only to forward-looking statements made by or on behalf of a bank, if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Securities Exchange Act of 1934 and has filed its most recent annual report with the Comptroller on Form F-2.

3. 12 CFR 11.5 is amended by revising paragraphs (d), (h), (l), and (m); by adding new paragraphs (b)(5), (e)(5), (n), and (o); by redesignating current paragraphs (n) and (o) as paragraphs (p) and (q), as follows:

§ 11.5 Proxies, proxy statements, and statements where management does not solicit proxies.

* * * * *

(b) *Exceptions.* The requirements of this § 11.5 shall not apply to the following:

* * * * *

(5) The furnishing of proxy voting advice by any person (the "advisor") to any other person with whom the advisor has a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the bank or any of its affiliates, or a shareholder proponent of the matter on which advice is given, as well as any material interest of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 11.5(i).

(v) **Note.**—The solicitations excepted by paragraphs (b)(1) and (b)(5) remain subject to the prohibitions against false and misleading statements in § 11.5(h).

* * * * *

(d) *Requirements as to proxy.* (1) The form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type the identity of the persons on whose behalf the solicitation is made, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (d)(4) of this section.

(2)(i) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in bold-faced type how the shares represented by the proxy are intended to be voted in each such case.

(ii) A form or proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(A) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(B) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(C) Designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(D) Any other similar means, provided that clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

(iii) Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority, provided that

the form of proxy so states in bold-face type.

(iv) Instructions. (A) Paragraph (d)(2)(ii) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

(B) If applicable law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the bank should provide a similar means for security holders to vote against each nominee.

(e) *Presentation of information in statement.* * * *

(5) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of SEC Rule 14a–8(a)(3)(i). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

* * * * *

(h) *False or misleading statements.* (1) No solicitation or communication subject to this section shall be made by means of any statement, form of proxy, notice of meeting, or other communications, written or oral, containing any statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has become false or misleading. Depending upon the particular circumstances, the following may be misleading within the meaning of this paragraph: Predictions as to specific future market values; material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation; failure so to identify a statement, form of proxy, and other soliciting material as clearly to distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; claims made prior to a meeting regarding the results of a solicitation.

* * * * *

(l) *Tender Offers.* (1) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of equity security which is registered pursuant to Section 12 of the Act, or a national bank or a bank operating under the Code of Law for the District of Columbia, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, on the date of the commencement of the tender offer such person has complied with the requirements of paragraph (l)(7) of this section. The definition of beneficial owner set forth in § 11.4(g)(4)(i) for the purposes of Section 13(d)(1) of the Act, shall apply also for purposes of Section 14(d)(1) of the Act.

(2) *Definitions.* Unless the context otherwise requires, all terms used in 12 CFR 11.5 (l), (m), (n) and (o) have the same meaning as in the Act and in 12 CFR 11.2 promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and 12 CFR 11.5 (l), (m), (n) and (o), the following definitions apply:

(i) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made;

(ii) The term "subject bank" means any national bank or bank operating under the Code of Law for the District of Columbia which is the issuer of securities which are sought by a bidder pursuant to a tender offer;

(iii) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

(iv) The term "beneficial owner" shall have the same meaning as that set forth in 12 CFR 11.4(g)(4)(i): *Provided, however,* That, except with respect to 12 CFR 11.5(l)(7) and (n)(9) and Item 6 of 12 CFR 11.54, the term shall not include a person who does not have or share investment power or who may be deemed to be a beneficial owner by virtue of his right to acquire beneficial ownership as set forth in 12 CFR 11.4(g)(4)(i).

(v) The term "tender offer material" means:

(A) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(B) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(C) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(vi) The term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under 12 CFR 11, the date of the event which begins the running of such time period shall be included *except that* if such event occurs in other than a business day such period shall begin to run on and shall include the first business day thereafter; and

(vii) The term "security position listing" means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(3) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(i) The long form publication of the tender offer is first published by the bidder pursuant to 12 CFR 11.5(l)(10)(i)

(ii) The summary advertisement of the tender offer is first published by the bidder pursuant to 12 CFR 11.5(l)(10)(ii)

(iii) The summary advertisement or the long form publication of the tender offer is first published by the bidder pursuant to 12 CFR 11.5(l)(10)(iii)

(iv) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(v) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in subparagraphs (3)(i) through (3)(iv) of this paragraph.

(4) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information at subdivision (iii) of this subparagraph with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under subparagraph (3)(v) of this paragraph *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under subparagraph (3)(v) of this paragraph on the date of such public announcement if within five business days of such public announcement, the bidder *either:*

(i) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event subparagraph (3)(v) of this paragraph shall not apply to the initial public announcement; or

(ii) Complies with 12 CFR 11.5(l)(7) and contemporaneously disseminates the disclosure required by paragraphs (m)(7)–(11) of this section to security holders pursuant to subparagraphs (l)(10)–(12) or otherwise in which event:

(A) The date of commencement of such tender offer under subparagraph (3) of this paragraph will be determined by the date the information required by paragraphs (m)(8)–(12) of this section is first published or sent or given to security holders pursuant to paragraphs (l)(10)–(12) of this section or otherwise; and

(B) Notwithstanding subparagraph (5)(ii)(A) of this paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(iii) The information referred to in subparagraph (5) of this paragraph is as follows:

(A) The identity of the bidder;

(B) The identity of the subject company; and

(C) The amount and class of securities being sought and the price or range of prices being offered therefor.

(5) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in subparagraphs (6)(i) through (6)(iii) of this paragraph concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (3)(v) of this paragraph.

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(6) *Public Announcement.* A public announcment concerning a tender offer by a bidder through a press release, newspaper advertisement or public statement which states that the offering will be made only by means of a prospectus and discloses the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered and the basis upon which the exchange may be made where the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (3)(v) of this paragraph: *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public announcement.

(7) *Filing and transmittal of tender offer statement.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject company's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(i) Files with the Comptroller six copies of a Tender Offer Statement on Form F–13 (12 CFR 11.54), including all exhibits thereto;

(ii) Hand delivers a copy of such Form F–13, including all exhibits thereto:

(A) To the subject bank at its principal executive office; and

(B) To any other bidder, which has filed a Form F–13 with the Comptroller relating to a tender offer which has not yet terminated for the same class of securities of the subject bank, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Form F–13);

(iii) Gives telephonic notice of the information required by paragraphs (m)(12)(ii) (A) and (B) of this section and mails by means of first class mail a copy of such Form F–13, including all exhibits thereto:

(A) To each national securities exchange where such class of the subject bank's securities is registered and listed for trading (which may be based upon information contained in the subject bank's most recent Annual Report on Form F–2 (12 CFR 11.42) filed with the Comptroller unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(B) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject bank's securities are authorized for quotation in the NASDAQ interdealer quotation system.

(8) *Additional materials.* The bidder shall file with the Comptroller six copies of any additional tender offer materials as an exhibit to the Form F–13 required by this section, and if a material change occurs in the information set forth in such Form F–13, six copies of an amendment to Form F–13 (each of which shall include all exhibits other than those required by Item 11(a) of Form F–13 disclosing such change and shall send a copy of such additionally tender offer material or such amendment to the subject bank and to any exchange and/or the NASD, as required by subparagraph (7) of this paragraph, promptly but not later than the date such additional tender offer material or such change is first published, sent or given to security holders.

(9) *Certain announcements.* Notwithstanding the provisions of subparagraph (8) of this paragraph, if the additional tender offer material or an amendment to Form F–13 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject bank, any exchange and/or the NASD, as required by subparagraph (7) of this paragraph, promptly after the date such tender offer material is first published or sent or given to security holders.

(10) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed "published or sent or given to security holders" within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder

lists and security position listings pursuant to paragraph (m), subparagraphs (10)(ii) and (10)(iii) of this section are exclusive.

(i) *Long-form publication.* The bidder makes adequate publication in a newspaper of long-form publication of the tender offer.

(ii) *Summary publication.* (A) The bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(B) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(iii) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to paragraphs (m) (1)–(7) shall comply with subparagraphs (10)(i) or (10)(ii) of this paragraph on or prior to the date of the bidder's request for such lists or listing pursuant to paragraph (m)(1) of this section.

(11) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(12) *Publication of changes.* If a tender offer had been published or sent or given to security holders by one or more of the methods enumerated in subparagraph (10) of this paragraph, a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change; *Provided, however,* That if the bidder has elected pursuant to paragraph (m)(6)(i) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to subparagraphs (m)(1)–(7), the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to paragraphs (m)(1)–(7) of this section.

(13) *Restrictions on Control Persons.* When a person makes a tender offer for, or a request or invitation for tenders of, any class of equity securities of a bank registered pursuant to section 12 of the Act, and such person has filed a statement with the Comptroller of the Currency pursuant to this paragraph, any other person controlling, or controlled by or under common control with ("control person") the issuing bank shall not thereafter, during the period such tender offer, request or invitation continues, purchase any class of equity securities of the issuing bank unless:

(i) The control person has filed with the Comptroller of the Currency a statement containing the information specified below with respect to any proposed purchases:

(A) The title and amount of equity securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(B) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(C) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securites, a description of the transaction and the names of the parties thereto.

(ii) The control person has at any time within the past 6 months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by subparagraph (l)(13)(i) of this paragraph and a copy has been filed with the Comptroller of the Currency.

(14) *Permitted communications.* The following communications shall not be deemed to be requests or invitations for tenders:

(i) Offers to purchase securities made in connection with a distribution of securities permitted by Rules 10b–6, 10b–7 or 10b–8 under the Act as promulgated by the SEC;

(ii) The call or redemption of any security in accordance with the terms and conditions of the governing instruments;

(iii) Offers to purchase securities evidenced by a scrip certificate, order form or similar document which represents a fractional interest in a share of stock or similar security;

(iv) Offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting shareholders' securities;

(v) The furnishing of information and advice regarding a tender offer to customers or clients by attorneys, banks, brokers, fiduciaries or investment advisers, who are not otherwise participating in the tender offer or solicitation, on the unsolicited request of a person or pursuant to a general contract for advice to the person to whom the information or advice is given;

(vi) A communication from a subject bank to its security holders which does no more than (A) identify a tender offer or request or invitation for tenders made by another person, (B) state that the management of the subject bank is studying the matter and will, on or before a specified date (which shall be not later than 10 days prior to the date specified in the offer, request or invitation, as the last date on which tenders will be accepted, or such shorter period as the Comptroller of the Currency may authorize) advise security holders as to the management's recommendation to accept or reject the offer, request or invitation, and (C) request security holders to defer making a determination as to whether or not they should accept or reject the offer, request or invitation until they have received the management's recommendation with repect thereto.

(m) *Obligations of the subject bank.* (1) Upon receipt by a subject bank at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (m)(5) of this section, the subject bank shall comply with the following:

(i) The subject bank shall notify promptly transfer agents and any other person who will assist the subject in complying with the requirements of this paragraph of the receipt by the subject bank of a request by a bidder pursuant to this paragraph.

(ii) The subject bank shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject bank was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject bank shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(iii) The subject bank shall make an election to comply and shall comply with all of the provisions of either subparagraph (2) or subparagraph (3) of this paragraph. The subject bank's election, once made, shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(iv) No later than the second business day after the date of the bidder's

request, the subject bank shall orally notify the bidder, which notification shall be confirmed in writing, of the subject bank's election made pursuant to subparagraph (1)(iii) of this paragraph. Such notification shall indicate (A) the approximate number of security holders of the class of securities being sought by the bidder and, (B) if the subject bank elects to comply with subparagraph (2) of this paragraph, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with subparagraph (7)(i) of this paragraph.

(2) *Mailing of tender offer materials by the subject bank.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(i) The subject bank shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject bank and make inquiry of each such participant as to the approximate number of beneficial owners of the subject bank securities being sought in the tender offer held by each such participant.

(ii) No later than the third business day after delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in subparagraph (2)(iii) of this paragraph. The subject bank shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailings be completed in a substantially greater period of time than the subject bank would complete a mailing to security holders of its own materials relating to the tender offer.

(iii) No later then the third business day after the delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in subparagraph (2)(i) of this paragraph. The subject bank shall use its best efforts to complete the transmittal in a timely manner but no event shall such transmittal be completed in a substantially greater period of time than the subject bank would complete a transmittal to such participants pursuant to security position listings or clearing agencies of its own material relating to the tender offer.

(iv) The subject bank shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to subparagraph (2)(ii) of this paragraph and of the transmittal pursuant to subparagraph (2)(iii) of this paragraph.

(v) During the tender offer and any extension thereof the subject bank shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (A) the date of preparation of the most recent stockholder list referred to in subparagraph (1)(ii) of this section or (B) the last preceding update.

(vi) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, the subject bank, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in subparagraphs (1)(ii) and (2)(v) of this paragraph and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to subparagraph (2)(iii) of this paragraph.

(vii) The subject bank shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(viii) Promptly following the termination of the tender offer, the subject bank shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to subparagraph (6)(iii)(c) over the direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this paragraph computed in accordance with subparagraph (7)(ii) of this paragraph.

(3) *Delivery of stockholder lists and security position listings.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following:

(i) No later than the third business day after the date of the bidder's request, the subject bank shall furnish to the bidder at the subject bank's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in subparagraph (1)(ii) of this paragraph and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject bank.

(ii) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials, the subject bank shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject bank during the tender offer and any extensions thereof.

(4) *Liability of subject banks and others.* Neither the subject bank nor any affiliate or agent of the subject bank nor any clearing agency shall be:

(i) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more requirements of this section;

(ii) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject bank or any affiliate or agent of the subject bank.

(iii) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph;

(iv) Liable under any provision of the Federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the

compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph.

(5) *Content of the bidder's request.* The bidder's written request referred to in subparagraph (1) of this paragraph shall include the following:

(i) The identity of the bidder;

(ii) The title of the class of securities which is the subject of the bidder's tender offer;

(iii) A statement that the bidder is making a request to the subject bank pursuant to subparagraph (1) of this paragraph for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(iv) A statement that the bidder is aware of and will comply with the provisions of subparagraph (6) of this paragraph;

(v) A statement as to whether or not it has elected pursuant to subparagraph (6)(i) of this paragraph to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph; and

(vi) The name, address and telephone number of the person whom the subject bank shall contact pursuant to paragraph (m)(1)(iv) of this section.

(6) *Obligations of the bidder.* Any bidder who requires that a subject bank comply with the provisions of paragraph (m)(1) of this section, shall comply with the following:

(i) The bidder shall make an election whether or not to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, which election shall be included in the request referred to in paragraph (m)(1) of this section and shall not be revocable by the bidder during the tender offer and extensions thereof.

(ii) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of paragraph (l)(10)(iii) of this section.

(iii) If the subject bank elects to comply with subparagraph (2) of this paragraph,

(A) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject bank, as provided in subparagraph (1)(iv) of this paragraph;

(B) The bidder shall promptly notify the subject bank of any amendment to the bidder's tender offer materials requiring compliance by the subject bank with subparagraph (2)(vi) of this paragraph and shall promptly deliver such amendment to the subject bank pursuant to subparagraph (7)(i) of this paragraph;

(C) The bidder shall advance to the subject bank an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with subparagraph (7)(ii) of this paragraph;

(D) The bidder shall promptly reimburse the subject bank for the direct costs incidental to compliance by the subject bank and its agents in performing the act required by this section computed in accordance with subparagraph (7)(ii) of this paragraph which are in excess of the amount advanced pursuant to subparagraph (6)(ii)(c) of this paragraph and

(E) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(iv) If the subject bank elects to comply with subparagraph (3) of this paragraph:

(A) The subject bank shall use the stockholder and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(B) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph promptly after the termination of the bidder's tender offer;

(C) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph to the subject bank on a confidential basis;

(D) The bidder shall not retain any stockholder list or security position listing furnished by the subject bank pursuant to subparagraph (3) of this paragraph, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(E) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject bank pursuant to subparagraphs (3)(i) and (3)(ii) of this paragraph;

(F) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the appropriate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(G) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(H) The bidder shall promptly reimburse the subject bank for direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with subparagraph (7)(ii) of this paragraph.

(7) *Delivery of materials, computation of direct costs.* (i) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject bank at the location specified by the subject bank in its notice given pursuant to subparagraph (1)(iv) of this paragraph a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject bank in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with subparagraph (6)(iii)(C) of this paragraph at the time the materials or amendments, as the case may be, are delivered.

(ii) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (A) the direct cost incidental to the mailing of the subject bank's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (B) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (C) the estimated direct costs of preparing mailing labels, of updating shareholder lists and of third party handling charges plus (D) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials thereto when finally computed may include all reasonable charges paid by the subject bank to third parties for supplied or

services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject bank. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

(8) *Information required on date of commencement*—(i) *Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of long-form publication pursuant to paragraph (l)(10)(i), such long-form publication shall include the information required by subparagraph (12)(i) of this paragraph.

(ii) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication pursuant to paragraph (l)(10)(ii):

(A) The summary advertisement shall contain and shall be limited to, the information required by subparagraph (12)(ii) of this paragraph; and

(B) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (12)(i) of this paragraph.

(iii) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings pursuant to paragraph (l)(10)(iii) of this section,

(A) Either *(1)* the summary advertisement shall contain, and shall be limited to the information required by subparagraph (12)(ii) of this paragraph, or *(2)* if long form publication of the tender offer is made, such long form publication shall include the information required by subparagraph (12)(i) of this paragraph, and

(B) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (12)(i) of this paragraph.

(iv) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to paragraph (l) (10) of this section, the tender offer materials which are published or sent or given to security holders on the date of commencement of such offer shall include the information required by subparagraph (12)(i) of this paragraph.

(9) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in subparagraphs (12)(i)(A)–(B) and (12)(ii)(D) of this paragraph.

(10) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in subparagraph (9) of this paragraph and tender offer materials described in subparagraphs (8)(ii)(B) and (8)(iii)(B) of this paragraph, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by subparagraphs (12)(i) and may omit any of the information required by subparagraphs (12)(i)(E)–(H) of this paragraph which has been previously furnished by the bidder in connection with the tender offer.

(11) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(12) *Information to be included*—(i) *(Long-form publication and tender offer materials.* The information required to be disclosed by subparagraphs (8)(i), (8)(ii)(B), (8)(iii)(A)(2) and (8)(iv) of this paragraph shall include the following:

(A) The identity of the holder;

(B) The identity of the subject bank;

(C) The amount of a class of securities being sought and the type and amount of consideration being offered therefor;

(D) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(E) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and paragraphs (n)(1)–(5) of this section and the manner in which shares will be accepted for payment and in which withdrawal may be effected;

(F) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period form the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to Section 14(d)(6) of the Act or paragraph (n)(5) of this section and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(G) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Form F–13 (12 CFR 11.54) or a fair and adequate summary thereof: *Provided, however,* That negative responses to any such item or sub-item of Form F–13 need not be included; and

(H) The disclosure required by Item 9 of Form F–13 or a fair and adequate summary thereof. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained.

(ii) *Summary publication.* The information required to be disclosed by subparagraphs (8)(ii)(A) and (8)(iii)(A) of this paragraph in a summary advertisement is as follows:

(A) The information required by subparagraph (12)(i) (A) through (E) of this paragraph;

(B) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject bank;

(C) A statement that the information required by subparagraph (12)(i)(G) of this paragraph is incorporated by reference into the summary advertisement;

(D) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(E) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to paragraph (l)(10)(iii) of this section, a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(iii) *No transmittal letter.* Neither the initial summary advertisement not any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject bank which are sought in the tender offer may

be transmitted to the bidder or its depository) or any amendment thereto.

(n) *Additional withdrawal rights*—(1) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(i) At any time until the expiration of fifteen business days from the date of commencement of such tender offer; and

(ii) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to paragraph (l)(4) of this section for securities of the same class: *Provided,* That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer: *And, provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(2) *Computation of time periods.* The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(3) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in subparagraph (1)(ii) of this paragraph, on the date such bidder receives a copy of the Form F–13 (12 CFR 11.54) pursuant to paragraphs (l)(3)–(6) of this section from such other bidder.

(4) *Notice of withdrawal.* Notice of withdrawal pursuant to this paragraph shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

(5) *Exemption from statutory pro rata requirements.* The limited pro rata provisions of section 14(d)(6) of the Act shall not apply to any tender offer for less than all the outstanding securities of the class for which the tender offer is made to the extent that the bidder provides in the tender offer materials disseminated to security holders on the date of commencement of the tender offer that in the event more securities are deposited during the period(s) described in subdivisions (i) and/or (ii) of this subparagraph than the bidder is bound or willing to accept for payment, all securities deposited during such period(s) will be accepted for payment as nearly as practicable on a pro rata basis, disregarding fractions, according to the number of securities deposited by each depositor.

(i) Any period which exceeds ten days from the date of commencement of the tender offer.

(ii) Any period which exceeds ten days from the date that notice of an increase in the consideration offered is first published, sent or given to security holders.

(6) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by any person described in subparagraph (9) of this paragraph with respect to a tender offer for such securities unless as soon as practicable on the earliest date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following subparagraphs.

(i) Such person shall file with the Comptroller six copies of a Tender Offer Solicitation/Recommendation Statement on Form F–14 (12 CFR 11.55), including all exhibits thereto; and

(ii) If such person is either the subject bank or an affiliate of the subject bank,

(A) Such person shall hand deliver a copy of the Form F–14 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 (12 CFR 11.54) filed with the Commission; and

(B) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Form F–14 and shall mail a copy of the Form to each national securities exchange where the class of securities is registered and listed for trading and if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. ("NASD").

(iii) If such person is neither the subject bank nor an affiliate of the subject bank,

(a) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 (12 CFR 11.54) filed with the Comptroller), and

(B) Such person shall mail a copy of the Form to the subject bank at its principal office.

(7) *Amendments.* If any material change occurs in the information set forth in the Form F–14 (12 CFR 11.55) required by this section, the person who filed such Form F–14 shall:

(i) File with the Comptroller six copies of an amendment on Form F–14 disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(ii) Promptly deliver copies and give notice of the amendment in the same manner as that specified in subparagraph (6)(ii) or subparagraph (6)(iii) of this paragraph, whichever is applicable; and

(iii) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(8) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Form F–14 or a fair and adequate summary thereof: *Provided, however,* that such solicitation or recommendation may omit any of such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(9) *Applicability.* (i) Except as is provided in subparagraphs (9)(ii) and (10) of this paragraph, paragraphs (n)(6)–(11) of this section shall only apply to the following persons:

(A) The subject bank, any director, officer, employee, affiliate or subsidiary of the subject bank;

(B) Any record holder or beneficial owner of any security issued by the subject bank, by the bidder, or by any affiliate of either the subject bank or the bidder; and

(C) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the Comptroller pursuant to this paragraph or paragraphs (l)(7)–(9) of this section.

(ii) Notwithstanding subparagraph (9)(i) of this paragraph, paragraphs

(n)(6)–(11) of this section shall not apply to the following persons:

(A) A bidder who has filed a Form F–13 pursuant to paragraphs (l)(7)–(9) of this section;

(B) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request of such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(10) *Stop-look-and-listen communication.* Paragraphs (n)(6)–(11) of this section shall not apply to the subject bank with respect to a communication by the subject bank to its security holders which only:

(i) Identifies the tender offer by the bidder;

(ii) States that such tender offer is under consideration by the subject bank's board of directors and/or management;

(iii) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject bank will advise such security holders of (A) whether the subject bank recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (B) the reason(s) for the position taken by the subject bank with respect to the tender offer (including the inability to take a position); and

(iv) Requests such security holders to defer making a determination whether to accept or reject such tender offer until they have been advised of the subject bank's position with respect thereto pursuant to subparagraph (10)(iii) of this paragraph.

(11) *Statement of management's position.* A statement by the subject bank of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to paragraph (o) of this section shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(o) *Unlawful tender offer practices.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices, no person who makes a tender offer shall:

(1) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent or given to security holders.

(2) Increase the offered consideration or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published, sent or given to security holders.

(3) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer;

(4) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(5) *Position of subject bank.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices, the subject bank, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject bank:

(i) Recommends acceptance or rejection of the bidder's tender offer;

(ii) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(iii) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(6) *Material change.* If any material change occurs in the disclosure required by paragraph (a) of this section, the subject bank shall promptly publish, send or give a statement disclosing such material change to security holders.

* * * * *

4. 12 CFR 11.6 is amended by adding a new paragraph (j) and redesignating the existing paragraphs (j) through (u) as paragraphs (k) through (v).

§ 11.6 "Insiders" securities transactions and reports under section 16 of this Act.

* * * * *

(j) Exemption for acquisitions under dividend reinvestment plans. Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same issue, *Provided,* That the plan is made available on the same terms to all holders of securities of the class on which the reinvestment dividends or interest are being paid.

* * * * *

5. 12 CFR 11.51 is amended by revising paragraph (c) in Item 5 and in Item 6 by adding paragraph (i) to read as follows:

§ 11.51 Form for proxy statement or statement where management does not solicit proxies (Form F–5).

* * * * *

Item 5—Voting Securities and Principal Holders Thereof

* * * * *

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, (1) make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

* * * * *

Item 6—Directors

* * * * *

(i) Shares voted at last meeting. With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format following such introductory paragraph, the percentage of total shares cast for and withheld from the vote for or, where applicable, cast against each nominee. When groups of classes or series of classes vote together in the election of a director or directors, they shall be treated as a single class for the purpose of the preceding sentence.

Instructions. 1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph (i)(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

2. No information need be given in response to Item 6(i) unless, with respect to any class of voting stock (or group of classes which voted together), 5 per cent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against

any nominee were withheld from the vote for or cast against such nominee.

3. If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 per cent or more of the total shares cast for and withheld from, the vote for, or, where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which he was most recently elected.

4. No information need be given in response to Item 6(i) if the bank has previously furnished to its security holders a report of the results of the most recent meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter, and (2) the information which would be called for by this Item 6(i). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials.

6. 12 CFR 11.53 is revised to read as follows:

§ 11.53 Solicitation/recommendation statement to be filed under Section 14(d)(4) of the Securities Exchange Act of 1934 (Form F-12).

Comptroller of the Currency Form,
Washington, D.C. 20219
Form F-12

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No. ——)
(Name of Subject Bank)——————
(Name of Person(s) Filing Statement)————
(Title of Class of Securities)——————
(CUSIP Number of Class of Securities)
(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement.)

Instructions: Six copies of this statement, including all exhibits, should be filed with the Comptroller.

General Instructions: A. The items numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

Item 1. Security and Subject Company

State the title of the class of equity securities to which this statement relates and the name and address of the principal executive offices of the subject bank.

Item 2. Tender Offer of the Bidder

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F-13 (12 CFR 11.54) filed with the Comptroller).

Item 3. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject bank and if the materiality requirement of Item 3(b) is applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any executive officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the Comptroller: *Provided*, That this statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to Item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recent Transactions and Intent With Respect to Securities

(a) Describe any transaction in the securities referred to in Item 1 which was affected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such persons.

Item 7. Certain Negotiations and Transactions by the Subject Bank

(a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is underway by the subject bank in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject bank, or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction. If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a) (1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished

Furnish such additional information, if any, as may be necessary to make the required

statements, in light of the circumstances under which they are made, not materially misleading

Item 9. Material to be Filed as Exhibits

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date) _____

(Signature) _____

(Name and Title) _____

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or bank or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

7. 12 CFR 11.54 is amended, under the heading "GENERAL INSTRUCTIONS", by revising paragraphs B and C, and under Item 6, by revising Instruction 2, as follows:

§ 11.54 Tender Offer Statement filed pursuant to section 14(d)(1) of the Securities Exchange Act of 1934, (Form F-13).

* * * * *

General Instructions

* * * * *

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly indentified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Item 2-7, inclusive, shall be given with respect to: (i) each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a bank or corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a bank or corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such bank or corporation; (b) each person controlling such bank or corporation; and (c) each executive officer and director of any bank or corporation ultimately in control of such bank or corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

* * * * *

Item 6. Interest in Securities of the Subject Bank

* * * * *

Instructions

* * * * *

2. If the information required by Item 6(b) of this Form is available to the bidder at the time this statement is initially filed with the Comptroller pursuant to paragraph (l)(7)(i) (12 CFR 11.5 (l)(7)(i)), such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Comptroller promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

* * * * *

§ 11.5 [Amended]

8. 12 CFR 11.5 is amended also in certain technical respects as follows:

(a) In § 11.5(a), by removing "the management of" from the second sentence thereof.

(b) In § 11.5(b)(1), by removing "the management of."

(c) In § 11.5(c)(1), by removing "of the management" where it first appears; by removing the word "management" where it appears thereafter in the first sentence and inserting the word "bank."

(d) In § 11.5(c)(6), by removing the word "Management's" and inserting "Bank's" in the first sentence; by removing "In the discretion of management" and inserting "In its discretion," in the second sentence.

(e) In § 11.5(c)(9)(ii), by removing the word "management" and inserting the word "bank's" in its place.

(f) In § 11.5(g)(1)(i), by removing "management" and inserting "bank" in its place.

(g) In § (g)(1)(ii), by removing "the management of".

(h) In § 11.5(g)(2)(ii), by removing the word "management" wherever it appears and inserting the word "bank" in its place.

(i) In § 11.5(g)(3), by removing "the management of" in the last sentence.

§ 11.51 [Amended]

9. 12 CFR 11.51 is amended also in certain technical respects as follows:

(a) In § 11.51 Item 3(a)(1), by removing the words "the management of," and "management" where they appear and inserting "the bank" in their place.

(b) In § 11.51 Item 4(a)(1), by removing the word "management" and inserting the words "the bank" in its place.

(c) In § 11.51 Item 4(a)(2), by removing the word "management" and inserting the words "the bank" in its place.

(d) In § 11.51 Item 6, by removing the word "management" in the introductory paragraph and inserting the words "the bank" in its place.

(e) In § 11.51 Item 6(e), by removing the words "with affiliates and others" from the heading. The new paragraph heading would read as follows:

(f) *Relationships.* * * *

(g) In § 11.51 Item 7, by removing the word "management" that appears in the last sentence of the introductory paragraph and inserting the word "bank" in its place.

The Comptroller of the Currency hereby amends 12 CFR Part 11 pursuant to Sections 3(b), 10(b), 13(d), 14(d), 14(e), 16, and 23(a) of the Exchange Act.

Dated: January 14, 1981.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 81-2338 Filed 1-19-81; 11:39 am]

BILLING CODE 4810-33-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-11551]

Certain Prima Facie Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a "safe harbor" rule which deems

certain companies having more than 40 percent of their assets invested in investment securities not to be investment companies. The rule reflects previous Commission orders declaring such companies not to be investment companies or to be exempt from the Act. Adoption of the rule obviates the need for issuers to apply for, and the Commission to grant, such orders on a case-by-case basis.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Special Counsel, (202) 272-2048, or Mark J. Mackey, Esq., (202) 272-3041, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted rule 3a-1 [17 CFR 270.3a-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") which deems certain companies meeting the statutory definition of the term "investment company" in section 3(a)(3) of the Act [15 U.S.C. 80a-3(a)(3)] not to be investment companies. The reasons for the Commission's proposing the rule were discussed thoroughly in Investment Company Act Release No. 10937 (Nov. 13, 1979), 44 FR 66608 ("Release No. 10937"). Persons interested in a more detailed discussion of the rule should refer to that release.

In response to its request for comments regarding the proposed rule, the Commission received letters from three commentators. Two of the commentators favored adoption of the rule, although one of these two commentators recommended certain modifications to the rule. The third commentator appeared to oppose the rule's adoption. Upon considering these recommendations, the Commission has determined to adopt the rule substantially as proposed.

One commentator believed that rule 3a-1 does not clearly state over what period of time an issuer's net income after taxes is to be measured.[1] The Commission notes that the release proposing rule 3a-1 refers to "present" income. Nevertheless, upon reconsidering this matter, the Commission believes it would be appropriate to define in more specific terms the period of time over which the issuer's net income after taxes is to be measured. Accordingly, the Commission has modified the proposed rule to require that the rule's income test be met for the last four fiscal quarters combined.

The commentator also believes that the treatment of income from certificates of deposit under rule 3a-1 is "ambiguous." In the release proposing rule 3a-1, the Commission noted that whether certificates of deposit are to be considered cash items or investment securities for purposes of determining whether an issuer holding them is an investment company under section 3(a)(3) depends, generally, on all the facts and circumstances.[2] The Commission also noted that, for purposes of determining compliance with the proposed rule, certificates of deposit typically should not be considered cash items absent convincing evidence of no investment intent.[3] The commentator objected to this approach apparently because of its lack of certainty. However, since for purposes of section 3(a)(3) a certificate of deposit is often an investment security rather than a cash item, it would be inappropriate categorically to treat income from all certificates of deposit as income solely from a cash item or solely from investment securities. Accordingly, the Commission has decided to retain this aspect of the rule as proposed.[4]

The same commentator, noting that an issuer relying on the rule would be required to make certain determinations, recommended that it be made clear that the Commission, its staff, or an interested third party could challenge the accuracy of such determinations in an appropriate proceeding.[5] The Commission emphasizes that the adoption of rule 3a-1 does not preclude such a challenge.

This commentator also noted that in some cases the nature of an issuer's business would be more accurately reflected by requiring the issuer to consolidate its financial statements with those of its majority-owned subsidiaries.[6] The Commission generally agrees.[7] However, proposed rule 3a-1 would not exclude an issuer from the definition of the term "investment company" set forth in section 3(a)(1) of the Act [15 U.S.C. 80a-3(a)(1)].[8] Therefore, the Commission does not believe that it is necessary or appropriate to modify the proposed rule to require an issuer to consolidate its financial statements with those of any majority-owned subsidiaries.[9] However,

[1] Under proposed rule 3a-1, an issuer will be deemed not to be an investment company for purposes of section 3(a)(3) of the Act provided, *inter alia*, that no more than 45 percent of such issuer's net income after taxes is derived from certain securities.

[2] Release No. 10937, n. 4.

[3] Release No. 10937, n. 29.

[4] Of course, an issuer which is unsure whether it meets the rule's income test can submit, in a no-action request or an application for an order, the issue of how such income should be treated.

[5] The commentator noted as an example of such determinations that certain assets must be valued—for purposes of determining whether an issuer meets the rule's requirement that no more than 45% of the value of an issuers total assets consist of certain securities—at their fair value as determined in good faith by the board of directors of the issuer.

[6] Under the proposed rule, the issuer would only consolidate its financial statements with any wholly-owned subsidiaries. The Commission noted in its release proposing rule 3a-1 that section 3(a)(3) of the Act requires unconsolidated financial statements presumably because consolidation of an issuer with a subsidiary which is majority-owned, but not wholly-owned, would distort the relative value of the issuer's investment securities to its other assets. This distortion would occur since consolidation requires all the subsidiary's assets to be included on the issuer's balance sheet. See Release No. 10937 at n. 5.

[7] Indeed, in proposing rule 3a-1 the Commission noted that an issuer which transferred assets to an affiliated person primarily for the purpose of avoiding the Act would not be able to rely on the proposed rule. See Release No. 10937 at n. 32. Of course, this is not completely dispositive of the issue raised by the commentator since an issuer may have transferred assets to a majority-owned subsidiary primarily for bona fide business reasons.

[8] As proposed, the rule would deem certain companies not to be investment companies "[n]otwithstanding section 3(a)(3) of the Act." Moreover, the Commission stated in its release that the proposed rule would except "companies which are investment companies solely by virtue of the definition stated in section 3(a)(3) of the Act, only for that period during which they comply with the rule's standards. Companies meeting the statutory definition of the term 'investment company' set forth in sections 3(a)(1) and 3(a)(2) of the Act * * * would not be excluded from the Act's definition of investment company by the rule." See Release No. 10937 at text following n. 28.

[9] In its release proposing rule 3a-1, the Commission stated that: Since determining a company's primary engagement involves considering many factors, no specific guidelines can be established for concluding *in all conceivable circumstances* whether a company is an investment company. *As a general rule*, however, if a company has no more than 45 percent of its assets in—and derives no more than 45 percent of its income from—investment securities, it is primarily engaged in a business other than being an investment company. (Emphasis added.)

Release No. 10937 at text following n. 26.

Thus, a company could meet the requirements of the rule and yet nevertheless be primarily engaged in the business of investing, reinvesting or trading in securities. In addition to the situation described by the commentator, the Commission notes that an issuer which otherwise would have 45 percent of its assets consisting of investment securities could cause itself to become highly leveraged—for example, by purchasing real estate which was substantially covered by a mortgage—thus decreasing the percentage of the issuer's assets which are investment securities to below 45 percent of its total assets. However, as the Commission noted in the release proposing this rule, if the transaction was effected merely to avoid the Act, the issuer might be deemed an investment company as defined in section 3(a)(1) of the Act. Release No. 10937 at n. 5. Similarly, an issuer could invest exclusively in government securities thereby owning no investment securities, and yet still be an investment company as defined in section 3(a)(1) of the Act.

In this connection, the Commission notes that rule 3a-1 adopts the statistical approach employed by

to avoid any potential confusion which might arise concerning the nature and scope of the exclusion provided by the rule, the Commission has determined to state more clearly in the text of the rule that rule 3a–1 only excludes an issuer from the definition of the term "investment company" set forth in section 3(a)(3) of the Act.

Another commentator expressed concern that the proposed rule would prevent an issuer not meeting the rule's requirements from relying on section 3(b)(1) [15 U.S.C. 80a–3(b)(1)].[10] The commission emphasizes that an issuer not meeting the requirements of rule 3a–1 could nevertheless rely on section 3(b)(1) of the Act provided the standards of that section were independently met by the issuer.

Finally, upon its own reconsideration of the proposed rule, the Commission has decided upon two modifications. The first modification relates to the treatment of capital gains under the proposed rule. In the release proposing rule 3a–1, it was noted that whether capital gains should be considered investment income for purposes of the proposed rule depends upon whether the issuer relies upon such gains as a regular source of income.[11] Upon reconsidering this matter, the Commission believes that, on balance, an issuer should not be automatically exempted by rulemaking when its capital gain income, either alone or in conjunction with its other investment income, constitutes more that 45 percent of its total income. Therefore, we have decided that, for purposes of the rule, capital gains should be treated as investment income except in those cases where the gain is derived from the sale of a security described in rule 3a–1(a)(1)–(4).

The second modification related to the treatment under the rule of securities of majority-owned subsidiaries which are not investment companies solely by reason of the exclusion from the definition of the term "investment company" set forth in section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].[12] As proposed, the rule did not treat such securities as investment securities. However, we concerned that an issuer might attempt to avoid the Act by transferring to such a subsidiary enough of its security holdings to reduce the percentage of its assets which are investment securities to below 45 percent of its total assets. Of course, such an issuer might be deemed to be an investment company under section 3(a)(1) of the Act.[13] Nevertheless, the Commission has decided to treat securities of these majority-owned subsidiaries as investment securities for purposes of the rule.

Final Rulemaking

Accordingly, rule 3a–1 excludes certain issuers from the definition of the term "investment company" set forth in section 3(a)(3) of the Act. An issuer which meets the definition of the term "investment company" set forth in section 3(a)(3) but which also meets the requirements of rule 3a–1 therefore will not be required to file an application for an order under section 3(b)(2) [15 U.S.C. 80a–3(b)(2)] declaring that the issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Of course, an issure which does not wish to (or cannot) rely on rule 3a–1, but which nevertheless meets the definition of investment company set forth in section 3(a)(3), may still file an application with the Commission for an order under section 3(b)(2), section 6(c) [15 U.S.C. 80a–6(c)], or both.

The relief provided by rule 3a–1 is conditioned, generally, on the company's having no more than 45 percent of the value (as defined in section 2(a)(41)(A) of the Act [15 U.S.C. 80a–2(a)(41)(A)]) of its total assets (exclusive of Government securities and cash items) consisting of, and receiving no more than 45 percent of its net income after taxes (for the last four fiscal quarters combined) from, securities other than: (1) Government securities; (2) securities issued by employees' securities companies; (3) securities issued by certain majority-owned subsidiaries of the issuer which are not investment companies; and (4) securities issued by certain controlled companies through which an issuer engages in a non-investment company business. These asset and income percentages are to be determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with any wholly-owned subsidiaries.

Authority, Effective Date

The Commission adopts rule 3a–1 pursuant to the provisions of section 6(c) and 38(a) [15 U.S.C. 80a–37(a)] of the Act. Because the rule excludes certain issuers from the Act, it is effective immediately.[14]

Text of Final Rulemaking

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.3a–1 as follows:

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

§ 270.3a–1 Certain prima facie investment companies.

Notwithstanding section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company under the Act; *Provided*, That:

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer's total assets (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such issuer's net income after taxes (for the last four fiscal quarters combined) is derived from, securites other than:

(1) Government securities;

(2) Securities issued by employees' securities companies;

(3) Securities issued by majority-owned subsidiaries of the issuer (other than subsidiaries relying on the exclusion from the definition of investment company in section 3(b)(3) or section 3(c)(1) of the Act) which are not investment companies; and

(4) Securities issued by companies:

(i) Which are controlled primarily by such issuer;

(ii) Through which such issuer engages in a busin[illegible] other than that of

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section 3(a)(3). However, several differences exist between that section and section 3(a)(1) of the Act. For example, section 3(a)(1) applies to companies which invest in any type of security, while section 3(a)(3) applies only to companies investing in "investment securities." Moreover, section 3(a)(3) requires unconsolidated financial statements and looks only to the assets of an issuer while section 3(a)(1) contains no such limitations.

[10] Section 3(b)(1) of the Act excludes from the definition of the term "investment company": any issuer primarily engaged, directly or through a wholly owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities.

[11] We note that one commentator believes this standard to be "ambiguous."

[12] Section a(c)(1) of the Act Provides, in part: Notwithstanding subsection (a) [of section 3] none of the following persons is an investment company within the meaning of this [Act]:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by but not than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 percentum of the value of the company's total assets* * *.

[13] See text accompanying n. 9, supra.

[14] 5 U.S.C. 553(d)(1).

investing, reinvesting, owning, holding or trading in securities; and

(iii) Which are not investment companies;

(b) The issuer is not an investment company as defined in section 3(a)(1) or section 3(a)(2) of the Act and is not a special situation investment company; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries.

By the Commission.

George A. Fitzsimmons,

Secretary.

January 14, 1981.

[FR Doc. 81-2296 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 270

[Release No. IC-11552]

Transient Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule which, subject to certain conditions, deems certain issuers not to be investment companies for purposes of the Investment Company Act of 1940 for a period not to exceed one year. The rule, which reflects previous no-action assurances in this area, excludes certain issuers—which otherwise would be considered investment companies because of unusual corporate occurrences—from complying with the Act.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Special Counsel, (202) 272-2048 or Mark J. Mackey, Esq., (202) 272-3041, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted rule 3a-2 [17 CFR 270.3a-2] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") to deem certain issuers, which otherwise would be transient investment companies, not to be investment companies for purposes of the Act. The reasons for the Commission's proposing rule 3a-2 were discussed thoroughly in Investment Company Act Release No. 10943 (Nov. 16, 1979), 44 FR 67152 ("Release No. 10943"). Persons interested in a more detailed discussion of the rule should refer to that release.

In response to its request for comments regarding the proposed rule, the Commission received five letters of comment. The commentators, with one apparent exception, favored the rule, although several commentators recommended modifications thereto. Upon considering these letters, the Commission has determined to adopt the rule with minor modifications.

Two commentators, noting that the rule requires certain action by the board of the directors of an issuer wishing to rely on the rule—and thus is implicitly available only to corporations—suggested that the rule be expanded to be made available to issuers other than those having a board of directors, such as partnerships and trusts.[1] The Commission notes that the term "director" is defined in the Act to mean, in part, "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated." Nevertheless, to avoid any potential confusion on this matter the Commission has decided to modify the language of the rule in a manner which will indicate more clearly that the rule is available to issuers (other than corporations) which have a governing body similar in nature to a board of directors.

One commentator questioned whether the requirement set forth in proposed rule 3a-2(a) that the issuer have a "bona fide intent to be engaged primarily by the termination of such [one year] period of time in a business other than that of investing, reinvesting, owning, holding or trading in securities" would be satisfied if an issuer intended to meet the requirements of rule 3a-1(a) [17 CFR 270.3a-1(a)] within a year after it began relying on rule 3a-2.[2] The Commission notes that rule 3a-1 excludes an issuer only from the definition of the term "investment company" set forth in section 3(a)(3) and does not constitute a determination by the Commission that a company meeting the rule's asset and income test is engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading in securities. Therefore, an issuer's intent to meet the requirements of rule 3a-1(a) would not necessarily satisfy the requirements of proposed rule 3a-2(a), that is, would not necessarily constitute an intent on its part to be engaged primarily in a businesss other than that of being an investment company.[3]

One commentator was concerned that the proposed rule would become the exclusive method by which a transient investment company could avoid registration under the Act. The Commission emphasizes that the rule creates a "safe harbor" for transient investment companies and is not intended to preclude a company from seeking either a no-action assurance from the Commission's staff [4] or a Commission order of exemption.

Another commentator, noting that an issuer relying on the rule would be required to make certain determinations, recommended that it be made clear that the Commission, its staff, or an interested third party could challenge the accuracy of such determinations in an appropriate proceeding. The Commission emphasizes that the adoption of rule 3a-2 does not preclude such a challenge.

One commentator was concerned that an issuer which failed to file the notice required by the rule would retroactively lose the exclusionary relief in its entirety notwithstanding that all other requirements of the rule had been met.[5] Upon reconsidering this aspect of the

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[1] Paragraph (a)(1) of the proposed rule requires an issuer desiring to rely on the rule to have a *bona fide* intent (as evidenced by an appropriate resolution of its board of directors which has been recorded contemporaneously in its minute books) to be engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

[2] Rule 3a-1 deems issuers meeting the statutory definition of the term "investment company" in section 3(a)(3) [15 U.S.C. 80a-3(a)(3)] not to be such companies, provided certain conditions are met. Rule 3a-1(a) requires, generally, that no more than 45 percent of the value of an issuer's total assets (exclusive of government securities and cash items) consists of, and no more than 45 percent of an issuer's net income after taxes is received from, securities other than government securities, securities issued by employees' securities companies, and securities issued by certain majority-owned subsidiaries and certain controlled companies of the issuer. See Investment Company Act Release No. 11551 (Jan. 14, 1981).

[3] For example, a start up company might invest substantially all its offering proceeds in government securities. If the company intended to continue to hold most of those securities a year later, it might not have the intent to be engaged primarily in a business other than investing, reinvesting, owning, holding or trading in securities even though it meets the requirements of rule 3a-1(a). For a more detailed discussion of the nature and scope of rule 3a-1, see Investment Company Act Release No. 11551 (Jan. 14, 1981).

[4] As a general rule, however, the Commission's staff is reluctant to provide no-action assurances in this area. The staff has taken this position, in part, because the decision whether to issue such a no-action assurance depends to a significant degree upon the company's intent, which is not easy to determine via the no-action procedure.

[5] Paragraph (a)(2) of the proposed rule provided, generally, if at the expiration of the period during which an issuer may rely on the rule, it is not engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading in securities, it would be required to so notify within 10 calendar days the Director of the Commission's Division of Investment management.

rule, the Commission has decided to delete the rule's notice requirement. Although the notice would serve a useful function by providing the Commission with the names of those companies which relied on the rule and were unable to become engaged primarily in a non-investment company business within the one year period provided by the rule, the Commission believes that, on balance, it would not be the most efficient allocation of its resources to have its staff review each such notice to determine whether the company is an unregistered investment company. Nevertheless, the Commission stresses that a company's inability to become engaged primarily in a non-investment company business within the rule's one year period would raise serious questions concerning the applicability of the Act to that company. The Commission expects that each such company will address these questions in the context of its own circumstances.

Another commentator recommended that the rule be amended to provide for the commencement of the one year period at the later of the time described in the proposal or at such time as an application, filed in good faith for an order prusuant to section 3(b)(2) [15 U.S.C. 80a-3(b)(2)], has been denied by the Commission or withdrawn by the applicant.[6] However, the Commission believes that the one year period should be measured from the time an issuer has the characteristics which would cause it to be defined as an investment company. The Commission does not believe it would be appropraite to allow an issuer to litigate its status in what may be a lengthy hearing procedure and then, if the application is denied, operate for an additional year without complying with the Act's disclosure and regulatory provisions. Accordingly, the Commission has decided to retain this aspect of the rule.

Finally, the Commission has modified the proposed rule to make it clearer that an issuer relying on the rule must intend to be engaged primarily in a non-investment company activity as soon as is reasonably possible,[7] in any event by the termination of the one year period an issuer may rely on the rule, and that the determination of whether an issuer has this intent will be based on all the facts and circumstances.[8]

Final Rulemaking

Rule 3a-2 deems an issuer not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities for purposes of section 3(a)(1) [15 U.S.C. 80a-3(a)(1)] or 3(a)(3) of the Act [9] during a period of time not to exceed one year [10] provided, generally, that the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such one year period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by: (1) the company's business activities; and (2) an appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons of similar status performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in the minute books or comparable documents. Finally, the rule provides that it may not be relied on by an issuer more frequently than once during any three-year period.

Authority, Effective Date

The Commission adopts rule 3a-2 pursuant to the provisions of sections 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)] of the Act. Because the rule excludes certain issuers from the Act it is effective immediately.[11]

Text of Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.3a-2 to read as follows:

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

§ 270.3a-2 Transient investment companies.

(a) For purposes of section 3(a)(1) and section 3(a)(3) of the Act, an issuer is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; *Provided*, That the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

(1) The issuer's business activities; and

(2) An appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

(1) The date on which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets on either a consolidated or unconsolidated basis; or

(2) The date on which an issuer owns or proposes to acquire investment securities (as defined in section 3(a) of the Act) having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No issuer may rely on this section more frequently than once during any three-year period.

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[6] Paragraph (b) of proposed rule 3a-2 provides that the one year period shall commence at the earlier of two dates. One date would be the date in which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets. The alternative date would be the date on which an issuer owns or proposes to acquire certain investment securities representing greater than 40 percent of the issuer's total assets.

[7] Of course, the determination of what is "reasonably possible" will depend on all the facts and circumstances of each particular case, including the nature of the business in which the issuer intends to become primarily engaged. For example, in its release proposing rule 3a-2 the Commission noted that real estate syndications and other tax shelters usually remain transient investment companies longer than other "start-up" companies because of the substantial amount of time needed to analyze, organize and purchase interests in a specific tax shelter. See Release No. 10943 at n. 5.

[8] Thus, for example, an issuer would not be deemed to have the requisite intent if, during the time it relied on the rule, the issuer actively invested and reinvested in securities and held itself out as being in the business of investing, reinvesting, and trading in securities, even if its directors passed a resolution satisfying the requirements of paragraph (a) of the rule.

[9] It should be noted that—regardless of the business in which an issuer actually is engaged primarily—an issuer which holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities would be an investment company under section 3(a)(1) of the Act. This rule, of course, would not affect such an issuer's status under the Act.

[10] The maximum one-year period of time for which the rule is available to an issuer is calculated from the earlier of two dates. One date is the date in which an issuer—such as a "start-up" enterprise which temporarily is engaged primarily in investment activities—owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets. The alternative date would be the date on which an issuer—such as a company having sold substantial operating assets, which intends temporarily to invest the proceeds pending the acquisition of new operating assets—owns or proposes to acquire certain investment securities representing greater than 40 percent of the issuer's total assets.

[11] 5 U.S.C. 553(d)(1).

By the Commission.
George A. Fitzsimmons,
Secretary.
January 14, 1981.
[FR Doc. 81-2313 Filed 1-21-81; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-11553]

Certain Investment Companies Owned by Companies Which Are Not Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a "safe harbor" rule under the Investment Company Act of 1940 to deem certain issuers having corporate parents as not being investment companies for purposes of the Act. The rule, which reflects previous orders of exemption and no-action assurances in this area, obviates the necessity for such issuers to seek, and the Commission to consider, such actions on a case by case basis.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:
Authur J. Brown, Special Counsel, (202) 272-2048
or
Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 272-3041.

SUPPLEMENTARY INFORMATION: The Commission today adopted rule 3a-3 [17 CFR 270.3a-3] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") to deem certain subsidiaries not be investment companies for purposes of the Act. The reasons for the Commission's proposing rule 3a-3 were dicussed thoroughly in Investment Company Act Release No. 10944 (Nov. 16, 1979), 44 FR 67150 ("Release No. 10944"). Persons interested in a more detailed discussion of the rule should refer to that release.

In response to its request for comments regarding the proposed rule, the Commission received three letters of comment. Two commentators favored the Commission's adopting the rule, although one of the two commentators recommended certain modifications to the rule. One commentator appeared to oppose the rule's adoption. Upon considering these letters, the Commission has determined to adopt the rule as proposed.[1]

One commentator believe that the rule's condition that the parent company and its wholly-owned subsidiary have no more than 45 percent of their consolidated assets invested in, and receive no more than 45 percent of their consolidated net income after taxes from, certain investment securities is unnecessary to prevent circumvention of the Act since, under section 3(a)(1) of the Act [15 U.S.C. 80a-3(a)(1)], the parent and subsidiary company relationship could be collapsed and the totality of the corporate arrangements be deemed to be an investment company. The commentator suggested instead that the rule merely provide that the parent company must not be engaged "directly or indirectly through a wholly-owned subsidiary or subsidiaries" in the business of being an investment company. However, when the rule's asset and income test are not met the Commission believes that, on balance, the potential need for its review is increased to the point where it would be inappropriate by rulemaking to exclude automatically such an issuer from compliance with the Act. Accordingly, we have decided to retain this aspect of the rule as proposed.

Another commentator, noting that an issuer relying on the rule would be required to make certain determinations, recommended that it be made clear that the Commission, its staff, or an interested third party could challenge the accuracy of such determinations in an appropriate proceeding. The Commission emphasizes that the adoption of rule 3a-3 does not preclude such a challenge.

Final Rulemaking

Rule 3a-3 deems certain corporate subsidiaries [2] not to be investment companies for purposes of section 3(a)(1) and 3(a)(3) [15 U.S.C. 80a-3(a)(3)] of the Act [3] provided, generally, that the parent and its subsidiary have no more than 45 percent of their consolidated assets invested in, and receive no more than 45 percent of their consolidated net income after taxes from, investment securities. For purposes of the rule, securities of certain controlled companies through which the parent company engages in a business other than that of being an investment company would not be considered "investment securities."[4]

Authority, Effective Date

The Commission adopts rule 3a-3 pursuant to section 6(c) [15 U.S.C. 80a-6(c)] and section 38(a) [15 U.S.C. 80a-37(a)] of the Act. Because the rule excludes certain issuers from the Act it is effective immediately.[5]

Text of Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.3a-3 to read as follows:

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

§ 270.3a-3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1) or section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company for purposes of the Act; *Provided,* That all of the outstanding securities of the issuer (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are directly or indirectly owned by a company which satisfies the conditions of paragraph (a) of rule 3a-1 [17 CFR 270.3a-1] under the Act and which is:

(a) A company that is not an investment company as defined in section 3(a) of the Act;

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[1] However, the Commission has changed the language of the rule to refer to the "conditions"—rather than the "requirements"—of rule 3a-1 [17 CFR 270.3a-1].

[2] These subsidiaries are companies which may not rely on the statutory exclusion from the definition of the term "investment company" found in section 3(b)(3) [15 U.S.C. 80a-3(b)(3)] solely by reason of their (1) having outstanding debt securities owned by the Small Business Administration; (2) being an investment company as defined under section 3(a)(1) of the Act; or (3) having a parent company which is not excepted from the definition of the term "investment company" by virtue of section 3(b)(1) or section 3(b)(2) [15 U.S.C. 80a-3(b)(1) and 80a-3(b)(2)], because the parent company is not, prima facie, an investment company under section 3(a)(3) of the Act or because the parent company relied on rule 3a-1 in lieu of applying for an order under section 3(b)(2).

[3] Notwithstanding that the rule excludes certain subsidiaries from the definition of investment company, the Commission can collapse the parent and subsidiary relationship and deem the totality of the corporate arrangement to be an investment company as defined in section 3(a)(1) of the Act. Release No. 10944 at n. 11.

[4] This condition is incorporated into rule 3a-3 by reference to paragraph (a) of rule 3a-1 which requires, generally, that a company have no more than 45 percent of the value of its total assets (exclusive of Government securities and cash items) consisting of, and receive no more than 45 percent of its net income after taxes from, securities other than Government securities, securities issued by employees' securities companies, and securities issued by certain majority-owned subsidiaries and certain controlled companies of such issuer. Moreover, paragraph (c) or rule 3a-1 provides that in determining this percentage an issuer shall consolidate its financial statements with those of any wholly-owned subsidiaries.

[5] 5 U.S.C. 553(d)(1).

(b) A company that is an investment company as defined in section 3(a)(3) of the Act, but which is excluded from the definition of the term "investment company" by section 3(b)(1) or 3(b)(2) of the Act; or

(c) A company that is deemed not to be an investment company for purposes of the Act by rule 3a–1.

By the Commission.

George A. Fitzsimmons,
Secretary.

January 14, 1981.

[FR Doc. 81–2314 Filed 1–21–81; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM80–56; Order No. 121]

Order Revising Form No. 2 Annual Report of Natural Gas Companies (Class A and Class B)

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby revises Form No. 2, "Annual Report of Natural Gas Companies (Class A and Class B)" (18 CFR 260.1). The revisions reduce the number of schedules and data elements contained in the form, establish or alter threshold reporting levels in certain schedules, and change reporting instructions in several schedules. These modifications reduce the data elements in Form No. 2 by approximately 20%. The changes to Form No. 2 reflect the results of an ongoing validation program to eliminate the reporting of data which is not necessary to the Commission's regulatory responsibilities and, thereby, to reduce the reporting burdens of jurisdictional companies which file that information with the Commission.

EFFECTIVE DATE: January 9, 1981.

FOR FURTHER INFORMATION CONTACT:
James Kitchen/Elaine M. Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 3408–N/3405–N, Washington, D.C. 20426, (202) 357–9212/357–9190
Randolph E. Mathura/Donald Champagny, Office of Producer and Pipeline Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 3100–N/5300–E, Washington, D.C. 20426, (202) 357–9066/357–8808.

Issued: January 9, 1981.

I. Background

Form No. 2, "Annual Report for Natural Gas Companies (Class A and Class B)" is prescribed by the Federal Energy Regulatory Commission (Commission) pursuant to sections 10(a) and 16 of the Natural Gas Act (15 U.S.C. 717–717w).[1] The information collected in Form No. 2 primarily includes general corporate information; summary financial data; balance sheet supporting data; income statement supporting data; and gas plant, sales, operating and statistical data.

On July 1, 1980, the Commission issued a Notice of Proposed Rulemaking (Notice) to revise Form No. 2 (45 46075, July 9, 1980). The revisions were proposed as part of the commission's ongoing effort to eliminate the reporting of information which is not needed for decisional purposes in the Commission's regulatory process. By eliminating the filing of information which is not needed by the Commission, the reporting burden of companies which file Form No. 2 with the Commission is reduced.

In the Notice, the Commission proposed to: eliminate the requirement for Certified Public Accountant certification on 15 of the 19 schedules presently requiring such certification, establish or revise threshold reporting levels on 13 of the schedules, revise the reporting instructions on 17 of the schedules, delete data from 10 schedules, and delete 33 schedules in their entirety. This was estimated to be a 19 percent reduction in the Commission-imposed reporting burden related to the Form No. 2.

In addition, the Commission specifically requested responses to five questions, which will be discussed in the next section. Pursuant to a request, the Commission extended the Form No. 2 rulemaking comment period until October 14, 1980 (45 FR 63001, September 23, 1980).

II. Summary of Comments and Changes to Form No. 2

In response to the proposed rulemaking, the Commission received thirty-nine comments. Of these, twenty-five were from natural gas companies which are required to file the report form, ten from state utility commissions, three from Certified Public Accountant firms, and one from a gas industry association.[2] The general reaction to the rulemaking was favorable. A number of changes were suggested by commenters, many of which have been incorporated into the Form No. 2, as discussed below and in the attached detailed discussion (Attachment A) [3] which responds to comments on a schedule-by-schedule basis. However, the Commission has not further discussed those schedules for which no comments had been submitted.

A. Responses to Specific Questions

The answers to five specific questions were requested by the Commission concerning the proposed revisions to the Form No. 2. The responses to these questions are analyzed sequentially.

1. (a) *Do the proposed revisions or eliminations of data affect any Commission or State regulatory functions?*

Of the ten state agencies which responded to the rulemaking, three indicated that revisions or eliminations to Form No. 2 would affect their regulatory responsibilities, five stated that revisions or eliminations would cause some partial effect on their responsibilities, one replied that there would be very little effect, and one claimed that the changes would have no effect.

1. (b) *Will State agencies now utilizing this report form in the exercise of their own regulatory responsibilities agree to reduce their reporting requirements concurrently?*

Thirty-one of the fifty states require Form No. 2, or some version of the Form

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[1] FERC Form No. 2 (Attachment C) is not being printed by the **Federal Register**. Copies of the Form No. 2 Final Rule, including all attachments, are available in the Commission's Office of Public Information. Blank copies of the form may be obtained from the Energy Information Administration.

[2] Interstate Natural Gas Association of America, Arthur Andersen & Co., Deloitte, Haskins & Sells, Price Waterhouse & Co., The Cincinnati Gas & Electric Company, Consolidated Gas Supply Corporation, East Tennessee Natural Gas (Tenneco), Iowa Illinois Gas and Electric Company, Iowa Power & Light Company, Iowa Public Service Company, Kansas Power and Light, Michigan Gas Storage Company, Michigan Wisconsin Pipe Line Company, Midwestern Gas Transmission (Tenneco), Natural Gas Pipeline Company of America, Northern Natural Gas Company, Northwest Pipeline Corporation, Orange & Rockland Utilities, Inc., Pacific Interstate Transmission Company, Pacific Gas and Electric Company, Panhandle Eastern Pipe Line Company, Public Service Company of Colorado, Public Service Electric and Gas Company, San Diego Gas & Electric, Southern Indiana Gas and Electric Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company (Tenneco), Texas Gas Transmission Corporation, United Gas Pipe Line Company, California Public Utilities Commission, Colorado Public Utilities Commission, Georgia Public Service Commission, Idaho Public Utilities Commission, Kansas State Corporation, Maine Public Utilities Commission, Michigan Department of Commerce, Minnesota Public Utilities Commission, New Jersey Department of Public Utilities; and New York Department of Public Service.

[3] Attachment B is a comparison table of old Form No. 2 schedules and revised Form No. 2 schedules.

No. 2 to be filed with them by natural gas companies within their jurisdiction.[4] Only ten of these thirty-one states responded to this rulemaking. Two said that they would probably continue to collect the data proposed for deletion in Form No. 2. Six indicated an interest in retaining at least a portion of the affected data. One state said that it would delete all of the data proposed for deletion. Finally, one state responded that it would collect the subject data only if it was specifically needed.

One state agency, and three jurisdictional companies which must file Form No. 2 with the Commission and also with a state agency identified a potential increase in reporting burden due to the Commission's deletion of information from Form No. 2 which was not also eliminated from the state requirements. One commenter alleged that the discontinuance of a reporting requirement by the Commission which is not also eliminated by its state agency only "shifts the reporting burden" from the Federal to the state level.

The Commission nevertheless believes it is in the public interest to delete information requirements from Form No. 2 even though that same data may, in some instances, continue to be collected by certain state agencies.[5] On the basis that only two state agencies may require all of the data proposed for deletion, and six others may require some of the data, the Commission cannot justify the retention of data which are not used in the Commission's decisionmaking process.[6] Retaining data not used by the Commission would penalize those companies which file Form No. 2 only with the Commission, and those companies whose state agency is revising its Form No. 2 requirements to correspond with the Commission's revisions. The burden in justifying the continued collection of the data will be at the state level.

2. *Is there any reason for continued collection of the data for the purposes of another Federal agency? Suggestions for the continued collection of data which have been proposed for elimination from the present Form No. 2 should identify the proper agency and the basis and purpose for its collection of the data.*

One commenter stated that the Securities and Exchange Commission may use some of the data in Form No. 2 which has been proposed for deletion or amendment. The comment urged that the data should be collected and disseminated by a single agency "in the interest of efficient regulation." No Federal agencies responed to the Notice.

The information which has been eliminated from Form No. 2 was not specifically shown to be necessary to the operations of any Federal agency. Furthermore, in our view, it should not continue to be collected by the Commission only for the purpose of convenience, if it is not otherwise required in Commission regulatory processes.

3. *What cost savings are likely to result from the proposed elimination of the CPA certifications?*

The Commission proposed to delete the certification requirement by Certified Public Accountants (CPAs) from fifteen schedules and retain it for the four basic financial statements: Balance Sheet, Income Statement, Statement of Retained Earnings, and Statement of Change in Financial Position. Sixteen of the jurisdictional companies responded to the question and agreed that some cost savings would result from the elimination of these CPA certifications. Estimates varied greatly, however, with respect to the amount of savings. Two state agencies addressed the question and stated that they did not believe that any cost savings would result. Three CPA firms responded to the question, and all three indicated that a cost savings would probably be realized.

The Commission has deleted the certification requirement for the fifteen schedules because such deletions do not alter the validity of the form. The four basic financial statements are essentially summaries of information reported in detail elsewhere in the form, including the fifteen schedules. Certification of the fifteen schedules is, therefore, unnecessary since these schedules are reviewed in connection with the certification of the four basic statements.

One CPA firm recommended an alternative to the current certification statement which would be patterned after standards established in the American Institute of Certified Public Accountants, Statement on Auditing Standards No. 14, Special Reports.

However, the basic purpose of this rule is to eliminate unnecessary reporting. Changes in format and schedule revisions that require additional burden are beyond the scope of this effort. Nonetheless, the suggestion for an alternative certification statement will be taken under advisement for any future refinements to Form No. 2.

4. *What are the merits of using a percentage of the year end account balance rather than a selected fixed dollar figure in establishing a threshold for "minor items"?*

There was no consensus among the 14 responses to this question: seven suggested the use of a fixed dollar amount; four preferred use of a uniform percentage amount; and three others suggested some standardized combination of the two methods. Other commenters claimed that the thresholds on certain schedules were too high, too low, unnecessary, or that the thresholds should be conformed to the Form No. 1, "Annual Report for Electric Utilities, Licensees, and Others (Class A and Class B)."

All of the thresholds proposed in this proceeding were carefully established on a schedule-by-schedule basis according to the Commission's particular needs for details unique to each account or schedule page. In view of the lack of a preponderance of comments favoring a particular uniform threshold type or amount, the Commission, upon review of our requirements, has retained a schedule-by-schedule approach to setting thresholds. Moreover, we are unable to conform all thresholds to those in Form No. 1, because of differences in the Commission's regulation of gas and electric rates, which must be reflected in the reporting requirements.

Specific threshold issues which are peculiar to Form No. 2 pages 507, 524, 537, 540, 564, and 572–572A are discussed in the atached discussion of schedules (Attachment A).

5. *What is the effect of deleting the INDEX from the back of the report form?*

The majority of responses to this question favored the retention of the Index. Many commenters urged that it should be made more legible. The Commission agrees, and the Index has been retained and reprinted to enhance its usefulness.

B. Other General Issues

1. *Differences in format between the proposed form No. 1 and form No. 2.*

[4] Twenty-one states require the filing of the current Form No. 2; nine states require the filing of both Form No. 2 and a state report form; one state accepts Form No. 2 in lieu of its own report form.

[5] In the following schedule pages, the issue arose concerning the respective Form No. 2 reporting requirements of the Commission and state agencies. Since it is discussed above, this issue is not raised again in the discussions of the individual schedules (Attachment A): pp. 104, 110–111, 114, 115, 116, 116A, 204, 206, 207A, 209, 212, 214, 214A, 221, 224, 224A, 225, 229, 300, 303, 304, 305, 306, 351, 506–507, 509–512, 513, 515, 523, 526, 533A–533D, 535–536A, 542, 545–546B, 550–551, 552–553B, and 563.

[6] The Commission did not conduct a separate analysis of the regulatory needs of each state agency which requires a Form No. 2, nor did the Commission separately attempt to measure the magnitude of any increased burden due to the filing of two different forms by respondents. The comments filed by the state agencies in this docket were considered indicative of state Form No. 2 requirements and reporting burdens.

Several commenters who responded to the instant rulemaking raised issues with respect to a pending rulemaking at the Commission to revise Form No 1. Form No. 1 is the "Annual Report for Electric Utilities, Licensees and Others (Class A and Class B)" and is essentially the electric counterpart of Form No. 2. A Notice of Proposed Rulemaking to revise Form No. 1 was issued on July 10, 1980 (Docket No. RM80–55, 45 F.R. 47705, July 16, 1980). A Final Rule on Form No. 1 is expected in the near future, but any changes resulting from issuance of the Final Rule would only be effective for reports for calendar year 1981 reports and thereafter.[7]

Several schedules in Form No. 1 are currently identical or similar to Form No. 2 schedules. Companies which file both Form Nos. 1 and 2 with the Commission and/or with state agencies, have interchanged various pages in the forms, where possible, to avoid duplicate reports. Some commenters objected to certain proposed changes in Form No. 2 schedules, which were not made to the corresponding schedules in Form No. 1 and, conversely, to changes in Form No. 1 which did not appear in Form No. 2. Those companies which are required to complete both forms argued that common schedules of the forms should be treated similarly, so as to reduce their reporting burden.

The Commission has, wherever possible, made conforming changes to both forms,[8] including reorganizing and renumbering the pages. In many instances, however, the Commission found it necessary to require reports from jurisdictional gas companies which differ from those required from jurisdictional electric companies. The forms cannot be made identical for both gas and electric companies because the requirements differ pursuant to the distinct statutes and regulations prescribed for each of these types of operations. Furthermore, the Commission actually regulates a greater percentage of gas revenues (approximately 84 percent) than it does of the electric revenues (approximately 15 percent)—and this factor affects the type of reporting required. Specific issues which were raised in certain schedules with respect to the differences between Form Nos. 1 and 2 are examined in connection with the discussions of the particular schedules (Attachment A).

2. *Cost-benefit analysis.*

One commenter stated that a cost-benefit analysis should be considered with respect to the collection of data in Form No. 2. The commenter also suggested that an appropriate test could be developed by joint Commission/industry efforts.

We agree that cost/benefit analysis is an essential ingredient in weighing the need to collect data; however, it is not the sole criterion. The Commission must first consider which data are essential to its regulatory responsibilities, *i.e.*, data which are necessary and appropriate to the lawful administration of the various statutes which the Commission administers.

In the Commission's data-validation program, the following criterion for retaining data has been used: Is the information to be retained in a reporting requirement *essential* to the decision-making process at the Commission? Cost/benefit factors are considered; however, the need for decision-making support, and legal requirements for substantial evidence to justify Commission decisions, must be paramount.

III. Public Procedure and Effective Date

The Commission has complied with 5 U.S.C. 553 by having provided public notice and an opportunity to participate in this rulemaking. Adoption of this Final Rule, including the discussion of the individual schedules (Attachment A) will eliminate a requirement imposed on industries regulated by the Commission. Therefore, the Commission finds good cause to waive the 30-day requirement set forth in 5 U.S.C. 553(d) and to make the Final Rule effective immediately. Thus, Form No. 2 will be revised as of the date of issuance of this Final Rule, and the new Form No. 2 format shall apply to reports filed for and covering the 1980 calendar year and each year thereafter.

(Natural Gas Act, as amended, (15 U.S.C. 717–717w); Department of Energy Organization Act, (42 US.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978).)

For the foregoing reasons, Form No. 2 is revised by the Commission as set forth in Attachment C of this Final Rule, and Part 260 of Chapter I, Title 18 of the Code of Federal Regulations is amended by the Commission, as set forth below, effective January 9, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 260—Statements and Reports (Schedules) is amended by revising § 260.1 in the Table of Contents and in the text of the regulations to read as follows:

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Sec.

260.1 FERC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B).

* * * * *

§ 260.1 FERC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B).

(a) The form of Annual Report of Natural Gas Companies (Class A and Class B), designated herein as FERC Form No. 2, is prescribed for the reporting year 1980 and thereafter.

(b) Each natural gas company, as defined in the Natural Gas Act (15 U.S.C. 717, et seq.) which is included in Class A or Class B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, shall prepare and file with the Commission for the calendar year beginning January 1, 1980, and for each calendar year thereafter, on or before April 30 following the close of such calendar year, an original and such number of conformed copies of the above-designated FERC Form No. 2 as are indicated in the general instructions set out in that form, all properly filled out and verified. One copy of such report should be retained by the respondent in its files. The conformed copies may be carbon copies, or other reproductions, if legible.

(c) This annual report contains the following:

Instructions for Filing the FERC Form No. 2
Identification
Attestation
List of Schedules
General Information
Control Over Respondent
Corporations Controlled by Respondent
Officers
Directors
Security Holders and Voting Powers
Important Changes During the Year
Comparative Balance Sheet
Statement of Income for the Year

[7] In the Notice of Proposed Rulemaking, Form No. 1 changes were slated to become effective for 1980 calendar year reports. Pursuant to requests, however, the Commission has twice extended the comment period on that rulemaking, and has postponed the effective date for any changes to the Form No. 1 until the 1981 reporting year. (*See* 45 F.R. 63296, September 24, 1980, and 45 F.R. 70476, October 17, 1980).

[8] On November 12, 1980, the Commission issued an Order pursuant to a request to permit companies which are required to file both Form Nos. 1 and 2 with the Commission to file the current Form No. 2 for the 1980 reporting year (45 F.R. 76784, November 20, 1980). As mentioned in the text, any revisions to the Form No. 1 filing requirements will not take effect before the 1981 reporting period. This order provides a measure of relief for companies which file both forms since they have the option to submit Form Nos. 1 and 2 in their current formats, for this year's reports, rather than a *revised* Form No. 2 and an *unrevised* Form No. 1.

Statement of Retained Earnings for the Year
Statement of Changes in Financial Position
Notes to Financial Statements
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion
Gas Plant in Service
Gas Plant Leased to Others
Gas Plant Held for Future Use
Production Properties Held for Future Use
Construction Work in Progress—Gas
Construction Overheads—Gas
General Description of Construction Overhead Procedure
Accumulated Provision for Depreciation of Gas Utility Plant
Gas Stored
Nonutility Property
Accumulated Provision for Depreciation and Amortization of Nonutility Property
Investments
Investment in Subsidiary Companies
Gas Prepayments Under Purchase Agreements
Advances for Gas Prior to Initial Deliveries or Commission Certification
Prepayments
Extraordinary Property Losses
Preliminary Survey and Investigation Charges
Miscellaneous Deferred Debits
Accumulated Deferred Income Taxes (Account 190)
Capital Stock
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock
Other Paid-In Capital
Discount on Capital Stock
Capital Stock Expense
Securities Issued or Assumed and Securities Refunded or Retired During the Year
Long-Term Debt
Unamortized Debt Expense, Premium and Discount on Long-Term Debt
Unamortized Loss and Gain on Reacquired Debt
Taxes Accrued, Prepaid and Charged during the Year
Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes
Investment Tax Credits Generated and Utilized
Accumulated Deferred Income Tax Credits
Miscellaneous Current and Accrued Liabilities
Other Deferred Credits
Undelivered Gas Obligations Under Sales Agreements
Accumulated Deferred Income Taxes—Accelerated Amortization Property (Account 281)
Accumulated Deferred Income Taxes—Other Property (Account 282)
Accumulated Deferred Income Taxes—Other (Account 283)
Gas Operating Revenues
Distribution Type Sales by States
Residential and Commercial Space Heating Customers
Interruptible, Off Peak, and Firm Sales to Distribution System Industrial Customers
Field and Main Line Industrial Sales of Natural Gas
Sales for Resale-Natural Gas
Revenue from Transportation of Gas of Others—Natural Gas
Sales of Products Extracted from Natural Gas
Revenues from Natural Gas Processed by Others
Gas Operation and Maintenance Expenses
Number of Gas Department Employees
Exploration and Development Expenses
Abandoned Leases
Gas Purchases
Exchange Gas Transactions
Gas Used in Utility Operations—Credit
Other Gas Supply Expenses
Transmission and Compression of Gas by Others
Miscellaneous General Expenses—Gas
Depreciation, Depletion, and Amortization of Gas Plant
Income from Utility Plant Leased to Others
Particulars Concerning Certain Income Deduction and Interest Charges Accounts
Regulatory Commission Expenses
Research, Development, and Demonstration Activities
Distribution of Salaries and Wages
Charges for Outside Professional and Other Consultative Services
Natural Gas Reserves and Land Acreage
Changes in Estimated Natural Gas Reserves
Changes in Estimated Hydrocarbon Reserves and Costs and Net Realizable Value
Natural Gas Production and Gathering Statistics
Products Extraction Operations—Natural Gas
Compressor Stations
Gas and Oil Wells
Field and Storage Lines
Gas Storage Projects
Transmission Lines
Liquefied Petroleum Gas Operations
Transmission System Peak Deliveries
Auxiliary Peaking Facilities
Gas Account—Natural Gas
System Maps
Index

Attachment A.—Discussion of Comments on Form No. 2 Schedules

Pages i–ii, General Instruction (new pages i–iv)

Several commenters found that the Form No. 2 filing deadline of the last day of the third month was difficult to meet. It was suggested that only the principal financial statements should be required by the current deadline, with the remaining portions to be filed one month later.

The Commission has agreed to change the filing date so that the entire Form No. 2 would be submitted by the end of the fourth month, i.e., April 30. This will satisfy requests of commenters without dividing the report form unnecessarily.

Another recommendation was to report dollar amounts in Form No. 2, rounded to the nearest thousand. One commenter, however, suggested that the rounding requirements should be made optional for each respondent. Apparently, rounding would be more of a detriment than a benefit to this company. The rounding would cause a duplication of efforts in instances where the amounts are also used in other reports which do not allow rounding.

The report will continue to require reporting on the basis of whole dollars because rounding to thousands would eliminate much of the monetary data reported by companies, particularly the smaller companies. Moreover, monetary amounts are currently maintained by all companies to the cent. Therefore, the current Form No. 2 reporting requirements for this type of information do not appear to be an additional burden, particularly in those instances where these same amounts are required in other reports that do not allow rounding to thousands. Finally, amounts in rate applications are rounded to the nearest dollar; the Form No. 2 amounts must be reported in a similar manner in order to properly establish a meaningful cross-reference between the Form No. 2 annual reports and the rate applications.

The General Instructions have also been amended, pursuant to several comments, to include the following clarification with respect to the application of thresholds: "When applying thresholds for determining significance for reporting purposes for Balance Sheet accounts, use balances at the end of the current reporting year; for Statement of Income accounts use current year amounts."

Page 101–101A, General Information (new page 101)

Several commenters suggested that the Commission eliminate from this schedule, Instruction No. 5, which requires details on each class of security of a respondent that is now registered, or that will be registered on a national securities exchange, and the amount of the security. The commenters argued that a similar reporting requirement has been proposed for elimination in part from the Form No. 1. Furthermore, the comments alleged that this data could be obtained from other sources, such as the Securities and Exchange Commission (SEC) Form 10–K, "Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934." Other comments argued that Instruction No. 5 could be deleted from page 101 and an instruction to indicate the name of the exchange for each listed security could be inserted on page 211, Unamortized Debt Expense, Premium and Discount on Long-Term Debt; on page 215, Capital Stock; and on page 219, Long-Term Debt.

In response to these suggestions, the Commission has eliminated Instruction No. 5 from page 101. The requirement to identify the stock exchange has been inserted in the instructions on pages 215

and 219. It would be redundant to add this requirement to page 211 because the long-term debt data on page 219 will already contain securities exchange information. Alternately, if the stock exchange identification information is available to a respondent from the SEC Form 10–K Annual Report, the Commission will accept a specific reference to that document on pages 215 and 219, provided that the reporting period of the Form 10–K corresponds to that of the Form No. 2. The instructions on pages 215 and 219 have been modified accordingly.

Comments also suggested that the portion of Instruction No. 6 of page 101A, concerning the identification of independent accountants, is redundant to the CPA certification statement filed pursuant to Item No. 15 of the General Instructions. It was argued that any changes in an independent accounting firm employed since the previous annual report could be added to page 108, Important Changes During the Year.

We agree that it is unnecessary to repeat the name and address of the independent accounting firm pursuant to Instruction No. 6 on page 101A, since that information is already required on the Certification statement. However, the "changes in the accounting firm" portion of Instruction No. 6 is more appropriately retained in the General Information section since it is not the type of substantive "change" that is required to be reported on page 108. Thus, page 101 is amended to indicate a change in the principal accountant and page 101A has been entirely eliminated.

Page 102, Control Over Respondent (new page 102)

Three comments suggested the elimination of the last sentence on page 102 that requires the identification of companies which are also controlled by the organization that controls the respondent. They argued that this information is reported for jurisdictional companies on page 103, Corporations Controlled by Respondent, and is available to the Commission for nonjurisdictional companies in the SEC Form 10–K, Annual Report.

The information provided by the last sentence on this page is useful to the Commission in rate proceedings. To ease the reporting burden of respondent companies, however, the Commission will accept a specific reference to an SEC Form 10–K Annual Report from which the information required by the last sentence on page 102 can be derived, provided that the reporting period of the Form 10–K corresponds to that of the Form No. 2. Page 102 instructions have been modified accordingly. (In the event that a jurisdictional parent company does not have an appropriate Form 10–K reference, we will accept a specific reference to page 103 of a parent company's Form No. 2 which has the required information.)

Page 103, Corporations Controlled by Respondent (new page 103)

Commenters argued that page 103 duplicates information reported on page 203, Investment in Subsidiary Companies (Account 123.1), and also in the SEC Form 10–K Annual Report.

The Commission uses the information on page 103 in rate proceedings to allocate costs, and as a starting point, to analyze returns earned by jurisdictional operations of respondent companies. The information on page 203 is not a sufficient substitute, because it lacks any description of the kind of business in which the controlled corporation is engaged. The Commission, however, will accept in lieu of the information presently reported on page 103, a specific reference on page 103 to an SEC Form 10–K Annual Report, provided that the reporting period of the Form 10–K corresponds to that of Form No. 2. Page 103 instructions have been modified accordingly.

Page 105, Directors (new page 105)

Two commenters argued against the regulatory need for information concerning the directors' term (columns (c) and (d)), the directors' meetings attended during the year (column (e)), and fees during the year (column (f)).

The data in columns (e) and (f) are used for comparison with data contained in rate increase applications, in order to test the reasonableness of the amounts contained in the applications. Columns (c) and (d), however, are unnecessary to this comparison and have been eliminated.

Pages 108–109, Important Changes During the Year (new pages 108 and 109)

One commenter involved in both gas and electric operations, suggested that the instructions on page 108 of Form Nos. 1 and 2 should be changed so that the pages would be essentially identical in each form. It was alleged that the changes would aid respondents who filed both Form No. 1 and Form No. 2. Thus, Instruction No. 6 on page 108 of Form No. 2 would be included on page 108 of Form No. 1. (Instruction No. 6 requires the estimated increase or decrease in annual revenue due to important rate changes.) Instruction No. 11 on page 108 of Form No. 1 would be added to page 108 of Form No. 2. (Instruction No. 11 requires a list of electric generating units placed in service during the year, the in-service date, location, and generating capacity.)

We concur in renumbering the instructions on page 108 of Form No. 2 to conform to the order of the instructions on page 108 of Form No. 1. The instructions on page 108 of each form will, therefore, be identical, with the following exceptions: Instruction No. 11 on page 108 of Form No. 2 now relates to gas operations only, while the corresponding instruction in Form No. 1 relates to electric operations only. Also, a new Instruction No. 12 has been added on page 108 of Form No. 2 which provides that a respondent may attach the notes from the annual stockholders report in lieu of filing data on pages 108–109. However, the stockholder's report notes, if attached, must include all of the information prescribed in each of the instructions on page 108. Finally, the addition of Instruction No. 6 from page 108 of Form No. 2 to page 108 of Form No. 1 is beyond the scope of this rulemaking; it will be discussed in the final rule to revise Form No. 1 (Docket No. RM80–55).

Pages 110–111, Comparative Balance Sheet (new pages 110–113), and Pages 114–116A, Statement of Income for the Year (new pages 114–117)

We concur in the commenters' recommendations that the "increase or (decrease)" data column shown on these schedules should be replaced by a requirement to list the amounts for the previous year. The report will then be comparative in nature and will conform to the standard format generally used in financial reporting. A change also has been made, as suggested, to Instruction No. 9 on page 115, to require an explanation of any difference from figures previously reported.

Page 112, Notes to Balance Sheet (new page 122–123)

One comment suggested that page 112, Notes to Balance Sheet, and the Notes to Statement of Income on page 114 should be combined since notes which apply to both of these financial statements cannot easily be reported separately.

We agree with the suggestion. Moreover, not only are pages 112, Notes to Balance Sheet, and the Notes to Statement of Income on pages 114, 115, and 116 combined, but also the Notes to Statement of Retained Earnings for the Year on page 117A and the Notes to Statement of Changes in Financial Position on page 119. Thus, the notes to all four of the basic financial statements will appear on the same pages for ease of reporting. These new pages have been entitled "Notes to Financial Statements"

and have been located on pages 122–123.

Page 201, Non-Utility Property (Account 121); and Accumulated Provisions for Depreciation and Amortization of Non-Utility Property (Account 122) (new page 215)

It was suggested that this schedule be eliminated since the amounts reported in the accounts are insignificant and the balance of each account appears on the Balance Sheet.

This schedule has been retained because the detail is used for both cost allocation and risk analysis.

Another comment urged that all items of property previously devoted to public service should be grouped together if the items are "minor".

These items are required to be reported separately because each unit of property which becomes or has been utility (*i.e.*, public service) property is considered in rate proceedings. Gains or losses from sales of each such item are then used in the evaluation of the company's profitability.

Page 202, Investments (Accounts 123, 124, and 136) (new page 216)

It was suggested that the requirement to report information concerning advance payments should be deleted from this page because the data can be obtained from page 210B, Advances for Gas Prior to Initial Deliveries or Commission Certification (Accounts 124, 166, 167).

We concur in the recommendations to revise the instructions to exclude advance payments from page 202.

Another commenter suggested deleting the schedule entirely. This is not feasible because each of the accounts comprising this schedule is used in rate proceedings to compare the dollar amount of a company's utility plant with the dollars of capital used to finance that plant. We must ensure that jurisdictional companies have an opportunity to recover their costs and that they earn a reasonable return on those investments over which we have jurisdiction and which provide the service to the public.

Page 203, Investments in Subsidiary Companies (new page 217)

One comment suggested the addition of a column for "Investments During the Current Year" as a cross-check to the information currently reported on this page. The inclusion of this data would not serve any genuine Commission need; therefore, this extra reporting burden has not been added.

Page 210, Prepayments (Account 165), Miscellaneous Current and Accrued Assets (Account 174), and Extraordinary Property Losses (Account 182) (new page 220)

Commenters recommended that this page be deleted in its entirety. It is alleged that prepayment information is already reported on pages 210A, Gas Prepayments Under Purchase Agreements, and on page 222, Taxes Accrued, Prepaid and Charged During the Year. Commenters suggested that this information could appear merely as a line item on the Balance Sheet (pages 110–111).

The Commission notes that Miscellaneous Current and Accrued Assets had been proposed for deletion in the Notice of Proposed Rulemaking, and is deleted herein. The remaining schedules, however, have been retained.

The Prepayments schedule is necessary because it provides a basis for testing the reasonableness of amounts reported in a rate application. The Extraordinary Property Losses schedule provides a ready analysis and status of losses and abandoned property which are used to determine the level of expenses to be allowed in rate proceedings.

The information in these schedules will not appear only as a line item on the balance sheet because the detail upon which the Commission depends for rate proceedings would be lost through such a summary.

Page 210B, Advances for Gas Prior to Initial Deliveries or Commission Certification (Accounts 124, 166, 167) (new page 219)

The current format of this schedule was objected to as cumbersome and an alternative format was suggested.

This proposed format would require information which is indentical to the current schedule, with one significant exception: The proposed format would require reporting of estimated repayment dates of advances for gas which are categorized into only two time periods: 1980 through 1981 and 1982 through 1984. The Commission currently requires the specific estimated repayment dates of all gas advances reported in Accounts 124, 166, or 167, to determine if respondents are complying with Commission orders concerning advance payments. The proposed format's provision for reporting within only two time frames would prohibit such Commission determinations. Therefore, the Commission has retained page 201B, in its current format.

Page 211, Unamortized Debt Expense, Premium and Discount on Long-Term Debt (Accounts 181, 225, 226) (new page 256); page 214B, Unamortized Loss and Gain on Reacquired Debt (Accounts 185, 257) (new page 257); and page 219, Long-Term Debt Accounts 211, 222, 223, 224) (new page 255)

Comments on this page were in either of two general categories: (a) Combine all three pages into a single schedule (alternative formats were suggested), or (b) delete part, or all of each of the schedules.

The first alternative (combine all three pages into a single schedule) is impractical, as it would result in a cumbersome schedule of two or three pages, even after restructuring. However, for greater ease in reporting, we have grouped the pages sequentially: Pages 255 (old page 219), 256 (old page 211) and 257 (old page 214B).

We also oppose the second alternative (delete the schedules, either in whole or in part) with two exceptions: On page 214B, two columns, Debits During Year (column (f)) and Credits During Year (column (g)) have been eliminated. The other information on page 214B, however, is closely related to data reported on both pages 211 and 219. The schedules, together, are important for risk analysis purposes.

Page 212, Preliminary Survey and Investigation Charges (Account 183) (new page 221); page 214, Miscellaneous Deferred Debits (Account 186) (new page 223); page 225, Other Deferred Credits (Account 253) (new page 266)

Comments stated that page 212 should be deleted in its entirety. Other commenters argued that pages 212, 214 and 225 require a temporary accumulation of the listed charges and should not be maintained in the present detail. It was suggested that only the following items should be retained on these pages: The Description (column (a)), and the Beginning and Ending Balances (columns (b) and (f)). Thus, Debits (column (c)), Credits (Accounts Charged) (column (d)), and Credits (Amount) (column (e)) would be deleted from pages 212 and 214; and Debits (Contra Account) (column (c)), Debit (Amount) (column (d)), and Credits (column (e)) would be deleted from page 225.

The continued reporting of these pages in the current format is necessary because they are the only source of this type of detailed data which are used to determine the proper disposition of each charge claimed in the rate process. The description and beginning and ending

balances do not provide this information.

The Commission concurs in the recommendation to delete the requirement to report the number of minor items below the established threshold level which are grouped.

Pages 214C–214D, Accumulated Deferred Income Taxes (Account 190) (new pages 224–225), and pages 227–227E, Accumulated Deferred Income Taxes (Accounts 281, 282, 283) (new pages 268–273)

Commenters alleged that the details on pages 214C–214D and 227–227E are duplicated in rate applications and are, therefore, unnecessary to the Form No. 2. Another suggestion was that only the Beginning and Ending Balances in each account for Electric, Gas, and Other, and for Federal, State and Local Taxes need be retained. One commenter argued that the provisions for Federal, State and Local Taxes could be deleted entirely from these schedules.

The Commission will continue to require the details concerning Accumulated Deferred Income Taxes on these pages. Rate application data cannot be substituted for these schedules, because those data reflect only beginning and ending balances while the schedules show major changes during the year and adjustment data. This information is required for ratemaking determinations.

However, we agree with a suggestion that data entries for Federal, State and Local Taxes should be deleted from pages 214C–214D, and such deletions have been made.

Commenters also questioned the need for Instruction No. 2 [1] on pages 227 and 227B since such information is excessive and of questionable value. The Commission agrees, and has deleted the instruction on both pages.

Page 218, Discount on Capital Stock, and Capital Stock Expense (New Page 253)

It was suggested that the Balance End of Year column (column (b)) for the Discount on Capital Stock account should be reported by class of stock rather than by class and series.

We have retained both the class and series identification. Both class and series of stock are necessary to the determination of the weighted cost of preferred stock, which is an essential component in the calculation of the overall cost of capital.

Pages 222 and 222A, Taxes Accrued, Prepaid and Charged During Year (Accounts 236, 165, 409.1, 409.2, 409.3, 439) (New Pages 258 and 259)

Comments suggested that Instruction No. 4 should be changed to require reporting by "kind of tax" rather than by "Federal, State and local." We concur and Instruction No. 4 is amended accordingly.

Comments also urged the elimination of Instruction No. 5 because it requires a manual work paper analysis that is difficult to prepare and because this information is available in other accounts. Instruction No. 5 requests all information to be reported by year in each of the categories, Federal, State or local, and by type of tax. In addition, a footnote is required to indicate each year examined by the Internal Revenue Service. We have eliminated from Instruction No. 5 that portion which requires reporting of the information covering more than one year which relates to Federal and State Income taxes only, since our rate analyses are not predicated upon an actual income tax basis. The balance of Instruction No. 5 is retained, however, because the data is required for rate analyses.

Comments further suggested that Instruction No. 8, which requires the distribution of taxes, be eliminated because this information is too detailed to serve any practical purpose and should not be maintained only for auditing checks. It was suggested that this data could be checked when the company is audited. We will continue to require the distribution of taxes because establishing trends of distribution is a necessary tool for rate analysis purposes. Moreover, the expeditious completion of our rate analysis requires that the data be reported in Form No. 2.

Finally, comments indicated that the columnar splits between taxes charged, taxes paid, and adjustments of taxes charged are burdensome to complete and should be modified. We have continued the columnar splits since reports of the actual tax liability incurred for the year as well as the amount paid in taxes during the year are necessary for rate analysis purposes.

Page 224, Miscellaneous Current and Accrued Liabilities (Account 242) (New Page 265)

Comments urged that this schedule be eliminated because the amounts reported reflect items normally incurred by an ongoing business concern. The amounts could be summarized on the balance sheet as they are for page 204, Notes and Accounts Receivable, and page 221, Notes Payable.

The detailed information on pages 204 and 221 is not required for ratemaking purposes. Page 224, however, is required because it is the only source of detailed data which are use for determining the proper disposition of costs.

Page 228, Investment Tax Credits Generated and Utilized (New Pages 262–263), and Page 229, Accumulated Deferred Investment Tax Credits (Account 255) (New Page 264)

Some commenters recommended that page 228 be deleted because it was considered to be too complex and less relevant than page 229, which was originally proposed for deletion by the Commission. Upon reconsideration, we find that the two pages are both essential to the Commission's review of the nature and amount of any divergence between the rates of return we find to be just and reasonable, and the returns actually earned by jurisdictional companies.

Page 301, Income From Utility Plant Leased to Others (Accounts 412 and 413) (New Page 336); page 505, Gas Plant Leased to Others (Account 104) (New Page 207)

Comments stated that the information which appears on pages 301 and 505 should be deleted and the data on page 301 could then be included as a line item in the Statement of Income For the Year (pages 114–116A). Other commenters stated that Accounts 412 and 413 are rarely used and, if used, would report most of the data on the Statement of Income.

Both pages 301 and 505 are retained because the data reported thereon are integral to a company's investment which must be analyzed for ratemaking purposes. A single line item on the Statement of Income for revenues (Account 412) and one for expenses (Account 413) does not provide the necessary detail about each plant item leased.

One commenter suggested that retention of page 301 was an oversight since page 303, Particulars Concerning Other Income Accounts, which contains similar information, was proposed for

[1] Instruction No. 2 on page 227 requires (a) each certificate number and description of property, (b) total and amortizable cost of the property, (c) date of commencement of amortization for tax purposes, (d) "normal" description rate used in computing deferred tax, and (e) tax rate used to originally defer amounts and the tax rate during the year used to amortize previous deferrals.

Instruction No. 2 on page 227B requires (a) the general methods of liberalization used, estimated lives, classes of plant to which each method is applied and the date the method was adopted and (b) a table showing for each year, 1954 to date, the annual amounts of tax deferrals, and a statement as to whether the accounting for liberalized depreciation has been approved or directed by a state Commission.

deletion in the Notice of Proposed Rulemaking.

Not all the detail on page 303 was deleted—certain of the data which were needed were transferred to page 116, Statement of Income for the Year.

Page 304, Particulars Concerning Certain Income Deduction and Interest Charges Accounts (new page 337)

Comments suggested that this schedule should be deleted, and replaced by line items on the Income Statement (page 116A) for Donations (Account 426.1), Life Insurance (Account 426.2), Penalties (Account 426.3), Expenditures for Certain Civic, Political and Related Activities (Account 426.4), and Other Deductions (Account 426.5). They also stated that Miscellaneous Amortization (Account 425), Interest on Debt to Associated Companies (Account 430), and Other Interest Expense (Account 431) are already summarized as line items on page 116A, Statement of Income for the Year, and that this deletion would make the schedule consistent with the proposed deletion of page 303.

We have retained this page because the reporting of totals only for each account as line items on the Income Statement would not be sufficient since the Commission requires the detail of individual account items for rate analysis purposes.

We also do not agree that page 304 should be accorded the same treatment as page 303. Page 303 reports income data, which are not required for rate analysis purposes. This is because cost-of-service determinations are based upon Commission review of the respondents' *expenses*, rather than their *income*. Page 304 reports such expense data, the details of which are essential to the Commission's analysis process.

Page 353–353A, Regulatory Commission Expenses (new pages 350–351)

Suggestions for this schedule varied from deleting the entire page to deleting only certain columns therein. It was argued that regulatory commission expense data are already obtained through rate applications, are difficult to compile both by account and individual formal cases, and only the totals of such expenses need to be reported.

We have retained pages 353–353A in the current format because the information is vital to ratemaking determinations. Both state and Commission regulatory expenses must be evaluated to determine whether those expenses can be allowed in the cost-of-service. This information is not obtainable from a rate application.

Page 354; Charges for Outside Professional and Other Consultative Services (new page 357)

Many comments urged the elimination of this page as an unnecessary, time-consuming and burdensome requirement. Respondents allegedly compile the data on this page according to a "best effort." Another comment stated that the information reported in this schedule is available from rate applications and compliance audits.

The Commission has retained this schedule because it is used for the evaluation of proper expenditures by respondent companies in the ratemaking process. The information is reported in this schedule on an annual basis and can be used by the Commission to develop historical trends for such charges. We cannot readily derive this information from compliance audits and rate applications because such audits and applications cover only specific dates or time periods.

Pages 355–356, Distribution of Salaries and Wages (new pages 354–355)

One comment suggested that these pages be deleted because the information is unnecessary. Other comments urged that the Allocation of Payroll Charged Clearing Accounts (column (c)) and the Total Column (column (d)) should be deleted. It was also suggested that Clearing Accounts could be reported in column (a) before "Other Accounts" (line 77) on page 356, for those companies which do not allocate payroll charged to clearing accounts.

We have retained this schedule in its current format since the information reported therein is essential to the evaluation of labor costs allocated to operation and maintenance expenses in rate applications. Clearing accounts will not be reported before "Other Accounts" as suggested, since benefits resulting from this proposed change are insignificant and such change would be disruptive to reporting by a majority of the companies which do allocate payroll cost.

Pages 501–504, Gas Plant in Service (new pages 202–205)

Comments on this schedule suggested that columns (c) Additions, (d) Retirements, (e) Adjustments, and (f) Transfers be deleted, since this information duplicates that shown in statement C of a rate application. Other comments recommended that reporting be limited to functional categories, thus eliminating detail that allegedly serves no useful purpose.

We have retained the requirement for this information in its present format because it is an integral part of a rate analysis. Furthermore, since general rate increases are not necessarily filed every year by every company, as is the Form No. 2, Statement C is not a viable substitute for these columns.

Page 506, Gas Plant Held for Future Use (Account 105) (new page 208) and Page 506A, Production Properties Held for Future Use Account 105.1) (new page 209)

Commenters recommended two changes with respect to these pages: (1) That column (c), "Date Expected to be Used in Utility Service," be eliminated from both of these schedules, and (2) that the requirement in Instruction No. 1 to indicate number of items grouped below the established threshold, be deleted.

Adoption of the first recommendation will eliminate too much data needed by the Commission to carry out its ratemaking responsibilities. The date that properties are expected to be placed in service is needed to evaluate the prudency of an investment in ratemaking proceedings under sections 4 and 5 of the Natural Gas Act.

We do, however, concur with the second recommended change and, therefore, delete the requirement to report the number of minor items which are grouped.

Page 507, Construction Work in Progress and Construction Not Classified Gas (Accounts 106 and 107) (new page 210)

One commenter suggested a $1,000,000 threshold for the reporting of projects instead of the proposed $500,000, with minor projects being defined as a percentage. Another suggested a threshold of 5% of the Construction Work in Progress balance. The proposed threshold will be retained because too much information would be lost if a higher threshold were adopted.

Several commenters suggested that Column (d), Estimated Additional Cost of Project, be eliminated because this information is difficult to develop and not particularly reliable. We will, however, retain this column because it is needed to develop historical trends and to evaluate a company's growth. These considerations are necessary in the ratemaking process.

We do, however, agree with the suggestion to eliminate Completed Construction Not Classified (column (c)) from this schedule.

Page 514, Gas Operating Revenues (Account 400) (new page 301)

The Commission has concurred in a commenters' suggestion to delete columns on page 514 which show Increases or Decreases from the preceding year (columns (c) and (e)), and to substitute, therefore, a requirement to report the amounts from the previous annual report.

A suggestion was also made to delete Instruction No. 3 and the corresponding requirement for information about the average number of customers per month (columns (f) and (g)). We have retained this requirement because there have been recent significant changes overall in the number of gas customers of respondent companies. These changes can greatly affect the respondent's gas operating revenues and are, therefore, significant to the Commission's ratemaking process.

Another comment suggested that the footnote required by Instruction No. 3 [2] can be eliminated by revising the instruction to exclude the duplicate reporting of customers who have a multiclassification status. While we concur with the deletion of the footnote requirement, the balance of the instruction is retained because the information is necessary for rate analyses.

Pages 516–517, Sales of Natural Gas by Communities (new pages 302–303)

One respondent has suggested that the title for these pages—Sales of Natural Gas by Communities, would not be appropriate if the Commission's proposed changes are adopted. The suggested title change was "Direct Sales by States."

The Commission agrees that the title should be changed—however, the new title is "Distribution Type Sales by States." This schedule collects data related to direct sales made by a pipeline company acting as a distributor. Other direct sales are reported on page 519, Field and Main Line Industrial Sales of Natural Gas.

Another respondent suggested that pages 516–517 be deleted. We have retained the schedule, nonetheless. A detailed record of non-jurisdictional sales, which is provided on these pages and on page 519 is essential to establish sales and revenue collection trends for a pipeline's non-jurisdictional business.

[2] Instruction No. 3 provides that, if in column (f), a single residential or commercial customer is reported twice by virtue of receiving special services through separation meters, a footnote must be added to indicate the number of customers as counted.

Pages 521–522, Sales for Resale—Natural Gas (Account 483) (new pages (310–311)

Comments objected to retention of the following columns in this schedule: (1) Point of Delivery (column (b)), which allegedly provides less useful information than do Statement G of a rate application, and Schedule 4 of FERC Form No. 16; (2) Average Revenue per Mcf (column (f)), which is claimed to be unnecessary for financial or regulator purposes; (3) Sum of Monthly Billing Demands (column (g)), which is a summary of billing demands and is claimed to be available, both from tariffs and rate applications, and from Schedule 4 of Form No. 16; and (4) Information on Peak Day Delivery to Customers (columns (h), (i), and (j)), which allegedly should be reported at a time earlier than the Form No. 2 filing, to be of any practical value. Furthermore, comments noted that peak day delivery data have already been eliminated from Form No. 16.

We do not concur with these suggested deletions. We have determined that delivery point information is essential for rate design determinations. If not reported in the Form No. 2, delivery point information would only be available when companies file *major* rate increases. The Commission regulations do not require the filing of Statement G in the case of *minor* rate increase applications. Consequently, column (b) must be used for delivery point information.

Column (f) is used to test the reasonableness of the rate design procedure being used by the respondent and will also be retained.

Column (g) contains the number of Mcf actually used in computing the demand portion of a customer's bill (Instruction No. 6). This amount is not always equal to the "contract demand" (i.e., "maximum obligation") which can be found in the tariffs of the individual customers; thus, column (g) has been retained.

Columns (h), (i), and (j), when evaluated simultaneously, provide information about the relative use of the system by specific customers, which is integral to the rate process. These columns, therefore, have also been retained.

Although the peak day data have been eliminated from Form No. 16, this was done only to remove a duplication in the reporting of this information. Peak day data are essential to the Commission and are more appropriately reported on Form No. 2.

Page 524, Revenue From Transportation of Gas of Others-Natural Gas (Account 489) (new page 312)

Commenters argued that a report of the Distance Gas is Transported (column (b)) has no direct relationship to revenue, and should be deleted. To the contrary, we have found that a number of pipeline companies are currently using mileage as a basis for determining initial rates for transportation service. Consequently, the distance that gas is transported does have a relationship to revenues received, so column (b) has been retained.

Other commenters suggested that a threshold level of 1,000,000 Mcf of gas transported annually should be instituted. Specifically, transportation services of less than 1,000,000 Mcf annually would be grouped in the same manner as data reported on page 541, Transmission and Compression of Gas by Others. All services in excess of 1,000,000 Mcf would be reported separately.

We agree with the proposed threshold. However, the Notice of Proposed Rulemaking failed to provide for the grouping of minor items below the threshold on page 541. This modification has been made on both pages 524 and 541.

Finally, the Commission has included a requirement in this schedule to identify the specific Commission order or regulation under which the transportation of gas of others was performed. While this provision represents a slight additional burden to respondent companies, it is significant to the Commission in that it will enable us to monitor activity under various Commission regulations which facilitate the movement of gas on a national basis.

Page 525, Sales of Products Extracted from Natural Gas (Account 490) (new page 313)

Instruction No. 2 on page 525 permits the grouping of sales by kind of product extracted and requires that the number of purchasers who buy these grouped products be indicated. The comments suggest that the requirement to indicate the number of customers so grouped be eliminated.

This information is necessary to the independent evaluation of the data contained in rate applications, and will continue to be required.

Pages 527–532, Gas Operation and Maintenance Expenses (new pages 320–325), and page 532, Number of Gas Department Employees (new page 325)

The Commission concurs in the recommendation to delete from these pages the columns which require the reporting of increases or decreases from the preceding year, and to require instead the reporting of amounts from the previous year. The Commission also concurs in the suggestion to eliminate the summary schedule on page 532.

The detail of gas operation and maintenance expenses for the year reported on pages 527–532, as well as the number of gas department employees on page 532 was also recommended for deletion; to perform historical trend analyses of the respondent companies' operations and changes in labor force. This information is necessary to the classification and allocation of costs.

Pages 537, Exchange Gas Transactions (Account 806, Exchange Gas) (new page 328), and 538, Exchange Gas Accounting (Account 806, Exchange Gas) (new pages 328–329)

It was suggested that a 500,000 Mcf threshold be established for the minor transactions which are grouped in this schedule. We agree that a threshold should be established. However, a threshold of 100,000 Mcf for these transactions will be used since a 500,000 Mcf threshold would eliminate too much data.

Another comment stated that pages 537 and Part B of page 538 could be combined, by eliminating from page 537, Point of Receipt (column (b)), Point of Delivery (column (d)) and the instruction to accompany columns (b) and (d) (Instruction 2). It was claimed that this information is available in Commission certificate and rate filings, and can also be derived from the Commission Tariff Rate Schedules (identified in column (g) on page 537, and column (f) on Part B of page 538). An alternative format was also suggested for this page.

We have retained the requirement to report points of receipt and delivery because certificates, rates, and tariff filings do not proivde adequate information concerning the *actual* points which are ultimately utilized to effect exchange transactions.

The Commission has adopted the alternative format suggested for this page—except that we have retained columns which report delivery and receipt point data, as discussed above.

Page 540, Other Gas Supply Expenses (Account 813) (new page 331)

It was suggested that a threshold level of $100,000 be established for this page and that the requirement to separately report maintenance expenses be eliminated because this account is not the type that would normally contain maintenance expenses.

A threshold level of $100,000 may eliminate much of the detail which is essential to the evaluation of Account No. 813 expenses in rate increase applications; therefore, no threshold will be established for this page.

The requirement to separately report maintenance expenses has also been retained. This requirement only affects those respondents who have such expenses to report; other companies, of course, will not be burdened by this requirement.

Page 541, Transmission and Compression of Gas by Others (Account 858) (new page 332)

The comments suggest the use of 1,000,000 Mcf as the threshold in this schedule instead of the proposed "1 Bcf," in order to be consistent with other threshold descriptions used throughout the Form No. 2. We concur.

Another comment suggested that Distance Transported (column (b)) should be deleted, because that information is difficult to obtain from the transporting pipeline. The Commission has retained column (b) for the same reasons discussed in connection with page 524, Revenues From Transportation of Gas to Others. Furthermore, the pipeline bearing the cost, as a matter of sound business policy, should know the service is being provided, including any distance of haul for which compensation is made.

Page 543, Miscellaneous General Expenses (Account 930.2) (Gas) (new page 333)

One commenter alleged that the information in this schedule duplicates data reported in a rate application, and should, therefore, be eliminated. This schedule has been retained, however, because the base period in rate applications, in many instances, does not coincide with the Form No. 2 reporting period, nor do all pipelines make annual rate change filings.

Pages 545–546B, Depreciation, Depletion and Amortization of Gas Plant (Account 403, 401.1, 404.2, 404.3, 405) (new pages 334–335)

It was suggested that Part B, Basis for Depletion and Amortization Charges, and Part C, Factors Used in Estimating Depreciation Charges should be deleted because they are used for auditing purposes only.

The Commission notes that Part B had already been proposed for deletion in the Notice of Proposed Rulemaking, and Part C, greatly reduced. Depreciation cannot be overlooked because it is a major component in the cost of services. Section 9 of the Natural Gas Act provides that: "Each natural gas company shall conform its depreciation and amortization accounts to the rates as ascertained, determined and fixed." Since there are no other sources of information, besides the Form No. 2, that show a company's depreciation rates on an annual basis, no further modifications have been made to this page.

Pages 552–553B, Natural Gas Production and Gathering Statistics (new page 506)

It was suggested that this schedule should be deleted in its entirety because the required information is obtainable from the Gas Plant in Service schedule (pages 501–504) and the Gas Operation and Maintenance Expense schedule (pages 527–532).

We have retained this schedule, as proposed in the Notice of Proposed Rulemaking, because the detailed production and gathering plant information requirements reported herein are not available separately for old (pre-1969) and new (post-1969) leases on pages 501–504 and pages 527–532.

Pages 556–557, Compressor Stations (new page 509)

Deletion of this schedule was suggested, or, in the alternative, the deletion of the requirements to report the number of employees (column (b)), plant cost (column (c)), the number, year of installation and horsepower capacity of driving units (columns (g)–(i)), and the number, year of installation and capacity of compressor units (columns (j)–(l)). It also alleged that this schedule is primarily statistical, and, therefore, should not be included in a financial report. Finally, it was alleged that adequate information on compressor stations is available in certificate filings.

Annual compressor station operation and related expense data are essential to overall plant evaluations and provide a record of operational changes that may occur, especially with regard to the flow of gas through the pipeline system.

However, upon review, we have determined that the non-operational data in columns (g) through (l) can be deleted. Columns (b) and (c) will be retained because they require the reporting of current data which are

essential to the Commission's evaluation of a plant's operation. The information reported in certificate filings is not necessarily submitted annually, and, therefore, is not a reliable source of current data.

Finally, the schedule cannot be eliminated simply because it collects statistical information. The Commission has no other source of summary statistical gas plant operating data—and we are reluctant to devise a new reporting requirement simply to collect the few statistical items in this form.

Page 558, Number of Gas and Oil Wells (new page 510)

It was recommended that this page be deleted because the level of detail required is irrelevant as a result of Commission Order No. 98, "Final Rule Governing Pricing of Pipeline Production Under the Natural Gas Act", (Docket No. RM80-6, issued August 4, 1980, 45 FR 43081, August 11, 1980).

The Commission has retained this schedule, notwithstanding Order 98, because this schedule provides historical data for an ongoing evaluation of the Commission pipeline production pricing policy. It is also used to evaluate the impact of pipeline-owned production in general rate change applications.

Page 564, Liquefied Petroleum Gas Operations (new page 515)

It was suggested that this page report insignificant data and should be eliminated; or, in the alternative, that a threshold should be applied for amounts reported therein.

This schedule is important in the valuation of the respondents' capability to produce liquefied petroleum gas. This gas can be used to meet firm residential customer requirements during particularly cold winters when natural gas is in short supply. Furthermore, we believe that any threshold level would have to be extremely low to include all affected respondents. Such a threshold would be artificial and would not measurably reduce the reporting burden. Therefore, we have not adopted a threshold for this schedule.

Pages 568–569, Gas Account—Natural Gas (new pages 518–519), and page 571, System Map (new page 520)

These schedules were criticized for collecting only statistical, rather than financial data, and were recommended for deletion.

The Commission has retained these pages because there is no separate statistical gas operations form for all pipelines.

These pages contain information necessary to develop operational trends which can be used in the rate process.

Futhermore, page 571 provides operational, as well as, statistical information. The system map is invaluable to the Commission in understanding the general locational and operational aspects of the respondents.

Pages 572–572A, Research, Development and Demonstration Activities (new pages 352–353)

This schedule was criticized for requiring too much detail for Commission needs. It was alleged that the Gas Research Institute (GRI) performs much of the research and development that was formerly performed by companies and associations, and can better supply information relative thereto, than can the respondent companies. This information was also claimed to be adequately reflected in rate application filings. Thus, it was suggested that the page should be eliminated. Another respondent suggested raising the threshold from $5,000 to $50,000.

We have retained this schedule in its current format because it includes the detail on numerous research projects other than those conducted by GRI. Rate application information is not interchangeable with this schedule because the schedule provides more detail than do rate applications, and it is reported to the Commission on a regular (*i.e.*, annual) basis.

The Commission has not raised the threshold because much of the significant data would be lost if the threshold were greater than $5,000.

Other comments suggested that only Classification (column (a)), Description (column (b)), and Costs Incurred Internally and Externally During the Year (columns (c) and (d)) should be retained, because the remaining columns (Amounts Charged in Current Year, and Unamortized Accumulations (columns (e) and (f)) are only used for audit purposes. In addition, Internal and External Cost data were alleged to be reflected separately in the classification column already; they could, therefore, be combined here.

We have retained the requirement to report all columns on pages 572–572A because of the importance of determining the disposition of these costs and to assure that they conform with the Commission rate treatment of a particular research and development project.

Finally, a separate listing of columns (c) and (d), Internal and External cost data is retained because no *duplicate* information is reported in the two columns.

Attachment B.—FERC Form No. 2 Revisions

BILLING CODE 6450-85-M

FERC FORM NO. 2 REVISIONS

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
General Instructions	i-ii	i-iv			X			Instructions clarified and expanded. Reduced number of schedules requiring CPA certification to the four basic financial statements. Filing date now 4/30/-.
General Information	101-101A	101			X			Instruction 5 deleted with reporting the name of the stock exchange moved to schedule page 250 and 255. Instruction 6 revised and renumbered as Instruction 5.
Control Over Respondent	102	102			X			Option to allow reference to SEC 10-K filings.
Corporations Controlled by Respondent	103	103			X			Option to allow reference to SEC 10-K filings.
Officers	104	104	X					
Directors	105	105			X	X		Instruction 2 deleted per Order No. 57, Nov. 8, 1979. Deleted Columns (c) and (d).
Security Holders and Voting Powers	106-107	106-107	X					
Important Changes During the Year	108-109	108-109			X			Added instruction 12 to allow the attachment of notes from stockholder reports. Instructions renumbered.
Comparative Balance Sheet	110-111	110-113				X		Deleted column (e). Expanded to include reporting account balances previously grouped and detailed on schedule pages now deleted. Common with Form No. 1.
Notes to Financial Statements (was titled - Balance Sheet)	112	122-123			X			Revised title and instructions 1 and 6 to now include notes for the four basic financial statements.
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortiz.	113	200	X					
Statement of Income for the Year	114-116A	114-117			X			Deleted Instruction 7. Accounts 415-418 amounts listed separately. Instructions revised to reflect the moving of the notes to the income statement to page 122. Increase/decrease columns revised to read "Previous year." Instruction 9 revised.
Statement of Retained Earnings for the Year	117-117A	118-119			X			Deleted reference to discontinued Form No. 9. Notes to be reported on schedule page 122.
Statement of Changes in Financial Position	118-119	120-121			X			Notes to be reported on schedule page 122
Nonutility Property	201	215		X				Instruction 5 - Added to limit the reporting to (5% of the balance end of the year for Account 121).
Accumulated Provision for Depreciation and Amortization of Nonutility Property	201	215	X					
Investments	202	216			X			Instruction 4 revised to exclude Account 124 amounts, now reported on schedule page 219.
Investments in Subsidiary Companies	203	217	X					
Notes and Accounts Receivable	204	-					X	Moved beginning and end of year balances to page 110.
Accumulated Provision for Uncollectible Accounts - Cr.	204	-					X	
Receivables from Associated Companies	206	-					X	Moved beginning and end of year balances to page 110.
Material and Supplies	207	-					X	Moved beginning and end of year balances to page 110.
Gas Stored	207A	214			X			Deleted instruction 2 and details for lines 7-11. Revised to reflect the detail data previously required by instruction 2.
Production Fuel and Oil Stocks	209	-					X	
Prepayments	210	220			X			Deleted instruction 3 and lines 7-11, allowing miscellaneous prepayments to now be grouped.
Miscellaneous Current and Accrued Assets	210	-					X	
Extraordinary Property Losses	210	220	X					
Gas Prepayments Under Purchase Agreements	210A	218	X					

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Advances for Gas Prior to Initial Deliveries or Commission Certification	210B	219	X					
Unauthorized Debt Expense, Premium and Discount on Long-Term Debt	211	256	X					
Preliminary Survey and Investigation Charges	212	221		X				Instruction 3 - Added provisions for grouping -(less than $250,000) - deleted number of items so grouped.
Miscellaneous Deferred Debits	214	223		X				Instruction 3 - Added provisions for grouping -(less than $100,000) - deleted number of items so grouped.
Deferred Losses from Disposition of Utility Plant	214A	-					X	
Unamortized Loss and Gain on Reacquired Debt	214B	257				X		Deleted columns (f) and (g).
Accumulated Deferred Income Taxes (190)	214C-214D	224-225			X			Deleted lines 19-22. Classification of total taxes.
Capital Stock	215	250			X			Added to Column (a) - Name of Exchange - Transferred from page 101, with reference to 10-K filings allowed.
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock and Installments Received Received on Capital Stock	216	251	X					
Other Paid-in Capital	217	252	X					
Discount on Capital Stock	218	253	X					
Capital Stock Expense	218	253	X					
Long-Term Debt	219	255			X			Added to Column (a) - Name of Exchange - Transferred from page 101, with reference to 10-K filings allowed.
Securities Issued or Assumed and Securities Refunded or Retired During the Year	220	254	X					
Notes Payable	221	-					X	Moved beginning and end of year balances to schedule page 112.
Payables to Associated Companies	221	-					X	
Taxes Accrued, Prepaid and Charged During Year	222-222A	258-259			X			Instruction 4 - Deleted headings by Federal, State, and Local. Inst. 5 - now exclude federal and state income taxes by year.
Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes	223	261	X					
Miscellaneous Current and Accrued Liabilities	224	265		X				Instruction 3 - Added provisions for grouping -(less than $100,000).
Customer Advances for Construction	224	-					X	
Deferred Gains from Disposition of Utility Plant	224A	-					X	
Other Deferred Credits	225	266		X				Instruction 3 - Added provisions for grouping -(less than $100,000) - deleted number of items so grouped.
Undelivered Gas Obligations Under Sales Agreements	225A	267	X					
Operating Reserves	226	-					X	Moved beginning and end of year balances to schedule page 113.
Accumulated Deferred Income Taxes	227-227E	268-273			X			Delete instruction 2 for page 227 and 227B.
Investment Tax Credits Generated and Utilized	228	262-263	X					
Accumulated Deferred Investment Tax Credits	229	264	X					
Gains or Loss on Disposition of Property	300	-					X	
Income from Utility Plant Leased to Others	301	336	X					

* Data requirements retained with redesigned format.

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As Is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Particulars Concerning Certain Other Income Accounts	303	-					X	Moved account amounts for the year to schedule page 117, Statement of Income for the Year.
Particulars Concerning Certain Income Deduction and Interest Charges Accounts	304	337		X	X			Instruction 3 revised to allow grouping of items less than $10,000. Moved Account 426.4 (and title) to be included in first sentence of instruction 3.
Expenditures for Certain Civic, Political and Related Activities	305	-					X	Account 426.4 reporting moved to schedule page 337 with some details required by instruction 3.
Extraordinary Items	306	-					X	
Common Utility Plant and Expenses	351	-					X	
Regulatory Commission Expenses	353-353A	350-351		X				Instruction 6 - Added provisions for grouping -(less than $25,000).
Charges for Outside Professional and Consultative Services	354	357		X				Instruction 1 and 2 - Revised to report only items in excess of $25,000 for both Class A and Class B.
Distribution of Salaries and Wages	355-356	354-355	X					
Gas Plant in Service	501-504	202-205	X					
Gas Plant Leased to Others	505	207	X					
Gas Plant Held for Future Use	506	208		X				Revised instructions to raise threshold to $250,000. Deleted number of items so grouped.
Production Properties Held for Future Use	506A	209 *		X				Revised instructions to raise threshold to $250,000. Deleted number of items so grouped.
Construction Work in Progress and Completed Construction Not Classified-Gas	507	210		X		X		Instruction 4 - Added provisions for grouping minor items - (less than $500,000). Deleted Account 106.
Accumulated Provision for Depreciation of Gas Utility Plant	508	213	X					
Accumulated Provision for Amortization and Depletion of Gas Utility Plant: Producing Natural Gas Lands and Land Rights	509	-					X	
Underground Storage Land and Land Rights	510	-					X	
Other Gas Plant in Service, Gas Plant Leased to Others, and Gas Plant Held for Future Use	511	-					X	
Abandonment of Leases	512	-					X	
Gas Plant Acquisition Adjustments and Accumulated Provision for Amortization of Gas Plant Acquisition Adjustments	513	-					X	
Gas Operating Revenues	514	301			X			Increase/decrease columns (c), (e) and (g) revised to read "Previous Year." Instruction 3 revised.
Unauthorized Overrun Penalties and Waivers	515	-					X	
Sales of Natural Gas by Communities (New title) Distribution Type Sales by States	516-517	302-303			X	X		Revised title and instructions to report only volumes and operating revenues by State and Class of of Customers. Deleted columns (b), (c), (f), (i), (l) and (o).
Residential and Commercial Space Heating Customers	518	305	X					
Interruptible, Off Peak, and Firm Sales to Distribution System Industrial Customers	518	305	X					
Field and Main Line Industrial Sales of Natural Gas	519-520A	306-309	X					
Sales for Resale - Natural Gas	521-522	310-311	X					

* Data requirements retained with redesigned format.

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Indepartmental Sales - Natural Gas	523	-					X	
Rents from Gas Property and Interdepartmental Rents	523	-					X	
Revenue from Transportation of Gas of Others - Natural Gas	524	312		X	X			Established 1,000,000Mcf threshold for grouping. Instruction 3 - added Commission authorization.
Sales of Products Extracted from Natural Gas	525	313	X					
Revenues from Natural Gas Processed by Others	525	313	X					
Incidental Gasoline and Oil Sales and Other gas Revenues	526	-					X	
Gas Operation and Maintenance Expenses	527-532	320-325			X			Line numbers changed to reflect errata notice issued Sept. 3, 1980, RM79-14. Increase/decrease column (c) revised to "Previous Year." Summary deleted.
Number of Gas Department Employees	532	325	X					
Leased Rental Charged	533A-5330	-					X	
Exploration and Development Expenses	534	326	X					
Abandoned Leases	534	326	X					
Gas Purchases	535-536A	327			X	X		Revised instructions to reflect reporting by total for each account and retained only columns (k), (l), and (m).
Exchange Gas Transactions	537	328-329		X	X			Instruction 1 - Added provisions for grouping - (less than 100,000 Mcf). Redesigned to include data from 538.
Exchange Gas Accounting	538	" "			X	X		Merged with 537, columns (a), (f) of A, (a,e,f) of B.
Gas Used in Utility Operations - Credit	539	330	X					
Other Gas Supply Expenses	540	331	X					
Transmission and Compression of Gas by Others	541	332		X				Revised instructions and column headings to establish 1,000,000 Mcf (Bcf) threshold with lessor amounts allowed to be grouped.
Franchise Requirements	542	-					X	
Miscellaneous General Expenses (Gas)	543	333		X				Lines 6 and 8 revised to read $5,000, allowing lessor amounts to be grouped for other expenses.
Construction Overhead - Gas	543	211				X		Deleted column (d).
General Description of Construction Overhead Procedure	544	212	X					
Depreciation, Depletion and Amortization of Gas Plant	545-546B	334-335			X	X		Revised instructions to reflect the deletion of Section B, page 546 and revisions to Section C to allow reporting by 5 functions in total and retaining only columns (b) and (e).
Natural Gas Reserves and Land Acreage	547-548	500-501	X					
Changes is Estimated Natural Gas Reserves	549	503	X					
Changes in Estimated Hydrocarbon Reserves and Costs	549A-549B	504-505	X					
Natural Gas Reserves Available from Purchase Agreements	550-551	-					X	
Natural Gas Production and Gathering Statistics	552-553B	506			X	X		Revised instructions to reflect the deletion of columns (f) through (w) - Production area details.
Products Extraction Operations - Natural Gas	554-555	507			X	X		Revised instructions to reflect the deletion of columns (c) through (j) - Details by plant.
Compressor Stations	556-557	509			X	X		Deleted columns (g) through (l) and instruction 4.

* Data requirements retained with redesigned format.

Title	Old Schedule Page No.	New Schedule Page No.	Retained- As Is *	Retained- Changed Threshold	Retained- Revised Instructions	Retained- Deleted Columns	Deleted Complete Schedule	Explanation
Number of Gas and Oil Wells	558	510			X			Deleted Instruction 5 - regarding other than full ownership of wells disclosure.
Field and Storage Lines	559	511			X	X		Revised instructions to reflect the deletion of columns (c) through (q) - diameter of pipe.
Gas Storage	560-561B	512-513			X	X		Revised instructions to reflect the deletion of columns (c) through (k) - details by projects.
Transmission Lines	562	514			X	X		Revised instructions to reflect the deletion of columns (c) through (q) - diameter of pipe.
Manufactured Gas Production Statistics	563	-					X	
Liquefied Petroleum Gas Operations	564	515	X					
Transmission System Peak Deliveries	565	516	X		-			
Auxuliary Peaking Facilities	566	517	X					
Gas Account - Natural Gas	568-569	518-519	X					
Service Interruptions Occurring on the Pipeline System	570	-					X	
System Maps	571	520	X					
Research, Development and Demonstration Activities	572-572A	352-353	X					
Attestation	573	1			X			Redesigned and moved to schedule page 1.
Index	-		X					
Identification	Title Sheet	1	X					
List of Schedules	iii-v	2-4	X					

* Data requirements retained with redesigned format.

[FR Doc. 81-2202 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-C

18 CFR Parts 271, 274

[Docket No. RM81-12]

Interim Rule Under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells

January 15, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Rule.

SUMMARY: Section 108 of the Natural Gas Policy Act of 1978 (NGPA) establishes a maximum lawful price for natural gas from stripper wells, *i.e.*, wells that produce no more than 60 Mcf of natrual gas per production day during a specified 90 day production period. In this interim rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations implementing section 108 to permit a producer whose well already qualifies for the section 108 stripper well price to continue to charge and collect that price when the well exceeds the 60 Mcf production rate due to pressure buildup during a temporary shut-in of the well. The rule establishes procedures under which a producer may seek a determination by the jurisdictional agency that excess production from a qualified stripper well is the result of a pressure buildup during a temporary shut-in. Such a determination, subject to Commission review, would permit the well to continue to qualify for the section 108 price.

DATES: The interim rule is effective January 15, 1981. Requests for a hearing are due on or before January 30, 1981. A public hearing, if held, will be announced by February 5, 1981. Comments are due on or before 4:30 p.m., February 20, 1981.

ADDRESS: Comments and requests for hearing should be submitted to: Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTRACT:

Carol Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 4106-G, Washington, D.C. 20426 (202) 357-8317.

Susan Tomasky, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 8100, Washington, D.C. 20426 (202) 357-8164

I. Introduction

In Subpart H of its regulations, the Federal Energy Regulatory Commission (Commission) has established rules implementing section 108 of the Natural Gas Policy Act of 1978 (NGPA), which sets a maximum lawful price for natural gas from stripper wells. Generally, the NGPA defines a stripper well as one that produces no more than an average of 60 Mcf of natural gas per production day in the preceding 90-day production period. The Commission is adopting herein an interim rule amending §§ 271.804, 271.805, 271.806, and 274.206 of its regulations to provide a special rule governing temporary over-production from wells which have previously been determined to qualify as stripper wells.

II. Discussion

Section 108 of the NGPA provides that in order for a well to qualify as a stripper well it must produce an average of 60 Mcf or less of natural gas per production day during the preceding 90-day production period. A well which exceeds the 60 Mcf limit during any 90-day production period loses its stripper well status unless the increased production is shown to be the result of "recognized enhanced recovery techniques." *See* section 108(b)(2).

The Commission has also recognized another situation in which a well may exceed the 60 Mcf per production day limit without losing its stripper well status. Section 271.804(d) of the regulations provides that once a well qualifies as a stripper well, it may retain that status so long as production does not exceed 60 Mcf per production day on a yearly basis, if the well is determined to be "seasonally affected." This "seasonally affected" rule as promulgated in order to allow for cyclical variations in production which result from seasonal pressure differentials on a pipeline system. Without this rule, many stripper wells would have to go through disqualification and requalification procedures each year.

The Commission now finds that there exists another situation that is causing temporary disqualification and subsequent requalification of legitimate stripper wells, placing an undue administrative burden on producers, states, and the Commission. This situation arises when a well is required to be temporarily shut-in to permit, for example, pipeline or wellhead maintenance or repair. During the shut-in days, pressure builds up in the well bore. When the well is reopened to the line, gas is produced at a higher rate of production than that at which the well normally produces, and the shut-in days do not qualify as "production days" for purposes of determining the well's rate of production. (*See* § 271.803(d).) In such situations the well's average rate of production may exceed the 60 Mcf per production day limit for the relevant 90-day production period, and the well may be disqualified as a stripper. As soon as the pressure buildup is dissipated and the well returns to its normal rate of production, the producer must submit a new application for a determination that the well is a stripper well, file a Form 121, fulfill the interim collection filing requirements[1] and comply with all of the other requirements necessary to receive a well category determination and collect the maximum lawful price under the category.

The Commission believes that once a well has been determined to be a stripper well, short-term over-production resulting from temporary pressure buildups such as those described above should not cause the well to lose its legitimate stripper status. The Commission further believes that it is within the spirit and intent of section 108 to encourage continued production from marginal wells by removing undue administrative burdens which may result when a stripper well is disqualified as a result of temporary pressure buildup. Accordingly, the Commission is acting under its administrative and rulemaking authority set forth in section 501(a) of the NGPA to promulgate a rule that will provide for continuing qualification of stripper wells that experience temporary pressure buildups.

III. Summary of Regulations

Section 271.804 (Special rules) is being amended to add a rule which provides that a previously qualifying stripper well that produces gas in excess of an average of 60 Mcf per production day during any 90-day production period shall not be disqualified from stripper status if the jurisdictional agency finds that:

(A) The rate of production in excess of 60 Mcf per production day resulted solely from pressure buildup when the well was temporarily closed to the line;

(B) Total production for the relevant 90-day production period did not exceed 5400 Mcf;[2] and

(C) The well would have produced at a rate not exceeding 60 Mcf per production day during the relevant 90-

[1] Recently adopted modifications to the interim collection filing requirements applicable for stripper wells are set out fully in the Final Rule in Docket No. RM80-54, Amendment to Part 273 Regulations Under the Natural Gas Policy Act.

[2] The 5400 Mcf figure has been selected because it represents the maximum amount of gas that can be produced from a well during a 90-day production period if that well is to maintain its stripper well status, *i.e.*, 60 Mcf per day × 90 days = 5400 Mcf.

day production period had the well been continuously open to the line during that period.

Section 271.805 is amended to provide that if a well's production exceeds the 60 Mcf limit for any 90-day production period, the well operator may file with the jurisdictional agency a petition for a determination that the increased production is the result of temporary pressure buildup. The jurisdictional agency shall then make an affirmative or negative finding on the petition and forward such finding to the Commission for review. Sections 271.806 and 274.206 are amended to conform to this procedure.

IV. Effective Date

This interim rule relieves restrictions previously placed on applicants under the Commission's regulations. Accordingly, it is being made effective immediately. This rule shall not become final, however, until the Commission has had an opportunity to receive oral and written presentation of relevant data, views and arguments.

V. Public Procedure

A. Written Comments

Interested persons are invited to submit comments, data, views, or arguments with respect to this interim regulation. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket No. RM81-12. An original and 14 copies should be filed. All comments received prior to 4:30 p.m., February 20, 1981, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the public file that has been established in this docket. This file is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during regular business hours.

B. Public Hearing

Interested persons may request the opportunity for an oral presentation of their views at a public hearing. Requests for a hearing should be submitted no later than January 30, 1981, to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM81-12. If a public hearing is held in this docket, the time and place will be announced by February 5, 1981.

(Natural Gas Policy Act of 1978, (15 U.S.C. 3301-3432); Department of Energy Organization Act, (42 U.S.C. 7101, *et seq.*); E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission amends Subpart H, Chapter I, Title 18, Code of Federal Regulations, on an interim basis, as set forth below, effective immediately.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES

1. Section 271.804 is amended by adding new paragraph (e), to read as follows:

§ 271.804 Special rules.

* * * * *

(e) *Temporary pressure buildup in previously qualifying stripper wells.* (1) A previously qualifying stripper well which produces natural gas at a rate in excess of an average of 60 Mcf per production day during any 90-day production period shall not be disqualified if the jurisdictional agency finds pursuant to a petition filed under § 271.805 that:

(i) The rate of production in excess of 60 Mcf per production day is the result of pressure buildup which occurred when the well was temporarily shut-in;

(ii) Total production for the relevant 90-day production period did not exceed 5400 Mcf; and

(iii) Based on the well's production history and any other available data, the well could reasonably have been expected to produce at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period.

(2) A previously qualifying stripper well is a well which

(i) Has been determined by a jurisdictional agency to qualify as a stripper well pursuant to this subpart, and

(ii) Has not been disqualified prior to the 90-day production period in which the temporary pressure buildup occurs.

2. Section 271.805(b) is revised to read as follows:

§ 271.805 Continuing qualification.

* * * * *

(b) *Petition under § 271.806.* (1) The operator may file with the jurisdictional agency:

(i) A motion contesting a notice filed by a purchaser under paragraph (a) of this section;

(ii) A petition for a determination under § 271.806 that the increased production of natural gas is:

(A) The result of the application of an enhanced recovery technique;

(B) If the well has not been designated as seasonally affected, the result of seasonal fluctuations; or

(C) The result of pressure buildup which occurred when the well was temporarily shut-in.

(2) A petition or motion filed under paragraph (b)(1) of this section may be filed at any time after notice is given under paragraph (a) of this section. A copy of the petition or motion and of the notice required under paragraph (a)(1) of this section shall be provided to the Commission and to the purchaser.

3. Section 271.806 is amended by revising paragraph (a), to read as follows:

§ 271.806 Jurisdictional agency determination and Commission review.

(a) *Petition under §§ 271.804(d) and (e) and 271.803(a).* The jurisdictional agency shall treat the following petitions as if they were applications for initial determinations and shall comply with the applicable provisions of Subpart A of Part 274 of this chapter:

(1) Petitions to designate a well as seasonally affected pursuant to § 271.804(d);

(2) Petitions to determine that production is excess of an average of 60 Mcf per production day was due to,

(i) Use of recognized enhanced recovery techniques defined in § 271.803(a), or

(ii) Temporary pressure buildup pursuant to § 271.804(e).

* * * * *

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

4. Section 274.206 is amended by adding a new paragraph (e), to read as follows:

§ 271.806 Stripper well natural gas.

* * * * *

(e) *Determination of increased production resulting from temporary pressure buildup.* For purposes of a determination under § 271.806(a) that excess production resulted from temporary pressure buildup in the well bore, the applicant shall file:

(1) The name and addresses of the applicant and purchaser(s);

(2) An identification of the well and accurate reference to,

(i) The original determination qualifying the well as a stripper well, and

(ii) The notice, if any, filed by a purchaser pursuant to § 271.805(a);

(3) The monthly production reports, tax records or billing statements for the 90-day production period in question or, if permitted by the jurisdictional

agency's filing requirements, summaries of such records or billing statements;

(4) A statement of the total production for the period in question, and the average production per production day;

(5) A statement of the number of days the well was shut-in and a description of the reason for the shut-in.

(6) Engineering, geological and/or production data to support a finding that the increased rate of production was the result of a pressure buildup which occurred when the well was shut-in.

(7) A statement, under oath, that to the best of his information, knowledge and belief,

(i) The well would have produced at an average rate not exceeding 60 Mcf per production day during the relevant 90-day production period had the well been continuously open to the line during such period,

(ii) The information supplied is true, and

(iii) The petition for this determination has been served on the jurisdictional agency, the Commission, and any purchaser.

(8) If the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

[FR Doc. 81-2203 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Health Care Financing Administration

Office of Human Development Services

20 CFR Part 416

42 CFR Part 435

45 CFR Part 1396

Supplemental Security Income, Medicaid, and Social Security; Continuation of Benefits and Eligibility for Certain Severely Impaired Recipients Who Work

AGENCIES: Social Security Administration, Health Care Financing Administration, and Office of Human Development Services, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: These interim regulations implement sections 201 (a) and (b) of Pub. L. 96-265, which provide for the continuation of Supplemental Security Income (SSI) benefits and eligibility for Medicaid and title XX social services for certain severely impaired SSI recipients who work. States which elect to do so may augment these benefits with State supplementary payments. Sections 201 (a) and (b) are effective for a 3-year period beginning January 1, 1981. The regulations will affect severely impaired SSI recipients who work and have earnings, including those whose earnings exceed the established substantial gainful activity (SGA) limits. As long as their earnings and other income do not exceed income limits prescribed in the SSI program (20 CFR Part 416, Subpart K) these individuals may receive special SSI cash benefits. If, because of their earnings, their income exceeds the income limits, they may still be eligible for Medicaid and title XX benefits if they meet certain conditions. SSI recipients who are blind are also covered under this latter provision.

DATES: These regulations are effective on an interim basis starting January 1, 1981. Your comments must be received on or before March 23, 1981, to be considered in establishing the final rule.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. You may see copies of all comments we receive at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT:

For SSI: Fred Miranda, Legal Assistant, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7341.

For Medicaid: Richard Cody, Acting Director, Medicaid Eligibility, Room 416, East High Rise Building, Baltimore, Maryland 21235, (301) 594-9050.

For Title XX Program: Mrs. Johnnie V. Brooks, Room 722-E, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4415.

SUPPLEMENTARY INFORMATION:

Present Law and Regulations Governing the SSI Program

Under present law, an individual who is severely impaired may qualify for SSI disability payments only if he or she "* * * is unable to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (See 20 CFR 416.905). Under current regulations (20 CFR 416.974), SGA is principally described in terms of dollar amounts of earnings above which an individual is presumed to be engaging in SGA. Earnings over this amount ($300 a month in 1980) are generally considered to show ability to do SGA and, other than during a period of trial work, are a basis for stopping SSI benefits. The trial work period (TWP) is a period of up to 9 months, which do not have to be consecutive, during which an individual may test his or her ability to work and still be considered disabled (20 CFR 416.992).

Problems Under Present Policies

In recent years there has been concern that the SSI disability program may actually discourage recipients from trying to go back to work. A severely impaired individual who becomes ineligible for SSI benefits may also lose Medicaid and title XX social services since eligibility for these programs is frequently tied to receipt of SSI benefits. While earnings will at least partially offset the loss of SSI cash benefits, Medicaid and title XX social services are rarely replaced. Thus, a severely impaired recipient who is thinking of going to work may decide not to rather than face a combined loss of benefits under SSI and other programs which more than offset the potential gain from earnings.

Provisions of New Law

Pub. L. 96-265, "The Social Security Disability Amendments of 1980," enacted on June 9, 1980, contains several work incentive provisions. Section 201(a) of Pub. L. 96-265 offers work incentives through a 3-year demonstration project. This demonstration project provides that an individual with a disabling impairment who loses eligibility for regular SSI benefits based on disability because he or she works and demonstrates the ability to perform SGA may become eligible for special SSI cash benefits. These benefits are computed in the same way as the regular SSI benefits payable to individuals who are disabled. They may be augmented by State supplementary payments if a State elects to do so.

An individual may qualify for these special SSI cash benefits if—

(1) In the month before the month for which eligibility is being determined, he or she was eligible for regular SSI benefits, special SSI cash benefits or State supplementary payments; and

(2) In the month for which eligibility is being determined, he or she is not eligible for regular SSI benefits based on disability because he or she works and demonstrates the ability to engage in SGA.

The special SSI cash benefits are payable for months through December 1983 so long as the individual continues to have a disabling impairment and to meet all other requirements for SSI eligibility.

An individual who receives special SSI cash benefits maintains his or her SSI recipient status for purposes of eligibility for Medicaid and title XX social services. Thus, the individual may be determined eligible for Medicaid and title XX services on the same basis as a person who receives regular SSI benefits.

If an individual's earnings and other income are great enough to reduce his or her Federal SSI benefits to zero, eligibility for the special SSI cash benefit ends. (State supplementary payments may continue depending on the amount of his or her income). However, even if cash benefits are stopped because of earnings, a severely impaired or blind individual (under 65 years of age) who was eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments in the month before the first month for which eligibility is being determined, may still acquire a special SSI eligibility status for purposes of Medicaid and title XX social services. This special eligibility status, under which the individual is considered a blind or disabled individual receiving SSI benefits, applies for months through December 1983 as long as the individual: (1) continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the termination of eligibility for Medicaid or title XX social services; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the benefits (SSI, State supplementary payments, Medicaid and title XX social services) which would be available if he or she did not have those earnings.

The demonstration will produce information from which Congress can evaluate the effectiveness of the special benefits provisions in section 201(a) in promoting work by SSI recipients who are blind or have disabling impairments and consider any administrative problems that may arise. To facilitate this evaluation, the Social Security Administration is required to account separately for the funds that are spent in implementing sections 201 (a) and (b).

The Interim Regulations

These interim regulations describe the rules SSA will follow in implementing sections 201 (a) and (b) of Pub. L. 96–265. They explain the special SSI cash benefits that are available for severely impaired in individuals who work and demonstrate the ability to perform substantial gainful activity. They also describe the special SSI eligibility status that may apply to blind and severely impaired individuals who work and whose earnings cause him or her to have income that is too great to permit eligibility for SSI benefits, list the two criteria an individual must meet to receive the special benefits, and list the two additional criteria needed to acquire the special eligibility status. 20 CFR 416.261–416.262 discuss the special SSI cash benefits and explain when these benefits are payable. 20 CFR 416.264–416.269 provides similar information about the special SSI eligibility status under which an individual is considered a blind or disabled individual receiving SSI benefits for purposes of Medicaid and title XX social services. 20 CFR 416.266 explains that even though SSI payments have been stopped, an individual will continue to be considered an SSI recipient during the time it takes SSA to determine whether he or she qualifies for the special eligibility status. 20 CFR 416.268 specifically identifies the kinds of information SSA will have to obtain from other sources to determine whether an individual qualifies for the special eligibility status. 20 CFR 416.1402 explains that determinations of eligibility concerning the special SSI cash benefits and the special eligibility status are initial determinations subject to the same appeal procedures that apply to other SSI determinations. 20 CFR 416.2001 explains that a state which makes State supplementary payments has the option of making these payments to individuals who are eligible for the special SSI benefits.

When determining an individual's eligibility for the special SSI cash benefits and for the special SSI eligibility status, SSA will verfy that the individual continues to be blind or to have a disabling impairment (first criterion) by applying the rules in 20 CFR, Part 416, Subpart I (see 45 FR 55621). When determining whether an individual continues to meet all other requirements for SSI eligibility (second criterion), SSA will follow the rules in 20 CFR Part 416 Subpart B.

In determining whether the special SSI eligibility status applies SSA must also establish that the individual's ineligibility for SSI cash benefits is due to earnings from work which caused him or her to have excess income and that two additional criteria are met. The two additional criteria to be met for the special eligibility status are: (a) the individual's ability to continue working would be seriously inhibited by the termination of eligibility for Medicaid or title XX services (third criterion); and (b) the individual's earnings would be insufficient to provide a reasonable equivalent of benefits under title XVI (SSI), title XIX (Medicaid) and title XX (Social Services), which would be available to him or her in the absence of such earnings (fourth criterion).

To make a determination about the third criterion, SSA will first obtain a signed statement from the individual containing: (1) a description of services received under the Medicaid and title XX programs in the present month and in the previous 12 months, as well as the services he or she expects to need in the next 12 months; and (2) the names of the providers who have furnished services and the dates the services were provided. SSA will verify that services were provided when the statement shows that the individual has received Medicaid or title XX social services.

SSA will confirm the receipt of Medicaid services for the previous 12 months by obtaining information from the State Medicaid agency about the services received, dates of the services and amount paid for them. If the State Medicaid agency is unable to provide the information because it does not have an automated data processing system that is currently programmed to produce these data or if the information is not otherwise made available to SSA by the State, SSA will request the information from the appropriate Medicaid providers. The recipient may be required to assist in obtaining this information. Generally, SSA will accept recipient statements regarding the current month's use as well as expected use of Medicaid services.

SSA will confirm that title XX services were received by obtaining from the State title XX agency or provider, information concerning whether the individual is or was a recipient of title XX services for the previous 12 month period. As with Medicaid services, SSA will accept the recipient's statements with regard to the current month's use or future use of title XX services.

If past use can be established, or if there is no past use and the need for current services or future use of Medicaid or title XX services can be

established, the individual meets criterion three.

To determine if the fourth criterion is met, SSA will apply an initial screen based on a review of earnings. This will involve comparing the individual's gross earnings to a threshold amount. Briefly, the threshold amount (which is explained more fully later) is defined as the sum of the following:

(1) The minimum level of earnings for an individual with no other income, living in his or her own household, which will reduce that individual's SSI and State supplementary payments to zero;

(2) The average expenditures for Medicaid benefits for blind and disabled SSI recipients in the individual's State of residence; and

(3) The average expenditures for title XX social services for blind and disabled SSI recipients in the individual's State of residence.

SSA will base the gross earnings used in this comparison on the first quarter for which special eligibility status is being determined and on a projection for the next three quarters. Whenever possible, SSA will verify earnings by using documents in the individual's possession or through contacts with the individual's employer(s). If the individual's earnings are less than or equal to the threshold amount, he or she meets criterion four. If the earnings are greater than the threshold amount, the individual may still meet criterion four if SSA can establish that the actual sum of past medical and social services costs, together with the SSI and State supplementary amount described earlier in number one, are greater than his or her gross earnings. If the person's gross earnings are less than or equal to this amount, he or she meets criterion four. If they are greater, the person does not qualify for the special SSI eligibility status.

Explanation of the Threshold Amount

SSI and State Supplementary Amount

The first element of the threshold amount is the minimum level of earnings for an individual with no other income, living in his or her own household, which will reduce that individual's SSI and State supplementary payments to zero. The amount will vary from State to State depending upon the amount of any State supplementary payment. (The basic Federal SSI benefit is currently $238 a month or $2,856 for 12 months.)

For purposes of illustration, let us suppose that a State's supplementary payment to a person living in his or her own household equals $62 a month, or $744 for 12 months. In that case, the combined Federal and State benefit for 12 months would equal $3,600 ($744 + $2,856). To arrive at the amount of the first element used in the threshold we multiply the yearly benefit of $3,600 by 2 and add the yearly exclusions of $240 and $780 (See § 416.1112(c) (3) and (4)). In this example the first element of the threshold would be $8,220 for 12 months.

Adjusted Average Expenditures for Medicaid

The adjusted averages for Medicaid were obtained from information reported by the States for fiscal year (FY) 1977. Adjustments were made for the five States which did not report and all of the figures were adjusted for inflation (12% compounded annually). (States report this information on form HCFA 2082, *Statistical Report on Medical Care; Recipients' Payments and Services*, which was formerly form NCSS–2082).

Average Expenditures for Title XX

The title XX average recipient expenditures were obtained from service and unit cost information submitted by the States to the Office of Human Development Services (HDS) during Fiscal Year 1978, as part of the *Social Services Reporting Requirements*. Since Maryland and Alaska did not report, the national average of $664 was used for those States. This data is based on estimates and is highly variable; therefore, it will be utilized on a temporary basis only.

HDS is requesting that State title XX agencies make available to SSA their own average cost of services under title XX for their blind and disabled SSI population. Since this average cost can be developed from more recent (refined) financial data that is available at the State level, it will be more accurate than the estimates HDS has been able to develop from available, but less reliable, figures.

Rationale for the Threshold Amount Formula and Figures Used in that Formula

A threshold formula was developed as a means to implement criterion four for several reasons. It expedites the eligibility process by permitting a determination to be made without an individualized evaluation of the personal medical and social services expenses of every recipient who is being evaluated for special SSI eligibility. Also, in our view, it most closely approaches the Congressional intent in applying this criterion (as reflected in the House of Representatives Conference Report No. 96–944, page 50). This report makes clear that Congress intended that generally available State-by-State information be used in establishing reasonable income limits to carry our criterion four. Title XIX and XX agencies are the primary sources of this information.

Computations for the Medicaid and title XX figures are based on the most appropriate data available for use in light of the limited time we have to implement the program (which does not permit us to obtain additional figures on a State-by-State basis). We plan to use updated data when it becomes available. However, we welcome comments on the data we have used and on other approaches that might be used in determining the threshold figures.

Continuing Eligibility Under the Special Status Provision

Eligibility for the special SSI eligibility status will be reevaluated at least annually. The verification procedures for initial eligibility will be applied in these reevaluations.

Federal and State Responsibilities

Federal Responsibility

(1) If a blind or disabled individual is no longer eligible for a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment (see 20 CFR 416.2001), SSA will automatically evaluate the person for the special SSI eligibility status. Until SSA makes this determination, eligibility for Medicaid and title XX benefits on the basis of SSI status will continue as though the person were receiving SSI benefits. Federal financial participation will be available to States for the costs of otherwise reimbursable Medicaid and title XX services provided to an individual during the time it takes SSA to make the special SSI eligibility status determination, since the individual will be presumed to meet the requirements of this special status until it is determined otherwise. Even if it is later determined that the individual was ineligible for the special eligibility status, Medicaid and title XX services provided to the individual during the period of presumed eligibility would be proper State expenditures and thus qualify for Federal matching funds. SSA will notify the State Medicaid and title XX agencies via the State Data Exchange (SDX) system both when special eligibility status is under evaluation and when a special eligibility status determination has been made.

(2) The Health Care Financing Administration (HCFA) will be responsible for making available to SSA information concerning the initial and updated threshold amount figures for

Medicaid that will be used under criterion four. The Office of Human Development Services (HDS) will be responsible for making available to SSA information concerning the title XX threshold amount figures to be used initially under criterion four.

State Responsibility

(1) State title XX agencies, as indicated previously, will be responsible for making available to SSA more recent and refined title XX threshold amount figures.

Also, State title XX agencies, upon request from SSA, will be responsible for supplying SSA with the total cost of social services for an individual. This will require that each State utilize its comprehensive services plan in making a list of social services available to blind and disabled SSI recipients. This list will have to be updated in conjunction with changes in service plans. For each of these services a State will compute a total estimated unit cost. The actual cost of social services provided to a particular blind or disabled individual on the basis of his or her SSI status will be computed by multiplying the number of times an individual received a particular service by the unit cost of that service. These figures will then be added to give the total actual cost. This information will then be submitted to SSA. We believe these requests will provide a minimum burden since we anticipate that there will be very few instances when such a request will be made. In some cases, the State agency will have to obtain information on services a client received from the provider agency in order to determine the actual total cost of social services for that client.

(2) State Medicaid agencies, upon request, will be responsible for supplying SSA with an individual's client profile of medical services (services and dates received, provider and amount paid) if they have automated systems which are currently programmed to produce such data.

(3) When SSA informs State Medicaid agencies of an individual's pending special SSI eligibility status, the Medicaid agencies will be expected to obtain up-to-date third party liability (TPL) information from the individual, his or her employer(s) or other available sources (See TPL requirements under 42 CFR Part 433, Subpart D). This is necessary for purposes of claims payment since it is likely that an individual may have obtained health insurance through recent employment, while the State's last TPL inquiry may have been made when the person first became eligible for SSI benefits.

(4) For purposes of determining Medicaid eligibility, States must consider an individual who is being evaluated for or has been granted the special SSI eligibility status as a blind or disabled person receiving SSI benefits.

Some States have elected the option under section 1902(f) of the Act of applying Medicaid eligibility requirements for aged, blind or disabled individuals that are more restrictive than those used under SSI. Those States must allow all blind and disabled individuals who have the special SSI eligibility status the same opportunity to establish Medicaid eligibility under the State's more restrictive criteria, as those actually receiving SSI.

Amendments to Title 42

HCFA has amended Medicaid regulations at 42 CFR 435.120 to indicate that individuals who are eligible for the special SSI status under section 1619(b) of the Act are to be considered individuals receiving SSI. In addition, HCFA has made two technical changes. The first is made in 42 CFR 435.3 to add the statutory basis for these regulations. The second amended the definition of "categorically needy" in 42 CFR 435.4 to include those individuals who are considered under section 1619(b) to meet the financial requirements for SSI.

Amendments to Title 45

Currently, under title XX the definition of SSI in 45 CFR 1396.1 means monthly cash payments made by the Social Security Administration or State supplementary payments to individuals who meet the requirements for those payments under title XVI (SSI) of the Act. These rules revise the definition of SSI under title XX so that those disabled and blind individuals who meet the conditions specified in section 1619(b) may retain their income maintenance status as SSI recipients for purposes of title XX.

Modifications to accommodate the expanded definition of SSI are found at 45 CFR 1396.1 (definitions), 1396.56 (fifty-percent rule), and 1396.60 (persons eligible and access to services).

Section 1396.1 now is modified to define SSI so that the blind and disabled individuals described in section 1619(b) of the Act are added to the category of SSI recipients. Section 1396.56 is revised to permit States to include the cost of services to those individuals in meeting the fifty percent rule. Section 1396.60 is amended to simply refer to "recipients of SSI benefits" as one of the categories of individuals that would be eligible for title XX on the basis of income maintenance status.

Reasons for Interim Regulations

The Health Care Financing Administration, the Office of Human Development Services and the Social Security Administration are issuing these rules as interim regulations in order to comply with the legislative mandate in section 201 of Pub. L. 96-265. Publication of a Notice of Proposed Rulemaking under the particular circumstances here would be impracticable and contrary to the public interest since the amendments are effective on January 1, 1981 and there would be insufficient time to publish both a notice of proposed rulemaking and a final regulation. These regulations are immediately needed to carry out the Congressional intent of section 1619 to expand the benefits available to severely impaired recipients. It is in the pubic interest to promptly have available and to be informed of the rules SSA is using to implement the provisions of section 1619. Accordingly, the proposed rulemaking procedures of the Administrative Procedure Act are waived under the authority of 5 U.S.C. 553(b)(B).

Reporting Requirements

The Department is required to submit to OMB for review and approval § 416.268 of these regulations. This section concerns the need for affected recipients to provide SSA information about Medicaid and title XX social services usage. We need this information so that we may determine whether these recipients qualify for special eligibility status for purposes of Medicaid and title XX social services. This section also concerns the need for States and medical providers to supply verifying information. We are submitting the section to OMB for approval. In the meantime we are requesting individuals from whom this information is needed, as well as States and medical providers, to voluntarily comply with the provision. The Department will publish a notice in the **Federal Register** when OMB has completed its review of this provision.

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients; No. 13.714, Medical Assistance Program; and No. 13.807, Supplemental Security Income Program)

Dated: January 8, 1981.

William J. Driver,

Commissioner of Social Security.

Howard Newman,

Administrator of Health Care Financing Administration.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

Approved: January 14, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Title 20—Employees' Benefits

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 416 reads as follows:

Authority: Sec. 1102, 1611, 1616, 1618, 1619, 1631 and 1634 of the Social Security Act as amended. Sec. 212 of Pub. L. 93–66, as amended; 49 Stat. 647 as amended, 86 Stat. 1466, 1474, 1475, and 1478, 90 Stat. 2901, 87 Stat. 155, and 94 Stat. 445; 42 U.S.C. 1302, 1382e, 1382g, 1383, 1383c, 1382h and 1396.

2. New §§ 416.260–416.269 are added to read as follows:

Benefits for Persons with Disabling Impairments Who Perform SGA

Sec.

416.260 General.

Special SSI Cash Benefits

416.261 What are special SSI cash benefits and when are they payable.

416.262 Eligibility requirements for special SSI cash benfits.

416.263 No additional application needed.

416.264 When does the "special SSI eligibility status" apply.

416.265 Eligibility requirements for the special SSI eligibility status.

416.266 Continuation of SSI status for Medicaid and title XX social services.

How We Establish Your Special SSI Eligibility Status

416.267 General.

416.268 What is done to determine if you must have Medicaid or title XX services in order to work.

416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

Benefits for Persons with Disabling Impairments Who Perform SGA

§ 416.260 General.

These regulations describe the rules for determining eligibility for special SSI cash benefits and for a special SSI eligibility status for a person who works despite a disabling impairment. These benefits and this status are available for a 3-year period beginning January 1, 1981 and ending December 31, 1983. Under these rules a person who works despite a disabling impairment may qualify for special SSI cash benefits as well as for Medicaid and title XX social services when his or her earnings exceed the established SGA limits described in § 416.974(b). Also, for purposes of determining eligibility or continuing eligibility for Medicaid and title XX social services, a blind or medically impaired person (no longer eligible for SSI benefits) who, except for earnings, would otherwise be eligible for SSI benefits may be eligible for a special SSI eligibility status under which he or she is considered a blind or disabled individual receiving SSI benefits. We explain the rules for eligibility for special SSI cash benefits in §§ 416.261–416.262. We explain the rules for acquiring the special SSI eligibility status in §§ 416.264–416.269.

Special SSI Cash Benefits

§ 416.261 What are special SSI cash benefits and when are they payable.

Special SSI cash benefits are benefits that we may pay you for months during January 1, 1981 through December 31, 1983, if you are not eligible for regular SSI benefits because you demonstrate the ability to engage in SGA. You must meet the eligibility requirements in § 416.262 in order to receive special SSI cash benefits. Special SSI cash benefits are not payable for any month in which your countable income exceeds the limits established for the SSI program (see Subpart K of this part). If you are eligible for special SSI cash benefits, we consider you to be a disabled individual receiving SSI benefits for purposes of eligibility for Medicaid and title XX social services. We compute the amount of special SSI cash benefits according to the rules in Subpart D of this part. If your State makes supplementary payments which we administer under a Federal-State agreement, and if your State elects to supplement the special SSI cash benefits, the rules in Subpart T of this part will apply to these payments.

§ 416.262 Eligibility requirements for special SSI cash benefits.

You are eligible for special SSI cash benefits if you meet the following requirements—

(a) In the month before the month for which we are determining your eligibility for special SSI cash benefits, you were eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments (See § 416.2001);

(b) You are not eligible for a regular SSI benefit in the month for which we are making the determination because you demonstrate the ability to perform SGA;

(c) You continue to have a disabling impairment; and

(d) You continue to meet all the non-disability requirements for eligibility for SSI benefits (see subpart B).

We will follow the rules in this subpart in determining your eligibility for special SSI cash benefits.

§ 416.263 No additional application needed.

We do not require you to apply for special cash benefits nor is it necessary for you to apply to have the special SSI eligibility status determined. We will make these determinations automatically.

§ 416.264 When does the "special SSI eligibility status" apply.

The special SSI eligibility status applies only for purposes of establishing or maintaining your eligibility for Medicaid or title XX social services. For these purposes we continue to "consider you to be a blind or disabled individual receiving SSI benefits" even though you are in fact no longer receiving SSI benefits. You must meet the eligibility requirements in § 416.265 in order to qualify for the special SSI eligibility status.

§ 416.265 Eligibility requirements for the special SSI eligibility status.

In order to be eligible for the special SSI eligibility status you must be under age 65 and, in the month before the first month for which we are making the special status determination, you must have been eligible to receive a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment (see § 416.2001). Also we must establish that—

(a) You are blind or you continue to have a disabling impairment;

(b) Except for your earnings, you continue to meet all the non-disability requirements for eligibility for SSI benefits (see Subpart B);

(c) The termination of your eligibility for Medicaid or title XX social services would seriously inhibit your ability to continue working (see § 416.268); and

(d) Your earnings are not sufficient to allow you to provide yourelf with a reasonable equivalent of the benefits (SSI benefits, State supplementary payments, Medicaid, and title XX social services) which would be available to you if you did not have those earnings (see § 416.269).

§ 416.266 Continuation of SSI status for Medicaid and title XX social services.

If we stop your benefits because of your earnings and you are potentially eligible for the special SSI eligibility status you will continue to be considered and SSI recipient for purposes of eligibility for Medicaid and title XX social services during the time it takes us to determine whether the special eligibility status applies to you.

How We Establish Your Special SSI Eligibility Status

§ 416.267 General.

We determine whether the special SSI eligibility status applies to you by verifying that you continue to be blind or have a disabling impairment by applying the rules in Subpart I of this part, and by following the rules in this subpart to determine whether you meet the requirements in § 416.265(b). If you do not meet these requirements we determine that the special eligibility status does not apply. If you meet these requirements, then we apply special rules to determine if you meet the requirements of § 416.265 (c) and (d). If for the period being evaluated, you meet all of the requirements in § 416.265 we determine that the special status applies to you.

§ 416.268 What is done to determine if you must have Medicaid or title XX services in order to work.

(a) *What we establish.* To determine that you need Medicaid or title XX services in order to continue to work we must establish either:

(1) that you are currently using or have used Medicaid or title XX services during the period which began 12 months before our first contact with you to discuss this use; or

(2) where there was no past use, that you expect to use these services within the next 12 months.

(b) *Statement about use of services.* We will ask you for a signed statement which:

(1) describes the types and dates of services you received under Medicaid and title XX in the present month and in the past 12 months;

(2) the types of services that you expect to receive in the next 12 months; and

(3) the names of the providers who furnished past services to you.

(c) *Verification of services.* We then verify what you tell us in your statement about past services through the agencies administering the title XX or Medicaid programs in your State or, as necessary, from providers of the services. If you have not used Medicaid or title XX services in the past 12 months, we accept your statement (unless we have evidence to the contrary) concerning your expected use of Medicaid and title XX services as the verification we need to establish that you need these services in order to work.

§ 416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

We must determine whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings (see § 416.265(d)). In determining whether you meet this requirement, we compare your anticipated gross earnings, or a combination of anticipated and actual earnings (as appropriate) for the 12-month period beginning with the calendar quarter for which your special eligibility status is being determined to a threshold amount for your State of residence. This threshold amount consists of the sum of a 12-month period of three items, as follows:

(a) The amount of gross earnings after the exclusions in § 416.1112(c) (3) and (4) which equals the Federal SSI benefit and State supplementary payment for an individual living in his or her own household in the State where you reside. This amount will vary from State to State depending on the amount of the State supplementary payment;

(b) The average expenditures for Medicaid benefits for disabled cash recipients in your State of residence; and

(c) The average expenditures for title XX social services for blind and disabled SSI recipients in your State of residence.

You meet the requirements in § 416.265(d) if the comparison shows that your gross earnings are equal to or less than the applicable threshold amount for your State.

If our comparison shows that your gross earnings exceed the applicable threshold amount for your State we will establish (and use in a second comparison) the amount of the actual expenditures for Medicaid and title XX social services which you received during the appropriate 12-month period. If you have already completed the 12-month period for which we are determining your eligibility we will consider only the expenditures which apply to that period. In establishing the actual expenditures, we use both the information you provide in the signed statement required in § 416.268 and that which we obtain from the appropriate agencies and providers.

3. A new § 416.1332 is added to read as follows:

§ 416.1332 Termination of benefit for disabled individual: Exception.

Special SSI cash benefits (see § 416.261) will be payable in the period January 1, 1981 through December 31, 1983 if you meet eligibility requirements in § 416.262. These requirements apply if you, as a disabled recipient, are no longer eligible for regular SSI benefits because you demonstrate that you are able to engage in SGA.

4. Section 416.1402 is amended by revising paragraphs (f) and (g) and by adding paragraphs (h) and (i) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(f) Imposing penalties for failing to report important information;

(g) Your drug addiction or alcoholism;

(h) Whether you are eligible for special SSI cash benefits under § 416.262; and

(i) Whether you are eligible for special SSI eligibility status under § 416.265.

5. Section 416.2001 is amended by adding paragraph (d) to read as follows:

§ 416.2001 State supplementary payments; general.

* * * * *

(d) *Supplementary payments for recipients of special SSI cash benfits.* A State which makes supplementary payments (regardless of whether they are mandatory or optional and whether the payments are federally administered), has the option of making those payments to individuals who receive cash benefits under section 1619(a) of the Act (see § 416.261), or who would be eligible to receive cash benefits except for their income.

6. Section 416.2112 is revised to read as follows:

§ 416.2112 Limitations as to individuals covered by agreement to determine eligibility for medical assistance.

Determinations of Medicaid eligibility under an agreement are limited to individuals (a) who have been determined to be eligible individuals under title XVI of the Act; or (b) who are receiving a State supplementary payment which is federally administered, or both (see § 416.2003 and § 416.2052 in connection with federally administered State supplementary payments); or (c) who are eligible to receive benefits under section 1619(a) of the Act or who we consider to be blind or disabled individuals receiving supplemental security income benefits as provided in

section 1619(b) of the Act (see § 416.260).

Title 42—Public Health

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

Part 435 of Chapter IV of title 42 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102, 1619(b) and 1902 of the Social Security Act (42 U.S.C. 1302, 1382h and 1396a).

2. Section 435.3 is amended by adding citation 1619(b) in numerical order to read as follows:

§ 435.3 Basis.

This part implements the following sections of the Act, which state eligibility requirements and standards:

1619(b) Benefits for blind individuals or those with disabling impairments whose income equals or exceeds a specific SSI limit.

* * * * *

3. Section 435.4 is amended by revising the definition of "categorically needy" to read as follows:

§ 435.4 Definitions and use of terms.

As used in this part—

* * * * *

"Categorically needy" means aged, blind or disabled individuals or families and children (1) who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for AFDC, SSI, or an optional State supplement or are considered under section 1619(b) of the Act to be SSI recipients; or

(2) Whose categorical eligibility is protected by statute (e.g., persons receiving cost of living increases under § 435.135).

* * * * *

4. Section 435.120 is amended by revising paragraphs (a) and (b) and by adding a paragraph (c) to read as follows:

Mandatory Coverage of the Aged, Blind, and Disabled

§ 435.120 Individuals receiving SSI.

Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who receive SSI, including—

(a) Individuals receiving SSI pending a final determination of blindness or disability;

(b) Individuals receiving SSI under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources; and

(c) From January 1, 1981 until December 31, 1983, individuals considered to be receiving SSI under 1619(b) of the Act (blind individuals or those with disabling impairments whose income equals or exceeds a specific SSI limit). (See 20 CFR 416.263–416.269 for determinations of eligibility under this provision.)

Title 45—Public Welfare

PART 1396—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

Part 1396 of Chapter XIII of Title 45 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 1396 reads as follows:

Authority: Sec. 1102 of the Social Security Act as amended, Sec. 201(a) of Pub. L. 96–265; 495 Stat. 647 as amended, 94 Stat. 445; 42 U.S.C. 1302 and 1382h.

2. Section 1396.1 is amended by revising the definition of "SSI (Supplemental Security Income)" to read as follows:

§ 1396.1 Program definitions.

As used in this Part:

* * * * *

SSI (Supplemental Security Income) means the program authorized by title XVI of the Act to provide financial assistance to aged, blind, or disabled individuals under section 1611 or to disabled individuals under section 1619(a) of the Act. The definition includes State supplementary payments made under section 1616 of the Act or under section 212 of Pub. L. 93–66, and the special eligibility status available to certain blind or disabled individuals under section 1619(b) of the Act. Individuals who receive special SSI cash benefits or acquire the special eligibility status under section 1619 are deemed eligible for title XX on the basis of income maintenance status.

The provisions of section 1619 will expire on December 31, 1983.

* * * * *

3. Section 1396.56 is amended by revising paragraphs (a) introductory text, (a)(3), and (a)(4) to read as follows:

§ 1396.56 Fifty percent rule.

(a) As a minimum the State shall expend an amount of the aggregate expenditures (combined Federal and State) under the program equal to one-half of the Federal funds claimed on behalf of any or all of the individuals:

* * * * *

(3) Who receive SSI benefits, or are eligible to receive such benefits; or

(4) Whose income and resources are, or are eligible to be taken into account, in determining eligibility for SSI benefits, or

* * * * *

4. Section 1396.60 is amended by revising paragraph (b)(1)(iii) to read:

§ 1396.60 Persons eligible and access to services.

* * * * *

(b) * * *

(1) * * *

(iii) Recipients of SSI benefits.

* * * * *

[FR Doc. 81-2297 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7763]

Income Tax; Taxable Years Beginning After Dec. 31, 1953; Application of Conventions Under Class Life Asset Depreciation Range System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of conventions under the Class Life Asset Depreciation Range system (CLADR system). The regulations affect certain persons who use the CLADR system for the year in which they begin doing business or holding depreciable property for the production of income.

DATE: The regulations are effective for property placed in service after November 14, 1979, other than depreciable property with respect to which substantial expenditures were paid or incurred prior to November 15, 1979.

FOR FURTHER INFORMATION CONTACT: Benedetta A. Kissel of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224, Attention: CC:LR:T (202–566–3930, not a toll-free number).

Background

On November 15, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 167(m) of the Internal Revenue Code of 1954 (44 FR 65777). A public

hearing was held on March 27, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Section 167(a) allows a depreciation deduction for 2 categories of property: property used in a trade or business and property held for the production of income. These amendments to the regulations make clear that no depreciation is allowed under the CLADR system for the period prior to the month in which a taxpayer begins engaging in a trade or business or holding depreciable property for the production of income. Thus, the period prior to that month will not be included in the taxable year for purposes of applying a CLADR convention. In general, a CLADR convention determines when eligible property will be deemed placed in service during the taxable year.

Certain changes have been made to the regulations as proposed as a result of written and oral comments.

The amendments as proposed required a determination of the exact day on which the taxpayer began conducting a trade or business or holding depreciable property for the production of income. The final regulations require the less difficult determination of the month in which the relevant event occurs.

The final regulations also clarify the phrase "engaging in a trade or business" in certain respects. In particular, the regulations provide that for purposes of applying the CLADR conventions, employees are not considered engaged in a trade or business by virtue of employment. In addition, persons engaging in *de minimis* amounts of business are not treated as engaging in a trade or business for purposes of applying the conventions with respect to certain assets.

The amendments were proposed to be effective for property placed in service after November 14, 1979. In response to comments, the final regulations provide an exception for depreciable property placed in service after November 14, 1979, if substantial expenditures were paid or incurred prior to November 15, 1979, with respect to such property. This effective date, which is based upon the date of publication of the notice of proposed rulemaking, is considered necessary to control abusive tax shelters.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.167 (a)–11 is amended as follows:

1. Paragraph (c)(2)(iv) is amended by:

(a) Inserting "(*a*)" before the first sentence,

(b) Inserting "(*b*)" between the second and third sentences, and

(c) Deleting the last sentence and inserting instead new subdivisions (*c*), (*d*), and (*e*).

2. Paragraph (c)(4) is amended by adding new examples (7), (8), and (9).

§ 1.167(a)–11 Depreciation based on class lives and asset depreciation ranges for property placed in service after December 31, 1970.

* * * * *

(c) *Manner of determining allowances.* * * *

(2) *Conventions applied to additions and retirements.* * * *

(iv) *Rules of application.* * * *

(*c*) For purposes of this subparagraph, for property placed in service after November 14, 1979, other than depreciable property described in paragraph (c)(2)(iv)(*e*) of this section, the taxable year of the person placing such property in service does not include any month before the month in which the person begins engaging in a trade or business or holding depreciable property for the production of income.

(*d*) For purposes of paragraph (c)(2)(iv)(*c*) of this section, an employee is not considered engaged in a trade or business by virtue of employment. In addition, if a person engages in a small amount of trade or business activity for the purpose of obtaining a disproportionately large depreciation deduction for assets for the taxable year in which they are placed in service, and placing those assets in service represents a substantial increase in the person's level of business activity, then for purposes of depreciating those assets the person will not be treated as beginning a trade or business until the increased amount of business activity begins. For property held for the production of income, the principle of the preceding sentence applies.

(*e*) The rules in paragraph (c)(2)(iv) (*c*) and (*d*) of this section do not apply to depreciable property placed in service after November 14, 1979, with respect to which substantial expenditures were paid or incurred prior to November 15, 1979. For purposes of the preceding sentence, expenditures were paid or incurred prior to November 15, 1979. For purposes of the preceding sentence, expenditures will not be considered substantial unless they exceed the lesser of 30 percent of the final cost of the property or $10 million. Expenditures that are not includible in the basis of the depreciable property will be considered expenditures with respect to property if they are directly related to a specific project involving such property. For purposes of determining whether expenditures were paid or incurred prior to November 15, 1979, expenditures made by a person (transferor) other than the person placing the property in service (transferee) will be taken into account only if the basis of the property in the hands of the transferee is determined in whole or in part by reference to the basis in the hands of the transferor. The principle of the preceding sentence also applies if there are multiple transfers.

* * * * *

(4) *Examples.* * * *

Example (7). X, a calendar year corporation, is incorporated on July 1, 1978, and begins engaging in a trade or business in September 1979. X purchases asset A and places it in service on November 20, 1979. Substantial expenditures were not paid or incurred by X with respect to asset A prior to November 15, 1979. For purposes of applying the conventions under this section to determine depreciation for asset A, the 1979 taxable year is treated as consisting of 4 months. The first half of the taxable year ends on October 31, 1979, and the second half begins on November 1, 1979. X adopts the half-year convention. Asset A is treated as placed in service on November 1, 1979.

Example (8). On January 20, 1982, A, B, and C enter an agreement to form partnership P for the purpose of purchasing and leasing a ship to a third party, Z. P uses the calendar year as its taxable year. On December 15, 1982, P acquires the ship and leases it to Z. For purposes of applying the conventions, P begins its leasing business in December 1982, and its taxable year begins on December 1, 1982. Assuming that P elects to apply this section and adopts the modified half-year convention, P depreciates the ship placed in service in 1982 for the 1-month period beginning December 1, 1982, and ending December 31, 1982.

Example (9). A and B form partnership P on December 15, 1981, to conduct a business of leasing small aircraft. P uses the calendar year as its taxable year. On January 15, 1982, P acquires and places in service a $25,000 aircraft. P begins engaging in business with only one aircraft for the purpose of obtaining a disproportionately large depreciation deduction for aircraft that P plans to acquire at the end of the year. On December 10, 1982, P acquires and places in service 4 aircraft, the

total purchase price of which is $250,000. For purposes of applying the conventions to the aircraft acquired in December, P begins its leasing business in December 1982, and P's taxable year begins December 1, 1982, and ends December 31, 1982. Assuming that P elects to apply this section and adopts the modified half-year convention, P depreciates the aircraft placed in service in December 1982, for the 1-month period beginning December 1, 1982, and ending December 31, 1982. P depreciates the aircraft placed in service in January 1982, for the 12-month period beginning January 1, 1982, and ending December 31, 1982.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it subject to the effective date limitation of subsection (d) of section 553 of Title 5 of the United States Code.

This Treasury decision is issued under the authority contained in sections 167(m) (85 Stat. 508, 26 U.S.C. 167(m)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 16, 1981

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-2304 Filed 1-16-81; 4:51 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 7760]

Income Tax; Taxable Years Beginning After Dec. 31, 1953; Deduction for Contributions to Qualified Pension Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating principally to the deduction limitations on contributions to defined benefit pension plans. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law, and affect all employers with defined benefit pension plans.

DATE: The regulations are generally effective for employers' taxable years beginning in 1976, but earlier (or later) in the case of some plans as provided by the Employee Retirement Income Security Act of 1974.

FOR FURTHER INFORMATION CONTACT: Joel Horowitz of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6212).

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1978, the Internal Revenue Service published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 404(a) of the Internal Revenue Code of 1954 in the **Federal Register**, 43 FR 21695. The amendments were proposed to conform the regulations to section 1013(c) of the Employee Retirement Income Security Act of 1974 (88 Stat. 921). No public hearing was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted, as revised, by this Treasury decision.

The amendments primarily provide rules for applying the minimum funding requirement as a deduction limitation under section 404(a)(1)(A)(i) and for amortizing past service costs and experience gains and losses over a 10-year period under the deduction limitation of section 404(a)(1)(A)(iii).

Technical Adjustments

The general and special rules for computing the deductible limit for a plan year are clarified in the final regulations. These clarifications identify how plan assets are to be adjusted for various purposes in computing the deductible limit under section 404(a)(1)(A) of the Code.

Timing for Computations and Interest Adjustments

In response to comments from the public, the final regulations contain provisions fixing the time for computing with interest normal cost and limit adjustments under section 404(a)(1)(A) (ii) and (iii). The computation date is the date as of which contributions are assumed to be made, and interest is computed at the valuation rate from the computation date to the earlier of two dates, the last day of the plan year used to compute the deductible limit for the taxable year or the last day of that taxable year. These provisions are in addition to those relating to the maintenance of 10-year amortization bases.

Change in Assumptions Under Aggregate Cost Method

The comments express confusion regarding the establishment under the aggregate cost method of a 10-year amortization base for changes in actuarial assumptions. The final regulations resolve this problem by excepting plans using the aggregate cost method from that requirement.

Establishment of 10-Year Amortization Base for Change in Funding Method

In response to the comments, the final regulations contain a provision for establishing a 10-year amortization base for an increase or decrease in accrued liability resulting from a change in funding method.

Maintenance of 10-Year Amortization Base

Many technical problems raised in the comments regarding the maintenance of 10-year amortization bases can be resolved by the fresh start alternative under the regulations. Therefore, the final regulations do not address these problems. However, the final regulations authorize the Commissioner to approve alternative allocation mechanisms.

New provisions have been added to the final regulations in response to comments requesting guidance regarding the treatment of interest adjustments.

Use of Unfunded Liability in Applying Fresh Start Alternative for Combining Bases or in Establishing Initial 10-Year Amortization Base

In response to the comments, reference to unfunded accrued liability has been deleted in the final regulations from provisions relating to the fresh start alternative and the initial 10-year amortization base. By now referring only to unfunded liability, the final regulations remove the inference that plans of the spread gain type must compute an unfunded accrued liability under a funding method of the immediate gain type to comply with these provisions.

Effect of Full Funding Limit on 10-Year Amortization Base

The regulations explicitly state that the deductible limits under section 404(a)(1)(A) are subject to the full funding limitation. In response to the comments, the final regulations make it clear that the full funding limitation is not computed independently of section 412 for this purpose.

Transitional Rule

Many comments object to the requirement in the transitional rule that, for taxable years beginning on or after January 1, 1979, a plan must retroactively establish 10-year amortization bases for prior years. These comments view the transitional rule as mandatory and exclusive.

In fact, the transitional rule is merely an alternative under the regulations to the fresh start option and to the

provision for establishing an initial 10-year amortization base for existing plans. The final regulations clearly reflect this fact. Under the final regulations, the transitional rule is available for employers' taxable years beginning before April 22, 1981. Under the proposed regulations, it would have been available only for employers' taxable years beginning before January 1, 1979.

Future Guidance

Comprehensive examples illustrating the application of the regulations will be published at a later date.

Also, regulations to be proposed at a later date will address additional issues relating to the deductibility of contributions to plans maintained by more than one employer and plans maintained by members of a controlled group of corporations.

Drafting Information

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are hereby adopted subject to the changes to § 1.404(a)–14 set forth below.

Paragraph 1. Paragraph (b)(2) of § 1.404(a)–14, as set forth in the notice of proposed rulemaking, is amended by adding "changes in funding method," after "changes in actuarial assumptions," in the second sentence.

Par. 2. The first sentence of paragraph (b)(3) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(b) *Definitions.** * *

* * * * *

(3) *Limit adjustment.* The term "limit adjustment" with respect to any 10-year amortization base is the lesser of—

(i) The level annual amount necessary to amortize the base over 10 years using the valuation rate, or

(ii) The unamortized balance of the base,

in each case using absolute values (solely for the purpose of determining which is the lesser).* * *

* * * * *

Par. 3. Paragraph (d) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(d) *Computation of deductible limit for a plan year*—(1) *General rules.* The computation of the deductible limit for a plan year is based on the funding methods, actuarial assumptions, and benefit structure used for purposes of section 412, determined without regard to section 412(g) (relating to the alternative minimum funding standard), for the plan year. The method of valuing assets for purposes of section 404 must be the same method of valuing assets used for purposes of section 412.

(2) *Special adjustments of computations under section 412.* To apply the rules of this section (*i.e.*, rules regarding the computation of normal cost with aggregate type funding methods, unfunded liabilities, and the full funding limitation described in paragraph (k) of this section, where applicable) with respect to a given plan year in computing deductible limits under section 404(a)(1)(A), the following adjustments must be made:

(i) There must be excluded from the total assets of the plan the amount of any plan contribution for a plan year for which the plan was qualified under section 401(a), 403(a) or 405(a) that has not been previously deducted, even though that amount may have been credited to the funding standard account under section 412(b)(3). In the case of a plan using a spread gain funding method which maintains an unfunded liability (*e.g.*, the frozen initial liability method, but not the aggregate method), the amount described in the preceding sentence must be included in the unfunded liability of the plan.

(ii) There must be included in the total assets of the plan for a plan year the amount of any plan contribution that has been deducted with respect to a prior plan year, even though that amount is considered under section 412 to be contributed in a plan year subsequent to that prior plan year. In the case of a plan using a spread gain funding method which maintains an unfunded liability, the amount described in the preceding sentence must be excluded from the unfunded liability of the plan.

The special adjustments described in paragraph (d)(2) (i) and (ii) of this section apply on a year-by-year basis for purposes of section 404(a)(1)(A) only. Thus, the adjustments have no effect on the computation of the minimum funding requirement under section 412.

* * * * *

Par. 4. Paragraph (f) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(f) *Special computation rules under section 404(a)(1)(A) (ii) and (iii)*—(1) *In general.* Subject to the full funding limitation described in paragraph (k) of this section, the deductible limit under section 404(a)(1)(A) (ii) and (iii) is the normal cost of the plan (determined in accordance with paragraph (d) of this section).

(2) *Adjustments in calculating limit under section 404(a)(1)(A)(iii).* In calculating the deductible limit under section 404(a)(1)(A)(iii), the normal cost of the plan is—

(i) Decreased by the limit adjustments to any unamortized bases required by paragraph (g) of this section, for example, bases that are due to a net experience gain, a change in actuarial assumptions, a change in funding method, or a plan provision or amendment which decreases the accrued liability of the plan, and

(ii) Increased by the limit adjustments of any unamortized 10-year amortization bases required by paragraph (g) or (j) of this section, for example, bases that are due to a net experience loss, a change in actuarial assumptions, a change in funding method, or a plan provision or amendment which increases the accrued liability.

(3) *Timing for computations and interest adjustments under section 404 (a)(1)(A) (ii) and (iii).* Regardless of the actual time when contributions are made to a plan, in computing the deductible limit under section 404 (a)(1) (A) (ii) or (iii) the normal cost and limit adjustments shall be computed as of the date when contributions are assumed to be made ("the computation date") and adjusted for interest at the valuation rate from the computation date to the earlier of—

(i) The last day of the plan year used to compute the deductible limit for the taxable year, or

(ii) The last day of that taxable year. For additional provisions relating to the timing of computations and interest adjustments, see paragraph (h)(6) of this section (relating to the timing of computations and interest adjustments in the maintenance of 10-year amortization bases).

For taxable years beginning before April 22, 1981, computations under the preceding sentence may, as an

alternative, be based on prior published positions of the Internal Revenue Service under section 404(a).

(4) *Special limit under section 404(a)(1)(A)(ii).* If the deduction for the plan year is determined solely on the basis of section 404(a)(1)(A)(ii) (that is, without regard to clauses (i) or (iii)), the special limitation contained in section 404(a)(1)(A)(ii), regarding the unfunded cost with respect to any three individuals, applies, notwithstanding the rules contained in paragraphs (d)(2) and (f)(1) of this section.

* * * * *

Par. 5. Paragraph (g) is amended by revising subparagraph (2) and by adding a new subparagraph (4). These revised and added provisions read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(g) *Establishment of a 10-year amortization base.* * * *

(2) *Change in actuarial assumptions.* (i) If the creation of an amortization base is required under the rules of section 412(b)(2)(B)(v) or (3)(B)(iii) (as applied to the funding method used by the plan), a 10-year amortization base must be established at the time of a change in actuarial assumptions used to value plan liabilities. The amount of the base is the difference between the accrued liability calculated on the basis of the new assumptions and the accrued liability calculated on the basis of the old assumptions. Both computations of accrued liability are made as of the date of the change in assumptions.

(ii) A plan using a funding method of the spread gain type does not directly determine an accrued liability. If a plan using such a method is required under section 412(b)(2)(B)(v) or (3)(B)(iii) to create an amortization base, it must establish a base as described in paragraph (g)(2)(i) of this section for a change in actuarial assumptions by determining an accrued liability on the basis of another funding method (of the immediate gain type) that does determine an accrued liability. (The aggregate method is an example of a funding method that is not required under section 412(b)(2)(B)(v) or (3)(B)(iii) to create an amortization base.) The funding method chosen to determine the accrued liability of the plan in these cases must be the same method used to establish all other 10-year amortization bases maintained by the plan, if any. These bases must be maintained in accordance with paragraph (h) of this section.

* * * * *

(4) *Change in funding method.* If a change in funding method results in an increase or decrease in an unfunded liability required to be amortized under section 412, a 10-year base must be established equal to the increase or decrease in unfunded liability resulting from the change in funding method. The base must be maintained in accordance with paragraph (h) of this section.

* * * * *

Par. 6. Paragraph (h) is revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(h) *Maintenance of 10-year amortization base*—(1) *In general.* Each time a 10-year amortization base is established, whether by a change in funding method, by plan amendment, by change in actuarial assumptions, or by experience gains and losses, the base must, except as provided in paragraph (i) of this section, be separately maintained in order to determine when the unamortized amount of the base is zero. The sum of the unamortized balances of all of the 10-year bases must equal the plan's unfunded liability with the adjustments described in paragraph (d) of this section, if applicable. When the unamortized amount of a base is zero, the deductible limit is no longer adjusted to reflect the amortization of the base.

(2) *First year's base.* See either paragraph (g) or paragraph (i) of this section for rules applicable with respect to the first year of a base.

(3) *Succeeding year's base.* For any plan year after the first year of a base, the unamortized amount of the base is equal to—

(i) The unamortized amount of the base as of the valuation date in the prior plan year, plus

(ii) Interest at the valuation rate from the valuation date in the prior plan year to the valuation date in the current plan year on the amount described in subdivision (i), minus

(iii) The contribution described in paragraph (h)(4) of this section with respect to the base for the prior plan year.

The valuation date is the date as of which plan liabilities are valued under section 412(c)(9). If such a valuation is performed less often than annually for purposes of section 412, bases must be adjusted for purposes of section 404 each year as of the date on which a section 412 valuation would be performed were it required on an annual basis. See paragraph (b)(3) of this section for the definition of valuation rate.

(4) *Contribution allocation with respect to each base.* A portion of the total contribution for the prior plan year is allocated to each base. Generally, this portion equals the product of—

(i) The total contribution described in paragraph (h)(6) of this section with respect to all bases, and

(ii) The ratio of the amount described in paragraph (b)(3)(i) of this section with respect to the base to the sum (using true rather than absolute values) of such amounts with respect to all remaining bases.

However, if the result of this computation with respect to a particular base exceeds the amount necessary to amortize such base fully, the smaller amount shall be deemed the contribution made with respect to such base. The unallocated excess with respect to a now fully amortized base shall be allocated among the other bases as indicated above.

(5) *Other allocation methods.* The Commissioner may authorize the use of methods other than the method described in paragraph (h)(4) of this section for allocating contributions to bases.

(6) *Total contribution for all bases.* The contribution with respect to all bases for the prior plan year (see paragraph (h)(3)(iii) of this section) is the difference between—

(i) The sum of (A) the total deduction (including a carryover deduction) for the prior year, (B) interest on the actual contributions for the prior year (whether or not deductible) at the valuation rate for the period between the dates as of which the contributions are credited under section 412 and the valuation date in the current plan year, and (C) interest on the carryover described in section 404(a)(1)(D) that is available at the beginning of the prior taxable year at the valuation rate for the period between the current and prior valuation dates, and

(ii) The normal cost for the prior plan year and interest on it at the valuation rate from the date as of which the normal cost is calculated to the current valuation date.

(7) *Effect of failure to contribute normal cost plus interest on unamortized amounts.* The failure to make a contribution at least equal to the sum of the normal cost plus interest on the unamortized amounts has the following effects under the preceding rules of this section—

(i) It does not create a new base.

(ii) It results in an increase in the unamortized amount of each base and

consequently extends the time before the base is fully amortized.

(iii) The limit adjustment for any base is not increased (in absolute terms) even if the unamortized amount computed under paragraph (h) of this section exceeds the initial 10-year amortization base. Thus, if the total unamortized amount of the plan's bases at the beginning of the plan year is $100,000 (which is also the unfunded liability of the plan), and a required $50,000 normal cost contribution is not made for the plan year, the following effects occur. The total unamortized balance of the plan's bases increases by the $50,000 normal cost for the year (adjusted for interest), plus interest on the $100,000 balance of the bases; and, because of that increase, it will take a longer period to amortize the remaining balance of the bases. (The annual amortization amount does not change.)

(8) *Required adjustment to a 10-year base limit adjustment if valuation rate changed.* If there is a change in the valuation rate, the limit adjustment for all unamortized 10-year amortization bases must be changed, in addition to establishing a new base as provided in paragraph (g)(2) of this section. The new limit adjustment for any base is the level amount necessary to amortize the unamortized amount of the base over the remaining amortization period using the new valuation rate. The remaining amortization period of the base is the number of years at the end of which the unamortized amount of the base would be zero if the contribution made with respect to that base equaled the limit adjustment each year. This calculation of the remaining period is made on the basis of the valuation rate used before the change. Both the remaining amortization period and the revised limit adjustment may be determined through the use of standard annuity tables. The remaining period may be computed in terms of fractional years, or it may be rounded off to a full year. The unamortized amount of the base as of the valuation date and the remaining amortization period of that base shall not be changed by any change in the valuation rate.

Par. 7. Paragraph (i) is amended by:

1. Inserting ", as of the date the combination is made," after "equals the sum" in subparagraph (2);

2. Inserting "year" in lieu of "number" in the last sentence of subparagraph (3);

3. Inserting "the unamortized amount of" after "the level amount necessary to amortize" in the first sentence of subparagraph (4); and

4. Deleting "accrued" in the first sentence, and inserting "paragraphs (d) and (f)" in lieu of "paragraph (d)" in the second sentence, of subparagraph (5).

Par. 8. Paragraph (j) is amended by deleting "accrued" from the second, third, seventh, and eighth sentences; removing "accrued plan" from the fifth sentence; and inserting "paragraphs (d) and (f)" in lieu of "paragraph (d)" in the second and eighth sentences of subparagraph (3).

Par. 9. Paragraph (k) is amended by inserting "section 412 and paragraphs (d), (e), and (f)" in lieu of "paragraph (d)" in the second sentence and by inserting "deductible contribution (including carryover)" in lieu of "contribution" in the third sentence.

Par. 10. Paragraphs (l) and (m) are revised to read as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

* * * * *

(l) *Transitional rules*—(1) *Plan years beginning before April 22, 1981.* In determining the deductible limit for plan years beginning before April 22, 1981, a contribution will be deductible under section 404(a)(1)(A) if the computation of the deductible limit is based on an interpretation of section 404(a)(1)(A) that is reasonable when considered with prior published positions of the Internal Revenue Service. A computation of the deductible limit may satisfy the preceding sentence even if it does not satisfy the rules contained in paragraphs (c) through (i) of this section.

(2) *Transitional approaches.* The deductible limit determined for the first plan year with respect to which a plan applies the rules contained in paragraphs (c) through (i) of this section must be computed using one of the following approaches—

(i) The plan (whether or not in existence before the effective date of section 404(a)) may apply the rules of paragraph (j) for establishing the initial base for an existing plan, treating 10-year bases (if any) as 10 percent bases in adding bases.

(ii) The plan may apply the fresh start alternative for combining bases under paragraph (i)(5).

(iii) The plan may retroactively establish 10-year amortization bases for years with respect to which section 404(a)(1)(A) and the rules of this section would have applied but for the transition rule contained in paragraph (l)(1) of this section. Contributions actually deducted are used in retroactively establishing and maintaining these bases under paragraph (h). However, a deduction already taken shall not be recomputed because of the retroactive establishment of a base.

(m) *Effective date of section 404 (a).* In the case of a plan which was in existence on January 1, 1974, section 404 (a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after December 31, 1974. In the case of a plan not in existence on January 1, 1974, section 404 (a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after September 4, 1974. See § 1.410 (a)–2 (c) for rules concerning the time of plan existence. See also § 1.410 (a)–2 (d), which provides that a plan in existence on January 1, 1974, may elect to have certain provisions, including the amendments to section 404 (a) contained in section 1013 of the Employee Retirement Income Security Act of 1974, apply to a plan year beginning after September 2, 1974, and before the otherwise applicable effective date contained in that section.

Par. 11. Paragraph (n) is removed.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: January 13, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

Section 1.404(a)–14 is revised as follows:

§ 1.404(a)–14 Special rules in connection with the Employee Retirement Income Security Act of 1974.

(a) *Purpose of this section.* This section provides rules for determining the deductible limit under section 404(a)(1)(A) of the Internal Revenue Code of 1954 for defined benefit plans.

(b) *Definitions.* For purposes of this section—

(1) *Section 404(a).* The term "old section 404(a)" means section 404(a) as in effect on September 1, 1974. Any reference to section 404 without the designation "old" is a reference to section 404 as amended by the Employee Retirement Income Security Act of 1974.

(2) *Ten-year amortization base.* The term "10-year amortization base" means either the past service and other supplementary pension and annuity credits described in section 404(a)(1)(A)(iii) or any base established in accordance with paragraph (g) of this section. A plan may have several 10-year amortization bases to reflect different plan amendments, changes in

actuarial assumptions, changes in funding method, and experience gains and losses of previous years.

(3) *Limit adjustment.* The term "limit adjustment" with respect to any 10-year amortization base is the lesser of—

(i) The level annual amount necessary to amortize the base over 10 years using the valuation rate, or

(ii) The unamortized balance of the base,

in each case using absolute values (solely for the purpose of determining which is the lesser). To compute the level amortization amount, the base may be divided by the present value of an annuity of one dollar, obtained from standard annuity tables on the basis of a given interest rate (the valuation rate) and a known period (the amortization period).

(4) *Absolute value.* The term "absolute value" for any number is the value of that number, treating negative numbers as if they were positive numbers. For example, the absolute value of 5 is 5 and the absolute value of minus 3 is 3. On the other hand, the true value of minus 3 is minus 3. This term is relevant to the computation of the limit adjustment described in paragraph (b)(3) and the remaining amortization period of combined bases described in paragraph (i)(3) of this section.

(5) *Valuation rate.* The term "valuation rate" means the assumed interest rate used to value plan liabilities.

(c) *Use of plan in determining deductible limit for employer's taxable year.* Although the deductible limit applies for an employer's taxable year, the deductible limit is determined on the basis of a plan year. If the employer's taxable year coincides with the plan year, the deductible limit for the plan year that coincides with that year. If the employer's taxable year does not coincide with the plan year, the deductible limit under section 404(a)(1)(A) (i), (ii), or (iii) for a given taxable year of the employer is one of the following alternatives:

(1) The deductible limit determined for the plan year commencing within the taxable year.

(2) The deductible limit determined for the plan year ending within the taxable year, or

(3) A weighted average of alternatives (1) and (2). Such an average may be based, for example, upon the number of months of each plan year falling within the taxable year.

The employer must use the same alternative for each taxable year unless consent to change is obtained from the Commissioner under section 446 (e).

(d) *Computation of deductible limit for a plan year*—(1) *General rules.* The computation of the deductible limit for a plan year is based on the funding methods, actuarial assumptions, and benefit structure used for purposes of section 412, determined without regard to section 412(g) (relating to the alternative minimum funding standard), for the plan year. The method of valuing assets for purposes of section 404 must be the same method of valuing assets used for purposes of section 412.

(2) *Special adjustments of computations under section 412.* To apply the rules of this section (*i.e.*, rules regarding the computation of normal cost with aggregate type funding methods, unfunded liabilities, and the full funding limitation described in paragraph (k) of the section, where applicable) with respect to a given plan year in computing deductible limits under section 404 (a)(1)(A), the following adjustments must be made:

(i) There must be excluded from the total assets of the plan the amount of any plan contribution for a plan year for which the plan was qualified under section 401(a), 403(a) or 405(a) that has not been previously deducted, even though that amount may have been credited to the funding standard account under section 412(b)(3). In the case of a plan using a spread gain funding method which maintains an unfunded liability (*e.g.*, the frozen initial liability method, but not the aggregate method), the amount described in the preceding sentence must be included in the unfunded liability of the plan.

(ii) There must be included in the total assets of the plan for a plan year the amount of any plan contribution that has been deducted with respect to a prior plan year, even though that amount is considered under section 412 to be contributed in a plan year subsequent to that prior plan year. In the case of a plan using a spread gain funding method which does not maintain an unfunded liability, the amount described in the preceding sentence must be excluded from the unfunded liability of the plan.

The special adjustments described in paragraph (d)(2) (i) and (ii) of this section apply on a year-by-year basis for purposes of section 404(a)(1)(A) only. Thus, the adjustments have no effect on the computation of the minimum funding requirement under section 412.

(e) *Special computation rules under section 404(a)(1)(A)(i)*—(1) *In general.* For purposes of determining the deductible limit under section 404(a)(1)(A)(i), the deductible limit with respect to a plan year is the sum of—

(i) The amount required to satisfy the minimum funding standard of section 412(a) (determined without regard to section 412(g)) for the plan year and

(ii) An amount equal to the includible employer contributions.

The term "includible employer contributions" means employer contributions which were required by section 412 for the plan year immediately preceding such plan year, and which were not deductible under section 404(a) for the prior taxable year of the employer solely because they were not contributed during the prior taxable year (determine with regard to section 404(a)(6)).

(2) *Rule for an employer using alternative minimum funding standard account and computing its deduction under section 404(a)(1)(A)(i).* This paragraph (e)(2) applies if the minimum funding requirements for the plan are determined under the alternative minimum funding standard described in section 412(g) for both the current plan year and the immediately preceding plan year. In that case, the deductible limit under section 404(a)(1)(A)(i) (regarding the minimum funding requirement of section 412) for the current year is the sum of the amount determined under the rules of paragraph (e)(1) of this section.

(i) Plus the charge under section 412(b)(2)(D), and

(ii) Less the credit under section 412(b)(3)(D),

that would be required if in the current plan year the use of the alternative method were discontinued.

(f) *Special computation rules under section* 404(a)(1)(A) (ii) and (iii)—(1) *In general.* Subject to the full funding limitation described in paragraph (k) of this section, the deductible limit under section 404(a)(1)(A)(ii) and (iii) is the normal cost of the plan (determined in accordance with paragraph (d) of this section).

(2) *Adjustments in calculating limit under section 404 (a)(1)(A)(iii).* In calculating the deductible limit under section 404(a)(1)(A)(iii), the normal cost of the plan is—

(i) Decreased by the limit adjustments to any unamortized bases required by paragraph (g) of this section, for example, bases that are due to a net experience gain, a change in actuarial assumptions, a change in funding method, or a plan provision or amendment which decreases the accrued liability of the plan, and

(ii) Increased by the limit adjustments of any unamortized 10-year amortization bases required by paragraph (g) or (j) of this section, for example, bases that are due to a net experience loss, a change in

actuarial assumptions, a change in funding method, or a plan provision or amendment which increases the accrued liability.

(3) *Timing for computations and interest adjustments under section 404(a)(1)(A) (ii) and (iii).* Regardless of the actual time when contributions are made to a plan, in computing the deductible limit under section 404(a)(1)(A) (ii) and (iii) the normal cost and limit adjustments shall be computed as of the date when contributions are assumed to be made ("the computation date") and adjusted for interest at the valuation rate from the computation date to the earlier of—

(i) The last day of the plan year used to compute the deductible limit for the taxable year, or

(ii) The last day of that taxable year. For additional provisions relating to the timing of computations and interest adjustments, see paragraph (h)(6) of this section (relating to the timing of computations and interest adjustments in the maintenance of 10-year amortization bases). For taxable years beginning before April 22, 1981, computations under the preceding sentence may, as an alternative, be based on prior published positions of the Internal Revenue Service under section 404(a).

(4) *Special limit under section 404(a)(1)(A)(ii).* If the deduction for the plan year is determined solely on the basis of section 404(a)(1)(A)(ii) (that is, without regard to clauses (i) or (iii)), the special limitation contained in section 404(a)(1)(A)(ii), regarding the unfunded cost with respect to any three individuals, applies, notwithstanding the rules contained in paragraphs (d)(2) and (f)(1) of this section.

(g) *Establishment of a 10-year amortization base*—(1) *Experience gains and losses.* In the case of a plan valued by the use of a funding method which is an immediate gain type of funding method (and therefore separately amortizes rather than includes experience gains and losses as a part of the normal cost of the plan), a 10-year amortization base must be established in any plan year equal to the net experience gain or loss required under section 412 to be determined with respect to that plan year. The base is to be maintained in accordance with paragraph (h) of this section. Such a base must not be established if the deductible limit is determined by use of a funding method which is a spread gain type of funding method (under which experience gains and losses are spread over future periods as a part of the plan's normal cost). Examples of the immediate gain type of funding method are the unit credit method, entry age normal cost method, and the individual level premium cost method. Examples of the spread gain type of funding method are the aggregate cost method, frozen initial liability cost method, and the attained age normal cost method.

(2) *Change in actuarial assumptions.* (i) If the creation of an amortization base is required under the rules of section 412(b) (2)(B)(v) or (3)(B)(iii) (as applied to the funding method used by the plan), a 10-year amortization base must be established at the time of a change in actuarial assumptions used to value plan liabilities. The amount of the base is the difference between the accrued liability calculated on the basis of the new assumptions and the accrued liability calculated on the basis of the old assumptions. Both computations of accrued liability are made as of the date of the change in assumptions.

(ii) A plan using a funding method of the spread gain type does not directly determine an accrued liability. If a plan using such a method is required under section 412(b) (2)(B)(v) or (3)(B)(iii) to create an amortization base, it must establish a base as described in paragraph (g)(2)(i) of this section for a change in actuarial assumptions by determining an accrued liability on the basis of another funding method (of the immediate gain type) that does determine an accrued liability. (The aggregate method is an example of a funding method that is not required under section 412(b) (2)(B)(v) or (3)(B)(iii) to create an amortization base.) The funding method chosen to determine the accrued liability of the plan in these cases must be the same method used to establish all other 10-year amortization bases maintained by the plan, if any. These bases must be maintained in accordance with paragraph (h) of this section.

(3) *Past service or supplemental credits.* A 10-year base must be established when a plan is established or amended, if the creation of an amortizable base is required under the rules of section 412(b)(2)(B) (ii) or (iii), or (b)(3)(B)(i) (as applied to the funding method used by the plan). The amount of the base is the accrued liability arising from, or the decrease in accrued liability resulting from, the establishment or amendment of the plan. The base must be maintained in accordance with paragraph (h) of this section.

(4) *Change in funding method.* If a change in funding method results in an increase or decrease in an unfunded liability required to be amortized under section 412, a 10-year base must be established equal to the increase or decrease in unfunded liability resulting from the change in funding method. The base must be maintained in accordance with paragraph (h) of this section.

(h) *Maintenance of 10-year amortization base*—(1) *In general.* Each time a 10-year amortization base is established, whether by a change in funding method, by plan amendment, by change in actuarial assumptions, or by experience gains and losses, the base must, except as provided in paragraph (i) of this section, be separately maintained in order to determine when the unamortized amount of the base is zero. The sum of the unamortized balances of all of the 10-year bases must equal the plan's unfunded liability with the adjustments described in paragraph (d) of this section, if applicable. When the unamortized amount of a base is zero, the deductible limit is no longer adjusted to reflect the amortization of the base.

(2) *First year's base.* See either paragraph (g) or paragraph (i) of this section for rules applicable with respect to the first year of a base.

(3) *Succeeding year's base.* For any plan year after the first year of a base, the unamortized amount of the base is equal to—

(i) The unamortized amount of the base as of the valuation date in the prior plan year, plus

(ii) Interest at the valuation rate from the valuation date in the prior plan year to the valuation date in the current plan year on the amount described in subdivision (i), minus

(iii) The contribution described in paragraph (h)(4) of this section with respect to the base for the prior plan year.

The valuation date is the date as of which plan liabilities are valued under section 412(c)(9). If such a valuation is performed less often than annually for purposes of section 412, bases must be adjusted for purposes of section 404 each year as of the date on which a section 412 valuation would be performed were it required on an annual basis. See paragraph (b)(3) of this section for the definition of valuation rate.

(4) *Contribution allocation with respect to each base.* A portion of the total contribution for the prior plan year is allocated to each base. Generally, this portion equals the product of—

(i) The total contribution described in paragraph (h)(6) of this section with respect to all bases, and

(ii) The ratio of the amount described in paragraph (b)(3)(i) of this section with respect to the base to the sum (using true rather than absolute values) of such

amounts with respect to all remaining bases.

However, if the result of this computation with respect to a particular base exceeds the amount necessary to amortize such base fully, the smaller amount shall be deemed the contribution made with respect to such base. The unallocated excess with respect to a now fully amortized base shall be allocated among the other bases as indicated above.

(5) *Other allocation methods.* The Commissioner may authorize the use of methods other than the method described in paragraph (h)(4) of this section for allocating contributions to bases.

(6) *Total contribution for all bases.* The contribution with respect to all bases for the prior plan year (see paragraph (h)(3)(iii) of this section) is the difference between—

(i) The sum of (A) the total deduction (including a carryover deduction) for the prior year, (B) interest on the actual contributions for the prior year (whether or not deductible) at the valuation rate for the period between the dates as of which the contributions are credited under section 412 and the valuation date in the current plan year, and (C) interest on the carryover described in section 404(a)(1)(D) that is available at the beginning of the prior taxable year at the valuation rate for the period between the current and prior valuation dates, and

(ii) The normal cost for the prior plan year and interest on it at the valuation rate from the date as of which the normal cost is calculated to the current valuation date.

(7) *Effect of failure to contribute normal cost plus interest on unamortized amounts.* The failure to make a contribution at least equal to the sum of the normal cost plus interest on the unamortized amounts has the following effects under the preceding rules of this section—

(i) It does not create a new base.

(ii) It results in an increase in the unamortized amount of each base and consequently extends the time before the base is fully amortized.

(iii) The limit adjustment for any base is not increased (in absolute terms) even if the unamortized amount computed under paragraph (h) of this section exceeds the initial 10-year amortization base. Thus, if the total unamortized amount of the plan's bases at the beginning of the plan year is $100,000 (which is also the unfunded liability of the plan), and a required $50,000 normal cost contribution is not made for the plan year, the following effects occur. The total unamortized balance of the plan's bases increases by the $50,000 normal cost for the year (adjusted for interest), plus interest on the $100,000 balance of the bases; and, because of that increase, it will take a longer period to amortize the remaining balance of the bases. (The annual amortization amount does not change.)

(8) *Required adjustment to a 10-year base limit adjustment if valuation rate changed.* If there is a change in the valuation rate, the limit adjustment for all unamortized 10-year amortization bases must be changed, in addition to establishing a new base as provided in paragraph (g)(2) of this section. The new limit adjustment for any base is the level amount necessary to amortize the unamortized amount of the base over the remaining amortization period using the new valuation rate. The remaining amortization period of the base is the number of years at the end of which the unamortized amount of the base would be zero if the contribution made with respect to that base equaled the limit adjustment each year. This calculation of the remaining period is made on the basis of the valuation rate used before the change. Both the remaining amortization period and the revised limit adjustment may be determined through the use of standard annuity tables. The remaining period may be computed in terms of fractional years, or it may be rounded off to a full year. The unamortized amount of the base as of the valuation date and the remaining amortization period of that base shall not be changed by any change in the valuation rate.

(i) *Combining bases*—(1) *General method.* For purposes of section 404 only, and not for purposes of section 412, different 10-year amortization bases may be combined into a single 10-year amortization base if such single base satisfies all of the requirements of paragraph (i) (2), (3), and (4) of this section at the time of the combining of the different bases.

(2) *Unamortized amount.* The unamortized amount of the single base equals the sum, as of the date the combination is made, of the unamortized amount of the bases being combined (treating negative bases as having negative unamortized amounts).

(3) *Remaining amortization period.* The remaining amortization period of the single base is equal to (i) the sum of the separate products of (A) the unamortized amount of each of these bases (using absolute values) and (B) its remaining amortization period, divided by (ii) the sum of the unamortized amounts of each of the bases (using absolute values). For purposes of this paragraph (i)(3), the remaining amortization period of each base being combined is that number of years at the end of which the unamortized amount of the base would be zero if the contribution made with respect to that base equaled the limit adjustment of that base in each year. This number may be determined through the use of standard annuity tables. The remaining amortization period described in this paragraph may be computed in terms of fractional years, or it may be rounded off to a whole year.

(4) *Limit Adjustment.* The limit adjustment for the single base is the level amount necessary to amortize the unamortized amount of the combined base over the remaining amortization period described in paragraph (i)(3) of this section, using the valuation rate. This amount may be determined through the use of standard annuity tables.

(5) *Fresh start alternative.* In lieu of combining different 10-year amortization bases, a plan may replace all existing bases with one new 10-year amortization base equal to the unfunded liability of the plan as of the time the new base is being established. This unfunded liability must be determined in accordance with the general rules of paragraphs (d) and (f) of this section. The unamortized amount of the base and the limit adjustment for the base will be determined as though the base were newly established.

(j) *Initial 10-year amortization base for existing plan*—(1) *In General.* In the case of a plan in existence before the effective date of section 404(a), the 10-year amortization base on the effective date of section 404(a) is the sum of all 10 percent bases existing immediately before section 404(a) became effective for the plan, determined under the rules of old section 404(a).

(2) *Limit adjustment.* The limit adjustment for the initial base is the lesser of the unamortized amount of such base or the sum of the amounts determined under paragraph (b)(3) of this section using the original balances of the remaining bases (under old section 404(a) rules) as the amount to be amortized.

(3) *Unamortized amount.* The employer may choose either to establish a single initial base reflecting both all prior 10-percent bases and the experience gain or loss for the immediately preceding actuarial period, or to establish a separate base for the

prior 10-percent bases and another for the experience gain or loss for the immediately preceding period. If the initial 10-year amortization base reflects the net experience gain or loss from the immediately preceding actuarial period, the unamortized amount of the initial base shall equal the total unfunded liability on the effective date of section 404(a) determined in accordance with the general rules of paragraphs (d) and (f) of this section. If, however, a separate base will be used to reflect that gain or loss, the unamortized amount of the initial base shall equal such unfunded liability on the effective date of section 404(a), reduced by the net experience loss or increased by the net experience gain for the immediately preceding actuarial period. In this case, a separate 10-year amortization base must be established on the effective date equal to the net experience gain or loss. Thus, if the effective date unfunded liability is $100,000 and an experience loss of $15,000 is recognized on that date, and if the loss is to be treated as a separate base, the unamortized balances of the two bases would be $85,000 and $15,000. If the unfunded liability were the same $100,000, but a gain of $15,000 instead of a loss were recognized on that date, the unamortized balances of the two bases would be $115,000 and a credit base of $15,000. In both cases, if only one 10-year base is to be established on the effective date, its unamortized balance would be $100,000 (the unfunded liability of the plan). See paragraphs (d) and (f) for rules for determining the unfunded liability of the plan.

(k) *Effect of full funding limit on 10-year-amortization bases.* The amount deductible under section 404(a)(1)(A) (i), (ii), or (iii) for a plan year may not exceed the full funding limitation for that year. See section 412 and paragraphs (d), (e), and (f) of this section for rules to be used in the computation of the full funding limitation. If the total deductible contribution (including carryover) for a plan year equals or exceeds the full funding limitation for the year, all 10-year amortization bases maintained by the plan will be considered fully amortized, and the deductible limit for subsequent plan years will not be adjusted to reflect the amortization of these bases.

(l) *Transitional rules*—(1) *Plan years beginning before April 22, 1981.* In determining the deductible limit for plan years beginning before April 22, 1981, a contribution will be deductible under section 404(a)(1)(A) if the computation of the deductible limit is based on an interpretation of section 404(a)(1)(A) that is reasonable when considered with prior published positions of the Internal Revenue Service. A computation of the deductible limit may satisfy the preceding sentence even if it does not satisfy the rules contained in paragraphs (c) through (i) of this section.

(2) *Transitional approaches.* The deductible limit determined for the first plan year with respect to which a plan applies the rules contained in paragraphs (c) through (i) of this section must be computed using one of the following approaches—

(i) The plan (whether or not in existence before the effective date of section 404(a)) may apply the rules of paragraph (j) for establishing the initial base for an existing plan, treating 10-year bases (if any) as 10 percent bases in adding bases.

(ii) The plan may apply the fresh start alternative for combining bases under paragraph (i)(5).

(iii) The plan may retroactively establish 10-year amortization bases for years with respect to which section 404(a)(1)(A) and the rules of this section would have applied but for the transition rule contained in paragraph (l)(1) of this section. Contributions actually deducted are used in retroactively establishing and maintaining these bases under paragraph (h). However, a deduction already taken shall not be recomputed because of the retroactive establishment of a base.

(m) *Effective date of section 404(a).* In the case of a plan which was in existence on January 1, 1974, section 404(a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after December 31, 1974. In the case of a plan not in existence on January 1, 1974, section 404(a) generally applies for contributions on account of taxable years of an employer ending with or within plan years beginning after September 4, 1974. See § 1.410(a)–2(c) for rules concerning the time of plan existence. See also § 1.410(a)–2(d), which provides that a plan in existence on January 1, 1974, may elect to have certain provisions, including the amendments to section 404(a) contained in section 1013 of the Employee Retirement Income Security Act of 1974, apply to a plan year beginning after September 2, 1974, and before the otherwise applicable effective date contained in that section.

[FR Doc. 81-2300 Filed 1-16-81; 4:45 pm]

BILLING CODE 4830-01-M

26 CFR Part 1

[T. D. 7756]

Income Tax; Taxable Years Beginning After December 31, 1953; LIFO Conformity Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the financial reporting conformity requirement incident to the use of the last-in, first-out (LIFO) method of inventory accounting. These regulations provide the public with guidance needed to comply with that requirement and affect taxpayers using the LIFO method for Federal income tax purposes.

DATES: Except as otherwise provided in the regulations, the regulations apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

FOR FURTHER INFORMATION CONTACT: Geoffrey B. Lanning of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Attention: CC:LR:T 202–566–3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 472 of the Internal Revenue Code of 1954, 44 FR 42717. The amendments were proposed to prescribe new rules for complying with the financial reporting conformity requirement required of taxpayers who use the last-in, first-out (LIFO) method of accounting for inventory for Federal income tax purposes. A public hearing on the proposed amendments was not requested and therefore none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The preamble to the notice of proposed rulemaking summarizes and explains the proposed amendments. The remainder of this preamble discusses the major comments from the public and changes to the proposed regulations.

These regulations should not be construed as containing all the requirements of Federal or State government agencies relating to the disclosure of financial activities and disclosures permitted under these regulations may not be consistent with all the requirements of such agencies.

Public Comments and Changes to the Proposed Regulations

1. *Supplemental and explanatory disclosures.* The proposed regulations provided a new rule that permits the use of an inventory method other than LIFO to ascertain income information reported to creditors, shareholders, partners, etc. after July 17, 1979, if the information merely supplements or explains the taxpayer's primary presentation of financial income. Several commentators suggested that the new rule also should be applied to information reported before July 18, 1979. The Treasury decision modifies the effective date of the new rule to apply to all reports, whenever issued.

The proposed regulations provided different rules for determining whether information is supplemental or explanatory, depending on the way the information is disclosed. Some commentators suggested that the typical parts of an annual report should be used to illustrate the different types of disclosure. Other commentators suggested that the distinctions between the types of disclosure should be clarified. The Treasury decision clarifies the difference between supplements, appendices, and other reports and uses the typical parts of an annual report to illustrate these different types of disclosure.

Several commentators suggested that the requirement of clearly identifying supplemental or explanatory information in supplements, appendices, and other reports should be clarified. Some commentators suggested that the requirement of disclosing LIFO-based information in other reports be clarified. The Treasury decision clarifies these requirements.

Several commentators suggested that the status of unaudited or preliminary income statements should be clarified. The Treasury decision provides that such income statements are considered a primary presentation of financial income and may be supplemented or explained by the disclosure of non-LIFO income information.

2. *Disclosure of inventory values as an asset.* The proposed regulations provided that the use of an inventory method other than LIFO to ascertain the value of inventory for purposes of reporting such value on a balance sheet does not violate the conformity requirement. Numerous commentators suggested that the scope of this rule should be further clarified with respect to balance sheets prepared on a non-LIFO basis and the reconciliation of such balance sheets with LIFO-based income statements. The Treasury decision provides that the disclosure of non-LIFO inventory values as an asset of the taxpayer is permitted and that such a disclosure may be made on a taxpayer's balance sheet. However, balance sheet disclosures of non-LIFO income, profit, or loss for a taxable year, fiscal year, or other one-year period are not permitted under the exception for disclosure of inventory asset values. However, the Treasury decision provides that such income disclosures may be made in the form of a parenthetical disclosure or footnote disclosure on a taxpayer's balance sheet. In addition, the Treasury decision provides that non-LIFO income information may be disclosed on a balance sheet in a form other than parenthetical remarks or footnotes if the balance sheet is a supplemental balance sheet and the income disclosure is clearly identified as supplemental or explanatory.

3. *Internal management reports.* The proposed regulations provided that the disclosure of non-LIFO income information in internal management reports does not violate the LIFO conformity requirement. This Treasury decision retains this exception, but reserves the definition of "internal management report" for a notice of proposed rulemaking to be published in the future.

4. *Reports covering a 12-month period.* The proposed regulations provided that reports covering a 12-month period are subject to the LIFO conformity requirement. The Treasury decision revises this rule to apply to reports covering a one-year period other than a taxable year, including fiscal years such as 52–53 week years. Commentators suggested that the rule should be given only prospective effect. The Treasury decision retains the retroactive application of the rule. However, the Internal Revenue Service will not terminate a taxpayer's LIFO election for a conformity violation involving a report covering a one-year period other than a taxable year if the report was issued before January 22, 1981.

5. *Interim reports.* The proposed regulations provided that a series of credit statements or financial reports is considered a single statement or report covering a single period if the statements or reports are prepared using a single inventory method and can be combined to disclose income information for the period. One commentator suggested that the rule be given only prospective effect. The Treasury decision retains the retroactive application of this rule, but the Internal Revenue Service will not terminate a taypayer's LIFO election for a conformity violation involving the issuance of a series of interim reports if the series of reports covers a taxable year and was issued before February 6, 1978, or covers a one-year period other than a taxable year and was issued before January 22, 1981.

6. *Market value.* Prior to amendment by this Treasury decision, the regulations § 1.472–2(e) provided that the LIFO conformity requirement is not violated if for financial reporting purposes the taxpayer uses market value in lieu of cost. The proposed regulations provided that this exception applies only if market value is lower than the LIFO cost assigned to items of inventory. Several commentators suggested that the new rule should be given only prospective effect. A few commentators suggested that the rule should not be adopted. Many commentators suggested that the new rule should be clarified with respect to its application to the "dollar-value" method of pricing inventories which does not account for inventories in terms of "items". The Treasury decision provides that for financial reporting purposes taxpayers may use the lower of LIFO cost or market method to value inventories and may not use market value in lieu of cost. The revised rule is given retroactive effect by the Treasury decision, but the Internal Revenue Service will not terminate a taypayer's LIFO election for a conformity violation involving reports that use market value in lieu of cost if such reports were issued before January 22, 1981. However, this limited waiver for the use of market value in lieu of cost only applies to a method that consistently values inventory at market value. For example, the use of a method that values inventory at market value but not in excess of LIFO cost is not permitted under the waiver for market value in lieu of cost.

7. *New rules.* Comments were received recommending that LIFO conformity issues relating to book-tax differences in LIFO inventory values be addressed in regulations. The Treasury decision provides examples of book-tax differences in LIFO inventory values that can be disclosed without violating the conformity requirements. Generally, these differences are attributable to the use of different inventory costing methods for book and tax purposes, the use of different accounting practices or accounting methods (other than inventory identification methods) for book and tax purposes, and the different treatment of transactions for book and tax purposes.

8. *Other comments.* Other comments were received suggesting that additional conformity issues should be addressed. This Treasury decision does not address these issues because it was decided that the resolution of these issues in regulations would unduly lengthen and complicate the regulations.

Additional Information

These regulations are needed in order to provide the public with the necessary guidance to comply with the LIFO conformity requirement. The Service has considered the direct and indirect effects of these regulations and has determined that these regulations will reduce burdens on taxpayers. These regulations do not establish any new recordkeeping or reporting requirements. Evaluation of the effectiveness of the regulations after issuance will be based on comments received from offices within the Internal Revenue Service and the Treasury Department, other governmental agencies, State and local governments, and the public.

Drafting Information

The principal author of this regulation is Geoffrey B. Lanning the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing both the substance and style of the regulation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.472–2(e) is revised to read as follows:

§ 1.472–2 Requirements incident to the adoption and use of LIFO inventory method.

* * * * *

(e) *LIFO conformity requirement*—(1) *In general.* The taxpayer must establish to the satisfaction of the Commissioner that the taxpayer, in ascertaining the income, profit, or loss for the taxable year for which the LIFO inventory method is first used, or for any subsequent taxable year, for credit purposes or for purposes of reports to shareholders, partners, or other proprietors, or to beneficiaries, has not used any inventory method other than that referred to in § 1.472–1 or at variance with the requirement referred to in § 1.472–2(c). See paragraph (e)(2) of this section for rules relating to the meaning of the term "taxable year" as used in this paragraph. The following are not considered at variance with the requirement of this paragraph:

(i) The taxpayer's use of an inventory method other than LIFO for purposes of ascertaining information reported as a supplement to or explanation of the taxpayer's primary presentation of the taxpayer's income, profit, or loss for a taxable year in credit statements or financial reports (including preliminary and unaudited financial reports). See paragraph (e)(3) of this section for rules relating to the reporting of supplemental and explanatory information ascertained by the use of an inventory method other than LIFO.

(ii) The taxpayer's use of an inventory method other than LIFO to ascertain the value of the taxpayer's inventory of goods on hand for purposes of reporting the value of such inventories as assets. See paragraph (e)(4) of this section for rules relating to such disclosures.

(iii) The taxpayer's use of an inventory method other than LIFO for purposes of ascertaining information reported in internal management reports. See paragraph (e)(5) of this section for rules relating to such reports.

(iv) The taxpayer's use of an inventory method other than LIFO for purposes of issuing reports or credit statements covering a period of operations that is less than the whole of a taxable year for which the LIFO method is used for Federal income tax purposes. See paragraph (e)(6) of this section for rules relating to series of interim reports.

(v) The taxpayer's use of the lower of LIFO cost or market method to value LIFO inventories for purposes of financial reports and credit statements. However, except as provided in paragraph (e)(7) of this section, a taxpayer may not use market value in lieu of cost to value inventories for purposes of financial reports or credit statements.

(vi) The taxpayer's use of a costing method or accounting method to ascertain income, profit, or loss for credit purposes or for purposes of financial reports if such costing method or accounting method is neither inconsistent with the inventory method referred to in § 1.472–1 nor at variance with the requirement referred to in § 1.472–2(c), regardless of whether such costing method or accounting method is used by the taxpayer for Federal income tax purposes. See paragraph (e)(8) of this section for examples of such costing methods and accounting methods.

(vii) For credit purposes or for purposes of financial reports, the taxpayer's treatment of inventories, after such inventories have been acquired in a transaction to which section 351 applies from a transferor that used the LIFO method with respect to such inventories, as if such inventories had the same acquisition dates and costs as in the hands of the transferor.

(viii) For credit purposes or for purposes of financial reports relating to a taxable year, the taxpayer's determination of income, profit, or loss for the taxable year by valuing inventories in accordance with the procedures described in section 472(b)(1) and (3), notwithstanding that such valuation differs from the valuation of inventories for Federal income tax purposes because the taxpayer either—

(A) Adopted such procedures for credit or financial reporting purposes beginning with an accounting period other than the taxable year for which the LIFO method was first used by the taxpayer for Federal income tax purposes, or

(B) With respect to such inventories treated a business combination for credit or financial reporting purposes in a manner different from the treatment of the business combination for Federal income tax purposes.

(2) *One-year periods other than a taxable year.* The rules of this paragraph relating to the determination of income, profit, or loss for a taxable year and credit statements or financial reports that cover a taxable year also apply to the determination of income, profit, or loss for a one-year period other than a taxable year and credit statements or financial reports that cover a one-year period other than a taxable year, but only if the one-year period both begins and ends in a taxable year or years for which the taxpayer uses the LIFO method for Federal income tax purposes. For example, the requirements of paragraph (e)(1) of this section apply to a taxpayer's determination of income for purposes of a credit statement that covers a 52-week fiscal year beginning and ending in a taxable year for which the taxpayer uses the LIFO method for Federal income tax purposes. Similarly, in the case of a calendar year taxpayer, the requirements of paragraph (e)(1) of this section apply to the taxpayer's determination of income for purposes of a credit statement that covers the period October 1, 1981, through September 30, 1982, if the taxpayer uses the LIFO method for Federal income tax purposes in taxable years 1981 and 1982. However, the Commissioner will waive any violation of the requirements of this paragraph in the case of a credit statement or financial report that covers a one-year period other than a taxable

year if the report was issued before January 22, 1981.

(3) *Supplemental and explanatory information*—(i) *Face of the income statement.* Information reported on the face of a taxpayer's financial income statement for a taxable year is not considered a supplement to or explanation of the taxpayer's primary presentation of the taxpayer's income, profit, or loss for the taxable year in credit statements or financial reports. For purposes of paragraph (e)(3) of this section, the face of an income statement does not include notes to the income statement presented on the same page as the income statement, but only if all notes to the financial income statement are presented together.

(ii) *Notes to the income statement.* Information reported in notes to a taxpayer's financial income statement is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by the income statement if all notes to the financial income statement are presented together and if they accompany the income statement in a single report. If notes to an income statement are issued in a report that does not include the income statement, the question of whether the information reported therein is supplemental or explanatory is determined under the rules in paragraph (e)(3)(iv) of this section.

(iii) *Appendices and supplements to the income statement.* Information reported in an appendix or supplement to a taxpayer's financial income statement is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by the income statement if the appendix or supplement accompanies the income statement in a single report and the information reported in the appendix or supplement is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement. If an appendix or supplement to an income statement is issued in a report that does not include the income statement, the question of whether the information reported therein is supplemental or explanatory is determined under the rules in paragraph (e)(3)(iv) of this section. For purposes of paragraph (e)(3)(iii) of this section, an appendix or supplement to an income statement includes written statements, schedules, and reports that are labelled supplements or appendices to the income statement. However, sections of an annual report such as those labelled "President's Letter", "Management's Analysis", "Statement of Changes in Financial Position", "Summary of Key Figures", and similar sections are reports described in paragraph (e)(3)(iv) of this section and are not considered "supplements or appendices to an income statement" within the meaning of paragraph (e)(3)(iii) of this section, regardless of whether such sections are also labelled as supplements or appendices. For purposes of paragraph (e)(3)(iii) of this section, information is considered to be clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement if the information either—

(A) Is reported in an appendix or supplement that contains a general statement identifying all such supplemental or explanatory information;

(B) Is identified specifically as supplemental or explanatory by a statement immediately preceding or following the disclosure of the information;

(C) Is disclosed in the context of making a comparison to corresponding information disclosed both on the face of the taxpayer's income statement and in the supplement or appendix; or

(D) Is a disclosure of the effect on an item reported on the face of the taxpayer's income statement of having used the LIFO method.

For example, a restatement of cost of goods sold based on an inventory method other than LIFO is considered to be clearly identified as supplemental or explanatory information if the supplement or appendix containing the restatement contains a general statement that all information based on such inventory method is reported in the appendix or supplement as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement.

(iv) *Other reports; in general.* The rules of paragraph (e)(3) (iv), (v), and (vi) of this section apply to the following types of reports: news releases; letters to shareholders, partners, or other proprietors or beneficiaries; oral statements at press conferences, shareholders' meetings or securities analysts' meetings; sections of an annual report such as those labelled "President's Letter", "Management's Analysis", "Statement of Changes in Financial Position", "Summary of Key Figures", and similar sections; and reports other than a taxpayer's income statement or accompanying notes, appendices, or supplements. Information disclosed in such a report is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by an income statement if the supplemental or explanatory information is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement and the specific item of information being explained or supplemented, such as the cost of goods sold, net income, or earnings per share ascertained using the LIFO method, is also reported in the other report.

(v) *Other reports; disclosure of non-LIFO income.* For purposes of paragraph (e)(3)(iv) of this section, supplemental or explanatory information is considered to have been clearly identified as such if it would be considered to have been clearly identified as such under the rules of paragraph (e)(3)(iii) of this section, relating to information reported in supplements or appendices to an income statement. For example, if at a securities analysts' meeting the following question is asked, "What would the reported earnings per share for the year have been if the FIFO method had been used to value inventories?", it would be permissible to respond "Reported earnings per share for the year were $6.00. If the company had used the FIFO method of value inventories this year and had computed earnings based upon the following assumptions, earnings per share would have been $8.20. FIFO earnings are based on the following assumptions:

"(A) The use of the same effective tax rate as used in computing LIFO earnings, and

"(B) All other conditions and assumptions remain the same, including—

"(*1*) The use of the LIFO method for Federal income tax purposes and

"(*2*) The investment of the tax savings resulting from such use of the LIFO method, the income from which is included in both LIFO and FIFO earnings.

(vi) *Other reports; disclosure of effect on income.* For purposes of paragraph (e)(3)(iv) of this section, if the only supplement to or explanation of a specific item is the effect on the item of having used LIFO instead of a method other than LIFO to value inventories, it is not necessary to also report the specific item. For example, if at a shareholders' meeting the question is asked, "What was the effect on reported earnings per share of not having used

FIFO to value inventories?", it would be permissible to respond "If earnings would have been computed on the basis of the following assumptions, the use of LIFO instead of FIFO to value inventories would have decreased reported earnings per share by $2.20. FIFO earnings are based on the following assumptions:

"(A) The use of the same effective tax rate as used in computing LIFO earnings, and

"(B) All other conditions and assumptions remain the same, including—

"(*1*) The use of the LIFO method for Federal income tax purposes and

"(*2*) The investment of the tax savings resulting from such use of the LIFO method, the income from which is included in both LIFO and FIFO earnings."

(4) *Inventory asset value disclosures.* Under paragraph (e)(1)(ii) of this section, the use of an inventory method other than LIFO to ascertain the value of the taxpayer's inventories for purposes of reporting the value of the inventories as assets is not considered the ascertainment of income, profit, or loss and therefore is not considered at variance with the requirement of paragraph (e)(1) of this section. Therefore, a taxpayer may disclose the value of inventories on a balance sheet using a method other than LIFO to identify the inventories, and such a disclosure will not be considered at variance with the requirement of paragraph (e)(1) of this section. However, the disclosure of income, profit, or loss for a taxable year on a balance sheet issued to creditors, shareholders, partners, other proprietors, or beneficiaries is considered at variance with the requirement of paragraph (e)(1) of this section if such income information is ascertained using an inventory method other than LIFO and such income information is for a taxable year for which the LIFO method is used for Federal income tax purposes. Therefore, a balance sheet that discloses the net worth of a taxpayer, determined as if income had been ascertained using an inventory method other than LIFO, may be at variance with the requirement of paragraph (e)(1) of this section if the disclosure of net worth is made in a manner that also discloses income, profit, or loss for a taxable year.

However, a disclosure of income, profit, or loss using an inventory method other than LIFO is not considered at variance with the requirement of paragraph (e)(1) of this section if the disclosure is made in the form of either a footnote to the balance sheet or a parenthetical disclosure on the face of the balance sheet. In addition, an income disclosure is not considered at variance with the requirement of paragraph (e)(1) of this section if the disclosure is made on the face of a supplemental balance sheet labelled as a supplement to the taxpayer's primary presentation of financial position, but only if, consistent with the rules of paragraph (e)(3) of this section, such a disclosure is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of financial income as reported on the face of the taxpayer's income statement.

(5) *Internal management reports.* [Reserved]

(6) *Series of interim reports.* For purposes of paragraph (e)(1)(iv) of this section, a series of credit statements or financial reports is considered a single statement or report covering a period of operations if the statements or reports in the series are prepared using a single inventory method and can be combined to disclose the income, profit, or loss for the period. However, the Commissioner will waive any violation of the requirement of this paragraph in the case of a series of interim reports issued before February 6, 1978, that cover a taxable year, or a series of interim reports issued before January 22, 1981 that cover a one-year period other than a taxable year.

(7) *Market value.* The Commissioner will waive any violation of the requirement of this paragraph in the case of a taxpayer's use of market value in lieu of cost for a credit statement or financial report issued before January 22, 1981. However, the special rule of this (7) applies only to a taxpayer's use of market value in lieu of cost and does not apply to the use of a method of valuation such as market value in lieu of cost but not more than LIFO cost.

(8) *Use of different methods.* The following are examples of costing methods and accounting methods that are neither inconsistent with the inventory method referred to in § 1.472–1 nor at variance with the requirement of § 1.472–2(c) and which, under paragraph (e)(1)(vi) of this section, may be used to ascertain income, profit, or loss for credit purposes or for purposes of financial reports regardless of whether such method is also used by the taxpayer for Federal income tax purposes:

(i) Any method relating to the determination of which costs are includible in the computation of the cost of inventory under the full absorption inventory method.

(ii) Any method of establishing pools for inventory under the dollar-value LIFO inventory method.

(iii) Any method of determining the LIFO value of a dollar-value inventory pool, such as the double-extension method, the index method, and the link chain method.

(iv) Any method of determining or selecting a price index to be used with the index or link chain method of valuing inventory pools under the dollar-value LIFO inventory method.

(v) Any method permitted under § 1.472–8 for determining the current-year cost of closing inventory for purposes of using the dollar-value LIFO inventory method.

(vi) Any method permitted under § 1.472–2(d) for determining the cost of goods in excess of goods on hand at the beginning of the year for purposes of using a LIFO method other than the dollar-value LIFO method.

(vii) Any method relating to the classification of an item as inventory or a capital asset.

(viii) The use of an accounting period other than the period used for Federal income tax purposes.

(ix) The use of cost estimates.

(x) The use of actual cost of cut timber or the cost determined under section 631(a).

(xi) The use of inventory costs unreduced by any adjustment required by the application of section 108 and section 1017, relating to discharge of indebtedness.

(xii) The determination of the time when sales or purchases are accrued.

(xiii) The use of a method to allocate basis in the case of a business combination other than the method used for Federal income tax purposes.

(xiv) The treatment of transfers of inventory between affiliated corporations in a manner different from that required by § 1.1502–13.

(9) *Reconciliation of LIFO inventory values.* A taxpayer may be required to reconcile differences between the value of inventories maintained for credit or financial reporting purposes and for Federal income tax purposes in order to show that the taxpayer has satisfied the requirements of this paragraph.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: January 13, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 81-2301 Filed 1-16-81; 4:45 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 7764]

Income Tax; Amortization of Experience Gains by Certain Pension Plans Funded by Group Deferred Annuity Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the determination of actuarial cost under the minimum funding standards. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations provide the public with guidance needed to comply with that Act and apply only to defined benefit pension plans described in the regulations.

DATE: These regulations are generally effective for plan years beginning after May 22, 1981.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Marget of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3651) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978, the Internal Revenue Service published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412(b)(3) of the Internal Revenue Code of 1954, 43 FR 60964. The amendments were proposed to conform the regulations to section 1013 of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 914) and would also apply for purposes of section 302 of ERISA (88 Stat. 869).

A public hearing on the proposed amendments was held on February 21, 1980. After consideration of all the comments, both oral and written, regarding the proposed amendments, those amendments are adopted, as revised, by the Treasury decision.

General Explanation

Section 412 of the Internal Revenue Code of 1954 provides minimum funding requirements with respect to certain pension plans. These requirements include the maintenance of a minimum funding standard account. Annually under the account the normal cost of the plan and certain amortization amounts are charged and contributions to the plan and certain other amortization amounts are credited.

In general, this regulation contains specific rules regarding certain plans funded solely through a group deferred annuity contract. The regulation treats dividends, rate credits, and credits for forfeitures as an actuarial or experience gain for these plans, to be amortized over subsequent plan years through credits to the funding standard account under section 412(b)(3)(B)(ii).

Scope of Regulation

This regulation applies only to plans described in the text of the regulation. It does not apply to all plans funded with group deferred annuity contracts. Specifically, it does not apply to plans described in regulations under section 412(i), to plans providing future service benefits only, or to split-funded plans using group deferred annuities.

Regulations relating to split-funded plans may be proposed in the future.

Effect of Pre-ERISA Law

A number of comments noted that under pre-ERISA regulations for purposes of section 404 the type of gains to which this regulation applies were not required to be amortized, but were used to reduce future employer contributions. These comments suggested that it would be proper to characterize these gains as "an amount considered contributed by the employer" for purposes of section 412. As such, the gains would not be required to be amortized, and increases in the cost of plan administration would be avoided.

The position of the final regulation is unchanged from that of the proposal. In all cases under pre-ERISA law plans were permitted to recognize gains immediately. The requirement that gains be amortized when generated by group deferred annuity contracts used in the manner described in the regulation is consistent with the general requirement with respect to the treatment of gains under ERISA.

The amortization of experience gains is explicitly provided for in section 412. It is expected that final regulations under section 404 will also provide for the amortization of such gains as the general rule; see § 1.404 (a)-14 (g), proposed on May 19, 1978. Therefore, the impact of ERISA on the plans to which this regulation applies appears to be no greater than the impact of ERISA on other plans.

The regulations do not follow the suggestion of some comments that there be a *de minimis* rule permitting pre-ERISA treatment for small gains. There is no basis for prescribing a *de minimis* rule applicable only to plans described in this regulation. However, the regulation does not prohibit an actuary from minimizing plan costs by taking into account an interest assumption with respect to expected gains under the group deferred annuity contracts.

Prospective Effect

The comments indicated that misunderstandings of the impact of ERISA on existing practices have created significant compliance problems for certain plans. They suggested that, if the proposal is adopted, it be applied prospectively to ease the hardship caused by these problems. The regulation, as adopted, implements this suggestion.

Section Designation

This section of the regulations, as proposed, was designated as § 1.412(b)(3)-1. The regulation, as adopted, is designated as § 1.412(b)-2 to conform with the structure of regulations to be proposed under section 412(b) at a later date.

Drafting Information

The principal author of these regulations was Thomas F. Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

The Income Tax Regulations, 26 CFR Part 1, are amended by adding in the appropriate place the following new section:

§ 1.412(b)-2 Amortization of experience gains in connection with certain group deferred annuity contracts.

(a) *Experience gain treatment.* Dividends, rate credits, and credits for forfeitures arising in a plan described in paragraph (b) of this section are experience gains described in section 412(b)(3)(B)(ii) (relating to the amortization of experience gains.

(b) *Plan.* A plan is described in this paragraph (b) if—

(1) The plan is funded solely through a group deferred annuity contract,

(2) The annual single premium required under the contract for the purchase of the benefits accruing during the plan year is treated as the normal cost of the plan for that year, and

(3) The amount necessary to pay in equal annual installments, over the appropriate amortization period, an amount equal to the single premium necessary to provide all past service benefits not initially funded, together with interest thereon, is treated as the annual amortization amount determined under section 412(b)(2)(B) (i), (ii) or (iii).

(c) *Effective date.* This section applies for the first plan year to which section 412 applies that begins after May 22, 1981.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)))

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: January 12, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 81-2122 Filed 1-19-81; 10:51 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 7

[T.D. 7758]

Income Tax; Taxable Years Beginning After December 31, 1953 and Temporary Income Tax Regulations Under the Tax Reform Act of 1976; Election to Treat Outdoor Advertising Displays as Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the involuntary conversion of real property. These final regulations provide rules relating to the making of an election to treat property that constitutes certain outdoor advertising displays as real property for income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976. The regulations provide the guidance needed to make the election allowed by law.

DATES: The new regulations are effective for taxable years beginning after December 31, 1970.

FOR FURTHER INFOMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attn: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1979, proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) under section 1033 of the Internal Revenue Code of 1954 were published in the **Federal Register** (44 FR 71429) and (42 FR 1469), respectively. Those amendments were proposed to conform the regulations to section 2127 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1920). A public hearing was held on April 22, 1980. After consideration of all comments regarding the proposed amendments those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 2127 of the Tax Reform Act of 1976 amended section 1033 to allow taxpayers an election to treat property that constitutes certain outdoor advertising displays as real property. In general, the election is available for taxable years beginning after December 31, 1970, including, in the case of an election made by July 21, 1981, taxable years which otherwise would be closed because the period for filing a claim for credit or refund has expired. No election may be made, however, with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small businesses under section 179 (a) is in effect.

Under the proposed regulations, the election was to be made by attaching a statement to the return (or amended return) for the first taxable year to which the election is to apply. Once made it was to be irrevocable without the consent of the Commissioner and it applied to all outdoor advertising displays of the taxpayer which may be made the subject of an election under section 1033(g)(3), including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election was made.

These final regulations supersede certain temporary regulations (26 CFR 7.0 (c)(6)) relating to the election.

Comments

Two comments on the notice of proposed rulemaking were received from the public. One comment requests that the regulations provide that, in the absence of an election to treat outdoor advertising displays as real property, such property will constitute personal property for purposes of chapter 1 of the Code. However, neither the statute nor its legislative history specifies that all outdoor advertising displays are to be treated as personal property in the absence of an election under section 1033 (g) (3). It appears that Congress enacted section 1033 (g) (3) merely to allow taxpayers to elect to continue to treat certain outdoor advertising displays as real property because the treatment of such displays became uncertain as a result of several court cases which held that billboards are tangible personal property (and not real property) for purposes of the investment credit. Accordingly, the regulations are silent on whether, in the absence of an election to treat outdoor advertising displays as real property, such property is considered tangible personal property for purposes of chapter 1 of the Code.

The other comment received from the public states that the notice of proposed rulemaking is incorrect in requiring a taxpayer to treat all currently owned outdoor advertising displays and all outdoor advertising displays acquired in the future as real property once the taxpayer elects to treat an involuntarily converted outdoor advertising display as real property. The comment states that the election should only apply to all qualifying outdoor advertising displays owned by the taxpayer at the time of the election. In the alternative, the comment requests that the regulations allow taxpayers to revoke elections made under the temporary regulations because taxpayers could not have reasonably anticipated that their elections would apply to all outdoor advertising displays acquired in the future.

There is no indication that section 1033(g)(3) was intended to allow taxpayers to treat qualifying outdoor advertising displays inconsistently. On the contrary, the committee reports make clear that an election, once made, applies to all qualifying outdoor advertising displays of the taxpayer. Accordingly, the final regulations do not modify the notice on this point.

However, because some taxpayers may have made elections erroneously believing that the election only applied to outdoor advertising displays owned by the taxpayer at the time of the election, the final regulations are modified to provide that taxpayers who made elections on or before December 11, 1979 (the date of publication of the notice), are allowed to revoke their election without the consent of the Commissioner provided certain requirements are met.

Drafting Information

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

Adoption of amendments to the regulations.

Accordingly, the amendments to 26 CFR Part 1, published as a notice of proposed rulemaking in the **Federal Register** for December 11, 1979 (44 CFR 71429), and to 26 CFR Part 7, published as a temporary regulation in the **Federal Register** for January 7, 1977 (42 FR 1469), are hereby adopted as proposed, except that paragraph (b)(2) of § 1.1033(g)–1, as added by paragraph 4 of the notice of proposed rulemaking, is amended by revising the last two sentences of paragraph (b)(2)(i)(A), by adding a new sentence at the end of paragraph (b)(2)(i)(A), by revising the first sentence of paragraph (b)(2)(ii), and by adding at the end of paragraph (b)(2) a new subdivision (iii). These revised and added provisions read as set forth below:

§ 1.1033(g)–1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property.* * * *

(2) *Election*—(i) *Time and manner of making election*—(A) *In general.* * * * If a taxpayer makes an election (or revokes an election under subdivision (ii) or (iii) of this subparagrah (b)(2)) for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election (or revocation) must be amended to reflect any tax consequences of the election (or revocation). However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election (or revocation). In order for the election (or revocation) to be effective, the taxpayer must remit with the amended return any additional tax due resulting from the election (or revocation), notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would prevent assessment or collection of such tax.

* * * * *

(ii) *Revocation of election by Commissioner's consent.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, an election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner. * * *

(iii) *Revocation where election was made on or before December 11, 1980.* In the case of an election made on or before December 11, 1979, the taxpayer may revoke such election provided such revocation is made not later than March 23, 1981. The request for revocation shall be made in conformity with the requirements of paragraph (b)(2)(ii); except that, in lieu of the information required by paragraph (b)(2)(ii)(E), the taxpayer shall state that the revocation is being made pursuant to this paragraph. In addition, the taxpayer must forward, with the statement of revocation, copies of his or her tax returns, including both the original return and any amended returns, for the taxable year in which the original election was made and for all subsequent years and must remit any additional tax due as a result of the revocation.

* * * * *

This Treasury decision is issued under the authority contained in sections 1033 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1920, 26 U.S.C. 1033; 68A Stat. 917, 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 9, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

The amendments to 26 CFR Parts 1 and 7 are as follows:

§ 1.1033(a)–1 [Amended]

Paragraph 1. Paragraph (b) of § 1.1033(a)–1 is amended by removing "§ 1.1033(f)–1" and adding in lieu thereof "§ 1.1033(g)–1".

§ 1.1033(a)–2 [Amended]

Par. 2. Paragraph (c)(3) of § 1.1033(a)–2 is amended by removing "section 1033(F)(4)" and adding in lieu thereof "section 1033(G)(4)", and by removing "§ 1.1033(f)–1" and adding in lieu thereof "§ 1.1033(g)–1".

§ 1.1033(g)–1 Redesignated as § 1.1033(h)–1.

Par. 3. Section 1.1033(g)–1 is redesignated as § 1.1033(h)–1 and is amended by removing "§ 1.1033(f)–1" and adding in lieu thereof "§ 1.1033(g)–1".

Par. 4. Section 1.1033(f)–1 is redesignated as § 1.1033(g)–1 and is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and by adding a new paragraph (b) to read as set forth below:

§ 1.1033(g)–1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property*—(1) *In general.* Under section 1033(g)(3) of the Code, a taxpayer may elect to treat property which constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code. The election is available for taxable years beginning after December 31, 1970. In the case of an election made on or before the 180th day after the date of publication of this notice of proposed rulemaking as a Treasury decision, the election is available whether or not the period for filing a claim for credit or refund under section 6511 has expired. No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election of additional first-year depreciation allowance for small business under section 179(a) is in effect. The election once made applies to all outdoor advertising displays of the taxpayer which may be made the subject of an election under this paragraph, including all outdoor advertising displays acquired or constructed by the taxpayer in a taxable year after the taxable year for which the election is made. The election applies with respect to dispositions during the taxable year for which made and all subsequent taxable years (unless an effective revocation is made pursuant to paragraph (b)(2)(ii)).

(2) *Election*—(i) *Time and manner of making election*—(A) *In general.* Unless otherwise provided in the return or in the instructions for a return for a taxable year, any election made under section 1033(g)(3) shall be made by attaching a statement to the return (or amended return if filed on or before the 180th day after the date of publication of this notice as a Treasury decision) for the first taxable year to which the election is to apply. Any election made under this paragraph must be made not later than the time, including extensions

thereof, prescribed by law for filing the income tax return for such taxable year or 180 days after the date of publication of this notice as a Treasury decision, whichever occurs last. If a taxpayer makes an election (or revokes an election under subdivision (ii) or (iii) of this subparagraph (b) (2)) for a taxable year for which he or she has previously filed a return, the return for that taxable year and all other taxable years affected by the election (or revocation) must be amended to reflect any tax consequences of the election (or revocation). However, no return for a taxable year for which the period for filing a claim for credit or refund under section 6511 has expired may be amended to make any changes other than those resulting from the election (or revocation). In order for the election (or revocation) to be effective, the taxpayer must remit with the amended return any additional tax due resulting from the election (or revocation), notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law which would prevent assessment or collection of such tax.

(b) *Statement required when making election.* The statement required when making the election must clearly indicate that the election to treat outdoor advertising displays as real property is being made.

(ii) *Revocation of election by Commissioner's consent.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, an election under section 1033(g)(3) shall be irrevocable unless consent to revoke is obtained from the Commissioner. In order to secure the Commissioner's consent to revoke an election, the taxpayer must file a request for revocation of election with the Commissioner of Internal Revenue, Washington, D.C. 20224. The request for revocation shall include—

(A) The taxpayer's name, address, and taxpayer identification number,

(B) The date on which and taxable year for which the election was made and the Internal Revenue Service office with which it was filed,

(C) Identification of all outdoor advertising displays of the taxpayer to which the revocation would apply (including the location, date of purchase, and adjusted basis in such property),

(D) The effective date desired for the revocation, and

(E) The reasons for requesting the revocation.

The Commissioner may require such other information as may be necessary in order to determine whether the requested revocation will be permitted. The Commissioner may prescribe administrative procedures (subject to such limitations, terms and conditions as he deems necessary) to obtain his consent to permit the taxpayer to revoke the election. The taxpayer may submit a request for revocation for any taxable year for which the period of limitations for filing a claim for credit or refund or overpayment of tax has not expired.

(iii) *Revocation where election was made on or before December 11, 1980.* In the case of an election made on or before December 11, 1979, the taxpayer may revoke such election provided such revocation is made not later than March 23, 1981. The request for revocation shall be made in conformity with the requirements of paragraph (b)(2)(ii), except that, in lieu of the information required by paragraph (b)(2)(ii)(E), the taxpayer shall state that the revocation is being made pursuant to this paragraph. In addition, the taxpayer must forward, with the statement of revocation, copies of his or her tax returns, including both the original return and any amended returns, for the taxable year in which the original election was made and for all subsequent years and must remit any additional tax due as a result of the revocation.

(3) *Definition of outdoor advertising display.* The term "outdoor advertising display" means a rigidly assembled sign, display, or device that constitutes, or is used to display, a commercial or other advertisement to the public and is permanently affixed to the ground or permanently atttached to a building or other inherently permanent structure. The term includes highway billboards affixed to the ground with wood or metal poles, pipes, or beams, with or without concrete footings.

(4) *Character of replacement property.* For purposes of section 1033(g), an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display (with respect to which an election under this section is in effect) shall be considered property of a like kind as the property converted even though a taxpayer's interest in the replacement property is different from the interest held in the property converted. Thus, for example, a fee simple interest in real estate acquired to replace a converted billboard and a 5-year leasehold interest in the real property on which the billboard was located qualifies as property of a like kind under this section.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 5. Paragraph (c)(6) of § 7.0 is hereby removed.

[FR Doc. 81-2305 Filed 1-16-81; 4:51 pm]
BILLING CODE 4830-01-M

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26 CFR Parts 25 and 301

[T.D. 7757]

Gift Taxes; Gifts Made After December 31, 1954 and Procedure and Administration—Filing of Gift Tax Returns; Furnishing Statement Explaining Estate or Gift Valuation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time for filing gift tax returns and for requesting a statement explaining valuation for estate, gift or generation-skipping transfer tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1976 and the Act of December 29, 1979. The regulations would provide the public with the guidance needed to comply with those acts. In addition, this document contains an amendment to a regulation relating to the exercise of a general power of appointment.

DATES: The amendments are generally effective for gifts made after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1979, the Federal Register published proposed amendments to the Gift Tax Regulations (26 CFR Part 25) under sections 2514 and 6075(b) and to the Procedure and Administration Regulations (26 CFR Part 301) under section 7517 of the Internal Revenue Code of 1954 (Code) (44 FR 75185). These amendments were proposed to conform the regulations to section 2008(a)(2) and (b) of the Tax Reform Act of 1976 (90 Stat. 1891 and 1892) relating to the special rule for filing returns where gifts in a calendar quarter total $25,000 or less. In addition, the final regulations conform the regulations to section 8 of the Act of

December 29, 1979 (93 Stat. 1277), which provides that the due date for filing a gift tax return for the fourth calendar quarter or the calendar year is April 15 of the following calendar year. The amendments are issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805). Section 25.2514–1 of the Gift Tax Regulations is also amended to clarify the effect of an exercise of a lifetime nongeneral power of appointment by a person when that person also has a lifetime general power of appointment over the same property.

Summary of Comments and Final Regulations

Exercise of General Power of Appointment

Under the proposed regulation, if a person had both a presently exercisable general power of appointment over all or a portion of a trust's corpus and a nongeneral power of appointment over the entire corpus of the same trust and the person exercised the nongeneral power, such an exercise resulted in the exercise of the general power.

Two comments were received regarding this proposed amendment. The first commentator was not in favor of making any change at all. However, if a change were to be made, the commentator believed that it should be made under paragraph (d) of § 25.2514–1 relating to the definition of exercise rather than under paragraph (c) of that section, relating to the definition of a general power of appointment. The second comment was in favor of the proposed amendment, but felt that the amendment was too broad. After carefully considering these comments, the final regulations have been revised by amending paragraph (d) and by narrowing its scope.

Under the final regulations, if a person has a presently exercisable general power of appointment over all or a portion of the corpus of a trust and a nongeneral power of appointment over all or a portion of the same trust the exercise of the nongeneral power is treated as the exercise of the general power to the extent that the amount of money or property subject to being transferred by the exercise of the general power has been reduced by the exercise of the nongeneral power.

Due Date for Gift Tax Returns

Two comments also addressed the proposed amendment to § 25.6075–1, relating to time for filing gift tax returns. The first commentator requested that the amendment be revised to make it clear that separate returns for each quarter must be filed. This change has not been made. However, the final regulations do make it clear that a return encompassing more than one quarter must meet all the requirements for a separate return had one been required for each quarter.

The second commentator requested that the effect of section 2513, relating to split gifts, be addressed in the final regulations and that § 25.2513–1(c) and (d) be revised. The effect of section 2513 is addressed in the final regulation. Under the final regulation, the effect of section 2513 is only taken into account for prior gifts if an irrevocable consent was made on a return required to be filed prior to the due date of the current return. Section 25.2513–1 (c) and (d) have not been revised because those paragraphs are correct as written. Section 6075(b) of the Code does not change the fact that a return is due for a particular quarter. It merely changes the date that the return is due.

Technical Amendment to 26 CFR Part 301

This Treasury decision also makes a technical amendment to § 301.6103 (l)(2)–(3)(a) of the Regulations on Procedure and Administration to relocate a misplaced sentence.

Drafting Information

The principal author of this regulation is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 25 and 301 are amended by adopting, subject to the following changes, the regulations proposed as a notice of proposed rulemaking published in the **Federal Register** on December 19, 1979 (44 FR 75185).

Paragraph 1. Paragraph 1 of the notice of proposed rulemaking is revised to read as follows:

Section 25.2514–1 is amended as follows:

(a) The last sentence of paragraph (c)(1) is revised to read as set forth below.

(b) Paragraph (d) is amended by adding four sentences after the last sentence in the paragraph to read as set forth below.

§ 25.2514–1 Transfers under power of appointment.

* * * * *

(c) *Definition of "general power of appointment".*—(1) *In general.* * * * The latter power is not a general power of appointment (but its exercise may result in the exercise of the former power; see paragraph (d) of this section).

* * * * *

(d) *Definition of "exercise."* * * * Furthermore, if a person holds both a presently exercisable general power of appointment and a presently exercisable nongeneral power of appointment over the same property, the exercise of the nongeneral power is considered the exercise of the general power only to the extent that immediately after the exercise of the nongeneral power the amount of money or property subject to being transferred by the exercise of the general power is decreased. For example, assume A has a noncumulative annual power to withdraw the greater of $5,000 or 5 percent of the value of a trust having a value of $300,000 and a lifetime nongeneral power to appoint all or a portion of the trust corpus to A's child or grandchildren. If A exercises the nongeneral power by appointing $150,000 to A's child, the exercise of the nongeneral power is treated as the exercise of the general power to the extent of $7,500 (maximum exercise of general power before the exercise of the nongeneral power, 5% of $300,000 or $15,000, less maximum exercise of the general power after the exercise of the nongeneral power, 5% of $150,000 or $7,500).

* * * * *

Par. 2. Section 25.6075–1 as set forth in paragraph 2 of the notice of proposed rulemaking is amended as follows:

(a) Paragraphs (a) and (b) are revised to read as set forth below.

(b) Paragraphs (c) and (d) are redesignated (d) and (e) respectively and a new paragraph (c) is added to read as set forth below.

§ 25.6075 Returns, time for filing gift tax returns for gifts made after December 31, 1976.

(a) *Due date for filing quarterly gift tax returns.*—(1) Except as provided in paragraph (b) of this section, a return required to be filed under section 6019 for the first, second, or third calendar quarter of any calendar year must be filed on or before the 15th day of the second month following the close of the calendar quarter in which the taxable gift was made.

(2) If a return is required to be filed under section 6019 for the fourth calendar quarter, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before

February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

(b) *Special rule.*—(1) If the total amount of taxable gifts (determined after the application of paragraph (c)(1) of this section, relating to split gifts) made by a person during a calendar quarter is $25,000 or less, the return required under section 6019 for that quarter must be filed on or before the date prescribed in paragraph (a)(1) of this section for filing the return for gifts made in the first subsequent calendar quarter (unless the first subsequent calendar quarter is the fourth calendar quarter in which case see paragraph (b)(2) of this section) in the calendar year in which the sum of—

(i) The taxable gifts made during such subsequent calendar quarter, plus

(ii) All other taxable gifts made in prior quarters of the calendar year for which no return has yet been required to be filed,

exceeds $25,000. The return must include transfers by gift (as required by section 6019 and the regulations under that section) made during such subsequent and prior quarters of the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(2) If a return is not required to be filed under paragraph (b)(1) of this section, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

The return must include all transfers by gift (as required under section 6019 and the regulations under that section) made during the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(3) Under section 6075(b)(3), any extension of time granted a taxpayer for filing the return of income taxes imposed by subtitle A for any taxable year which is a calendar year shall be treated as an extension of time granted the taxpayer for filing any return under section 6019 which is due (under paragraphs (a)(2)(ii) and (b)(2)(ii) of this section) on or before April 15th following the close of the fourth calendar quarter. See also section 6081 and § 25.6081–1 for other rules relating to extensions of time for filing returns.

(4) See section 7503 and § 301.7503–1 for the due date of a return that falls on a Saturday, Sunday, or a legal holiday. As to additions to the tax for failure to file the return within the prescribed time, see section 6651 and § 301.6651–1.

(c) *Effect of section 2513.*—(1) In determining whether taxable gifts made during any calendar quarter exceed $25,000, and in determining whether taxable gifts made in the current calendar quarter and the preceding calendar quarters of the calendar year for which no return has yet been required to be filed exceed $25,000, the effect of section 2513 is not taken into account for any gifts made in the current or previous quarters for which a return is now being filed unless an irrevocable consent was made by either spouse on a return that was required to be filed prior to the due date of the current return. See § 25.2513–3 for the rules relating to when a consent becomes irrevocable.

(2) Paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). During the first quarter of 1980 A made taxable gifts of $17,000 ($20,000 − $3,000 annual exclusion under section 2503 (b)) to D. During the second quarter A made another taxable gift of $10,000 to D. A's taxable gifts for the first two quarters are $27,000. Therefore, A is required to file a return for the first and second quarters on or before August 15, 1980. On that return A's wife, B, consented to the application of section 2513 (relating to split gifts) for the second quarter. Even though A split the second quarter gift with his wife, A's return is nevertheless required to be filed on or before August 15, 1980 because in determining whether taxable gifts exceed $25,000, the effect of section 2513 is only taken into account for the quarter in which an irrevocable consent was made on a return required to be filed before August 15, 1980.

Example (2). Assume the same facts as in Example (1). In addition, during the third quarter A made another taxable gift of $20,000 to D, and B made a taxable gift of $24,000 to D. B is required to file a return reporting the taxable gifts made during the second and third quarters on or before November 15, 1980 because B's total taxable gifts exceed $25,000 (second quarter gifts after taking section 2513 into account = ½ ($10,000) − $3,000 (annual exclusion under section 2503 (b)) = $2,000 plus a $24,000 gift in the third quarter). Even if A and B had consented to the application of section 2513 for the third quarter, B's return would nevertheless be due on or before November 15, 1980, because an irrevocable consent was not made on a return that was required to be filed prior to November 15, 1980. However, the effect of section 2513 is taken into account for the second quarter because an irrevocable consent was made on a return that was required to be filed prior to November 15, 1980.

Example (3). During the first quarter of 1980 A made taxable gifts of $27,000 to F ($30,000 − $3,000 annual exclusion under section 2503 (b)). A is required to file a return on or before May 15, 1980. A fails to file a return until August 1, 1980. On that return B, A's spouse, consented to the application of section 2513. The consent on that return is irrevocable under § 25.2513–3. During the second quarter B made taxable gifts of $14,000 to F. A and B made no other gifts during 1980. B has made total taxable gifts of $26,000 ($12,000 for the first quarter and $14,000 for the second quarter). Therefore, B is required to file a return on or before August 15, 1980. Even if A and B had consented to the application of section 2513 for the second quarter, B's return is nevertheless due on or before August 15, 1980. Assuming no other gifts were made during the year, A's return reporting the second quarter split gift would be due on or before April 15, 1981.

Example (4). During the first quarter of 1980 A made taxable gifts of $20,000 to G. B, A's spouse, files a gift tax return on June 15, 1980 reporting that gift and both A and B signify their consent to the application of section 2513 on that return. In determining whether either spouse has exceeded the $25,000 amount for the remainder of 1980, the effect of section 2513 will be taken into account for the transfer by gift made in the first quarter.

* * * * *

Par. 3. Section 301.6103 (l) (2)–3 (a) of the Regulations on Procedure and Administration is amended by revising subparagraph (23) and the flush language following subparagraph (27). These revised provisions read as follows:

§ 301.6103 (l) (2)–3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.

(a) *Disclosures following general requests.* * * *

(23) Copies of initial pleadings indicating that the Service intends to intervene in a civil action under section 502 (h) of the Act;

* * * * *

Return information disclosed under this paragraph includes the taxpayer identity information (as defined in section 6103(b)(6)) of the plan or trust, the name

and address of the sponsor and administrator of the plan or trustee of the trust, and the name and address of the person authorized to represent the plan or trust before the Service. Disclosure of returns or return information as provided by this paragraph will be made only following receipt by the Commissioner of Internal Revenue of an annual written request for such disclosure by the Administrator of Pension and Benefit Welfare Programs of the Department of Labor or the Executive Director of the Pension Benefit Guaranty Corporation describing the categories of returns or return information to be disclosed by the Service and the particular purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of the Department of Labor or such corporation to whom such disclosure is authorized.

Par. 4. Paragraph (a) of § 301.7517-1 as set forth in paragraph 3 of the notice of proposed rulemaking is revised to read as set forth below.

§ 301.7517-1 Furnishing on request of statement explaining estate or gift valuation.

(a) *In general.* Section 7517 requires the Service to furnish to a taxpayer, at the request of that taxpayer, a statement explaining the estate, gift or generation-skipping transfer valuation of any item contained on a return filed by the taxpayer as to which a determination or proposed determination of value has been made. The request must be filed no later than the latest time to file a claim for refund of the tax which is dependent on the value with respect to which the determination has been made. The request should be filed with the district director's office that has jurisdiction over the return of the taxpayer.

William E. Williams,
Acting Commissioner of Internal Revenue.

Approved: January 13, 1981.

Donald C. Lubick,
Assistance Secretary of the Treasury.

Paragraph 1. Section 25.2514-1 is amended as follows:

(a) The last sentence of paragraph (c)(1) is revised to read as set forth below.

(b) Paragraph (d) is amended by adding four sentences after the last sentence in the paragraph to read as set forth below.

§ 25.2514-1 Transfers under power of appointment.

* * * * *

(c) *Definition of "general power of appointment"*—(1) *In general.* * * * The later power is not a general power of appointment (but its exercise may result in the exercise of the former power; see paragraph (d) of this section).

* * * * *

(d) *Definition of "exercise."* * * * Furthermore, if a person holds both a presently exercisable general power of appointment and a presently exercisable nongeneral power of appointment over the same property, the exercise of the nongeneral power is considered the exercise of the general power only to the extent that immediately after the exercise of the nongeneral power the amount of money or property subject to being transferred by the exercise of the general power is decreased. For example, assume A has a noncumulative annual power to withdraw the greater of $5,000 or 5 percent of the value of a trust having a value of $300,000 and a lifetime nongeneral power to appoint all or a portion of the trust corpus to A's child or grandchildren. If A exercises the nongeneral power by appointing $150,000 to A's child, the exercise of the nongeneral power is treated as the exercise of the general power to the extent of $7,500 (maximum exercise of general power before the exercise of the nongeneral power, 5% of $300,000 or $15,000, less maximum exercise of the general power after the exercise of the nongeneral power, 5% of $150,000 or $7,500).

* * * * *

Par. 2. Sections 25.6075 and 25.6075-1 are removed and the following new section is added in lieu thereof.

§ 25.6075-1 Returns; time for filing gift tax returns for gifts made after December 31, 1976.

(a) *Due date for filing quarterly gift tax returns.*—(1) Except as provided in paragraph (b) of this section, a return required to be filed under section 6019 for the first, second, or third calendar quarter of any calendar year must be filed on or before the 15th day of the second month following the close of the calendar quarter in which the taxable gift was made.

(2) If a return is required to be filed under section 6019 for the fourth calendar quarter, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

(b) *Special rule.*—(1) if the total amount of taxable gifts (determined after the application of paragraph (c)(1) of this section, relating to split gifts) made by a person during a calendar quarter is $25,000 or less, the return required under section 6019 for that quarter must be filed on or before the date prescribed in paragraph (a)(1) of this section for filing the return for gifts made in the first subsequent calendar quarter (unless the first subsequent calendar quarter is the fourth calendar quarter in which case see paragraph (b)(2) of this section) in the calendar year in which the sum of—

(i) The taxable gifts made during such subsequent calendar quarter, plus

(ii) All other taxable gifts made in prior quarters of the calendar year for which no return has yet been required to be filed,

exceeds $25,000. The return must include transfers by gift (as required by section 6019 and the regulations under that section) made during such subsequent and prior quarters of the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(2) If a return is not required to be filed under paragraph (b)(1) of this section, then—

(i) For gifts made after December 31, 1976 and before January 1, 1979, the return must be filed on or before February 15th following the close of the fourth calendar quarter, or

(ii) For gifts made on or after January 1, 1979, the return must be filed on or before April 15th following the close of the fourth calendar quarter.

The return must include all transfers by gift (as required under section 6019 and the regulations under that section) made during the calendar year for which no return has yet been required to be filed and identify in which quarter such transfers were made. The return must meet all the requirements for a separate return as if a separate return had been made for each quarter in which a transfer by gift was made. This return will be treated as a separate return for each of the quarters identified on the return.

(3) Under section 6075(b)(3), any extension of time granted a taxpayer for filing the return of income taxes imposed by subtitle A for any taxable year which is a calendar year shall be

treated as an extension of time granted the taxpayer for filing any return under section 6019 which is due (under paragraphs (a)(2)(ii) and (b)(2)(ii) of this section) on or before April 15th following the close of the fourth calendar quarter. See also section 6081 and § 25.6081–1 for other rules relating to extensions of time for filing returns.

(4) See section 7503 and § 301.7503–1 for the due date of a return that falls on a Saturday, Sunday, or a legal holiday. As to additions to the tax for failure to file the return within the prescribed time, see section 6651 and § 301.6651–1.

(c) *Effect of section 2513.*—(1) In determining whether taxable gifts made during any calendar quarter exceed $25,000, and in determining whether taxable gifts made in the current calendar quarter and the preceding calendar quarters of the calendar year for which no return has yet been required to be filed exceed $25,000, the effect of section 2513 is not taken into account for any gifts made in the current or previous quarters for which a return is now being filed unless an irrevocable consent was made by either spouse on a return that was required to be filed prior to the due date of the current return. See § 25.2513–3 for the rules relating to when a consent becomes irrevocable.

(2) Paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). During the first quarter of 1980 A made taxable gifts of $17,000 ($20,000 − $3,000 annual exclusion under section 2503(b)) to D. During the second quarter A made another taxable gift of $10,000 to D. A's taxable gifts for the first two quarters are $27,000. Therefore, A is required to file a return for the first and second quarters on or before August 15, 1980. On that return A's wife, B, consented to the application of section 2513 (relating to split gifts) for the second quarter. Even though A split the second quarter gift with his wife, A's return is nevertheless required to be filed on or before August 15, 1980 because in determining whether taxable gifts exceed $25,000, the effect of section 2513 is only taken into account for the quarter in which an irrevocable consent was made on a return required to be filed before August 15, 1980.

Example (2). Assume the same facts as in Example (1). In addition, during the third quarter A made another taxable gift of $20,000 to D, and B made a taxable gift of $24,000 to D. B is required to file a return reporting the taxable gifts made during the second and third quarters on or before November 15, 1980 because B's total taxable gifts exceed $25,000 (second quarter gifts after taking section 2513 into account = ½ ($10,000) − $3,000 (annual exclusion under section 2503(b)) = $2,000 plus a $24,000 gift in the third quarter). Even if A and B had consented to the application of section 2513 for the third quarter, B's return would nevertheless be due on or before November 15, 1980, because an irrevocable consent was not made on a return that was required to be filed prior to November 15, 1980. However, the effect of section 2513 is taken into account for the second quarter because an irrevocable consent was made on a return that was required to be filed prior to November 15, 1980.

Example (3). During the first quarter of 1980 A made taxable gifts of $27,000 to F ($30,000 − $3,000 annual exclusion under section 2503(b)). A is required to file a return on or before May 15, 1980. A fails to file a return until August 1, 1980. On that return B, A's spouse, consented to the application of section 2513. The consent on that return is irrevocable under § 25.2513–3. During the second quarter B made taxable gifts of $14,000 to F. A and B made no other gifts during 1980. B has made total taxable gifts of $26,000 ($12,000 for the first quarter and $14,000 for the second quarter). Therefore, B is required to file a return on or before August 15, 1980. Even if A and B had consented to the application of section 2513 for the second quarter, B's return is nevertheless due on or before August 15, 1980. Assuming no other gifts were made during the year, A's return reporting the second quarter split gift would be due on or before April 15, 1981.

Example (4). During the first quarter of 1980 A made taxable gifts of $20,000 to G. B, A's spouse, files a gift tax return on June 15, 1980 reporting that gift and both A and B signify their consent to the application of section 2513 on that return. In determining whether either spouse has exceeded the $25,000 amount for the remainder of 1980, the effect of section 2513 will be taken into account for the transfer by gift made in the first quarter.

(d) *Nonresident not citizens of the United States.* In the case of a donor who is a nonresident not a citizen of the United States, paragraphs (a) and (b) of this section shall be applied by substituting "$12,500" for "$25,000" each place it appears. For rules relating to whether certain residents of possessions are considered nonresidents not citizens of the United States, see section 2501(c) and § 25.2501–1(d).

(e) *Effective date.* This section is effective for gifts made after December 31, 1976.

Par. 3. Section 301.6103(l)(2)–3(a) of the Regulations on Procedure and Administration is amended by revising subparagraph (23) and the flush language following subparagraph (27). These revised provisions read as follows:

§ 301.6103(l) (2)–3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.

(a) *Disclosures following general requests.* * * *

(23) Copies of initial pleadings indicating that the Service intends to intervene in a civil action under section 502(h) of the Act;

* * * * *

Return information disclosed under this paragraph includes the taxpayer identity information (as defined in section 6103(b)(6)) of the plan or trust, the name and address of the sponsor and administrator of the plan or trustee of the trust, and the name and address of the person authorized to represent the plan or trust before the Service. Disclosure of returns or return information as provided by this paragraph will be made only following receipt by the Commissioner of Internal Revenue of an annual written request for such disclosure by the Administrator of Pension and Benefit Welfare Programs of the Department of Labor or the Executive Director of the Pension Benefit Guaranty Corporation describing the categories of returns or return information to be disclosed by the Service and the particular purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of the Department of Labor or such corporation to whom such disclosure is authorized.

Par. 4. A new § 301.7517–1 is added to read as set forth below.

§ 301.7517–1 Furnishing on request of statement explaining estate or gift valuation.

(a) *In general.* Section 7517 requires the Service to furnish to a taxpayer, at the request of that taxpayer, a statement explaining the estate, gift or generation-skipping transfer valuation of any item contained on a return filed by the taxpayer as to which a determination or proposed determination of value has been made. The request must be filed no later than the latest time to file a claim for refund of the tax which is dependent on the value with respect to which the determination has been made. The request should be filed with the district director's office that has jurisdiction over the return of the taxpayer.

(b) *Effective date*—(1) *Estates of decedents.* Section 7517 applies to estates of decedents dying after December 31, 1976.

(2) *Gifts.* Section 7517 applies to gifts made after December 31, 1976.

(3) *Generation-skipping transfer.* Section 7517 applies to any generation-skipping transfer subject to chapter 13.

[FR Doc. 81-2302 Filed 1-14-81; 4:48 pm]

BILLING CODE 4830-01-M

26 CFR Part 54

[T.D. 7759]

Pension Excise Taxes; Excise Taxes on Excess Contributions to Plans Covering Self-Employed Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation prescribing rules for determining when there are excess contributions to "H.R. 10" or "Keogh" plans, and imposing an excise tax upon the excess, if any. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974 (ERISA). This regulation provides necessary guidance to the public for compliance with the law and affects all employers maintaining these plans, that is, sole proprietorships and partnerships.

DATE: The regulation is effective for employer taxable years beginning on or after January 1, 1976.

FOR FURTHER INFORMATION CONTACT: Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1979, the Federal Register published a proposed amendment to the Pension Excise Tax Regulations (26 CFR Part 54) under section 4972 of the Internal Revenue Code of 1954 (44 FR 18700). The amendment was proposed to conform the regulations to section 2001(f)(1) of the Employee Retirement Income Security Act of 1974 (88 Stat. 955). A public hearing was neither requested nor held on this regulation. After consideration of all the comments received regarding the proposed amendment, the amendment is adopted as revised by this Treasury decision.

Applicability of Tax

Several commentators appear to have misunderstood the scope of the tax imposed by section 4972. The excise tax imposed by section 4972 applies to all excess contributions to plans benefiting self-employed individuals, regardless of whether the individual on whose behalf the contribution is made is self-employed or not. Thus, the tax applies to excess contributions made on behalf of common-law employees, if the plan provides benefits for an individual who is or was self-employed with respect to the plan.

Correcting Distributions

Several commentators questioned whether correcting distributions made during the taxable year reduce the amount of the excess contributions for that year for purposes of computing the tax imposed by section 4972. Section 4972(b)(1) provides that the amount of the excess contributions shall be "reduced by the sum of the correcting distributions . . . made in all prior taxable years." Thus, the regulation provides that the computation of excess contributions takes into account correcting distributions made in prior taxable years, but not those made during the taxable year.

This conclusion is consistent with the legislative history of section 4972. The Conference Committee report of ERISA states:

> The excess contribution may be eliminated (so as to stop the running of the tax) * * * by repayment of the excess contribution from the plan (which would reduce or eliminate the tax *for subsequent years).* (Emphasis added). H.R. Rep. No. 93-1280, 93d Cong., 2d Sess. 334 (1974).

Additionally, in contrast to prior law, section 4972(b)(5) does not permit, much less require, the income earned on an excess contribution to be included in a correcting distribution. Therefore, under section 4972, the income attributable to the excess contribution must remain in the plan.

Section 401(d)(4)(B) requires a plan to provide that no benefits in excess of contributions made by an owner-employee, as an employee, are to be paid to any owner-employee, except in the case of disability, prior to age 59½. This requirement only precludes a distribution to an owner-employee; it is not applicable to a correcting distribution made to the employer of the owner-employee. The proposed rule in § 54.4972-1(g)(1) has been amended to clarify that the only impermissible correcting distribution from a defined contribution plan is one made to an owner-employee prior to age 59½.

Date for Payment of the Tax

The tax imposed by section 4972 is to be paid at the time prescribed for filing Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans (Rev. March 1979), without regard for any filing extensions. The tax becomes due on that date so that interest will accrue on the tax between that filing date and the time the tax is actually paid.

Rollover Contributions

Several commentators have questioned whether the provisions of section 4972(c) apply to amounts contributed on behalf of owner-employees vis a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C). Section 54.4972-1(d) has been amended to clarify that the provisions of section 4972(c) do not apply to these rollover contributions.

Drafting Information

The principal author of this regulation is Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

Adoption of Amendment to the Regulations

Accordingly, the proposed amendment to 26 CFR Part 54 is hereby adopted, subject to the changes indicated below:

Paragraph 1. Paragraph (d) of § 54.4972-1 is revised by redesignating subparagraph (2) as subparagraph (3), and by adding a new subparagraph (2) to read as follows:

§ 54.4972-1 Tax on excess contributions to plans benefiting self-employed individuals.

* * * * *

(d) *Contributions by owner-employees*

* * *

(2) *Rollover amounts.* The provisions of section 4972 (c) and paragraph (d) of this section are not applicable to amounts contributed on behalf of an owner-employee in a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).

* * * * *

Par. 2. The second to the last flush sentence of § 54.4972-1(g)(1) is revised by adding "to an owner-employee" before "prior to age 59½".

Par. 3. The first sentence of Example (i) of section 54.4972-1(g)(2) is revised by adding "who are over the age of 59½ and who are" after the words "A and B are owner-employees."

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 12, 1981.

Donald C. Lubick,

Assistant Secretary of the Treasury.

Section 54.4972-1 is revised as follows:

§ 54.4972-1 Tax on excess contributions to plans benefiting self-employed individuals.

(a) *In general.* Section 4972 imposes a tax of 6 percent on the amount of the excess contributions (as defined in section 4972 (b) and (c) of this section) under certain qualified plans (as defined in paragraph (b) of this section) for each taxable year beginning after December 31, 1975, of the employer who maintains such plan. Partnerships and sole proprietors are to report this tax by filing Form 5330 (or other designated form) and the tax is to be paid annually at the time prescribed for filing such return (determined without regard to any extension of time for filing).

(b) *Employers to whom section applies.* The tax under section 4972 is imposed on employers who maintain a qualified plan during their taxable year. For this purpose, the term "qualified plan" means a pension or profit-sharing plan which includes a trust described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a). In addition to being a qualified plan, the plan must provide contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1). For this purpose, the plan does not have to provide contributions or benefits for employees who are employees within the meaning of section 401(c)(1) during the taxable year; it is sufficient that the plan so provided in a prior taxable year.

(c) *Excess contributions*—(1) *In general.* For a taxable year of an employer for purposes of section 4972 and this section, the term "excess contributions" means—

(i) The amount (if any) by which the sum of—

(A) The amount (if any) determined under section 4972(b)(2) and paragraph (d) of this section, plus

(B) The amount (if any) determined under section 4972(b)(3) and paragraph (e) of this section, plus

(C) The amount (if any) determined under section 4972(b)(4) and paragraph (f) of this section, exceeds

(ii) The amount (if any) of any correcting distributions (as defined in section 4972(b)(5) and paragraph (g) of this section) made in all prior taxable years beginning after December 31, 1975.

(2) *Contributions allocable to insurance.* For purposes of section 4972(b) and this section, the amount of any contribution made under the plan which is allocable to the purchase of life, accident, health, or other insurance is not taken into account. The amount of any contribution which is allocable to the cost of insurance protection is determined in accordance with the provisions of paragraph (g) of § 1.404(e)-1A and paragraph (b) of § 1.72-16.

(d) *Contributions by owner-employees*—(1) *General rule.* In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees, within the meaning of section 401(c)(3), the amount determined under section 4972(b)(2) and this paragraph for the employer's taxable year is the amount computed separately with respect to each owner-employee equal to the sum of—

(i) The excess (if any) of

(A) The amount contributed under the plan by each owner-employee as an employee (that is, each owner-employee's contributions within the meaning of section 401(c)(5)(B)) for such taxable year of the employer, over

(B) The amount permitted under section 4972(c) and paragraph (h) of this section to be contributed by each owner-employee as an employee for such taxable year of the employer, and

(ii) The amount determined under section 4972(b)(2) and this paragraph for the immediately preceding taxable year of the employer, reduced by the excess (if any) of the amount described in subdivision (1)(B) of this subparagraph over the amount described in subdivision (1)(A) of this subparagraph for such taxable year of the employer.

(2) *Rollover amounts.* The provisions of section 4972 (c) and paragraph (d) of this section are not applicable to amounts contributed on behalf of an owner-employee in an rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C).

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

Example (1).

(i) A and B are the only owner-employees covered under the X Employees' Trust. The X Partnership, the X Trust, and the X Plan all use the calendar year as their annual accounting period, at all relevant times. The amount determined under section 4972(b)(2) for 1975 is 0 because this section does not apply to contributions made for taxable years beginning before January 1, 1976. In calendar year 1976, A contributes $2,500 and B contributes $2,500 to the trust. The amount permitted to be contributed to the trust for 1976 with respect to A as an employee is $1,800 and with respect to B as an employee is $2,200.

(ii) The amount determined under this paragraph for 1976 with respect to A is $700, computed as follows: the sum of the excess of the amount contributed by A ($2,500) over the amount permitted to be contributed by A ($1,800), and the amount determined under this paragraph for A in 1975 (0).

(iii) The amount determined under this paragraph for 1976 with respect to B is $300, computed as follows: the sum of the excess of the amount contributed by B ($2,500) over the amount permitted to be contributed by B ($2,200), and the amount determined under this paragraph for B in 1975 (0).

(iv) The amount determined under section 4972(b)(2) and this paragraph for 1976 with respect to the employer, X Partnership, is $1,000, the sum of the amounts determined separately under this paragraph with respect to A ($700) and B ($300). The tax under section 4972 for 1976 on the X Partnership (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $1,000 or $60.

Example (2).

(i) Assume the facts stated in Example (1). In calendar year 1977, A contributes $1,500 and B contributes $2,300 to the trust. Assume that the amount permitted to be contributed to the trust for 1977, under section 4972(c) for A and B is $2,500 each.

(ii) The amount determined under this paragraph for 1977 with respect to A is 0, computed as follows: the sum of 0 (the excess of the amount contributed by A ($1,500) over the amount permitted to be contributed ($2,500)) and $700, the amount determined under this paragraph for A in 1976, reduced by $1,000 (the amount permitted to be contributed by A ($2,500) over the amount contributed by A ($1,500)).

(iii) The amount determined under this paragraph for 1977 with respect to B is $100, computed as follows: the sum of 0 (the excess of the amount contributed by B ($2,300) over the amount permitted to be contributed ($2,500)) and $300, the amount determined under this paragraph for B in 1976, reduced by $200 (the amount permitted to be contributed ($2,500) by B over the amount contributed by B ($2,300)).

(iv) The amount determined under section 4972(b) and this paragraph for 1977 with respect to the employer, X Partnership, is $100, the sum of the amounts determined separately under this paragraph with respect to A ($0) and B ($100). The tax imposed under section 4972 for 1977 on the X Partnership (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $100, or $6.

(e) *Defined benefit plans*—(1) *General rule.* In the case of a defined benefit plan (as defined in section 414(j)), the amount determined under section 4972(b)(3) and this paragraph for the taxable year of the employer is the amount contributed under the plan by the employer during the taxable year plus the amounts, if any, contributed by the employer during any prior taxable

year beginning after December 31, 1975, if—

(i) As of the close of the taxable year, the full funding limitation of the plan (determined under section 412(c)(7) and the regulations thereunder) is zero, and

(ii) Such amounts contributed have not been deductible by the employer for the taxable year or for any prior taxable year beginning after December 31, 1975.

See section 404 and the regulations thereunder for the determination of the amount deductible by the employer for the taxable year. If the amounts contributed by the employer exceed the amounts which have been deductible, the amount determined under this paragraph shall not exceed the amounts which have not been deductible. For purposes of this paragraph, the determination of both the amounts contributed and the amounts deductible by the employer for any relevant taxable year includes amounts contributed and deductible on behalf of any employee covered under the plan, including common-law employees and other self-employed individuals who are not owner-employees in addition to owner-employees. The determination of whether the full funding limitation is zero shall be made taking into account all the plan assets unreduced by any deduction carryover under section 404(a)(1)(D). The determination of whether the full funding limitation is zero as of the close of the employer's taxable year shall be made with respect to the plan year ending with or within the employer's taxable year. Consequently, if an employer whose taxable year is the calendar year establishes and maintains a defined benefit plan whose plan year begins on July 1 and ends on June 30, the full funding limitation for that plan will be determined with respect to the plan year ending on June 30 within the calendar taxable year including that June 30.

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) X Partnership ("X") adopts the Y Defined Benefit Plan ("Y Plan") on January 1, 1977. The taxable year of X is the calendar year. The Y Plan also has a calendar plan year. For 1977, $25,000 is contributed to the Y Plan by X. Assume that for 1977, (1) only $10,000 is deductible by X for 1977 under section 404 and (2) the full funding limitation of the Y Plan (determined under section 412(c)(7)) on December 31, 1977, is greater than zero. For 1978, X makes no additional contributions to the Y Plan. Assume that for 1978, (1) no amount is deductible by X under section 404 and (2) the full funding limitation of the Y Plan (determined under section 412(c)(7)) on December 31, 1978, is zero. The amount determined under section 4972(b)(3) and this paragraph for the 1978 taxable year is $15,000, computed as follows: the difference between (A) the sum of the amounts contributed by X for taxable year 1978 (0), and the amounts contributed by X for taxable year 1977 ($25,000) and (B) the sum of the amount deductible for taxable year 1978 (0) and the amount deductible for taxable year 1977 ($10,000). The tax imposed under section 4972 for 1978 on X (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $15,000 or $900.

(ii) For 1979, X makes no additional contributions to the Y Plan. Assume that for 1979, (1) the full funding limitation of the Y Plan determined under section 412(c)(7) is greater than zero. Assume further that $10,000 of the amounts contributed for 1977 is deductible by X for 1979 under section 404. There is no amount determined under section 4972(b)(3) and this paragraph for 1979 because the condition described in subparagraph (1)(i) of this paragraph is not satisfied.

(iii) For 1980, X makes no additional contributions to the Y Plan. Assume that for 1980, (1) no amount is deductible under section 404 and (2) the full funding limitation of the Y Plan (determined under section 412(c)(7)) on December 31, 1980, is zero. The amount determined under section 4972(b)(3) and this paragraph for the 1980 taxable year is $5,000, computed as follows: the difference between (A) $25,000, the sum of the amounts contributed by X for taxable years 1980 (0), 1979 (0), 1978 (0), and 1977 ($25,000) and (B) $20,000, the sum of the amounts deductible for taxable years 1980 (0), 1979 ($10,000), 1978 (0), and 1977 ($10,000). The tax imposed under section 4972 for 1980 on X (assuming that no other events affecting the determination of the tax under section 4972 occur) is 6 percent of $5,000, or $300.

(f) *Defined contribution plans*—(1) *General rule.* In the case of a defined contribution plan (as defined in section 414(i)), the amount determined under section 4972(b)(4) and this paragraph for the taxable year of the employer is equal to the portion of the amounts contributed under the plan by the employer during the taxable year plus the amounts contributed by the employer during any prior taxable year beginning after December 31, 1975, which has not been deductible by the employer for the taxable year or for any such prior taxable year. For purposes of this paragraph, the determination of both the amounts contributed and the amounts deductible by the employer for any relevant taxable year includes amounts contributed and deductible on behalf of any employee covered under the plan, including common-law employees and other self-employed individuals who are not owner-employees in addition to owner-employees.

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) The X Partnership ("X") adopts the Z Defined Contribution Plan and Trust ("Z Plan") on January 1, 1976. X's taxable year and the plan year of Z Plan are both calendar years. For 1976, X contributes $40,000, of which $30,000 is deductible under section 404 for taxable year 1976. The amount determined under section 4972(b)(4) and this paragraph for 1976 is $10,000 (the difference between (A) $40,000, the amount contributed by X for taxable year 1976 and (B) $30,000, the amount deductible for taxable year 1976).

(ii) For 1977, X contributes $25,000, and the amounts deductible by X under section 404 for taxable year 1977 is $30,000 ($5,000 for the contribution carryover from 1976 and $25,000 with respect to the 1977 contribution). The amount determined under section 4972(b)(4) and this paragraph for 1977 is $5,000, computed as follows: the difference between (A) $65,000, the sum of the amounts contributed by X for taxable year 1976 ($40,000) and the amounts contributed by X for taxable year 1977 ($25,000), and (B) $60,000, the sum of the amounts deductible for taxable year 1976 ($30,000) and the amounts deductible for taxable year 1977 ($30,000).

(g) *Correcting distribution*—(1) *General rule.* For purposes of section 4972(b) and this paragraph, the term "correcting distribution" means, for the taxable year of the employer, the sum of—

(i) In the case of a contribution made as an employee by an owner-employee, within the meaning of section 401(c)(3), to a defined benefit or defined contribution plan, the amount, or any part thereof, determined under section 4972(b)(2) and paragraph (d) of this section which is distributed to the owner-employee who contributed such amount to the plan;

(ii) In the case of a defined benefit plan, the amount, or any part thereof, determined under section 4972(b)(3) and paragraph (e) of this section which is distributed from the plan to the employer, and

(iii) In the case of a defined contribution plan, the amount, or any part thereof, determined under section 4972(b)(4) and paragraph (f) of this section which is distributed to (A) the employer or (B) to the employee for whom such amount was contributed.

If, for any employer taxable year in which a defined contribution plan is maintained, there is a correcting distribution to an employee which could be from amounts described in subparagraph (1)(i) and (iii) of this paragraph for such employee, then such correcting distribution shall be deemed to be made first from amounts described in such subparagraph (1)(i) and then from amounts described in such subparagraph (1)(iii) for purposes of this section and section 72. For the income tax treatment of such distributions to

employees, see section 72 and the regulations thereunder. Any such distributions to employees shall not be subject to the tax imposed by section 4975 nor result in the defined contribution plan failing to satisfy the exclusive benefit requirement of section 401(a), solely by reason of being a correcting distribution within the meaning of this paragraph. If, for any employer taxable year in which a defined benefit, or defined contribution plan is maintained, there is a correcting distribution described in subparagraph (1)(ii) or (iii) of this paragraph to the employer maintaining the plan, such distribution shall not be subject to the tax imposed by section 4975 nor result in the plan's failing to satisfy the exclusive benefit or the definitely determinable requirements under section 401(a). If, for any employer taxable year in which a money purchase pension plan is maintained, a correcting distribution described in subparagraph (1)(iii) of this paragraph is made to an employee who has not yet become eligible to receive retirement benefits under the plan, the qualification of the pension plan (and trust) under section 401(a) may be adversely affected. See § 1.401–1(b)(1)(i). A correcting distribution described in subparagraph (1)(iii) of this paragraph to an owner-employee prior to age 59½ must be precluded under the plan. See section 401(d)(4)(B).

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) A and B are owner-employees who are over the age of 59½ and who are covered under the X Employees' Defined Contribution Plan and Profit-Sharing Trust ("Plan Y"). The X Partnership ("X") and Plan Y are on calendar years. In calendar year 1976, A contributes $2,500 and B contributes $2,500 to Plan Y. The amount permitted to be contributed to Plan Y for 1976 with respect to A as an employee is $1,800 and with respect to B as an employee is $2,200. X contributes to Plan Y $5,000 on behalf of A and $5,000 on behalf of B. Of this amount, assume that $2,700 is deductible with respect to A and $3,300 is deductible with respect to B by X under section 404. The amount determined under section 4972(b)(2) and paragraph (d) of this section (the excess owner-employee contributions made by A and B to Plan Y) for taxable year 1976 is $1,000, computed as follows: the sum of (A) for A, $700, the difference between his own contributions ($2,500) and the amount permitted to be contributed by A ($1,800) and (B) for B, $300, the difference between his own contributions ($2,500) and the amount permitted to be contributed by B ($2,200). The amount determined under section 4972(b)(4) and paragraph (f) of this section (the excess contributions made by X to Plan Y) for taxable year 1976 is $4,000, computed as follows: the sum of (A) by X for A, $2,300, the difference between contributions by X ($5,000) and the amount deductible by X for A ($2,700) and (B) by X for B, $1,700, the difference between contributions by X for B ($5,000) and the amount deductible by X for B ($3,300). During 1976, there is no correcting distribution, within the meaning of section 4972 and this paragraph, because there are no distributions to A, B, or X.

(ii) Assume that, for taxable year 1977, the amounts determined under sections 4972(b)(2) and 4972(b)(4) remain the same as for taxable year 1976, that is, $1,000 ($700 for A and $300 for B) and $4,000 ($2,300 by X for A and $1,700 by X for B), respectively. Assume further that, in 1977, Plan Y distributes $3,000 to A and $1,000 to B. The amount determined under section 4972(b)(5) and this paragraph (the correcting distribution for Plan Y) for taxable year 1977 is $4,000, computed and attributed as follows: the sum of (A) $3,000 with respect to A, the amount of the distribution to A applied first to A's $700 amount described in subparagraph (1)(i) of this paragraph and next to A's $2,300 amount described in subparagraph (1)(iii) of this paragraph and (B) $1,000 with respect to B, the amount of the distribution to B applied first to B's $300 amount described in subparagraph (1)(i) of this paragraph and next to B's $1,700 amount described in subparagraph (1)(iii) of this paragraph. For purposes of computing the excess contributions for taxable year 1977, the correcting distribution of $4,000 would not be taken into account because only correcting distributions for prior year are considered. However, for taxable year 1978 the correcting distribution of $4,000 would be taken into account.

(iii) Assume that, for taxable year 1978, there are no additional amounts determined under sections 4972(b)(2) and 4972(b)(4) and that Plan Y distributes $900 to B. The amount determined under section 4972(b)(5) and this paragraph (the correcting distribution for Plan Y) for the 1978 taxable year is $900, computed and attributed as follows: the amount of the distribution to B, $900, applied to B's $1,000 amount described in subparagraph (1)(iii) of this paragraph. For purposes of computing the excess contributions for taxable year 1978, the correcting distribution of $900 would not be taken into account. However, for taxable year 1979, the correcting distribution of $900 would be taken into account.

(h) *Amount permitted to be contributed by owner-employee*—(1) *General rule.* Except as provided in subparagraph (2), for purposes of section 4972(b)(2) and paragraph (d), the amount permitted to be contributed under a plan by an owner-employee as an employee for any taxable year of the employer is the smallest of the following—

(i) $2,500;

(ii) 10 percent of the earned income (as defined in section 401(c)(2)) for such taxable year derived by the owner-employee from the trade or business with respect to which the plan is established, or

(iii) The amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions which is permitted to be made by employees who are not owner-employees during such taxable year.

(2) *Special rule.* In the case of a taxable year of the employer in which there are no employees other than owner-employees, the amount permitted to be contributed under a plan by an owner-employee (as an employee) is zero.

(i) *Special rules and cross references*—(1) *Time of contributions.* For purposes of this section, time of employer contributions made with respect to any taxable year shall take into account the rules specified in section 404(a)(6), relating to time when contributions deemed made.

(2) *Disallowance of deduction.* For disallowance of deduction for taxes paid under this section, see section 275(a)(6).

(3) *Certain annuity contracts.* For a special rule relating to owner-employee contributions for premiums on annuity, etc. contracts, see § 1.401(e)4(a)

(4) *Disqualification for excess contributions.* For plan qualification requirements relating to excess contributions, see section 401(d)(5).

[FR Doc. 81-2303 Filed 1-16-81—4:51 pm]
BILLING CODE 4830-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

Trademark Opposition and Cancellation Proceedings: Compulsory Counterclaims

AGENCY: Patent and Trademark Office (PTO), Department of Commerce.

ACTION: Final rule.

SUMMARY: This amendment of the rules of practice in trademark cases provides explicitly for compulsory counterclaims under stated conditions in opposition and cancellation proceedings before the Trademark Trial and Appeal Board in the Patent and Trademark Office. The amendment establishes the authority for a pre-existing practice which has been held on judicial review to be unauthorized by the existing rules.

EFFECTIVE DATE: April 1, 1981.

FOR FURTHER INFORMATION CONTACT: David J. Kera, Member, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, D.C. 20231, 703–557–3551.

SUPPLEMENTARY INFORMATION: On April 16, 1979 notice was given in the Federal Register (44 FR 22478) of a proposal to amend two sections of Title 37 of the Code of Federal Regulations relating to trademark opposition and cancellation proceedings. Interested persons were invited to comment on the proposal by May 15, 1979. Twenty-six written letters and statements were submitted. Careful consideration has been given to all comments received, and the proposal is being adopted with certain changes.

The regulations adopted involve both sections that were proposed to be revised, amended or added—namely, §§ 2.106 and 2.114.

This amendment has been reviewed pursuant to Executive Order 12044 and found to have no major economic consequences and therefore does not require a regulatory analysis.

The text of the rules will be reproduced in the Patent and Trademark Office Official Gazette in about two months with additions indicated by arrows and deletions indicated by brackets to help readers identify the changes. The letters and written statements received and a summary and analysis of the comments are available for public inspection in Room 11E10, Crystal Plaza, Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

Purpose of Rules

The purpose of the rules that are being adopted is to make it compulsory for a defendant to file a counterclaim for the cancellation of the registration pleaded by the plaintiff in an opposition or cancellation proceeding if the defendant wants to challenge the validity of the plaintiff's registration and if the grounds for a counterclaim exist when the answer to the notice of opposition or petition for cancellation is filed. When a defendant in an opposition or cancellation proceeding desires to eliminate the plaintiff's registration as a ground upon which the opposition or cancellation is based, a petition by the defendant to cancel the plaintiff's registration is mandatory because the validity of the plaintiff's registration cannot be questioned so long as it remains uncancelled.[1]

The effect of the rules is that if a counterclaim is not filed as provided by the rules, the applicant or respondent will thereafter be barred from seeking to cancel the registration pleaded by the opposer or cancellation petitioner in the prior proceeding on any ground which existed at the time when the answer was filed.

The rules that are being adopted avoid piecemeal litigation of a multiplicity of actions and counteractions relating to a single conflict or controversy. For instance, when the issue is likelihood of confusion and a question is raised whether the plaintiff's registration should remain on the register or should be cancelled, that question must be decided before there can be a determination of the issue whether the defendant's mark involved in an opposition proceeding should be registered or whether the defendant's registration involved in a cancellation proceeding should be cancelled.[2] To permit a defendant to litigate a first case to a decision, which by hypothesis the plaintiff would win, and thereafter permit the defendant to petition for the cancellation of the plaintiff's registration, would allow a proliferation of proceedings and would meanwhile result in the first plaintiff's registration remaining on the register when it might be an improper registration. If the party which was the defendant in the first case should win the second case and thereafter file a new application to register its mark, there would have been a substantial period of time when the register would not have reflected the true rights of the parties. This situation would be detrimental to the public, which searches the register and relies upon the rights recorded there when deciding upon the availability of new marks for adoption and use.[3] Since a claim of invalidity of a registration of a mark is logically related to the issue of enforceability of the registration in an opposition or cancellation proceeding, the consolidation in one proceeding of all claims determinable by the Patent and Trademark Office arising out of a particular conflict will avoid unnecessary delays and unnecessary proliferation of proceedings to decide what is a single controversy. By adopting the rules, the Office is taking steps to have the pleadings of the parties present the entire controversy at one time and to have discovery, trail, final briefs and oral argument in one proceeding instead of several. Both the parties and the public will benefit from the more efficient procedure established by the rules being adopted.

Compulsory Counterclaims

Amended §§ 2.106(b) and 2.114(b) provide that an answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescense, fraud, mistake or prior judgment. When pleading special matters, the Federal Rules of Civil Procedure are to be followed. A reply to an affirmative defense need not be filed. However, a defense attacking the validity of any one or more of the registrations pleaded in the opposition or petition for cancellation is a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant or respondent when the answer to the opposition or petition is filed, the counterclaim must be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition or cancellation proceeding, the counterclaim must be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed, however, if it is the subject of another proceeding between the same parties or anyone in privity therewith.

Amended §§ 2.106(b) and 2.114(b) further provide that an attack on the validity of a registration pleaded by an opposer or petitioner will not be heard unless a counterclaim or separate proceeding is filed to seek the cancellation of such registration. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or petition for cancellation, or in any amendment thereto made under Rule 15, FRCP. The provisions of §§ 2.111 through 2.115, inclusive, are applicable to counterclaims and a time, not less than thirty days, will be designated within which an answer to a counterclaim must be filed. Upon motion by a party, the times for pleading, discovery, testimony, briefs or oral argument will be reset or extended when necessary to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

In response to some of the comments, §§ 2.106(b)(1) and 2.114(b)(1) have been changed by the inclusion of a sentence to make it clear that they are applicable only when a pleaded registration is

[1] See *Contour Chair-Lounge Co., Inc.* v. *The Englander Co., Inc.*, 139 USPQ 285 (CCPA 1963).

[2] See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108 (CCPA 1974), where the Court held that the registered mark of even a subsequent-user opposer must be considered in an opposition; cf. *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 160 USPQ 715 (CCPA 1969), where, in an analogous situation, the Court said that the Board had taken the proper approach in first determining a cancellation petition by the plaintiff against the defendant's existing registration and then, after dismissing petition for cancellation, dismissed the opposition by the plaintiff against an application by the defendant for the registration of substantially the same mark for the same goods. The Court indicated that the issues in the cancellation had to be decided first because they were controlling.

[3] The public has an interest in the removal from the register of improvidently issued registrations. *Selfway, Inc. v. Travelers Petroleum, Inc.*, 198 USPQ 271 (CCPA, 1978).

identified by number and date of issuance in an original or amended notice of opposition or petition for cancellation. Since a party may not rely on a proceeding being prosecuted by a stranger, §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) have been modified from the version published for comment so as to state explicitly that the separate proceeding for the cancellation of an opposer's or cancellation petitioner's registration which would obviate the need for a counterclaim must be between the same parties or anyone in privity therewith. It should be noted that the Trademark Trail and Appeal Board has control over its docket so that a case may be suspended at the request of a party when a separate proceeding in a more advanced stage may render a case moot, thereby avoiding unnecessary litigation.

Two comments stated that there is no basis in the Trademark Act for the compulsory counterclaim rules in amended §§ 2.106(b)(2) and 2.114(b)(2). Several related comments were to the effect that these sections would operate to bar a claim against a plaintiff's registration prior to the time when such a claim would be barred by section 14 of the Act.

Initially, it should be noted that the presence of Rule 13(a) in the Federal Rules of Civil Procedure shows that there is no constitutional impediment to a compulsory counterclaim rule of procedure. Moreover, it is considered to be within the power of the Commissioner of Patents and Trademarks to adopt compulsory counterclaim rules, which are not inconsistent with any provision of the Trademark Act, as part of the rules and regulations for the conduct of proceedings in the Patent and Trademark Office, as authorized by section 41 of the Trademark Act.

Courts have long recognized that a compulsory counterclaim rule operates to compel a party to raise a claim at a time chosen by its opponent.[4] This necessarily means that a party may be compelled to raise a claim, or to lose it, long prior to the time when a statute of limitations would absolutely bar the claim. Sections 14 (a) and (b) of the Trademark Act have been interpreted as a statute of limitations barring claims against certain registrations on particular grounds more than five years after a specified event (the issuance or republication of a registration under the Trademark Act of 1946) has occurred.[5]

As there is nothing inconsistent between a statute of limitations and a compulsory counterclaim rule, so there is nothing inconsistent between a statutory cause of action for which there is no statute of limitations (sections 14 (c), (d), and (e) of the Trademark Act) and a compulsory counterclaim rule insofar as there is a particular controversy involving particular marks and specified goods or services. The effect of amended §§ 2.106(b) and 2.114(b) is simply to require the timely assertion of a claim, if one exists, under sections 14 (c), (d), and (e) of the Trademark Act. If a plaintiff's registration is invalid, it is to the benefit of the public as well as to the defendant to have it promptly removed from the register, and it is to the advantage of the parties and the board to have the issue litigated in one case rather than in a protracted series of cases. Since there is no provision of the Trademark Act with which the compulsory counterclaim rules are inconsistent and the rules are for the conduct of proceedings under the Trademark Act, it is concluded that the Commissioner possesses the statutory authority under section 41 of the Trademark Act to adopt the rules.

Although one comment stated that amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) are broader than the compulsory counterclaim rule of Rule 13(a), FRCP, it is the position of the Patent and Trademark Office that amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) comport with the practice on compulsory counterclaims announced and followed by the Federal Courts in applying Rule 13(a), FRCP.[6] Assuming that the comment is meant to point out that the plaintiff's right to prevent or cancel a registration and the defendant's right to obtain or retain a registration do not arise out of the "transaction or occurrence that is the subject matter of the opposing party's claim" (the language in Rule 13(a), FRCP), the answer is that an inter partes proceeding before the Board is *sui generis* and the continued existence or not of the plaintiff's registration is inextricably involved in the determination of the defendant's right to obtain or to maintain a registration when the issue is likelihood of confusion.

The occasion for a counterclaim will typically arise in practice only when an opposer or a cancellation petitioner seeks to prevent or to cancel a registration of an applicant or a respondent on the ground that the defendant's mark is likely to cause confusion or mistake or to deceive within the meaning of section 2(d) of the Trademark Act. Certainly the defense that a registration pleaded by an opposer or cancellation petitioner is invalid and therefore cannot support the pleaded claim of damage is, at the very least, an offshoot of the same basic controversy between the parties and is the essence of an affirmative defense. By virtue of section 2(d), the plaintiff's registration and the defendant's entitlement to a registration are parts of the same transaction, i.e., the process of deciding whether the defendant has a right to obtain or retain a registration.[7]

The same analysis responds to the five comments that the first action and a counterclaim are not intimately related or do not arise out of the same factual situation. A pleaded registration is a substantive part of the evidentiary case on behalf of an opposer or cancellation petitioner who is prosecuting a proceeding based upon likelihood of confusion since, in an opposition, it must be considered regardless of the parties' dates of use and, in a cancellation, is evidence of continuous use since the filing date of the application which issued into the registration. An attack on the validity of the pleaded registration, which must be by means of a counterclaim or petition for cancellation, is thus a related branch of the same basic controversy, and, as such, it is properly a compulsory counterclaim. Furthermore, if the counterclaim or petition for cancellation is premised on allegations of likelihood of confusion and priority of use, as is often the situation, the same factual and legal issues are present in both the opposer's or cancellation petitioner's case and the applicant's or respondent's case; *a fortiori*, a counterclaim is properly compulsory. To argue from a defendant's side that it is involuntarily involved does not justify not having to prosecute a counterclaim if grounds for it exist. A person accused of trademark infringement in an action in a District Court is just as involuntarily involved and it would be anomalous if a claim against the plaintiff's registration in such a proceeding were not considered a compulsory counterclaim.

What has been said above answers the comment that there is no judicial economy in a compulsory counterclaim rule. Without such a rule the following

[4] See *Martino's v. McDonald's System, Inc.*, 27 FR Serv 2d 501 (7th Cir. 1979).

[5] See *National Service Industries, Inc. v. Turtle Wax, Inc.*, 154 USPQ 68 (TTAB 1967).

[6] See *Martino's v. McDonald's System, Inc.*, *supra*, n. 4; *Plant v. Blazer Financial Services Inc. of Georgia*, 27 FR Serv 2d 955 (5th Cir. 1979); *Irrigation & Power Equipment, Inc., v. Machinery Specialties Pty., Ltd.*, 202 USPQ 12 (D. Colo. 1977); and *Lewis Manufacturing Co., Inc. v. Chisholm-Ryder Co., Inc.*, 27 FR Serv 2d 1166 (D. Pa. 1979).

[7] See *Webster's New Collegiate Dictionary* (1977) at 1239, which defines "transaction" as "an act, process or instance of transacting."

sequence of events could take place. An opposer could rely on a registration; the applicant could take no testimony; and the opposition would be decided in favor of the opposer. The applicant could then petition for cancellation of the opposer's registration on the ground of prior use. A defense of collateral estoppel raised by the initial opposer on the issue of priority would be met by the applicant with the argument that proof of priority of use in the opposition would have been irrelevant, citing *King Candy Co. v. Eunice King's Kitchen, Inc., supra*, n. 2, and therefore was not necessary to the determination of the opposition. A second proceeding would thus be litigated. Assuming applicant prevailed, presumably a second application would be filed. Thus the Office would have had to deal with two contested proceedings and two applications to determine rights that could have been ascertained on the basis of one application and one proceeding. An opposer which thought it had prevailed would discover that it had won a Pyrrhic—even a phantom—victory, and the register would have incorrectly reflected the rights of the parties, to the detriment of the public, for an extended period of time. To contend, in these circumstances, that the rule would not result in judicial, examining and public economy is to miss the point entirely.

Several comments stated that even under amended §§ 2.106(b) and 2.114(b), the Board cannot settle all of the potential issues between the parties because matters of infringement and unfair competition are for the courts to decide. It should be pointed out that the rules being adopted are designed to settle in one proceeding all of the issues determinable within the Patent and Trademark Office, arising from a particularized controversy involving specified marks and goods or services, which are ripe for litigation and adjudication. Obviously, issues outside the jurisdiction of the Board cannot be determined.

Amended §§ 2.106(b) and 2.114(b) do not impose a new and untried practice on the Trademark Trial and Appeal Board. On the contrary, a compulsory counterclaim rule was in effect and worked well from the date of the decision in *Outdoor Sports Industries, Inc. v. The Joseph & Feiss Co.*, 177 USPQ 535 (TTAB 1973), *petition denied*, 177 USPQ 533 (Comm'r. Pats 1973) to the date of the decision in *Endo Laboratories, Inc. v. Fredericks*, 197 USPQ 560 (TTAB 1977).[8] No objection to the practice from any source came to the Board's attention and no appeal from a decision applying the practice was prosecuted to an appellate decision except for *Thuron Industies, Inc., v. The Conrod-Pyle Co.*, 198 USPQ 403 (CCPA 1978), where the Court held that Rule 13(a), FRCP, did not support the Board's practice and that § 2.106(b), as then written, was a permissive rather than a mandatory rule. Nevertheless, during the five-year period in which a compulsory counterclaim practice was in effect, the Board did not experience any undue difficulty in discovery or motion practice, did not observe any unusual increase in the number of counterclaims that were filed and did not find that proceedings were made longer or more complicated by reason of the counterclaim practice. On the contrary, the Board's experience showed that the compulsory counterclaim practice resulted in a net saving of time and resources, thereby enabling the Board to function more efficiently and to serve the public interest more effectively.

Several comments stated that the compulsory counterclaim rules will provoke unnecessary conflicts or will make settlements more difficult to achieve. It is considered very unlikely that provisions for compulsory counterclaims will stimulate needless conflicts (by definition, a conflict exists before a counterclaim would be filed) or hamper attempts to reach a settlement. When parties have conflicting claims against each other, it is believed that both would have reason to explore the possibility of an amicable settlement which would obviate the need for litigation. However, in response to a suggestion received, it is considered inadvisable to quote or refer to the compulsory counterclaim rules in the Office letter notifying an applicant of an opposition or a respondent of a cancellation proceeding because that might be misinterpreted as a direction to file a counterclaim in every proceeding.

A few comments questioned the effect of amended §§ 2.106(b) and 2.114(b) on subsequent court litigation between the parties. These sections apply only to proceedings before the Trademark Trial and Appeal Board; they do not and could not affect the powers over registrations conferred upon the Federal Courts by section 37 of the Trademark Act. The Patent and Trademark Office cannot, of course, speculate on how courts may apply the doctrine of estoppel to claims which might have been, but were not, litigated in the Office. This and other questions remain to be answered by the evolution of case law after the amended rules become effective.

It is expected that in the original notice of opposition or petition for cancellation, an opposer or cancellation petitioner will identify by number and date of issuance each registration upon which it expects to rely. The deliberate withholding, until the testimony period of an opposer or cancellation petitioner, of the identification of the registration or registrations intended to be introduced in evidence in support of the claim of damage causes unwarranted surprise and prejudice to an applicant or respondent. Such a practice frustrates proper discovery and preparation for trial. The burden is upon an opposer or cancellation petitioner to present initially a pleading that gives fair notice of the case that an applicant or respondent must meet. The Federal Rules of Civil Procedure reject the approach that pleading is a game of skill.[9]

The Patent and Trademark Office recognizes that situations will arise where an opposer or cancellation petitioner will want to introduce a registration which was not originally pleaded. This may be done by a motion to amend the pleadings under Rule 15, FRCP, to add one or more registrations. When they are pleaded by number and date of issuance, amended §§ 2.106(b) and 2.114(b) will then apply to any added registration. It should be remembered that a long and unexplained delay in the filing of a motion to amend a notice of opposition or petition for cancellation, when there is no question of newly discovered evidence (as there would not be when a party is pleading its own registration), may render the amendment untimely if the defendant is thereby prejudiced.[10] It therefore behooves an opposer or cancellation petitioner to plead its registration by number and date of issuance, if not in the original notice of opposition or petition for cancellation, as soon as possible after the omission (or newly issued registration) comes to the opposer's or cancellation petitioner's attention. Amended §§ 2.106(b)(2)(iv) and 2.114(b)(2)(iv) provide sufficient flexibility to allow an applicant or respondent fair and adequate opportunity to plead, take discovery, and present evidence on a counterclaim

[8] During this period, the following cases applied the compulsory counterclaim rule then in effect: *Textron, Inc. v. The Gillette Co.*, 180 USPQ 152 (TTAB 1973); *Kajita v. Walter Kidde & Co.*, 185 USPQ 436 (TTAB 1975); *Delta Tire Corp. v. Sports Car Club of America, Inc.*, 185 USPQ 443 (TTAB 1975); and *Scovill Mfg. Co. v. Stocko Metallwarenfobriken Henkels und Sohn KG*, 188 USPQ 24 (TTAB 1975).

[9] See *Tiffany & Co. v. Columbia Industries, Inc.*, 173 USPQ 6 (CCPA 1972).

[10] See *Ercona Corp. v. JENAer Glaswerk Schott & Gen.*, 182 USPQ 573 (TTAB 1974).

on any available ground when an opposer or cancellation petitioner pleads a registration in an amended notice of opposition or petition for cancellation.

An opposer or cancellation petitioner may withdraw without prejudice a notice of opposition or a petition for cancellation before an answer is filed. See §§ 2.106(c) and 2.114(c). One comment inquired what would happen if the defendant failed to file an answer. When an applicant or respondent elects not to answer, the opposition or cancellation is decided as in a case of default. See §§ 2.106(a) and 2.114(a). If no answer of any kind is filed, there can be no counterclaim, which is, by definition, a pleading within an answer. If a party is willing to lose by default, there is a very high probability that there is no interest in the mark, at least for the goods or services identified in the application being opposed or in the registration sought to be cancelled.

One comment expressed concern that the premature destruction of the records of proceedings in the Patent and Trademark Office might impede or prevent a party from rebutting a contention that a compulsory counterclaim was not filed. There should be no apprehension that the destruction or loss of Office records would interfere with a just application of amended §§ 2.106(b) and 2.114(b). Every paper in every proceeding is either filed by or served upon every party. See §§ 2.105, 2.113 and 2.119(a). In every case, the decision or an order terminating the proceeding is served on every party through counsel or directly when there is no counsel. Thus, every party to a proceeding will have a complete record of the pleadings and the decision or order terminating a proceeding for future use as needed.

Several comments raised the question of the effect of amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) in situations where the grounds for a counterclaim exist but are not known to a defendant. Several related comments indicated a lack of understanding of the difference between the existence of grounds for a counterclaim and knowledge of those grounds by a defendant. One comment stated that the author agreed with the proposed rules if they were limited to grounds the defendant knew or had reason to know, and one comment stated that the proposed rules should limit compulsory counterclaims to certain causes of action, e.g., likelihood of confusion combined with priority of use. Another comment was in favor of the adoption of the proposed rules provided that a counterclaim could be pleaded in an amended answer.

A distinction is made in amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) between the time when a cause of action giving rise to a counterclaim must have matured for a counterclaim to be complusory and the time when the counterclaim be pleaded. The cause of action must have matured by the date of filing of the answer to the notice of opposition or petition for cancellation in order for the counterclaim to be compulsory in that proceeding. Rule 13(a), FRCP, provides that "A pleading shall state as a counterclaim any claim which *at the time of serving the pleading* the pleader has against any opposing party * * *" (emphasis added). This indicates that there should be a date which sets a limit so that if a claim matures thereafter it is not a compulsory counterclaim. The date of filing of the answer seems to be, in the context of proceedings before the Board, a fair limiting date. Thus, if a cause of action, such as abandonment,[11] does not exist until after the date of the answer, it is not a compulsory counterclaim. That is, if the cause of action for the cancellation of the plaintiff's pleaded registration has not matured by the date of filing of the answer, the filing of a counterclaim is permissive rather than mandatory.

It is recognized that the grounds for a counterclaim may remain unknown until after the initial anwer is filed. In certain situations the defendant will usually know the grounds, or at least have knowledge upon which a counterclaim could be pleaded in good faith on information and belief, before the answer is filed. These grounds include likelihood of confusion combined with priority of use, or mere descriptiveness of the plaintiff's alleged mark, or that the plaintiff's alleged mark is the common descriptive name of a product or service. In other situations, the grounds for a counterclaim may be learned by means of discovery or, in some instances, as a result of an opposer's or cancellation petitioner's evidence. Examples of such grounds are abandonment and, rarely, fraud. In the absence of a separate petition for cancellation previously filed by a party or anyone in privity therewith, the counterclaim must be filed as part of the answer (which means that the answer must be verified and the proper cancellation fee paid) if the grounds are known when the answer is filed. If grounds for cancellation are learned after the answer is filed, the counterclaim must be filed promptly (which is a flexible standard) after the grounds are learned if it is to be asserted. The counterclaim which is added by an amendment to the answer must be verified and accompanied by the proper fee. As amended §§ 2.106(b)(2)(i) and 2.114(b)(2)(i) make clear, any answer may be seasonably amended to plead a counterclaim when the grounds are learned after the original answer is filed.

A number of comments expressed concern that the rules will mandate or encourage speculative counterclaims which the defendant would hope to support by information learned through discovery. A related comment was that proceedings would become complicated and there would be no saving in time or expense. Several comments indicated that an applicant desiring a decision only on the single issue of the registrability of its mark would feel compelled to file a counterclaim.

An applicant or respondent is under an obligation to learn by discovery whether suspected possible grounds for a counterclaim in fact exist if it wants to be sure of the opportunity to file a counterclaim when the grounds existed as of the date of filing the answer. The amount of discovery required to learn of the possible existence of grounds for a counterclaim is not onerous, at least up to the point where an informed decision may be made whether or not to pursue the issue. However, speculative counterclaims should not be filed. Section 2.15 states that the signature of an attorney at law or other person representing a party to a proceeding to a paper filed by him, or the filing of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. Rule 11, FRCP, contains language to the same effect and further provides that a pleading signed with intent to defeat the purpose of the rule may be stricken as sham and false.

An applicant or respondent is never under an absolute obligation to plead a counterclaim. If an applicant or respondent desires to have a proceeding which will determine only whether the applicant's or respondent's mark is likely to cause confusion, mistake or deception, the applicant or respondent may refrain from filing a counterclaim (assuming, of course, that there is a choice because the factual basis for a counterclaim is present). The effect of omitting a counterclaim for which the

[11] See *P.A.B. Produits et Appareils de Beaute* v. *Satinine Societa In Nome Collettivo di S.A. e.M. Uselline*, 196 USPQ 801 (CCPA 1978).

grounds exist will be that the applicant or respondent, after the case is terminated will thereafter be barred from petitioning to cancel the registration pleaded by the opposer or cancellation petitioner (i.e., the registration identified by number and date of issue in an original notice of opposition or petition for cancellation) on any ground that had matured when the original answer was filed in the first proceeding. This bar will be effective, however, only insofar as a second proceeding between the parties would involve the same mark and the same goods or services of the party (applicant or respondent in the first proceeding) as were the subject of the first proceeding.

Several comments raised the question of the effect of amended §§ 2.106(b) and 2.114(b) when there was no reason for the applicant or respondent to file a counterclaim in the first proceeding because there clearly was no likelihood of confusion, but a later application or registration by the same applicant or respondent, for a specifically different mark or for the same mark but different goods or services, presented a much closer question, and the applicant or respondent, when again met with an opposition or petition for cancellation by the same party relying upon the same registration as had been pleaded in the prior proceeding, would want to counterclaim for cancellation. As indicated previously, the rules that are being adopted have the objective of avoiding a relitigation of issues that could have been determined in a single proceeding. The intent of amended §§ 2.106(b) and 2.114(b) is to bar a later petition for cancellation of the pleaded registration only when the same conflict or controversy is sought to be relitigated. Thus, if a second proceeding concerns a mark or a description of goods or services different from those of the applicant or respondent in the first proceeding, other than trivial, frivolous, or immaterial changes, different issues are presented, the controversy is different, and the compulsory counterclaim rules would have no application; in this situation a petition or counterclaim for cancellation of the opposer's or cancellation petitioner's pleaded registration in a new proceeding would not be barred.

The situations where the compulsory counterclaim rules in amended §§ 2.106(b) and 2.114(b) are most likely to be invoked are those in which a cause of action for the cancellation of an opposer's or cancellation petitioner's registration arises from events or facts which have been concluded or fixed at a time which has passed. When a cause of action arises from a continuing state of facts, e.g., abandonment as a result of nonuse of a mark, or licensing without adequate control, or because a word has become a common descriptive name, it is conceivable that the compulsory counterclaim rules that are being adopted will be applicable very infrequently or not at all.

One comment stated that an applicant or respondent cannot properly plead damage from an opposer's or cancellation petitioner's registration until the Trademark Trial and Appeal Board or a court "reverses" the examiner's "holding" that a mark, as applied to its goods or services, does not so resemble a previously registered mark as to be likely to cause confusion. This comment misconstrued the decision in *Hyde Park Footwear Co., Inc. v. Hampshire Designers, Inc.*, 197 USPQ 639 (TTAB 1977). An applicant or respondent may consider itself to be damaged by the registration of an opposer's or cancellation petitioner's mark, and is therefore entitled to present evidence and to be heard, notwithstanding that the examiner, with only an application and a prior registration to consider, may have been of the opinion that confusion is unlikely. There is no requirement, and it would be unreasonable to impose one, that an applicant or respondent must await an unfavorable decision of the Board in an opposition or cancellation proceeding (thereby "reversing" the examiner) before the applicant or respondent could assert a likelihood of confusion as a basis for the standing necessary for a cancellation petition against an opposer's or petitioner's registration. Where a party can demonstrate a real interest in the proceeding, it has standing to petition for cancellation.[12]

Another comment suggested that the fee payable in connection with a cancellation be $25 regardless of the number of registrations sought to be cancelled by the counterclaimant. Section 31(a)(5) of the Trademark Act requires a fee of $25 on filing a petition for cancellation for each class. Since section 41 of the Trademark Act specifies that the rules and regulations promulgated by the Commissioner be not inconsistent with law, a single fee of $25 irrespective of the number of registrations or classes for which cancellation is sought cannot be established. However, as a practical matter, the fee for cancellation is usually a very small percentage of the total cost incurred. Even in the extremely rare case involving numerous pleaded registrations, the antagonists are generally prepared to expend a considerable sum to settle a wide-ranging dispute, and again the fee is a small percentage of the total expense. Thus, the statutory fee is not considered to be a reason not to adopt the compulsory counterclaim rules.

Amended §§ 2.106(b) and 2.114(b) are not applicable to concurrent use proceedings. In such proceedings, the applicant is the nominal plaintiff and only its concurrent use application is involved, so there is no registration against which the named excepted user (the nominal defendant in the proceeding) could counterclaim.

One comment suggested a rule change which was more extensive than the published proposal. After careful consideration, it was decided not to make the rules that are being adopted applicable to concurrent use proceedings or to interference proceedings. When a concurrent use applicant specifies another's application or registration as an exception to the applicant's right of exclusive use, the other party's application or registration is made a part of the concurrent use proceeding and the excepted applicant or registrant is made a party to the proceeding. See §§ 2.42 and 2.99. At the conclusion of the proceeding conducted by the Trademark Trial and Appeal Board pursuant to section 17 of the Trademark Act, the Commissioner may restrict the registration of a registered mark and may register the mark or marks for the person or persons entitled thereto, as the rights of the parties are established in the proceeding. See section 18 of the Trademark Act. Prior to the institution of a concurrent use proceeding, which is between or among the concurrent use applicant or applicants and persons named as excepted users, which include applicants and registrants specified as excepted users, a concurrent use application is published for opposition under section 12(a) of the Trademark Act. Upon publication under section 12(a), any person, including a person named in the application as an excepted user, who believes he may be damaged may file a notice of opposition.

If the opposition to a concurrent use application is prosecuted to a decision, the rights of the parties, including any rights determinable on a counterclaim under amended § 2.106(b), may be decided there. If the rights of the parties are determined in the concurrent use proceeding, section 18 of the Trademark Act authorizes the Commissioner to restrict an applicant's or an excepted

[12] See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24 (CCPA 1976); and *Colomb v. Wadsworth*, 201, USPQ 200 (CCPA 1979).

user's application or registration in accordance with the findings and conclusions of the Board. Hence, there is no need to extend the compulsory counterclaim rules to concurrent use proceedings.

Interferences are declared only by the Commissioner and only upon petition showing extraordinary circumstances which would result in a party's being unduly prejudiced without an interference. See § 2.91(a). In practice, an interference is declared only when there are more than two pending applications for substantially the same mark for substantially the same goods or services and the applicant claiming the earliest date of first use is the junior applicant so that he would have to file and prosecute two or more oppositions successfully before his mark could be published for opposition. Since only applications are involved, there is no need for a compulsory counterclaim rule in interference proceedings. All of the rights of the parties will be determined in the interference proceeding.

Text of Rules Adopted

After consideration of the comments received and pursuant to the authority contained in section 1123 of Title 15 of the United States Code and section 6 of Title 35 of the United States Code, Part 2 of Title 37 of the Code of Federal Regulations is amended as set forth below.

1. In § 2.106 paragraph (b) is revised to read as follows:

§ 2.106 Answer.

* * * * *

(b)(1) An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, or prior judgment. When pleading special matters, the Federal Rules of Civil Procedures shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto made under Rule 15, FRCP.

(2)(i) A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

2. In § 2.114 paragraph (b) is revised to read as follows:

§ 2.114 Answer.

* * * * *

(b)(1) An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, or prior judgment. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original petition for cancellation or in any amendment thereto made under Rule 15, FRCP.

(2) (i) A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer if filed. If grounds for a counterclaim are known to respondent when the answer to the petition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the cancellation proceeding. The counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by a petitioner for cancellation will not be heard unless a counterclaim or separate petition if filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs, or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

Dated: December 8, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks

Approved: January 9, 1981.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-1578 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-16-M

POSTAL SERVICE

39 CFR Part 111

Application Procedures for Special Bulk Third-Class Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends Chapter 6 of the Domestic Mail Manual to clarify the Postal Service's administrative practice concerning the application procedures for special (nonprofit) bulk third-class mail rates. It states with greater precision that a separate application for an authorization to mail at the special bulk third-class rates of postage must be filed at each post office where the mailer desires to deposit special rate mailings. The rule also clarifies that a refund of postage paid at the regular bulk third-class rates while a special rate application was pending will only be paid on mailings made at offices where an application was filed. In addition, the rule further clarifies that a cooperative mailing may be made by two or more nonprofit organizations only when each of the cooperating organizations is authorized to mail at the special bulk third-class rates at the post office where the cooperative mailing is deposited.

EFFECTIVE DATE: February 21, 1981.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, Office of Mail Classification, (202) 245-4353.

SUPPLEMENTARY INFORMATION: On September 26, 1980, the Postal Service

published for comment in the Federal Register the proposed amendment to Chapter 6. Interested persons were invited to submit written comments concerning the proposed regulations. No comments were received. Accordingly, the Postal Service hereby adopts the following changes to the Domestic Mail Manual which is incorporated by reference in the Federal Register (39 CFR 111.1).

PART 623—SPECIAL BULK RATES

1. In Part 623, amend 623.1 to read as follows:

623.1 Authorization.

Only organizations which meet the requirements of 623.2 or 623.3 and which have received specific authorization from the Postal Service may mail eligible matter at the special bulk rates contained in Exhibit 611.2. (See application procedure in 642.) Before mailing at the special bulk rates, a mailer must be issued a special rate authorization. A separate authorization is required at each post office where special rate mailings are deposited.

2. In part 623, amend 623.52 to read as follows:

623.5 What may be mailed.

* * * * *

.52 Cooperative mailings may be made at the special bulk rates only when each of the cooperating organizations is individually authorized to mail at the special bulk rates at the post office where the mailing is deposited. Cooperative mailings containing any matter prepared by, in behalf of, or produced for an organization not itself authorized to mail at the special bulk rates at the post office where the mailing is deposited must be paid at the applicable regular rate. If customers disagree with a postmaster's decision that the regular rate of postage applies to a particular mailing, they may appeal the decision in accordance with 133. See Form 3602, *Statement of Mailing With Permit Imprints*, or Form 3602-Pc, *Statement of Mailing—Bulk Rates*, for the certifications required of special bulk rate mailers for mailings made under this section.

PART 641—ANNUAL FEE—BULK RATES

3. Amend 641 to read as follows:

641 Annual Fee—Bulk Rates.

An annual bulk mailing fee must be paid once each calendar year by or for any person or organization which mails at the regular or special bulk third-class rates at each post office where mailings will be deposited (see 612.1). Any person or organization which engages a business concern or other individual to mail for them must pay the fee. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2). The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year.

PART 642—APPLICATION TO MAIL AT THE SPECIAL BULK RATES

4. In 642.1 amend .11 to read as follows:

642.1 Application Procedures.

.11 *Filing.* An application for authorization on Form 3624, *Application To Mail at Special Bulk Third-Class Rates*, must be filed by the organization at each post office where the organization wishes to deposit mailings at the special bulk rates. The applicant must indicate on the application form the qualifying category or categories of organizations under which it seeks authorization. See 623.

5. In 642.4, amend .43 to read as follows:

642.4 Mailing While Application Pending.

* * * * *

.43 *Refund.* If an authorization to mail at special bulk rates is issued, the postmaster of the issuing office will refund to the mailer the postage paid at that office at the applicable regular bulk third-class rate in excess of the special rate since the effective date of the authorization.

Note.—No refunds will be made:

a. If the application is denied and no appeal is filed;

b. If postage was paid at first-class or single-piece third-class rates;

c. For the period prior to the effective date of the authorization; or

d. For mailings made at a post office at which a separate application was not filed.

(39 U.S.C. 401(2), 404(a)(2))

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 81-2274 Filed 1-21-81; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

[A-1-FRL 1725-7]

40 CFR Part 52

Revision to the State Implementation Plan (SIP) for the State of Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Maine were submitted to EPA on July 1, 1980 by the Commissioner of the Department of Environmental Protection. Those revisions included a comprehensive air quality monitoring plan intended to meet requirements of 40 CFR 58.

On September 17, 1980 the Regional Administrator published in the Federal Register (45 FR 61644) a Notice of Proposed Rulemaking for this revision to the Maine SIP, to approve the comprehensive air quality monitoring plan. No comments were received during the 30-day comment period. EPA is taking final action approving the revision.

EFFECTIVE DATE: These regulations take effect on February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Donald P. Porteous, Air Section, EPA, Region I, 60 Westview Street, Lexington, Massachusetts 02173, (617) 861-6700.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) pursuant to the requirements of Sections 110(a)(2)(C), 319, 313, and 127 of the Clean Air Act, EPA promulgated ambient air quality monitoring, data reporting, and surveillance provisions, establishing a new Part 58 in 40 CFR, entitled Ambient Air Quality Surveillance.

Maine has submitted a Comprehensive Air Quality Monitoring Plan designed to meet the requirements of Part 58. EPA has found that the Maine submittal meets the applicable regulations. EPA proposed approval of the Comprehensive Air Quality Monitoring Plan in a notice of proposed rulemaking (45 FR 61644). No comments were received during the 30-day comment period. EPA is now granting final approval of the Maine plan.

After evaluation of the state's submittal, the Administrator has determined that the Maine revision meets the requirements of the Clean Air Act and 40 CFR Part 58. Accordingly, this revision is approved as a revision to the Maine State Implementation Plan.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this SIP revision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

(Section 110(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7401 and 7601)

Dated: January 14, 1981.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart U—Maine

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

Under § 52.1020, Identification of Plan, add Paragraph (c)(13) as shown below:

§ 52.1020

* * * * *

(c) * * *

(13) Revisions to Chapter 5—State Implementation Plan—Air Quality Surveillance, intended to meet requirements of 40 CFR 58, were submitted by the Commissioner of the Maine Department of Environmental Protection on July 1, 1980.

[FR Doc. 81-2198 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule changes the effective date of filing legal documents in adjudicative proceedings under the Surface Mining Control and Reclamation Act of 1977. This action is necessary so that delays in the mail will not cause parties to lose their legal rights. It permits filing to be effective upon mailing the document rather than on receipt of the document.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce R. Harris, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (703-557-9037).

SUPPLEMENTARY INFORMATION: 43 CFR 4.1107(g) concerns the effective filing date for documents filed with an administrative law judge, other than a document initiating a proceeding, and for all documents filed with the Board of Surface Mining and Reclamation Appeals. Presently, the regulation provides that the filing date is the date the document is received by the administrative law judge or the Board. Mail delays have resulted in the dismissal of several appeals by the Board for late filing. To alleviate this problem, 43 CFR 4.1107(g) is changed to make the effective filing date the date of mailing for a notice of appeal or petition for discretionary review filed with the Board, rather than the date of receipt. However, the date of receipt is retained for cases in which the Board has a regulatory deadline for issuing a decision—30 days from the filing of a perfected application under 43 CFR 4.1187(h) and within 60 days of the date the hearing record is closed by the administrative law judge under 43 CFR 4.1196. Language is added to place the burden of establishing the date of mailing on the person filing the document. A postmark will suffice as evidence of mailing; however, occasionally mail is delivered with an illegible postmark or no postmark at all. Therefore, filing parties are cautioned that the best evidence of the date of mailing is a certificate of mailing issued by the post office. In addition, a postage meter postmark will not be considered evidence of mailing since such meters may be adjusted to show a date other then the actual date of mailing. Proof that a document was properly addressed would also be required to establish the date of mailing; this can also be accomplished by obtaining a certificate of mailing.

Since 43 CFR 4.1107(g), as changed, relates only to notices of appeal and petitions for discretionary review filed with the Board, 43 CFR 4.1107(h) is added to establish the effective filing date for all other documents filed with the Board and for all documents, other than an initiating document, filed with an administrative law judge. The effective filing date for those documents is the date of mailing. The burden of establishing the date of mailing is on the person filing the document. The discussion above concerning establishing the date of mailing is applicable to this regulation also.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Exec. Order No. 12044 and 43 CFR Part 14.

Because these rules are not significant and are rules of Departmental procedure, they need not be and were not published in proposed form for public comment. 5 U.S.C. 553(b)(A), 43 CFR 14.5(d)(2). They shall be effective on the date of their publication because they do not substantially modify earlier procedures. 43 CFR 14.5(d)(4).

Dated: January 16, 1981.

Cecil D. Andrus,

Secretary of the Interior.

1. Section 4.1107(g) is revised to read:

§ 4.1107 Filing of documents.

* * * * *

(g) The effective filing date for a notice of appeal or a petition for discretionary review filed with the Board shall be the date of mailing or the date of personal delivery, except the effective filing date for a notice of appeal from a decision in an expedited review of a cessation order proceeding or from a decision in a suspension or revocation proceeding shall be the date of receipt of the document by the Board. The burden of establishing the date of mailing shall be on the person filing the document.

* * * * *

2. Section 4.1107(h) is added:

§ 4.1107 Filing of documents.

* * * * *

(h) The effective filing date for all other documents filed with an administrative law judge or with the Board shall be the date of mailing or personal delivery. The burden of establishing the date of mailing shall be on the person filing the document.

[FR Doc. 81-2328 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

43 CFR Public Land Order 5797

[CA-275]

California; Partial Revocation of Reclamation Project Withdrawal

Correction

In FR Doc. 81-591 appearing on page 2046 in the issue of Thursday, January 8, 1981, third column under "Mount Diablo Meridian" land description, the complete description should read as follows:

T. 47 N., R. 3 E.,
Sec. 19, Lots 1, 2, 3, 4, and 5, and SE¼SE¼;
Sec. 20, Lots 1 and 2, fractional part of SW¼NE¼, E½NE¼, and NW¼SW¼;
Sec. 30, Lot 1 and NE¼NW¼.

BILLING CODE 1505-01-M

43 CFR Public Land Order 5808

[A-9628]

Arizona; Partial Revocation of Forest Service Administrative Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Executive Order No. 1398, issued August 15, 1911 which withdrew public lands for a Forest Service Administrative Site. Because of the Recreation and public Purposes lease currently upon the subject lands, they will remain closed to all forms of disposal except dispoal under the Recreation and Public Purposes Act.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mario L. Lopez, Arizona State Office, 602–261–4774.

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 1398, issued on August 15, 1911, which set aside public lands for a Forest Service administrative site is hereby revoked so far as it affects the following described lands:

Gila and Salt River Meridian

T. 24 S., R. 14 E.,

Sec. 6, Lots 8 and 13 (formerly that portion of SE¼NE¼, NE¼SE¼ lying west of right-of-way for N.S. Interstate Highway 19).

The area described contains 42.77 acres in Santa Cruz County.

2. The above-described public lands are currently included in Recreation and Public Purposes Lease A–6629, issued to the Nogales Public Schools, under the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), and are not subject to other appropriation or disposition under the public land laws, including the mining laws (30 U.S.C. Ch. 2), or the Mineral Materials Sales Act of July 31, 1947, as amended, (30 U.S.C. 601, 602)(1976), but will remain open to leasing under the mineral leasing laws.

3. Any rights and privileges in the form of easements and rights-of-way previously granted or established under the public land laws on the subject lands shall continue in full force and effect.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81–2268 Filed 1–21–81; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 5809

[ORE 012261–A]

Oregon; Partial Revocation of Public Land Order No. 3165

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in part as to 289.28 acres of lands withdrawn for protection and preservation of scenic and recreation areas by the Bureau of Land Management. This action will restore part of the lands to the operation of the public land laws generally.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3165 of July 31, 1963, which withdrew certain lands for protection and preservation of scenic and recreation areas by the Bureau of Land Management is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 34 S., R. 8 W.,
Sec. 2, N½SW¼;
Sec. 3, Lots 1, 2, and S½NE¼;
Sec. 13, NE¼SE¼.

The area described aggregates 289.28 acres in Josephine County.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands in Sections 2 and 13 will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. The lands in Section 3 remain segregated from operation of the public land laws generally by Power Site Reserve No. 728 of December 27, 1919, and Water Power Designation No. 14 of February 13, 1922. Lot 1 of Section 3 is also segregated from operation of the public land laws generally, including the United States mining laws and mineral leasing laws by Wild and Scenic Rivers Withdrawal, OR 4337–A.

4. The lands described in paragraph 1 except Lot 1 of Section 3 have been and continue to be open to entry and location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81–2271 Filed 1–21–81; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 5810

[OR–16881]

Oregon; Partial Revocation of National Forest Administrative Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes the Secretarial Order of November 23, 1906, as to 80 acres of lands withdrawn for use by the Forest Service as a ranger station. This action will restore the lands to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of November 23, 1906, which withdrew certain national forest lands for use by the Forest Service as a ranger station, is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Wallowa-Whitman National Forest—Porcupine Administrative Site

T. 5 S., R. 37 E.,
Sec. 22, W½SE¼.

The area described contains 80 acres in Union County.

2. At 10 a.m., on February 20, 1981, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81–2261 Filed 1–21–81; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 5811

[C-25845]

Colorado; Withdrawal of Lands for the Dolores Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 953.06 acres of public land and 309.56 acres of national forest lands and reserves them for use by the Water and Power Resources Service in connection with the McPhee Dam and Reservoir, Dolores Project in Colorado.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Alvah Q. Whitledge, Colorado State Office, 303–837–2825.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, 30 U.S.C. Ch. 2. The lands shall be reserved for use by the Water and Power Resources Service in connection with the McPhee Dam and Reservoir, Dolores Project, including, without limiting the generality of the preceding, the use of such lands to replace wildlife habitat inundated by the McPhee Reservoir and for recreational purposes.

New Mexico Principal Meridian

T. 38 N., R. 15 W.,
Sec. 18, lots 2 and 3, NE¼SW¼;
Sec. 19, SE¼NW¼, NE¼SW¼.
T. 38 N., R. 16 W.,
Sec. 2, lots 1 to 4 inclusive;
Sec. 11, S½N½;
Sec. 12, SW¼NE¼, S½NW¼, N½S½, SW¼SW¼, SE¼SE¼;
Sec. 13, W½NW¼.

The above described lands aggregate 953.06 acres in Montezuma County.

2. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the mining laws, 30 U.S.C. Ch. 2, for use by the Water and Power Resources Service in connection with the McPhee Dam and Reservoir, Dolores Project:

San Juan National Forest

New Mexico Principal Meridian

T. 38 N., R. 15 W.,
Sec. 3, lot 2, E½NE¼SE¼, SW¼NE¼SE¼, SW¼SE¼;
Sec. 7, S½NE¼, E½SE¼;
Sec. 28, NW¼SW¼.

The above described lands aggregate 309.56 acres in Montezuma County.

The total area described contains 1,262.62 acres.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands described in paragraph 2 of this order under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2285 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5812

[OR-20289 (Wash)]

Washington; Revocation of Public Water Reserve No. 63

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order which withdrew certain lands as a public water reserve. This action will restore 40 acres to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of April 30, 1919, which withdrew the following described public lands for a public water reserve is hereby revoked:

Willamette Meridian

Public Water Reserve No. 63

T. 25 N., R. 25 E.,
Sec. 35, SE¼SW¼.
T. 16 N., R. 28 E.,
Sec. 14.

The areas described aggregate 680 acres in Douglas and Adams Counties, Washington.

2. The lands in T. 16 N., R. 28 E., are withdrawn for the Columbia National Wildlife Refuge by Public Land Order 1766 of December 12, 1958, and Public Land Order 4954 of November 27, 1970, and remains segregated from the public land laws generally, including the United States mining laws.

3. At 10 a.m., on February 20, 1981, the land in T. 25 N., R. 25 E., shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m., on February 20, 1981, the land in T. 25 N., R. 25 E., will be open to nonmetalliferous mineral location under the United States mining laws. The land has been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2270 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5813

[I-4769]

Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two orders which withdrew lands for the Minidoka Reclamation Project. The land has been disposed of in accordance with the Act of March 31, 1950 (64 Stat. 39).

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208–234–1735.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714), it is ordered as follows:

1. The Secretarial Orders of November 17, 1902, and March 18, 1908, which withdrew lands for the Minidoka Reclamation Project, are hereby revoked

so far as they affect the following described land.

Boise Meridian

T. 8 S., R. 25 E.,
Sec. 12, SE¼SE¼.

The area described contains 40 acres in Minidoka County.

2. The land has been patented in accordance with the Act of March 31, 1950 (64 Stat. 39).

The land has been and continues to be open to applications and offers under the mineral leasing laws.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2287 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5814

[OR-13355]

Oregon; Revocation of Secretarial Order of April 25, 1899

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order which withdrew 6.24 acres of land for use by the U.S. Army Corps of Engineers as a rock quarry site. This action will restore the land to operation of the public land laws generally, including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughn, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of April 25, 1899, which withdrew the following described land for use by the U.S. Army Corps of Engineers as a rock quarry site is hereby revoked:

Willamette Meridian

Siuslaw River Rock Quarry Site

T. 18 S., R. 10 W.,
Sec. 11, Lot 9.

The area described contains 6.24 acres in Lane County, Oregon.

2. At 10 a.m., on February 20, 1981, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the land will be open to location under the United States mining laws. The land has been and continues to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2284 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5815

[OR-22119 (Wash)]

Washington; Revocation of Executive Order No. 1713

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a withdrawal affecting 0.95 acres of land withdrawn for public purposes. The land will remain segregated from operation of the public land laws generally, including the mining laws, by a Recreation and Public Purposes Act classification.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 1713 of February 24, 1913, which withdrew the following described public land for public purposes is hereby revoked in its entirety:

Willamette Meridian

T. 37 N., R. 2 W.,
Sec. 16, Lot 5.

The area described contains 0.95 acres in San Juan County, Washington.

2. The public land described above has been and continues to be open to applications and offers under the mineral leasing laws, but remains segregated from operation of the public land laws generally, including the mining laws, by Recreation and Public Purposes Act classification WA 03675.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2280 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5816

[M-33777 (SD)]

South Dakota; Transfer of Jurisdiction: Modification of Public Land Order No. 2112

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies PLO 2112 in that primary jurisdiction of the historic Fort Meade Cemetery and access road is transferred to the Veterans Administration.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Dan Stark, Montana State Office, 406-657-6291.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, and all prior withdrawals, the following described Fish and Wildlife Coordination Act lands under the jurisdiction of the Secretary of Interior are hereby transferred to the Administrator of Veterans Affairs, Veterans Administration, and made a part of the National Cemetery System:

Black Hills Meridian, South Dakota.

T. 5 N., R. 5. E.,
Sec. 11, Metes and bounds tracts in Lot 3 described as follows:

Cemetery Tract

Commencing at the cor. of secs. 11, 12, 13, and 14, T. 5. N., R. 5 E., B.H.M., SD, thence N. 89°48' W., on the line bet. secs. 11 and 14, 1066.33 ft. dist., thence N., 0°12' E., normal to the line bet. secs. 11 and 14, 39.79 ft dist. to the point of beginning and corner No. 1:

From corner No. 1, by metes and bounds, N. 86°25'45" W., 147.54 ft., to corner No. 2; thence N. 01°34'22" W., 268.80 ft., to corner No. 3; thence N. 83°35'54" E., 175.73 ft., to corner No. 4; thence S. 45°37'23" E., 110.91 ft., to corner No. 5; thence S. 01°18'44" E., 145.08 ft., to corner No. 6; thence S. 53°57'37" W., 126.91 ft., to corner No. 1; the place of beginning.

The tract has an area of 1.51 acres.

Access Road Tract

Commencing at the cor. of secs. 11, 12, 13, and 14, T. 5 N., R. 5 E., B.H.M., SD, thence

N. 89°48' W., on the line bet. secs. 11 and 14, 1066.33 ft. dist., thence N. 0°12' E., normal to the line bet. secs. 11 and 14, 39.79 ft. dist. to corner No. 1 of the Fort Meade Cemetery Tract, thence N. 86°25'45" W., on line 1–2 of the Fort Meade Cemetery Tract, 147.54 ft., dist. to corner No. 2, thence N. 01°34'22" W., on line 2–3 of the Fort Meade Cemetery Tract, 109.54 ft. dist. to the point of beginning and corner No. 1:

From corner No. 1, by metes and bounds, S. 84°20' W., 87.53 ft., to corner No. 2 and point of curve, thence along a 9°12'36" curve to the right having a radius of 621.62 ft., 63.31 ft. to corner No. 3 and point of tangency, thence N. 89°50' W., 52.34 ft., to corner No. 4, thence N. 24°28'21" W., 72.62 ft., to corner No. 5, thence S. 89°50' E., 82.62 ft., to corner No. 6 and points of curve, thence along a 10°18'00" curve to the left having a radius of 555.82 ft., 56.59 ft., to corner No. 7 and point of tangency, thence N. 84°20' E., 92.26 ft., to corner No. 8, on line 2–3 of the Fort Meade Cemetery Tract, thence S. 01°34'22" E., on line 32 of the Fort Meade Cemetery Tract, 66.16 ft., to corner No. 1, the place of beginning.

The tract has an area of 0.33 acres.

2. Effective on approval of this order, the lands described in paragraph 1 of this order shall become part of the National Cemetery System with perpetual administration under the National Cemeteries Act of 1973, 38 U.S.C. 1000 (1976).

3. The Fort Meade Cemetery has been identified on the National Register of Historic Places. Accordingly, actions that might affect the historical values of the cemetery may be taken only after consultation with and concurrence by the South Dakota State Historic Preservation Officer and the Advisory Council on Historic Preservation.

4. The lands remain withdrawn from all forms of appropriation under the public land laws, including the mining laws but not from leasing under the mineral leasing laws.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2272 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order No. 5817

[OR-19469]

Oregon; Revocation of Executive Order No. 5864

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 40 acres as a lookout station for use by the Bureau of Land Management. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5864 of June 23, 1932, which withdrew the following described public lands for use by the Bureau of Land Management as a lookout station, is hereby revoked:

Willamette Meridian

T. 1 S., R. 40 E.,
Sec. 32, NE¼NE¼.

The area described contains 40 acres in Union County.

2. At 10 a.m., on February 20, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 81-2258 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5818

[ORE-016183-A]

Oregon; Partial Revocation of Public Land Order No. 3869

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in part as to 40 acres of lands withdrawn as recreation sites for use by the Bureau of Land Management. This action will restore the lands to operation of the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3869 of November 12, 1965, which withdrew certain lands for use by the Bureau of Land Management as recreation sites is hereby revoked so far as it affects the following described lands:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 16 S., R. 7 W.,
Sec. 19, W½SE¼SW¼.
T. 19 S., R. 7 W.,
Sec. 19, N½SE¼NE¼.

The areas described aggregate 40 acres in Lane County.

2. At 10 a.m., on February 20, 1981, the lands will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

3. The lands remain segregated from operation of the public land laws generally by Power Site Reserve No. 659 of December 12, 1917, and Water Power Designation No. 14 of December 12, 1917.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2260 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5819

[ORE-016416]

Oregon; Revocation of Public Land Order No. 3837

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew 440 acres of land as a material site for use by the Bureau of Land Management. This action will restore the lands to operation of the public land laws generally, including the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., 503–231–6905, Oregon State Office.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3837 of September 27, 1965, which withdrew the following described public land for use by the Bureau of Land Managment as a material site is hereby revoked:

Willamette Meridian

Sugarloaf Mountain Material Site

T. 29 S., R. 12 W.,
Sec. 23, E½ and E½SW¼.
Sec. 24, SW¼SW¼.

The area described contains 440 acres in Coos County, Oregon.

2. At 10 a.m., on February 20, 1981, the E½ and E½SW¼ of Sec. 23 will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land, and the SW¼SW¼ of Sec. 24 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 20, 1981, the lands will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon, 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2273 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5820

[OR 13498]

Oregon; Withdrawal of National Forest Land for Recreation and Administrative Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 120 acres of land within the Umpqua National Forest from the mining laws for the Cow Creek Recreation and Administrative Site.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by Section 205 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is hereby ordered as follows:

1. Subject to valid existing rights, the following described national forest land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the mining laws, 30 U.S.C. Ch. 2, and reserved in support of Forest Service programs.

Willamette Meridian

Umpqua National Forest, Cow Creek Recreation and Administrative Site

T. 32 S., R. 3W.,
Sec. 5, N½NW¼ and N½S½NW¼.

The area described contains 120 acres in Douglas County, Oregon.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2262 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5821

[M-36791]

Montana; Revocation of Public Land Order No. 1169

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes PLO 1169, dated June 15, 1955, which withdrew 80 acres of public lands for use of the Department of the Air Force in connection with Glasgow Air Force Base, Montana. This action will restore the public lands to operation of the public land laws, generally including the mining and mineral leasing laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Koch, Montana State Office, 406–657–6291.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1169 of June 15, 1955, which withdrew the following described public lands for use in connection with Glasgow Air Force Base is hereby revoked in its entirety:

Montana Principal Meridian

T. 31 N., R. 40 E.,
Sec. 35, E½NE¼.

The area described contains 80 acres in Valley County.

2. At 10 a.m., on February 20, 1981, the public lands described above shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on February 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The public lands described above will be open to applications and offers under the mineral leasing laws and to location under the United States mining laws at 10 a.m., on February 20, 1981.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2268 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5822

[OR-10676]

Oregon; Withdrawal of Lands for Diamond Craters Geologic Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,6,656.18 acres of public lands from the operation of the general land laws including the mining laws, but not from leasing under the mineral leasing laws, for the protection and preseveration of geologic and biological resources of exceptional scientific, educational, scenic, and recreational value.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virture of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, 30 U.S.C. Ch. 2, but not from leasing under the mineral leasing laws, and reserved for the protection of their scientific research, educational, scenic, and recreational values.

Willamette Meridian

T. 28 S., R. 31 E.,
Sec. 24, E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 25, E½NE¼, NW¼NE¼, NE¼NW¼, and NE¼SE¼.
T. 29 S., R. 31 E.,
Sec. 1, E½E½;
Sec. 12, NE¼NE¼.
T. 28 S., R. 32 E.,
Sec. 17;
Sec. 18, Lot 4, S½NE¼, SE¼SW¼, and SE¼;
Secs. 19 through 22, inclusive;
Sec. 23, SW¼ and S½SE¼;
Sec. 24, SW¼SW¼;
Sec. 25, NW¼NW¼, S½NW¼, and SW¼;
Secs. 26 through 35, inclusive.
T. 29 S., R. 32 E.,
Sec. 1, W½NW¼ and SW¼;
Secs. 2 through 6, inclusive;
Sec. 7, Lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, N½, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 9;
Sec. 10, N½ and SW¼;
Sec. 11, W½NE¼ and NW¼;
Sec. 15, N½NW¼.

The areas described aggregate 16,656.18 acres in Harney County, Orgeon.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2310 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5823

[OR-21725]

Oregon; Revocation of Recreational Withdrawal No. 41

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order which withdrew 80 acres of lands for protection of recreational values. This action permits restoration of the lands to operation of the mining laws provided appropriate rules and regulations are issued to allow mineral location on lands conveyed pursuant to the Recreation and Public Purposes Act.

EFFECTIVE DATE: January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of December 17, 1930, which withdrew the following described lands for protection of recreational values is hereby revoked:

Willamette Meridan

T. 33 S., R. 1 E.,
Sec. 33, S½NE¼.

The area described contains 80 acres in Jackson County.

2. The surface estate of the lands have been conveyed to the State of Oregon pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869–4); therefore, unless and until appropriate rules and regulations are issued, the lands will not be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

[FR Doc. 81-2263 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5824

[OR-19287]

Revocation of Executive Order No. 5118

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 40 acres of public lands as a lookout station for use by the State of Oregon. This action will restore the lands to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: February 20, 1981.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5118 of May 16, 1929, which withdrew the following described public lands for use by the State of Oregon as a lookout station, is hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 29 S., R. 11 W.,
Sec. 21, SE¼SW¼.

The area described contains 40 acres in Coos County.

2. At 10 a.m., on February 20, 1981, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on February 20, 1981, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

January 15, 1981.

FR Doc. 81-2259 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 304

Determination of the Federal Share of Collections

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

ACTION: Final Rule with comment period.

SUMMARY: This regulation authorizes State Child Support Enforcement agencies to use the current rate of Federal matching in their respective State AFDC programs as an optional method of determining the amount of each child support collection which may be applied as reimbursement of the Federal government's share of AFDC payments. Existing regulations at 45 CFR 304.26 require that such determinations be made according to the rate of Federal matching in each of the specific assistance payments being reimbursed. This rate of Federal matching is subject to periodic changes. Our present requirements thus create an administrative burden when States use child support collections to reimburse past assistance payments as required by Section 457(b) of the Social Security Act, because these payments have in many cases been made at a prior rate of Federal matching. This new optional procedure will therefore provide significant administrative benefits for States that choose to use it.

DATE: Effective date: January 22, 1981.

Comment Period: Consideration will be given to written comments or suggestions received on or before March 23, 1981. Agencies and organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement; Department of Health and Human Services; 61110 Executive Blvd., Suite 900; Rockville, Maryland, 20852; ATTN: Policy Branch. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the address above.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, (301) 443-5350.

SUPPLEMENTARY INFORMATION:

Federal Share of Collections

Section 457(b) of the Social Security Act requires that, from the amounts of child support collected by the State and retained as reimbursement for AFDC payments, the State must reimburse the Federal Government to the extent of its participation in the financing of the assistance payment. Existing regulations at 45 CFR 304.26 require States to distribute collections according to the rate of Federal matching in the specific AFDC payments that the child support collection is used to reimburse. Although the vast majority of the payments being reimbursed are in the current period, under existing OCSE policy States must nevertheless be able to calculate the Federal share of collections which are used to reimburse assistance payments made in the past when different rates of Federal matching in AFDC were in effect. This is an unnecessarily burdensome requirement given the infrequency of occurrence. The requirement is particularly burdensome in jurisdictions which calculate AFDC reimbursement under Section 403(a) of the Social Security Act. The AFDC reimbursement rate in these States may change as often as every month.

Because of the problems associated with existing policy, OCSE has decided to permit States the option of using the rate of Federal financial participation in the State's AFDC program in effect at the time of distribution as the basis for determining the Federal share of collections. Any potential effect on Federal or State shares of collections due to the slight changes over time in reimbursement rates is likely to be negligible. States choosing to reimburse the Federal government at current AFDC Federal matching rates will generate savings in both Federal and State administrative costs. The regulation has been given a new title, Determination of Federal share of collections, to more accurately reflect its content.

Statutory Authority

The Social Security Act at Section 457(b)(3)(A) requires that, of the amounts of child support collected by the States on behalf of AFDC children in excess of those amounts used to reimburse the current month's assistance payment, 457(b)(1), and those amounts paid to the family, 457(b)(2), the States must retain such excess amounts as reimbursement of prior months' assistance payments, "with appropriate reimbursement of the Federal Government to the extent of its participation in the financing" of the earlier assistance payments. We believe that this statutory language is sufficiently broad to permit OCSE to allow States the option of calculating the Federal share based on the current AFDC FFP rate.

Rulemaking

This amendment to the regulation is being published in final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so. The Department finds that there is good cause to dispense with public notice and comment with respect to this change because notice and comment prior to its adoption is unnecessary and impracticable for the reasons that follow. This amendment will provide the State IV-D agencies with an optional procedure which will simplify the administration of the IV-D program in those States which adopt it. It does not affect the substantive rights of individuals involved in the IV-D program. It places no new requirements upon the States, but rather, by providing an alternative which simplifies requirements that have proven burdensome to many States, it seeks to improve the efficiency of the Child Support Enforcement program. Prompt enactment of this change will allow States which choose this option to immediately realize the benefits of simplified distribution procedures. This change has been advocated by several States which are anxious to implement it as soon as possible.

This regulation is being made effective immediately upon publication because in providing an alternative method to determine the Federal share of collections it relieves a restriction on the way in which collections are distributed. Although the regulation has immediate effect, OCSE will give consideration to public comments received on or before March 23, 1981.

45 CFR Part 304 is amended by revising § 304.26 to read as follows:

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of child support collected by the State and retained as reimbursement for AFDC payments, the State shall reimburse the Federal government to the extent of its participation in the financing of the AFDC payment. In computing the Federal share of child support collections, the State has two options:

(1) The State may use the AFDC FFP rate applicable to the period in which the assistance payment was made as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, this percentage shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the Federal share of collections shall be computed using the rate of Federal participation in the financing of:

(A) The individual assistance payment; or

(B) All of the assistance payments in the same month; or

(2) The State may use the current rate of AFDC FFP as follows:

(i) If the State uses the Federal medical assistance percentage under section 1118 of the Act, the percentage applicable at the time of distribution shall be used in computing the Federal share of collections.

(ii) If the State uses the computations in section 403(a) of the Act, the average rate of Federal participation in the financing of assistance payments during the immediately preceding quarter shall be used in computing the Federal share of collections.

(b) If an incentive payment is made to a jurisdiction under § 302.52 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

(Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302))

(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: December 22, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: January 14, 1981.

Patricia Roberts Harris,

Secretary.

[FR Doc. 81-2319 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-07-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1060

General Characteristics of Community Action Programs; CSA Income Poverty Guidelines (Revised)

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is revising its income poverty guidelines. The Economic Opportunity Act of 1964, as amended, requires at least annual revisions of the poverty guidelines for use by every agency administering programs under the Act in which the poverty guidelines are used to judge eligibility for participating in programs. These revisions assure that the income guidelines reflect the changes in the cost of living.

EFFECTIVE DATE: This rule is effective February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Ernest F. Powers, Office of Policy, Planning & Evaluation, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, Telephone: (202) 632-6630, Teletypewriter: (202) 254-6218.

SUPPLEMENTARY INFORMATION: The Community Services Administration revision of the updated poverty guidelines constitutes compliance with the legislatively mandated requirement of Section 624 of the Economic Opportunity Act of 1964, as amended. This revision is not significant according to Executive Order 12044 since the only change being made reflects the changes in the Consumer Price Index and is required by the previously mentioned Section of the EOA. The text defining "Income" and "A Farm Residence" remains unchanged. The policy regarding use of these guidelines is also unchanged by this revision.

This amendment to § 1060.2 revises the guidelines previously published in §§1060.2-1 and 1060.2-2.

Richard J. Rios,

Director.

45 CFR 1060.2-1 through 1060.2-2 is revised to read as follows:

Sec.
1060.2-1 Applicability.
1060.2-2 Policy.
Attachment.

Authority: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

§ 1060.2-1 Applicability.

This subpart applies to all grants financially assisted under Titles II, IV and VII of the Economic Opportunity Act of 1964, as amended, if such assistance is administered by the Community Services Administration.

§ 1060.2-2 Policy.

(a) The attached income guidelines are to be used for all those CSA funded programs, whether administered by a grantee or delegate agency, which use CSA poverty income guidelines as admission standards. Any individual or family certified eligible for AFDC or SSI payments is automatically eligible for CSA programs services without the need to be separately certified through the application of the attached income guidelines. These guidelines do not supersede alternative standards of eligibility approved by CSA.

(b) The guidelines are also to be used in certain other instances where required by CSA as a definition of poverty, e.g., for purposes of data collection and for defining eligibility for allowances and reimbursements to board members. Agencies may wish to use these guidelines for other administrative and statistical purposes as appropriate.

(c) The attached guidelines are based upon Table 17 of the U.S. Bureau of the Census, *Current Population Reports*, Series P-60, No. 120, "Money Income and Poverty Status of Families and Persons in the United States: 1978" (Advance Report), U.S. Government Printing Office, Washington, D.C., November 1979; OMB letter to Director, CSA, dated April 11, 1980 and Department of Labor Press Release USDL-80-794 of December 23, 1980.

(d) The following definitions, from *"Current Population Reports"*, P-60, No. 91, Bureau of the Census, December 1973 have been adopted by CSA for use with the attached poverty guidelines.

(1) *Income.* Refers to total cash receipts before taxes from all sources. These include money wages and salaries before any deductions, but not including food or rent in lieu of wages. They include receipts from self-employment or from own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, unemployment and workman's compensation, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is non-cash income, such as the bonus value of food and fuel produced and consumed on farms and

the imputed value of rent from owner-occupied farm or non-farm housing.

(2) *A farm residence.* Is defined as any dwelling on a place of 10 acres or more with $50 or more annual sales of farm products raised there; or any place less than 10 acres having product sales of $250 or more.

Attachment

1981 Community Services Administration

Poverty Income Guidelines for all States Except Alaska and Hawaii

	Nonfarm family	Farm family
Size of family unit:		
1	$4,210	$3,590
2	5,590	4,760
3	6,970	5,930
4	8,350	7,100
5	9,730	8,270
6	11,110	9,440

For family units with more than 6 members, add $1,380 for each additional member in a nonfarm family, and $1,170 for each additional member in a farm family.

Poverty Guidelines for Alaska

	Nonfarm family	Farm family
Size of family unit:		
1	$5,260	$4,490
2	6,990	5,950
3	8,710	7,410
4	10,440	8,890
5	12,160	10,340
6	13,880	11,800

For family units with more than 6 members add $1,730 for each additional member in a nonfarm family and $1,460 for each additional member in a farm family.

Poverty Guidelines for Hawaii

	Nonfarm family	Farm family
Size of family unit:		
1	$4,840	$4,130
2	6,430	5,130
3	8,020	6,820
4	9,600	8,170
5	11,190	9,510
6	12,770	10,860

For family units with more than 6 members, add $1,590 for each additional member in nonfarm family, and $1,360 for each additional member in a farm family.

[FR Doc. 81-2121 Filed 1-21-81; 8:45 am]

BILLING CODE 6315-01-M

ACTION

45 CFR Part 1213

Action Cooperative Volunteer Program; Correction

AGENCY: ACTION.

ACTION: Final rule; correction.

SUMMARY: This document corrects a referrence contained in final regulations concerning volunteers of the ACTION Cooperative Volunteer Program which were published March 7, 1975 (40 FR 10670 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Louise E. Maillett, Assistant General Counsel, ACTION, 806 Connecticut Avenue, N.W., Washington, D.C. 20525, (202) 254-8855.

Accordingly, the following corrections are made to 45 CFR Part 1213:

1. In § 1213.5-5(a)(9), the reference to "Part 1212" is corrected to read "Part 1210".

2. In § 1213.5-5(d), the reference to "Part 1212" is corrected to read "Part 1210".

Secs. 121, 122, 402(12) and (14) and 420 of Pub. L. 93-413, 87 Stat. 395, 400, 401, 407 and 414)

Signed at Washington, D.C., this 14th day of January, 1981.

Sam Brown

Director of ACTION.

[FR Doc. 81-2233 Filed 1-21-81; 8:45 am]

BILLING CODE 6050-01-M

45 CFR Part 1232

Nondiscrimination on Basis of Handicap in Programs Receiving Federal Financial Assistance From ACTION; Correction

AGENCY: ACTION.

ACTION: Final rule; correction.

SUMMARY: This document corrects the alphabetical lettering within a section of the final regulations implementing Section 504 of the Rehabilitation Act of 1973 in programs receiving Federal financial assistance from ACTION. The final regulations were published on May 30, 1979 (44 FR 31018 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Louise E. Maillett, Assistant General Counsel, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525, (202) 254-8855.

Accordingly, the following corrections are made to 45 CFR Part 1232:

1. Subsection "(j)" of § 1232.3 Definitions is corrected to read subsection "(i)".

2. Subsection "(k)" of § 1232.3 Definitions is corrected to read subsection "(j)".

3. Subsection "(l)" of § 1232.3 Definitions is corrected to read subsection "(k)".

4. Subsection "(m)" of § 1232.3 Definitions is corrected to read subsection "(l)".

(Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Sec. 402(14), Pub. L. 93-113, 87 Stat. 398).

Signed at Washington, D.C., this 14th day of January, 1981.

Sam Brown,

Director of ACTION.

[FR Doc. 81-2224 Filed 1-21-81; 8:45 am]

BILLING CODE 6050-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-245; FCC 80-776]

American Telephone and Telegraph Co.; Manual and Procedures for the Allocation of Costs

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: This Report and Order sets forth a manual containing procedures to be followed by AT&T in allocating costs. The manual establishes reporting categories to which plant, expenses and other costs must be assigned as well as procedures to be used in the allocation. The purpose of the manual is to develop rates of return on investment for the reporting categories. These rates of return will be used as one measure of compliance of tariffed services with the requirements of the Communications Act.

DATES: Supplemental Notice will be issued for the purpose of exploring long range solutions to cost allocation problems. Dates for submitting comments will be issued in the Supplemental Notice. Filing dates established in the Notice of Proposed Rulemaking on long-term procedures (78 FCC 2d 1296) are therefore cancelled. The Interim Cost Allocation Manual is adopted effective January 6, 1981.

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

FOR FURTHER INFORMATION CONTACT: Albert Halprin, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-9342).

In the matter of American Telephone and Telegraph Co., Manual and Procedures for the Allocation of Costs, CC Docket No. 79-245. See also 45 FR 46121, July 9, 1980.

Report and Order

Adopted: December 19, 1980.

Released: January 6, 1981.

By the Commission: Commissioner Quello concurring in the result; Commissioner Jones absent.

Introduction

1. This proceeding was initiated through the issuance of a Notice of Inquiry in September 1979 [1] in which we sought comments on the proper approach to be used for the allocation of costs by the American Telephone and Telegraph Co. (AT&T) among the interstate services it offers or may offer in the future. Both the existing approach used by AT&T to implement the fully distributed costing technique prescribed in Docket 18128 [2] (FDC–7) and alternative approaches were the subject of comments. After review and careful consideration of the comments we developed a proposal for an interim cost allocation manual which was put forth for comments in a Notice of Proposed Rulemaking (Notice) issued in June, 1980.[3]

2. In the Notice, we reviewed the history and background of our attempts to determine the proper method of cost allocation for AT&T, a discussion which will not be repeated herein.[4] After considering the history of attempts to implement the FDC–7 methodology—a history which demonstrated both the unwieldliness of the methodology and the difficulties caused by the disparity between that method's assumptions about the nature of AT&T's investment decision and the realities of AT&T's plant provisioning approach—as well as suggestions to modify that approach, we concluded that for at least the immediate future the FDC–7 approach was impracticable, even if modified. Because of our desire to implement an allocation methodology which would be understandable and auditable and because of our obligation under an order of the United States Court of Appeals for the District of Columbia Circuit to adopt a cost allocation manual in December 1980,[5] we determined that an alternative approach was required.

3. We therefore considered the alternative approaches suggested by the comments. Two different alternatives were presented. The first, primarily endorsed by Southern Pacific Communications (SPC), Microwave Communications, Inc. (MCI), United States Transmission System (USTS), and Satellite Business Systems (SBS) and based upon a report prepared for them by Walter Hinchman Associates,[6] (Hinchman Proposal) was predicated upon an elaborate new system of record keeping—the Primary Allocation and Assignment Records (PAARs). This system was not, however, possible to implement in the short term. As an immediate measure the Hinchman proposal recommended the adoption of an "interim cost allocation manual whose primary if not sole purpose is the generation of valid experienced use and associated cost data through special studies." [7] While stating that the Commission should specify more valid, reliable and auditable procedures for the conduct of special studies, no specific methods to achieve this goal were proposed. In addition, while no direct reference to the cost generation process under the interim plan was made, the long-term Hinchman proposal would continue to rely on "built-up" costs which would then have to be reconciled with the revenue requirement assigned to the interstate jurisdiction through the separations process.

4. An alternative approach was proposed by Western Union in its comments filed in response to the Notice of Inquiry. Basically, Western Union proposed starting with the actual pool of costs (including, of course, the return element) which must be recovered through interstate operations and then dividing these costs among services on the basis of derived factors. While this procedure would, *inter alia*, eliminate the need for reconciling the pool of costs with the interstate revenue requirement, no specific suggestions for the factors to be used were put forth by the carrier, nor was any means for their development suggested.

5. After review of the comments, we proposed in the Notice to utilize existing, externally mandated systems of cost assignments for the allocation manual wherever possible. This would start with the separations process which determines the revenue requirement for interstate service. Costs would be assigned to three categories—MTS, WATS, and Private Line services. We stated in the Notice that, as soon as an access charge was prescribed, it will become the basis for the allocation of the costs of those services covered by the charge. In addition, direct assignment of costs was required wherever appropriate.

6. Comments and reply comments on the Notice were filed by AT&T; SPC; MCI; SBS; USTS; Ad Hoc Telecommunications Users Committee (Ad Hoc); Aeronautical Radio, Inc. and Air Transport Association of America, jointly (ARINC); American Broadcasting Cos., CBS Inc., and National Broadcasting Co., jointly (Networks); Independent Data Communications Manufacturers Associaton (IDCMA); and the American Hotel and Motel Association (AHMA). Initial comments only were filed by GTE Telenet Communications Corp. (Telenet); New York State Department of Public Service (NYPS); and Alascan, Inc. (Alascom). Reply Comments only were filed by the Telecommunications Committee of America (TCA). The National Data Corporation (NDC) filed an expression of interest.[8]

7. With the exception of AT&T, the initial comments did not deal with the specifics of, or make suggestions for the modification of, the interim proposal. Rather, they opposed the proposal on policy, legal, and constitutional grounds.[9] Many reply comments were also directed at AT&T's suggestions. We shall therefore consider these general objections initially, and then turn to the specific suggestions for modification of our proposal for an interim cost allocation manual.

Discussion

8. In evaluating the criticisms of our proposal to utilize jurisdictional separations results as a prime component of the interim cost allocation manual it is necessary to be mindful of the proper context for this task. We are obligated by order of the United States Court of Appeals to promulgate a manual on an expedited schedule. The proposal contained in the interim manual must be judged by two standards. First, it is an improvement over existing procedures and, second, it is superior to alternative proposals which can be implemented at this time. Nothing would be gained by attempting to judge the interim manual against an "ideal" standard of "proper allocation," even assuming such an ideal has meaning in an economic or theoretical sense and that it is attainable as a practical matter.

9. In analyzing the comments, it is also important to keep in mind that the parties commenting represent only a small fraction (albeit those with, perhaps, the largest direct financial

[1] 73 FCC 2d 629.

[2] 61 FCC 2d 587, reconsideration of 64 FCC 2d 971, further reconsideration of 67 FCC 2d 1441.

[3] 78 FCC 2d 1296.

[4] See 76 FCC 2d at 1300–1306.

[5] Order of June 11, 1980, extended to early 1981 by Order of October 30, 1980. *MCI Telecommunications v FCC*, Docket No. 79–1119.

[6] Hinchman Proposal at p. 11.

[7] "Cost-of-Service Accounting and Pricing Procedures," originally submitted in CC Docket No. 78–196, the Uniform System of Accounts Inquiry.

[8] These comments are summarized in Appendix B.

[9] These oppositons ranged, however, from total antipathy to suggestions that, while representing a step in the right direction, the proposal was fatally flawed.

interests) of those affected by our decision in this case. When, for example, comments cite the "unanimity of opinion" that the separations process is fatally flawed because it utilizes a weighting factor ("SPF") to adjust interstate minutes for separation of non-traffic sensitive plant, we are mindful that many states, not parties to this proceeding, vigorously contest this notion.[10] We are also aware that users of MTS, who may well be the beneficiaries of this approach, will generally neither have the individual financial interest nor the expertise to participate.

10. In evaluating our decision in Docket No. 18128, the Court of Appeals stated that our responsibility is to "make a reasonable selection [of a methodology] from the available alternatives."[11] One aspect of the various comments critical of our interim proposal is that they fail to go beyond criticism and suggest modifications or alternative methods which are superior to our proposal. Apart from their expression of concern that the interim manual may become permanent or merely lead to another interim step, the parties generally do not focus on our view that an interim proposal must be capable of immediate implementation both to meet the mandate of the Court of Appeals and to rid ourselves of a system which, at this point, for the reasons suggested in the Notice, entails costs far outweighing any benefits.

11. A revised Method 7 has never been adopted by us and has never been well defined. No party has disagreed with, or substantively attempted to rebut, our tentative findings contained in the Notice that the existing procedures developed by AT&T are unacceptable. No party has specifically responded to our objections to the concept of trial balancing; to the wisdom of attempting to assign cost to individual services on an "historic" causation basis whereas AT&T builds plant only on the basis of overall forecasts; to the assignment of costs to different services which may not be technically discrete but are often marketing responses to consumer needs; and to our belief that a cost allocation system must promote, *inter alia*, network efficiency and flexibility in responding to rapidly changing technology and changing and flexible consumer desires. And no party has really challenged the finding of the Notice that, pending consideration of alternatives in the long-range phase of this docket, no alternative to our interim plan capable of immediate implementation exists.

12. Criticism of our proposal without indicating a better alternative for the present is, at least, internally consistent in the case of parties such an ARINC and USTS who believe that is is premature to prescribe a manual at this time and that further proceedings should be conducted before this takes place. We agree that further consideration of cost allocation procedures are necessary and for that reason we emphasize again, as we did in the Notice, that after finalizing the interim manual we intend to consider, fully, long-term approaches to allocation. We must recognize, however, both that we are under a mandate from the Court of Appeals to adopt an interm manual for the immediate future and that we do not start with a *tabula rasa*.

13. We turn then to a consideration of the general objections of our proposed interim manual. These are of five general types:

(1) That our decision to abandon FDC–7 methodology, for the present, is improper;

(2) That our use of separations results is illegal or otherwise inappropriate;

(3) That our use of separations results to assign costs to reporting categories is improper;

(4) That the interim manual's failure to obtain costs for specific services (particularly private line and 800 services) and its alleged total reliance on competition, resale or both as a substitute for regulatory oversight is a fatal flaw; and

(5) That we "approached this problem as if it could be solved in isolation"[12] and did not consider the interdependence of the proposed interim manual to proceedings such as the Private Line Tariff Restructuring, USOA, Computer Inquiry II and Access Charge.

We consider below each of these objections *seriatim*

Departure From FDC 7

14. Our decision that FDC 7 methodology is not implementable at this time and that an alternative approach is necessary in the interim manual was condemned by some parties and supported by others. Carriers such as USTS and SBS indicate agreement with relying on a relative use approach. AT&T expresses no view on our movement from FDC 7. ARINC, however, stated in its comments (at pp. 8–9) that, "after more than a decade of proceedings to formulate the FDC 7 method, the Commission simply proposes to toss it aside without having given it a fair chance in the marketplace." SPC refers to the "15 or more years of decision making in which the FDC 7 methodology was accepted by the Commission, the Court and the public as a lawful process of cost allocation." (Reply Comments at p. 2). MCI states that "the Commission is preparing to abdicate its responsibilities under the Act by failing to implement the FDC 7 methodology * * *" (Reply at p. 4).[13]

15. These, and other similar comments, appear to be based on the assumption that a valid revised FDC 7 methodology which implements the principles of our Decision in Docket No. 18128 exists, or has at some time existed. We set forth in the Notice our view that no such methodology had yet been divised either in the form of AT&T's FDC 7 proposals or the manual proposed by Judge Miller and rejected by us as a possibility for immediate implementation in Docket No. 20814.[14] We also explained the basis for our belief that no modifications to the existing or proposed methods existed of which we are aware which would render them viable.

16. The question of whether a manageable FDC 7 system could be implemented was not considered in Docket No. 18128 and not addressed in the Final Decision in that docket. Method 7 was not the centra] focus during much of the 18128 proceeding and the "revised Method 7" methodology with which we have dealt over the past few years was never promulgated, but was left to working sessions to develop. Our experiences with the product of these working sessions, combined with changes in the direction of telecommunication regulation, have led us to the tentative view expressed in the Notice that no such system is practicable with the resources available to us. This is a case of a few years of experience with a specific methodology being more valuable in judging its usefulness than a decade of hearings largely focused on general principles.

17. Many parties refuse to face the reality that the only FDC 7 methodology capable of being utilized at this time is that implemented by AT&T, and found unacceptable. We noted in Docket 20814 that, "implementation of the ID (Miller) Manual at this time would require extensive time delays while AT&T developed data bases and information

[10] NYPS, the only state participating, did not address contentions that jurisdictional separations force interstate users to subsidize intrastate ones.

[11] Aeronautical Radio slip opinion at p. 13.

[12] SBS Comments at p. 11.

[13] Some commentators have changed their view of the desirability of FDC 7 and the possibility of successfully implementing it. See, e.g., MCI Opposition to Petitions for Reconsideration in Docket No. 18128 at p. 4.

[14] 74 FCC 2d 1, 36.

gathering techniques to replace REDCAP, FELTCAP, IXL– studies, etc."[15] Other less detailed FDC 7 manuals proposed in that docket or in this proceeding would face similar extensive delays during which we would be left with nothing but the discredited AT&T approach. We stated in the Notice that, "no suggestions have been made which offer any hope of bringing the existing (i.e. AT&T) FDC 7 methodology under * * * control."[16] We believe that, for the present, this assertion has not been rebutted or seriously challenged. Suggestions for specific modifications or alternatives to existing FDC 7 methodologies have been few, most commenting parties seeming, instead, to prefer recommending that the Commission "do something" to make FDC 7 workable.[17]

18. For these reasons we continue to adhere to our tentative conclusion that FDC 7 does not offer a workable solution to the problem of allocating AT&T's costs, at least for the immediate future. While we set forth in the Notice our concerns about the viability of this approach for the long term[18], we make no judgment on that question at this time. Rather we will consider long term approaches in further proceedings in this docket. We note, however, as appears to be self-evident, that the mere length of earlier proceedings does not constitute good cause to continue this approach. We must make an independent decision as to whether FDC 7 is the proper solution given our present state of knowledge about it.

Use of Separations for any Purpose

19. Many objections to the use of jurisdictional separations in connection with the allocation of costs for AT&T have been raised.[19] They include arguments that:

(1) Separations procedures do not result in "true costs" being assigned to the various jurisdictions;

(2) Separations does not allocate cost to individual services or rate elements and is not designed for, or intended to be used for, ratemaking;

(3) Separations results are substantially within the control of AT&T and are inauditable;

(4) Separations procedures violate the holding of the Supreme Court in *Smith v. Illinois Bell Telephone Co.*[20]

(5) Separations procedures are expected to change and a reliance on them will result in rate instability;

(6) Separations procedures violate the Fifth Amendment, Article I of the Constitution.

20. We view these objections as being of two types. First are those which involve any use of separations. Second are those which involve relying on separations for the assignment of costs to services. With respect to the former, we believe that parties either misconstrue our proposal or ignore the constraints within which we operate.

21. The existing method of separating plant used jointly or in common [21] for interstate and intrastate services has been in effect for 10 years. It was adopted after a Federal-State Joint Board met on the matter and is incorporated as Part 67 of our rules.[22] Existing separations procedures are binding on carriers, the states, and ourselves. All parties to this proceeding are well aware that the Commission does not have the power to unilaterally modify matters affecting jurisdictional separations. Any such matter must be referred to a Federal-State Joint Board, pursuant to Section 410(c) of the Communications Act.[23] There is virtually total agreement that the existing system of separating plant can and should be improved. We agree that problems with separations exist. (There is, of course, considerable disagreement in some areas about the type of improvements which are necessary.) A Federal-State Joint Board has already been convened in Docket 80–286 and has begun the task of formulating recommendations. This is the only action we may take to correct any deficiencies in existing separations procedures.

22. Until the Joint Board completes its task the existing separations process determines the interstate revenue requirement and the costs to be recovered by AT&T with respect to jointly used plant and associated costs and expenses. No proposal has been made, at least explicitly, which challenges the right of AT&T to recover this requirement through interstate operations. Any such proposal would be clearly unlawful as confiscatory.[24]

23. Proposals by parties that the difference between assigned costs and what these parties view as "true costs" not be assigned to services they utilize would merely shift costs to other interstate ratepayers. If it is improper for one interstate ratepayer, such as MCI, to pay this so-called "subsidy", it is at least as improper for other ratepayers, typically MTS customers, who have no more responsibility for the creation of the "subsidy" than MCI, to be forced to pay their share and MCI's as well.

24. All serious proposals for cost allocation, from the Hinchan Proposal to revised FDC 7 or FDC 1 approaches recognize that the total of costs allocated among interstate services will be determined by the separations process. Because the assignment of interstate costs will not be affected by any allocation plan we may adopt, any challenge to the interim manual based upon the complexity or inaccuracy of this assignment, the degree of control of AT&T over this process, or the unlawfulness or unconstitutionality of the assignment of these costs is not relevant to our tasks in this docket. We accept the amounts assigned interstate by separations as a given. Our task is merely to properly spread this amount among reporting categories.

25. Although we are not making a final determination with respect to jurisdictional separations questions that will be decided in Docket No. 80–286, we do not agree with parties who contend that any formula which assigns non-traffic sensitive costs to interstate on a basis other than unweighted minutes of use is improper, *even if* we accepted these contentions, our only recourse would be the convening of a Joint Board as we have done.[25] While we also

[15] 74 FCC 2d 36m. 23.

[16] 78 FCC 2d 1329.

[17] SPC, for example, submitted a section of the manual it proposed (along with USTS) in Docket No. 20814. It characterizes this section as containing *inter alia* "explicit constraints on the use of massive studies * * *." However, an examination of the SPC manual shows that the sole constraint (with respect to special studies used as inputs to the FDC 7 study) is that Bell provide a complete copy of the study upon request. Bell could follow alternative procedures if it could show that "providing a certain special study is extremely burdensome and will add little useful information to the FDC 7 process * * *." Whatever criticisms may be made of AT&T's approach to implementing FDC 7, it must be recognized that Bell has provided voluminous quantities of material in connection with its annual central submission. Presumably, if requested, AT&T would be willing to provide even more information. The problem is not one of availability. The difficulties lie in the quality of the data received and the need for such massive amounts of information that we are unable to audit such information or even review it in a timely fashion. Therefore, the explicit constraint suggested by SPC—that AT&T be required to provide any study utilized—would hardly be sufficient to transform existing FDC 7 procedures into a workable system. It would represent merely a continuation of the attempts to implement a system we have found unworkable, at least for the immediate future.

[18] 78 FCC 2d 1316–30.

[19] Objections to the use of separations are raised by all parties' comments on the manual.

[20] 282 U.S. 133 (1930).

[21] Distinctions between these concepts are not made for separations purposes and they are used interchangeably herein.

[22] 26 FCC 2d 247.

[23] 47 U.S.C. 410.

[24] *FPC v. Hope Nat. Gas Co.* 320 U.S. 591 (1944); *Bluefield Water Works and Improv. Co. v. West Va. P.S.C.* 262 U.S. 679 (1923).

[25] We reject the notion that separating the costs of jointly used plant among jurisdictions is susceptible to such simple analyses as seem to be implied in some of the comments. That the process of

cannot agree with contentions that existing separations procedures for determining the interstate revenue requirement violate of *Smith*,[26] or unconstitutional,[27] even if we accepted these contentions our only recourse would be the convening of a Joint Board as we have done.

26. Existing separations procedures determine the interstate revenue requirement and, hence, the pool of costs to be allocated among interstate services. Problems which exist with either the methodology or with its implementation by Bell (or others) cannot be remedied in this docket. They are not lessened by suggestions to determine the so called "true costs" of interstate services through detailed records, unit costing or other means. Any approach must result in the same total of interstate costs—the total set by separations.

Use of Separations for Assignment of Costs to Reporting Categories

27. Apart from the use of the interstate revenue requirement, the interim manual only utilizes the separations process for the allocation of interstate costs to the message and private line categories. We have already made clear in this order that we recognize that problems exist in the separations process.[28] In deciding to rely on separations for the purpose of this division, we must weigh its benefits versus the benefits of other possible approaches. In the Notice, we stated that the advantages of utilizing separations are that it was more understandable, more verifiable and less subject to management discretion than AT&T's FDC methodology either as it existed at that time, or with any modifications which had been proposed.

28. While parties continue to attack the validity of the division between private line and message services made by separations, they have not demonstrated, or indeed attempted to demonstrate, that a superior alternative exists at this time. AT&T, which had earlier urged the continuation of its FDC 7 approach, with improvements, has indicated that the Notice "provides a basic framework with which (AT&T) can work to arrive at a cost allocation solution for the present." No other party has suggested how any system other than separations will produce, e.g., a 1980 central submission that is more understandable, more auditable and less subject to management discretion, than does the interim manual.

29. One (but not the only) problem in the separations process is that it appears to underallocate costs to the private line category because of residual techniques and because the SPF factor (which multiplies interstate use by more than three times) is applied only to message minutes and not to private line minutes. We are aware, however, based

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separating, and of allocating, jointly used plant is a highly complex one has long been recognized. *Groesbeck v. Duluth S.S. & A. R. Co.* 250 U.S. 607 (1919). The Supreme Court has explicitly held that, "allocation of costs is not a matter for the slide rule. It involves judgement on a myriad of facts. It has no claim to an exact science." *Colorado Interstate Gas Co. v. FPC* 324 U.D. 581, 585 (1945). Existing separations procedures involve judgments made by not just ourselves but by representatives of the states, as required by Congress. MCI's suggestion that we cannot presume separations to be lawful (Comments at p. 26) but must make an independent determination of this, is unpersuasive.

[26] The basic requirement set forth by the Supreme Court in this case is that the jurisdictional separation of commonly used plant must take account of the uses to which that plant is put. Specifically, the Court struck down a system which failed to assign to the interstate jurisdiction any responsibility for the exchange plant used in common for both interstate and intrastate services. The key holding of Smith was that: "While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential, it is quite another matter to ignore altogether the actual uses to which the property is put." (282 U.S. 150–151.) MCI has argued that the requirement that only "reasonable measures" and not "extreme nicety" of the separation proposal are essential is based upon the fact that accurate cost allocation methods did not exist when the *Smith* decision was reached. MCI, and other parties, assume, without demonstrating, that such accurate methods do exist today. We are not convinced that the increasing sophistication of allocation methodology has surpassed, or perhaps even kept pace with, the increasing complexity of the integrated telecommunications network. More importantly, however, we view the *Smith* holding as being both required by and consistent with the generally held view that allocating the cost of non-traffic sensitive communication plant held in common or a fully distributed costing basis is from a strictly economic view, an abritrary process which cannot ignore policy considerations. Indeed, the Commission is required by Section 1 of the Communications Act to take into account a variety of considerations in our regulatory activities.

We are charged "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide, wire and radio communication service with adequate facilities at reasonable charges" and, to consider both the national defense and the promotion of the safety of life and property through the use of wire and radio communication. The contention that the use of a multiplicative factor such as SPF for dividing non-traffic sensitive plant and assigning associated costs and expenses, renders the separations process unlawful, *per se*, is not persuasive. We likewise reject the argument that it is improper for us to presume that separations is lawful and the implication that, before utilizing it, we must make an independent determination of its legality. While we believe that modifications to the existing procedures should be made, and have convened a Federal-State Joint Board to this end, the fact remains that the separations procedure sets the interstate revenue requirement with respect to common plant and associated costs and expenses. Apart from the legal prohibition or our modifying or rejecting existing procedures in this proceeding, we believe that the expansion of this docket to include questions would excessivley delay, or perhaps frustrate, our prescription of an interim cost allocation manual.

[27] The argument is made that jurisdictional separations result in the assignment of excessive costs to the interstate jurisdiction and that requiring consumers of such services to pay this so-called "subsidy" constitutes either the taking of property without compensation in violation of the Fifth Amendment or taxation in derogation of Congress' power under Article I of the Constitution. This argument is built upon the notion that plant used jointly for intrastate and interstate telecommunications service can and must be divided in such a way as to assign to each jurisdiction the true economic costs of the respective services. Specifically, several parties indicate that the use of the subscriber plant factor (SPF) contained in the Ozark Plan to weight interstate minutes of use for purposes of establishing a ratio (interstate minutes of use [adjusted by SPF] to intrastate minutes of use) for dividing jointly used plant results in the cross-subsidization of intrastate by interstate operations. This implies that the joint plant and associated cost and expenses used by different jurisdictions can be divided in a way that excludes policy considerations and is justifiable on a purely economic basis. At least insofar as each jurisdiction is assigned fully distributed costs, we are unconvinced of the validity of this positon at least as regards non traffic sensitive plant. Even assuming, *arguendo*, that the amount assigned interstate is not identical to, for example, the amount that an "accurate" unit costing mechanism would build up for such costs, the question of how or whether this amount should be recovered through AT&T's interstate operations would remain.

As noted above, a refusal on our part to permit AT&T to recover its interstate requirement, established in accordance with law, would clearly be unlawful. On the other hand, no consumer of interstate service would be economically responsible for the "subsidy, and it would plainly be unsound for the specialized carriers, or any other class of customers, to be relieved of a "subsidy" burden that must be borne by interstate users generally. Any useful rates must not be unjust, unreasonable, or unreasonably discriminatory and specific rates have been struck down as violative of this principle which has long governed utility regulation. Moreover, we have not determined that such a subsidy element exists in the present separations formula. Even if a subsidy element did exist, we do not see this as raising constitutional questions. Regulatory agencies have, in appropriate circumstances, utilized explicit cross-subsidies for public purposes and these have never to our knowledge, been struck down as violative of the Fifth Amendment or Article I of the Constitution. (See, e.g., *U.S. v. Great Northern R. Co.* 343 U.S. 562 (1951); *U.S. v. Abilene and Southern R. Co.* 265 U.S. 234 (1924); *New England Divisions Case* 261 U.S. 184 (1922).) The Article 1 cases cited by MCI are simply not relevent to the situation with which we are dealing. Both *National Cable Television Ass'n v. U.S.* 415 U.S. 336 (1974) and *National Ass'n of Broadcasters v. FCC* 554 F.2d 1118 (1976) deal with the Commission's powers to levy fees, which are not involved in this proceeding. The case of *Brushaber v. Union Pacific RR.* 240 U.S. 1 (1915), denies a challenge to a graduated tax as being violative *per se* of the Fifth Amendment. The so called "Brushaber test" relied upon by MIC is based upon a proposition not even decided by the Court in that case. Following the quotation cited by MCI, the Court stated that, "none of the propositions relied upon [in this case] in the remotest degree presents such questions." 240 U.S. 25.

[28] While we expect that changes will result from the present Joint Board, separations will neither change so quickly nor so often as to make fears about "rate churning" valid.

upon AT&T's present WATS filing [29] and its comments in this docket,[30] that the interim manual will require an increase in private line rates. This increase will not be insubstantial and will, in fact, be somewhat larger than would have been required under the methodology prescribed in Docket 20814. Therefore, we believe that, at this point, the results of the manual may well constitute an appropriate resting place for the present, even though higher rates may ultimately be required if and when more precise cost information becomes available.[31]

30. We have noted above [32] that the concept of fully distributed "true costs" as applied to plant jointly used by different telecommunications services and subject to regulation by different jurisdictions requires the use of non-economic factors (i.e., "considerations of fairness, not mere mathematics").[33] We discussed in the Notice how the existing FDC 7 methodology, which develops costs from the bottom-up and then trial balances the totals to the interstate revenue requirement, results in continual disputes about the accuracy of the pre-trial balanced figures—disputes which we did not view as resolvable. As a result, the same criticisms concerning "true costs" which are leveled at our proposed interim manual were also directed at the FDC 7 methodology. So long as the sum total of costs allocated to services equals the interstate revenue requirement which includes separations results, this criticism cannot be completely eliminated. The aggregation of reporting categories is, at least in part, a recognition of the impracticality of assigning fully distributed "true costs" to individual services.

31. It is true that separations does not assign costs to individual services and hence—as the separations Manual itself makes clear—does not provide sufficient information to be used in assigning costs to individual services.[34] However, we have determined that, for annual reporting purposes, more aggregated reporting categories are preferable. We emphasize that we cannot and have not sought to use separations to obtain costs for individual services. As discussed below (at paras. 34–35), our use of aggregated reporting categories neither constitutes a waiver of the requirement to support individual tariff filings nor an intent on our part to abandon our responsibility to evaluate such filings. It reflects, instead, a belief on our part that the proposals before us for the allocation of costs to individual services or service elements do not produce information on which we can rely in evaluating filed tariffs. This, we note, is the view repeatedly urged upon us by virtually all of those parties who now criticize our abandonment of AT&T's unworkable version of the FDC 7 methodology.

32. In the same vein, we note that the criticism that separations results are too subject to control by AT&T to be used for cost allocation purposes was also raised against the FDC 7 process.[35] While we agree that the separations process can be improved, and, indeed, hope the recently convened Joint Board will make progress in this direction, we still believe that the outside scrutiny of separations by ourselves, state regulators, and other interested persons makes its split between message and private line categories less subject to management discretion than the massive FDC 7 studies which were annually presented to us. Once again no party has come close to demonstrating that any implementable alternative exists which is superior. Although we intend to explore long-range approaches in future proceedings in this docket, mere injunctions that we prescribe a "better" system do not constitute a viable choice for the immediate future.

33. We also disagree with those persons who claim that the volume of supporting materials filed with AT&T's recent WATS submission negates our argument that the separations-based interim manual is more auditable and manageable than the FDC 7 system. As AT&T notes in its Reply Comments (at p. 13, fn.), "the portion of the WATS filing which contains and documents the allocation of costs to the three reporting categories required by the proposed interim manual * * * consist of two books totalling about 700 pages." While we are making certain changes and clarifications in the proposed manual which will, we believe, further increase its manageability, we are satisfied that the proposal constitutes a significant step in the right direction.

Claimed Excessive Reliance on Competition and Resale

34. Although we recognize that the parties filing comments object to our proposal because of an asserted overreliance on competition, resale, and, other factors, a review of these comments reveals that, in many cases, there is a substantial misunderstanding of what we have proposed. The interim cost allocation manual proposed in the Notice required the allocation of investments, expenses, and revenues to three aggregated reporting categories.[36] Because we continue to believe that no proposal is before us which will properly, or even adequately, allocate costs to individual services or service elements,[37] we are declining to issue a prescription on how to achieve that end at this time. This inability is in no way reflective of a belief on our part that mere regulation of the rates of return of these broad reporting categories is sufficient to satisfy our regulatory responsibility. On the contrary, if a proper and manageable methodology can be developed for more detailed cost allocation, we certainly intend to consider it before prescribing a manual for the long term.

35. We have, on the other hand, stated many of our concerns about the inherent difficulties of implementing such an approach. Chief among these are the nature of AT&T's plant provisioning process, the high degree of fungibility of plant, the fact that many services offered under tariff by AT&T do not represent mutually exclusive offerings (in terms of technology) but are, instead, responses to customer desires, and our belief that the public interest is served by permitting Bell both to utilize its network with maximum efficiency and to be in a position to respond to future demands of the market.

36. These views will, we are sure, be commented on in the further proceedings to take place in this docket.

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[29] Transmittal No. 13555. AT&T comments pp. 18–19.

[30] Comments at p. 2. AT&T does propose modifications to our proposal, which are discussed below.

[31] In this regard we note that SPC, in its critical comments on the proposed interim manual, cites AT&T's transmittal letter accompanying the WATS filing in which AT&T indicates that, based upon the results of allocations in accordance with the proposed manual, private line rates result in a return below the authorized system level and that an increase in such rates is likely. SPC then states "this, of course, was the position of SPC and other affected carriers in the MPL proceeding, which resulted in no action by the Commission." (Comments at p. 28). The manual, therefore, produces a result which SPC has been advocating.

[32] See fn. 25.

[33] *Colorado Interstate Gas Co.* v. *FPC, supra*, at 499.

[34] We therefore recognize that, as NYPS indicates, broad aggregated studies will not be sufficient for all of our regulatory activities. Because we have rejected incremental pricing for selected services we will not be faced with a need to translate embedded into marginal costs as was NYPS.

[35] This finding is contained in the executive summary of the study of Jurisdictional Separations prepared by J. W. Wilson and Associates and submitted on September 30, 1980. This study focuses on the establishment of the interstate revenue requirement.

[36] For reasons explained below (paras 63–63, *infra*) we are adding a fourth reporting category for ENFIA.

[37] Although allocation to service elements has been suggested, such a level of detail was not required by our Order in Docket No. 18128, nor has it even been attempted.

However, in expressing these tentative views in the Notice we have not closed our eyes to the fact that, within the aggregate reporting categories, significant differences exist in the degree of competitiveness of the various services tariffed by AT&T. We agree with the Ad Hoc parties that utilizing our resources for oversight of those of Bell's tariffed services for which the least competition exists is important, but it is likewise important to ensure that Bell's services which face increasing competition not be unlawfully priced at levels which could stifle this development. Moreover, while we also agree that a valid, implementable system of cost allocation at a more refined level would be preferable to our announcement that we will consider tariffs on a case-by-case basis, we have found that no such system is available at present. Clearly, the need for case-by-case review of tariffs would not be lessened by prescription of a system which produces results on which we cannot rely. Indeed, the promulgation of useless or ineffective rules might impair our flexibility in handling future tariff filings which might appear to involve cross-subsidy or were otherwise anticompetitive.

37. The Networks argue that, "use of the separations process for cost allocation purposes is particularly detrimental to the determination of the cost of service for the radio and television program transmission services." [38] Because we have not prescribed methods for allocation of costs within the reporting categories, we believe that the criticism expressed by the Networks is not directed at our proposal, but, rather at AT&T's "restated FDC 7" methodology [39] which we disavow.

38. We also reject the contention that our proposal is based upon the assumption that because the private line category is small relative to the message categories, we are declining to regulate private line service. The relevance of the relative sizes of the categories is based upon the degree to which alternative private line services could be used as a source of cross-subsidy versus the degree to which message services (primarily MTS) could be used. While not denying that intraprivate line cross-subsidies, or intra-WATS cross-subsidies, represent concerns deserving attention, we believe that cross-subsidy between message and private line services has been, and continues to be, an even more serious concern. While various parties have submitted varying figures for the degree of penetration of the private line market,[40] it is quite clear that the private line services are more competitive, as a group, than message services.[41] We are continuing to take all appropriate steps to encourage the growth of competition.[42]

39. Our interim manual has focused on the potential for cross-subsidization from message service because, we believe, measures exist to deal with it. While the manual itself will not address the problem of cross-subsidy among private line services, we do not believe that any proposal for annual cost allocation is available which will adequately do so or which can allocate costs in an auditable and manageable manner to more disaggregated categories. This, and not relative size or importance, is the major reason for our failure to include a requirement for allocation to individual services in the interim manual.[43] Our concerns that individual tariffs are lawful are being addressed in other dockets and will be addressed in the further proceedings in this docket.[44]

40. Parties have also challenged our statement in the Notice that "AT&T can continue to file information from its demand translation/unit costing process in support of tariffs, with any and all improvements to the techniques it can implement." [45] They point to our expressed dissatisfaction with these methods and argue that their continued use is inconsistent with our own pronouncements. SPC, for example, states it is "completely at a loss to understand how the Commission can even suggest that methods which are unsuitable for disaggregating the costs of services for evaluating earnings ratios are nonetheless suitable to develop costs for ratemaking." [46]

41. SPC appears to mistake our statement for a finding that AT&T's submissions based on its demand translation-unit cost approach will necessarily be found to be adequate. While existing procedures have not been found to be sufficient, AT&T has indicated in this docket that it has made and continues to make improvements in its methodology. It is possible that AT&T may be able to adequately support its tariffs with such methods. Our point here is simply that we will make this determination only in the context of specific tariff filings. In addition, while we cannot prospectively approve AT&T's proposal set forth in its comments for private line tariff support on the basis of this record, AT&T is also free to file such materials as well. Here again, we will evaluate each such filing, and the adequacy of the support material, as it is made.

42. We recognize, as we did in the Notice, that all parties would prefer that this uncertainly be eliminated through a prescription of methodology (although the parties do not agree on the methodology). On the basis of the record before us, we are simply unable to grant preapproval to any proposal or to formulate a valid alternative we would be prepared to preapprove. In any event, we have great concern about whether any cost allocation mechanism can serve as a substitute for rigorous case-by-case tariff review. At the very least, our experience with attempts to implement FDC 7 teaches us the value of reviewing the cost support for individual filings which result from a given methodology before determining that such a methodology can ensure that tariffs are just and reasonable.

43. In the Notice, we stated that each individual private line tariff would not be required to earn the interstate rate of return, but that the aggregated reporting category would have such a requirement. This statement was interpreted by some parties as a carte blanche to AT&T to set prices. To others it is tantamount to a finding that the cost of capital is not an essential part of the cost of providing a service. Neither of these positions is correct. The increased flexibility for AT&T which we proposed was the result of two factors. First, given the broad averaging techniques of the manual and our inability to prescribe or pre-approve a specific method of preparing tariff support materials, we believed a requirement that each service earn the exact interstate rate of return was inappropriate and probably unenforceable. Second, we are of the view that many private line services are interchangeable; that they are, in many instances, subject to a significant degree of actual or potential competition and that, under such circumstances, an

[38] Networks Reply at p. 4.

[39] Networks Comments at p. 30.

[40] For 1979, Bell competitors (not including independent Telcos) are listed as having 13.8% of private line market revenues (SPC Comments at p. 22; Ad Hoc Comments at p. 13) or 12% (SBS Comments at p. 2). Bell has about 80% of total private line revenues.

[41] Total revenues percentages for all services for Bell competitors are shown as 1.6% (SPC at p. 24) or 2% (SBS at p. 2).

[42] See, e.g., our Authorization of Domestic Satellites, adopted December 4, 1980.

[43] We recognize that certain language in the Notice (e.g. para 6, 78 FCC 2d 1298) could have made this point more explicitly. The Notice did make clear, however, that any tariff filed by AT&T would be required to be just, reasonable and non-discriminatory as required by the Act and that "AT&T will continue to bear the burden of demonstrating the lawfulness of individual tariff filings." 78 FCC 2d 1315.

[44] See paras. 46–52, *infra*.

[45] 78 FCC 2d 1299.

[46] SPC Reply Comments at p. 21.

inflexible rate of return requirement for all services, including new or reconfigured ones, could stifle innovation and the satisfaction of customer demands. We hold to these general views.

44. We recognize, however, that these conditions, particularly the second, may apply to a greater or lesser extent to individual private line services. The degree of justification we will require for a deviation from the rate of return (in a given direction) will depend on the nature of a particular service. A tariff for a service for which substitutes do not exist (either from competitors or other Bell services) would require a heavy justification to be targeted to earn more than the system rate. On the other hand, a tariff for a service for which substitutes exist (from Bell or its competitors) at reasonable rates would not require the same justification (and presumably would be much less likely to be so priced). A tariff for a service which was the subject of developing competition and was earning less than the system rate would also be scrutinized closely. New AT&T tariffs for private line services, which Bell indicated in its comments will shortly be filed, must also provide understandable justification for differing rates of increase or for decreases.

45. We also intend to continue to vigorously pursue approaches other than cost allocation to prevent opportunities for cross-subsidization or the utilization of monopoly power to overprice services facing inelastic demand of customers or to preditorily price services to inhibit the development of competition and we intend to continue to seek to eliminate traditional regulation of those areas, such as customer premises equipment, in which competition can better serve the public interest than can those traditional approaches.

Inconsistency With Other Dockets

46. The interim cost allocation manual adopted today, as well as any future cost allocation manuals to be prescribed in the future, must be viewed in the context of actions we have taken to provide a regulatory framework for the development of telecommunications in an era of increasing competition. Several comments have faulted our proposal for its inability to insure that each tariffed service or service element offered by AT&T bears its "true costs," including identical return elements. We have explicitly rejected any system of regulation which will, through design or in effect, stifle the continued development of telecommunications offerings by carriers. We have, however, recognized that the current nature of the industry requires regulatory oversight both to protect against attempts to stifle competition and to protect customers of services offered on a monopoly or near monpoly basis. In order to meet these objectives, we are proceeding along several different paths in a coordinated manner. We recognize that excessive reliance cannot be placed on any one of these approaches to prevent cross-subsidization or extraction of monopoly rents. (In fact, we believe that excessive reliance on such matters as allocation of costs and related, automatic, pricing prescriptions would fail to meet our goal of encouraging innovation.) [47]

47. Rather, we have chosen a combination of approaches as the proper course to achieve our twin regulatory goals—encouraging the development of competition while protecting monopoly customers—with as much expedition and as little disruption as practicable. We have initiated a number of proceedings to move towards these goals—the elimination of barriers to resale and shared use of services; the proposed adoption of a building block private line tariff; the revision of separations procedures (in partnership with the states); the detariffing of appropriate portions of telecommunications offerings; the development of a more useful uniform system of accounts; and the elimination of unnecessary regulatory requirements, particularly for non-dominant carriers.

48. The separations-based approach contained in the interim manual is consistent with, and complements, our actions in these other dockets. Many of the negative comments submitted about the proposed manual seem to stem either from a desire, misplaced in our view, to solve all potential pricing problems in this docket or from a failure to recognize that the interim manual will build upon, not conflict with, our decisions in these companion dockets. For example, SPC complains that the manual will not develop prices for access to local distribution facilities. This is, of course, the subject of a different proceeding, in Docket 78–72. As we stated in the Notice we intend to rely herein upon the results of the *Access Charge* proceeding for the allocation of the exchange portion of interstate costs. [48] Similarly, many parties complain about the way in which plant is divided through the separations process. We have already initiated a Joint Board which is currently attempting to make the necessary changes in separations. As we have already stated, such changes are not within our authority to require at this time. Changes made as a result of this Joint Board will be reflected in the data filed pursuant to this manual.

49. Several commenters [49] have also expressed their views that our adoption of an interim manual along the lines proposed in the Notice would prevent, or render meaningless, our attempt to require a "building block" tariff for private line services. This perception is not only inaccurate but is based upon misconceptions about the bases for our actions in these dockets. We have indicated, both in the Notice and above, that many currently tariffed private line services are not based upon any different technical or cost characteristics of the offerings, but, instead, reflect AT&T's marketing views. Given this, and with the high degree of fungibility of plant used to offer these services, attempts to allocate costs to each service through FDC 7 methodology show no hope of becoming manageable. Moreover, requirements that each category earn the precise interstate rate of return could stifle innovation.

50. The development of a unified building block tariff for private line services containing discrete, mutually exclusive elements is not only consistent with our approach to cost allocation but, if properly implemented, is, in our view, a far superior method of protecting against unlawful discrimination against private line customers. In addition, insofar as the cost allocation manual requires the direct assignment of costs to the categories, it should be possible to utilize these costs for review of rates filed under such a building block tariff. We anticipate that the Uniform System of Accounts which is to be prescribed in Docket 78–196 will also aim at providing an auditable and useful basis for evaluating the relationship of costs to rates for the private line service elements.

51. In addition to these attempts to improve our ability to regulate rates, our

[47] See, e.g. our discussion of the "Hinchman Proposal" at 78 FCC 2d 1330–1333.

[48] Indeed, MCI presents arguments in this proceeding directed at the legitimacy of our proposal for an access charge methodology made in CC Docket No. 78–72. It is appropriate to consider in this docket the propriety of utilizing an access charge for cost allocation purposes, as we proposed in the Notice. The specific mechanism for determining such charges is not, however, at issue in this docket, and we believe that no useful purpose would be served by consideration of the details of such a plan herein. Insofar as a lawful method of determining access charges is adopted in CC Docket No. 78–72 no party has set forth specific arguments as to why the results of such a procedure cannot lawfully or should not be used for cost allocation purposes.

[49] See, e.g. SBS comments at p. 5.

Orders in the *Second Computer Inquiry* and *Competitive Carrier Rulemaking* took significant steps to reduce traditional regulatory oversight of areas where regulation is no longer in the public interest. In following such a course we seek to bring the benefits of competition to consumers of these products and services, while, at the same time, lessening the need to apply imperfect techniques to allocate investment to a multitude of services.

52. While we hope to continue our progress in the future, we recognize that attempts to resolve all oversight matters in a single docket might well be so broad as to be doomed. Therefore, even if we were not under a mandate from the Court of Appeals to adopt a cost allocation manual with the utmost expedition, we would still feel such consolidation was inappropriate. Even without consolidation, however, we believe it will be possible, and we certainly intend to resolve all of these pending proceedings in a manner which recognizes their interdependence.

Proposed Modifications

53. AT&T has proposed several substantive (as well as a number of "housekeeping") modifications to our proposed interim cost manual. Apart from SBS (in its reply comments), AT&T is the only party to suggest modification rather than rejection of our proposal. The substantive suggestions of AT&T and of SBS are discussed below.

54. AT&T has proposed the following substantive changes to the proposed interim manual:

(1) That the requirement that each reporting category earn the prescribed interstate rate of return be modified to provide a "zone of reasonableness" around that rate;

(2) That interexchange circuit plant not be divided in accordance with separations procedures but be divided into line haul and circuit termination categories and then separately allocated on different bases;

(3) That changes be made in the Expense Section of the manual with respect to taxes, to General Department expenses, and to satellite rentals; and

(4) That a Separate Exchange Access reporting category be established.

In addition, Bell has indicated that the manual did not address the treatment of investment of all plant and has proposed modifications consistent with the proposed interim manual. SBS, in reply, also proposed certain changes to earth station investment.

55. We cannot accept AT&T's proposal that a "zone of reasonableness" be established around the prescribed interstate rate of return. Although AT&T has not suggested a specific range for this zone, it has expressed its belief that the 11.7% it calculated for WATS and the 11.1% it calculated for MTS in connection with its WATS filing should be considered as falling within this zone. Presumably, AT&T is proposing that no justification would be required for rates targeted to earn a return which differs from the prescribed interstate rate but which falls within the zone. Even apart from the theoretical problems which would flow from the prescription of such a zone (either specified or unspecified), the example chosen by AT&T demonstrates the undesirability of such an approach. Because of the small size of private line services relative to message services, the automatic allowance of rates of return above the system level for MTS and WATS might well result in the private line category continuing to earn a dramatically lower return than do message services. While we recognize the imprecision of the division of investment between message and private line, called for by the manual, it is our view that the result is to underallocate to private line services. It would aggrevate, not ameliorate, this imprecision to establish a zone of reasonableness which would permit message rates to be targeted above the total interstate rate.

56. AT&T has proposed to depart from the use of separations-like techniques for allocating interexchange investment which we proposed in the Notice with respect to interstate interexchange circuit plant. AT&T proposes to treat line haul and circuit termination costs separately. The former would be allocated to message and private line categories on the basis of mileage; the latter would be allocated on the basis of a circuit count. The impact of this proposal would be to shift costs from longer haul to shorter haul services and is supported by parties who are consumers of long-haul services. It is opposed by AT&T's competitors.

57. Those approving the change note that separations ignores the difference in cost characteristics of long haul and short haul routes by allocating both line haul and circuit terminations on the basis of circuit miles. Those opposing this modification argue against making a single change in separations while retaining its broad averaging approach for other costs. They do not disagree that this proposal, in theory, is more accurate than the separations approach. SBS, for example states, "on the surface AT&T's suggestion seems a reasonable attempt to add greater cost causation to the ICM process. The problem with this suggestion is not the process so much as the result."[50] SBS notes that the effect of this change would be to shift costs from more competitive services to less competitive ones. USTS, moreover, challenges AT&T's ability to differentiate line haul from circuit termination investment in a manner which is auditable noting that accounts for such plant do not exist. AT&T has only indicated that data to implement this allocation can be developed through analyses of data used in separations and from Long Lines' records.

58. On balance we conclude that it would not be appropriate at this juncture to permit selective "corrections" (particularly those which have an unequal effect on services subject to differing degrees of competition) to the separations process based upon unidentified records. We agree with USTS that the question of departing from separations results is better left to the long-term phase of this proceeding. We also anticipate that this matter will be addressed when a Joint Board is convened to prescribe new separations procedures for interexchange plant.

59. AT&T proposes three substantive adjustments to the allocation of expenses. First, AT&T requests that net income rather than net operating revenues (as we had proposed) serve as the basis for allocating income taxes. AT&T justifies this by citing the cause and effect relationship between income and taxes. Our proposal was the result of concern about the assignment of negative taxes to private line services and the resulting assignment of tax expense to message services in excess of actual income taxes paid. A far better approach to this problem, however, is the requirement that each reporting category earn the interstate rate of return. This requirement is established herein, and AT&T has indicated its intent to file increases in private line tariffs. We are therefore making this change as requested by Bell.

60. AT&T's second suggested change would merely require that General Departments expense be allocated on the same basis as related costs. Bell argues that, because of the major restructuring of the Bell system which is beginning, there may be a number of changes in the General Departments which could require changes to the interim manual. Bell suggests that, as part of its annual cost allocation report, it would provide the specific practices used to implement the manual. We cannot accept this approach. We recognize the need to provide a

[50] SBS Reply Comments at p. 5.

mechanism for making both non-substantive and necessary changes to the interim manual and are establishing such a mechanism. The annual submission takes place six months after the close of the period to which it relates, and there is no reason why the procedures to be used to allocate General Departments expenses should not be known, and the validity of any minor changes established, before and not after the submission is made.

61. The third change to the expense provisions of the proposed interim manual suggested by AT&T is the utilization of a different basis for allocating satellite rents. Bell proposes to allocate these rents based upon a count of eligible circuits rather than of circuits in use. SBS vigorously objects to this approach as being too subject to management discretion, particularly in the case of domestic satellites where eligible circuits are only defined as "longer-length circuits."[51] SBS offers a counterproposal for the allocation of satellite costs. It proposes to allocate all domestic satellite related costs, including book costs for earth station investment, on the basis of circuits in use. We will not make either change at this time. SBS' criticism of the AT&T approach appears valid. The counter-suggestion of SBS, which has not been subject to comment since it was made in reply, would require the assembling of book costs for domestic earth station investment, which are not presently found in the USOA in contrast to international satellite earth station investment, which is accounted for separately under the USOA. It is also susceptible to the same criticism as that raised against AT&T's proposal to change the allocation of interexchange investment. We do not believe that it would be desirable, at this time, to modify existing USOA accounts so as to isolate one category of investment and allocate it in a detailed manner in contrast to the broad averaging of separations. We are not, therefore, changing our proposal for the allocation of satellite costs.

62. AT&T next proposes that an Exchange Access reporting category be established and that costs and revenues assigned to ENFIA be included in this category. While no party agreed with the proposed interim manual's assignment of ENFIA to the private line reporting category, the parties generally do not agree with Bell's approach either. Carriers oppose the separate reporting of ENFIA while private line users fear that the inclusion of private line access charges in a reporting category with ENFIA could present an opportunity for cross-subsidy between the various access charges.

63. We have already made clear our intention to develop equitable access charges in Docket 78-72. While we shall not prejudge our decision in the access charge proceeding herein, we believe it is appropriate to establish a separate reporting category for ENFIA access at this time. Obviously, we shall not impose a requirement that this category earn the system rate of return so long as ENFIA is provided at rates which are the product of negotiations. The establishment of appropriate rate levels for ENFIA access will result from the access charge proceeding. We do not believe that it is appropriate at this time to combine all access charges, some of which are clearly private line services, in a single reporting category.

64. Finally, AT&T was correct in noting that the proposed interim manual did not provide instructions for the allocation of certain non-exchange, non-interexchange investment. The interim manual we issue today remedies this. While we have adopted a different approach for switchboards than that contained in AT&T's comments, it is, like AT&T's suggestion, a separations-type approach. First, we require that all switching equipment be allocated on a mileage insensitive basis. Next, we adopt AT&T's suggestion that international satellite earth stations and associated depreciation and amortization accounts be allocated based on international satellite costs. A distributive ratio for MTS and WATS will be developed based on allocations of the exchange, switching equipment, international satellite, and interexchange allocations. This ratio will be used to allocate the remaining investment. While many of the allocation factors for specific accounts appear reasonable, the approach we are taking does not require such a disaggregation of investment, and we believe that the additional complexity which would result from the use of these factors is not warranted by any signficant improvements in results.

65. In addition, our proposal for allocating switching investment eliminates use of traffic units as an allocation factor for switchboards. As we learned in the WATS filing (See Volume 3-7, Book 1 of Revision to AT&T Tariff FCC No. 259), the use of this factor results in the allocation of 97.2% of total switchboard investment to MTS and only 2.8% to WATS. This reflects AT&T's assumption that practically the total demand for switchboard services should be the responsibility of the MTS users. We disagree with this assumption for the obvious reason that WATS customers require availability of switchboard services (e.g. long distance information), even though accessed through MTS, in order to make effective use of WATS. The fact that WATS users cannot access switchboard services directly reflects only the manner in which the company chooses to offer the service. Thus we are requiring that switchboards be allocated to MTS and WATS on the basis of dial equipment minutes of use (DEMs), as local dial switching equipment would be under AT&T's proposal. Toll dial switching equipment will be allocated to MTS and WATS on the basis of switched message minutes, as suggested by AT&T.

Manual

66. The interim cost allocation manual is similar to that proposed in the Notice. The only change to the investment section is the addition of specific rules for allocation of that investment not covered by the proposal, discussed above. The only substantive changes to the expense section are the changes to income tax allocation, discussed above, and a change in methods for allocating expenses associated with switchboard services. In the investment section, *supra*, we explained our rejection of the assumption that costs associated with switchboard services should be allocated almost exclusively to MTS. We view switchboard services as being demanded by WATS customers, even though the services must be accessed through MTS. Thus we are requiring that expenses associated with Accounts 624, 626, 627, 629, 630, 631 and 633 be allocated to MTS and WATS on the basis of relative subscriber line use. Public Telephone Expenses (Account 632), however, will continue to be allocated based on traffic units. We recognize that this may result in some overallocation of costs to WATS since some operating expenses (e.g. collect calls) might more appropriately be divided on a traffic unit basis while others (e.g. directory expenses) are more fairly dealt with by the SLU factor. If Bell can isolate these expenses, we believe a petition to modify the interim manual in accordance with the procedure we are establishing would be appropriate.

67. In order to eliminate any uncertainty about the proper method for allocating investment, we have included an example of the methodology to be followed, using the figures submitted by AT&T in the WATS filing. We are also providing a mechanism to permit modifications to the manual. Authority is delegated to the Chief, Common

[51] SBS Reply Comments at p. 5.

Carrier Bureau, to authorize non-substantive changes to the manual (e.g. renumbering of accounts)[52] without further proceedings. The Chief, Common Carrier Bureau, will also recommend the appropriate proceedings in response to petitions for substantive changes which are consonant with the policy we are adopting herein.

68. We stress, once again, that this manual is an interim one, which will be utilized until completion of the long-term phase of this docket. While we recognize that it is far from sophisticated, it represents the only approach which is an implementable alternative to AT&T's revised FDC 7 methodology. The results of the cost allocation manual will be the basis for determination of the rate of return of the reporting categories. Except for the ENFIA category,[53] the categories will be required to be targetted to earn the system rate of return. AT&T has already indicated its intent to file an increase in private line rates based on the results of the information compiled for the WATS filing. The WATS filing itself is being suspended and set for investigation. We believe that matters covering the implementation of a new tariff are best dealt with in the context of those proceedings. We are therefore not requiring the filing of a new WATS tariff by this Order. MTS customers, however, appear to be entitled to rates designed to earn the allowable system return in accordance with allocations done pursuant to this manual. This entitlement is overdue. We are therefore requiring that tariffs targetted to earn the system rate of return for the MTS and Private Line reporting categories be filed within four (4) months of the date of release of this Order.[54]

Other Matters

69. We turn to consideration of some miscellaneous points raised by the parties.

A. AHMA has requested that this proceeding be consolidated with the WATS tariff filing (transmittal No. 13555) because of the interdependence of the two proceedings. AHMA specifically indicates that decisions reached in this docket must affect our decision on the lawfulness of the proposed WATS tariff. While we recognize that there is a relationship between the two matters, such a relationship will exist between every tariff to be filed by AT&T and the annual reports filed pursuant to the cost allocation manual. As we have indicated both in the Notice and herein, the promulgation of this manual does not constitute a repeal of § 61.38 of our Regulations, and this section continues to govern the justification of tariffs. Furthermore, we are today suspending the WATS tariff and setting it for an investigation that should be conducted independently of further proceedings in this docket. While we are addressing both matters today, and doing so in a manner which recognizes their relationship, AHMA's motion is denied.

B. ARINC argues that the study conducted for it by Economics and Technology, Inc. (ETI) and submitted by ARINC with its reply comments to the Notice of Inquiry in this docket was not considered by us and that this constitutes a denial of due process. The ETI study was considered to be an integral part of the ARINC comments and hence was not listed separately in either the body of the Notice or in the Appendix summarizing the comments. The proposal contained in the ETI report was to improve the FDC 7 process through requiring the allocation of costs to more disaggregated elements to generate more usable information. It also called for the assignment of "additional capacity costs" more accurately than the present FDC 7 methodology, and for improvement of "trial balancing" through detailed procedures which identify the subsidy element in separations. This type of approach was considered and rejected as a viable short term approach in the Notice.

C. Alascom's filing addresses the question of the applicability or precedential effect of the determinations in this docket to itself. This interim manual does not constitute a prejudgment of any other issue before us or before the recently convened Joint Board. It is solely directed to the procedures to be followed by AT&T in allocating costs and is not binding on Alascom.

D. Several parties have argued that the Notice was violative of both the Administrative Procedure Act and Section 205 of the Communications Act because it required AT&T to file interim WATS rates based on the proposed manual before parties had an opportunity to comment upon the proposal contained in the Notice. We made clear in the Notice that this action was required by the June 11, 1980, Order of the Court of Appeals for the District of Columbia in *MCI Telecommunications, Inc.* v. *FCC*, Docket No. 79-119, an order by which we were bound. A failure on our part to require the filing of interim WATS rates based on the proposed interim manual would have been inconsistent with the Court of Appeals' Order. Moreover, because of our actions suspending the proposed WATS rates and requiring rates to be filed based on, *inter alia*, the cost allocation procedures of the interim manual contained herein, as a final order, the argument that due process was denied is not only incorrect but moot as well.

70. Parties differ on the potential usefulness of the working sessions on tariff support procedures to be used while the interim manual is in force. While we cannot be certain that these sessions will be helpful, neither are we prepared to say that we are sure they will not contribute to progress in this area. We are therefore directing the Chief, Common Carrier Bureau, to convene and to conduct such sessions in the near future, after public notice. The Chief, Common Carrier Bureau, is delegated authority to conduct the sessions for as long and in such a manner as he deems proper and to provide for discovery or other matters ancillary to these sessions which he may determine are warranted. The Chief, Common Carrier Bureau, is also authorized to require the filing of specific cost support materials, although such orders shall in no way bind the Commission in the review of tariffs.

Conclusion

71. We believe that the interim manual adopted here today satisfies—at least on an initial basis—our responsibility to adopt a workable manual for the allocation of costs by AT&T. That responsibility was defined by the Court of Appeals in *Aeronautical Radio, Inc.* v. *FCC* as making a reasonable selection from the available alternatives. Because of the Order of the Court in *MCI Telecommunications, Inc.* v. *FCC*, as well as the need to replace AT&T's revised FDC 7 methodology which has failed to produce lawful rates, we are obligated to make such a determination on an expedited schedule. We therefore determined that the most appropriate step was to adopt an interim manual which represented both an improvement over the existing FDC 7 methodology and the best proposal which could be implemented at the present time. We indicated that we would explore long range approaches to cost allocation—approaches which

[52] We would not view such changes as constituting rules under the Administrative Procedure Act, 5 U.S.C. 551. In addition, while such changes will be published in the **Federal Register**, we do not believe that notice and public procedure thereon are necessary to the public interest.

[53] See para 63, *supra*.

[54] We expect to issue a new rate of return prescription in the near future in Docket No. 79-63. If the adoption renders this four month limit on the filing of new rates impracticable we shall modify the time accordingly.

might, for example, require information not presently existing—in further proceedings in this docket. We intend to issue a Supplemental Notice of Inquiry in this docket addressing these questions in the near future. This Supplemental Notice will include a schedule for the submission of comments. We will therefore not require the filing of comments on long term approaches in accordance with the schedule contained in the Notice.

72. While many of the parties who challenged the reliability of the data submitted for the past several years under the FDC 7 approach criticized our proposed interim manual, they did not attempt to present an alternative capable of implementation at this time. Indeed parties have argued that we should abandon our proposed interim manual and develop a better proposal without even attempting to demonstrate that the *status quo* is preferable to the interim cost allocation manual. In this regard we believe the statement of Justice Brandeis in *Groesbeck* v. *Duluth SS&A.R. Co.* 250 U.S. 607 (1919) is still appropriate. He stated that,

> experience teaches us that it is much easier to reject formulas (for the allocation of common costs) as being misleading than to find one apparently adequate.[55]

73. Suggestions such as that of SBS, endorsed by MCI, that cost allocation be based on the "building block" elements contemplated in Docket 79-246 are simply not relevant to the immediate problem we face. While this is a legitimate position for consideration in the long term phase of this docket, it is clearly of no help at the present time since the question of what constitutes the proper "building-blocks" is in dispute in that docket and no decision has yet been issued.

74. Similarly, USTS' proposal for a 10 step approach to cost manual development including development of "cost allocations computer program and data base" subject to comment by all parties can be considered in the long-term phase of this proceeding. The question we face today however is whether the existing system of cost allocation, some other system of cost allocation before us, or our interim manual (or no manual) should be utilized pending development of a longer-term approach which all parties feel is necessary and to which we are committed. This question we address today, and this is the only question to which we find the interim manual adopted herein is the preferable answer.

[55] 250 U.S. 607, 614-15.

75. ARINC requests that we "withdraw the proposed interim manual and * * * recommit (ourselves) to the purpose of this proceeding—to prescribe a set of rules and procedures to be followed in allocating costs of service in accordance with the broad principles of Docket 18128".[56] ARINC neither demonstrates that this goal can be achieved at present nor responds to our criticisms of the prior methodologies. Although the effect of such an action would be to continue use of a system we have found unacceptable for the reasons set forth in the Notice, ARINC only requests that we prescribe an FDC 7 manual in accordance with its earlier comments in this docket, an approach we have already rejected.

76. We still recognize that our interim manual is both less ambitious than what we and others may have anticipated in this proceeding and far from perfect. We continue to believe that it is the most reasonable and indeed the only possible approach for the immediate future. Its issuance does not prejudge any of the issues to be explored in the long-term phase of this proceeding. Our experience in reviewing the recent WATS filing which included data based on the manual has both indicated the need for certain clarifications and confirmed our belief that the interim manual is more comprehensible, auditable, and manageable than the AT&T system it replaces.

77. Accordingly, pursuant to the provisions of Sections 1, 4 (i) and (j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201-205, and 403 and Section 553 of the Administrative Procedures Act, 5 U.S.C. 553 it is ordered that the Interim Cost Allocation Manual attached as Appendix A is adopted.

78. It is further ordered, That within four (4) months of the date of release of this Order, AT&T shall file revised rate levels targeted to produce the prescribed interstate rate of return for the private line and MTS reporting categories established herein. AT&T shall file a reallocation of costs allocated to the WATS category within one (1) month of the date of release of this Order.

79. It is further ordered, that the Secretary shall cause this Report and Order to be published in the Federal Register.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A—Cost Allocation Manual

This manual contains general instructions for allocating the annual investment and expense costs to the following reporting categories for AT&T.

Exchange Network Facilities for Interstate Access (ENFIA)
Private Line
Message Telecommunications Service (MTS)
Outward WATS and 800 Service (collectively, WATS)

For each of the reporting categories, an earnings ratio will be developed according to this formula:

$$\text{Earnings Ratio} = \frac{\text{Revenues minus (expenses and taxes)}}{\text{Gross investment minus reserves}}$$

These earnings ratios, plus supporting documents, will be filed with the Commission during June following the reporting year ("central submission"). These earnings ratios will be subject to final interpretation by the Commission.

The process for making changes to this manual shall be determined by the Chief, Common Carrier Bureau. Minor changes (such as changes in account names) may be made providing these changes are approved by the Chief, Common Carrier Bureau prior to filing of the central submission. Substantive changes, which may be requested by any party, will require appropriate procedures.

I. Investments and Reserves

Instructions in this section are to be used to allocate interstate investments and reserves to the reporting categories.

[56] ARINC reply comments at p. 3.

A. Bell Operating Companies (BOCs)

The final output of the Jurisdictional Separations Process (JSP) will be used as the definition of total BOC interstate private line investment and reserves and total BOC interstate message investment and reserves.[1] Investment and reserve amounts for ENFIA and other facilities provided to OCCs are derived from JSP data. Message investment will be grouped into exchange, interexchange

[1] The primary source for this information is currently provided by AT&T's Interstate Settlement Information System (ISIS) report. JSP results are adjusted for changes required in Docket 19129 Phase II. Additional adjustments are currently made (but subject to final determination by the Joint Board) for facilities provided to Other Common Carriers under contractual agreement and for facilities used to provide ENFIA.

and "other" categories, and allocated to MTS and WATS according to instructions described below. Those portions of exchange and interexchange investment associated with the switching function (Toll Dial Switching, Switchboards and Local Dial Switching) will be allocated separately as described below.

B. Long Lines Department

Using JSP principles, and Long Lines accounting records, investment and reserves for the Long Lines Department will be divided between private line and message categories. Message investments will be grouped into exchange, interexchange and "other" categories, to be used in further allocation to MTS and WATS. As with BOC investment, exchange and interexchange investment associated with the switching function will be allocated separately as described below.

C. Reporting Categories

ENFIA

This category will include investments and reserves for ENFIA. Investments and reserves are developed at this time from JSP data. Further delineation of service categories to be included in this reporting category, (to be called Exchange Access in the future) and of the definition of investment used for exchange access, will result from CC Docket No. 78-72.

Private Line

Private Line investments and reserves from the BOCs and Long Lines Department are to be added together to establish total private line investment and reserve amounts.

MTS and WATS

Investment and reserve amounts for the BOC and Long Lines message category, as developed above, will be added together and then allocated to MTS and WATS. Message telephone plant (defined here as Account 100.1 less private line investment, land, buildings, furniture and office equipment, and vehicles and other work equipment) will be identified as either exchange or interexchange. Toll Dial Switching, Switchboard and Local Dial Switching investment associated with exchange and interexchange will also be separately identified. Exchange plant amounts will be allocated to MTS and WATS on the basis of relative subscriber line minutes of use.[2] Interexchange plant amounts will be allocated between MTS and WATS based on network message minute miles. Toll Dial Switching investment will be allocated on the basis of switched message-minutes. Switchboards and Local Dial Switching investment will be allocated on the basis of dial equipment minutes. International satellite associated earth station investment (Account 100.5) and its associated depreciation and amortization account (Account 175) will be allocated on the basis of international satellite rents.

Exchange, interexchange, international satellite and switching telephone plant developed separately for MTS and WATS will be added together to form total message telephone plant amounts for MTS and WATS. The percentage which MTS and WATS telephone plant each makes of total message telephone plant (as defined above) will be used as a distributive ratio to allocate all remaining investment ("other") and reserve accounts between MTS and WATS.[3]

II. Expenses and Income—Description of FDC Methodologies

Procedures in this section are to be used to distribute all interstate expenses (600 series accounts) and income to the reporting categories. The term "attribution" denotes the existence of a direct link between the expense account and the reporting category. The term "allocation" means that a direct link does not exist, and that a method was chosen to approximate the causation of the expense by reporting category. The term "assigned costs" refers to the sum of all expenses and return and taxes on investment, other than unattributable investment and expense amounts.

[2] In developing the count of minutes of use for the allocation of exchange "non-traffic sensitive" plant, both the interstate originating and terminating WATS minutes of use shall be counted.

[3] Included in this remaining investment and reserves portions are the following accounts: Land and Buildings; Furniture and Office Equipment; Vehicles and Other Work Equipment; Telephone Plant under Construction; Property Held For Future Telephone Use; Satellite Earth Station Investment; Materials and Supplies; Customer Deposits; Organization, Franchise and Patent Rights; Depreciation Reserve and Accumulated Deferred Income Tax Reserve; Amortization Reserve; Earth Station Depreciation and Amortization Reserve; and, Cash Working Capital.

Expenses and Revenues—FDC Methods

Operating expense accounts	Allocation and attribution procedures
602.1-602.8 Repairs of Outside Plant (OSP)	Allocate to reporting categories based on associated OSP in service (Accounts 214 through 244).
	Allocate maintenance of overseas facilities to reporting categories based on the number of associated circuits in service.
603-01 Subscriber Line Testing	Subdivides into 3 parts (Station, OSP, and COE) in proportion to troubles found.
	(1) Allocate the station portion to reporting categories in proportion to station repair expense (see 605-01).
	(2) Allocate the OSP portion to reporting categories based on exchange OSP investment.
	(3) Allocate the COE portion to reporting categories based on the exchange COE investment.
603-02 Service Order Testing	Allocate to the public switched network (PSN) and private line reporting categories in proportion to service order activity subsequent to the initial installation. Then attribute the total amount for PSN services to the PSN reporting categories based on the distribution of exchange outside plant and exchange central office equipment investment.
603-04 Trunk Testing	Attribute circuit testing to reporting categories using an analysis of reported testing hours.
	Overseas testing allocated to reporting categories based on number of circuits in service.
	Allocate facilities testing to reporting categories based on associated interexchange (IX) plant in service.
604 COE Repairs	Attribute the Long Lines Service Engineering portions of Account 604 directly to the private line reporting category.
	Attribute #4ESS international generic program costs directly to MTS.
	Allocate the circuit rearrangements and change portions of Account 604-07 and Account 604-08 (less Long Lines Service Engineering) to reporting categories based on number of IX circuit sections.
	Allocate overseas facility terminal equipment maintenance to reporting categories based on associated number of circuits.
	Allocate the remainder of Account 604 to reporting categories based on associated COE plant in service.
605 Station Equipment Maintenance	Attribute Associated Company 605-01 (R) and 605-07 (M) separately to reporting categories using the results of a continuing sample of installers and repair persons. These people will report their time (construction, removal, rearrangements and changes and repair) to reporting categories. Until such reported data are available allocate to reporting categories based on station equipment plant in service.
	Allocate Associated Company 605-04 (shop repairs) to reporting categories based on the station equipment plant in service. Allocate Long Lines Account 605 to reporting categories based on Long Lines station equipment plant in service (Accounts 231, 232, and 234).
606 Buildings and Grounds	Allocate to reporting categories based on investment in buildings (less general office and garage and storeroom space).
610 Maintaining Transmission Power	Allocate to reporting categories based on COE plant (Account 221) separately for domestic and overseas.
	Allocate to reporting categories based on combined Accounts 602 through 606 and 610.
608 Depreciation	Attribute to reporting categories based on the depreciable classes of plant in service using composite Associated Company and Long Lines depreciation rates. (Ocean cable depreciation is allocated separately based on the ocean plant in service in each category.)
609 Extraordinary Retirements	Attribute to reporting categories based on special analysis of accounting records.
613 Amortization of Intangible Property	Allocate to reporting categories based on assigned costs.
614 Amortization of Plant Acquisition Adjustments.	Attribute to reporting categories based on special analysis of accounting records.

Expenses and Revenues—FDC Methods

Operating expense accounts	Allocation and attribution procedures
NOTE.—Accounts 621 through 633 are treated separately for the Associated Companies and Long Lines; except accounts allocated based on investment.	
621-01 General Traffic Supervision (Except Accounts 621-311 and 316).	Allocate to reporting categories based on Account 624 less 624-22 and 624-25.
621-311/316/05, 622-02/03, 624-25/629-06, 631-38, and 631-48 Business Services.	Attribute to reporting categories using data from a Business Service time reporting system.
621-03, 624-22, 629-07, and 631-37/47 Network Administration.	Allocate Accounts 621-431, 624-222, 624-422, and 624-622 (switching and line and number administration) to reporting categories based on toll dial switching equipment plant in service. Allocate Accounts 621-331 and 624-322 (traffic load data administration) to reporting categories based on toll dial switching and switched services IX central office equipment and OSP plant in service, excluding dedicated overseas IX central office equipment and outside plant. Allocate Accounts 624-722 (Truck Administration) to reporting categories based on switched services IX central office equipment plant and OSP plant in service, excluding dedicated overseas IX central office equipment and outside plant. Allocate Accounts 621-231 (network administration staff) to reporting categories based on the combined attribution of Accounts 624-222, -622, and <-722. Allocate the remainder (training and other staff) of Account 621-03 based on the combined attribution of Accounts 621-231, -331, and -431. Allocate the remainder (supervision, training and other) of Accounts 624-22, 629-07, 631-37, and 631-47 based on the combined attribution of Accounts 624-222, -422, -622, and -722.
622-01 Service Observing	Allocate to reporting categories based on Account 624 less 624-22, and 624-25.
624 (Except Accounts 624-22 and 624-25) Operators Wages less Network Administration and Business Services.	Allocate Associated Company expenses to MTS and WATS on the basis of message minute miles. Allocate Long Lines expenses directly to private line and message. Allocate message amounts to MTS and WATS on the basis of relative subscriber line minutes of use.
626 Rest and Lunch Rooms	Attribute to reporting categories based on Account 624 less 624-22, and 624-25. (Network Administration and Business Services portions of these accounts are treated above.)
627 Operator's Employment and Training	Same as Account 626.
629 less -07 and -08 CO Stationery and Printing.	Same as Account 626.
630 CO House Service	Same as Account 626.
631 less -37, -38, -47, and -48 Miscellaneous CO Expenses.	Same as Account 626.
632 Public Telephone Expenses	Allocate Associated Company expenses to reporting categories based on traffic units. Attribute Long Lines expenses directly to MTS and Private Line.
633 Other	Same as Account 626.
640 General Commercial Administration	Allocate Associated Company expenses to reporting categories based on Associated Company Account 645. Attribute Long Lines Product Management expense directly to reporting categories. Remainder of Long Line Account 640 unattributable, allocate to service categories on Long Lines Account 643.
642 Advertising	Attribute Residence Sales, Long Distance Residence Sales and Long Distance Business sales to MTS. Business sales unattributable, allocate to reporting categories based on assigned costs. Remainder unattributable, allocate to reporting categories based on assigned costs.
643 Sales	Attribute to reporting categories using the results from a sales time reporting system.
644 Connecting Company Relations	Unattributable, allocate to reporting categories based on attribution of Independent Company Settlements.
645 Local Commercial Operations	Attribute Associated Company coin telephone collection (645-181/381) directly to MTS. Attribute remainder of Associated Company expenses to reporting categories using results of an analysis of commercial work measurement plan. Attribute Long Lines expenses to reporting categories using results from a sales time reporting system.
648 Public Telephone Commission	Attribute to MTS.
649 Directory	Attribute to MTS and WATS based on a count of MTS and Outward WATS messages.
650 Other Commercial Expenses	Allocate Associated Company expenses to reporting categories based on Associated Company Account 645. Long Lines expenses unattributable, allocate based on Long Lines Account 643.
661 Executive Department	Distribute to reporting categories based on assigned costs.
662 Accounting Department	Attribute Revenue Accounting to reporting categories based on analysis of work hours and functions from Associated Company Cost Analysis Measurement Plan (CAMP) and analysis of Long Lines Revenues Accounting Offices. Remainder unattributable, allocate to reporting categories based on assigned costs.
663 Treasury Department	Allocate to reporting categories based on assigned plant in service.
664 Law Department	Attribute overseas legal expenses to overseas services based on analysis of records. Attribute outside legal consultant fees and associated costs based on analysis of AT&T Form M Schedule 39. Allocate remainder to reporting categories based on assigned costs.
665 Other General Office Salaries and Expenses.	Allocate Personnel, Account 665-03, to reporting categories based on Maintenance, Traffic, Commercial and Revenue Accounting salaries. Allocate Long Lines Service Engineering expenses (Portion of 665-09) to the private line category. Attribute Account 665-29, Customer Services, to categories based on reported hours. Attribute Account 665-149, Central Office Planning and Engineering, based on toll dial switching equipment plant in service. Remainder unattributable, allocate to reporting categories based on assigned plant in service.
668-669 Insurance and Accidents and Damages.	Unattributable, allocate to reporting categories based on plant in service.

Expenses and Revenues—FDC Methods

Operating expense accounts	Allocation and attribution procedures
670 Earth Station Expenses	Allocate to reporting categories based on Account 100.5.
671 Operating Rents	Allocate circuit and miscellaneous rents to reporting categories based on inter-exchange OSP and circuit equipment and toll switching equipment plant in service. Allocate Long Lines rents paid to affiliates to reporting categories based on number of circuits. Attribute international satellite rents incurred for services that can only be provided on satellite facilities directly to reporting categories. Allocate remaining international satellite rents to reporting categories based on total international voice-grade circuits in use. Allocate domestic satellite rents to reporting categories based on domestic satellite circuits in use. Allocate building space rents to reporting categories based on the combined Accounts 643, 645, and Revenue Accounting portion of 662.
672 Relief and Pensions	Allocate to reporting categories based on Maintenance, Traffic, Commercial, and Revenue Accounting Salaries.
673 Telephone Franchise Requirement (dr)	Allocate based on the total investment in Account 100.1.
674 (and Long Lines Account 691) General Services and Licenses.	Allocate to reporting categories on bases consistent with the nature of the items of expense.
675 Other Expenses	Allocate to reporting categories based on plant in service.
676 Telephone Franchise Requirements (cr)	Allocate based on the total investment in Account 100.1.
677 Expenses Charged Construction (cf)	Same as Account 675.

Income Accounts—FDC Methods Subsection

Income accounts	Allocation and attribution procedures
Gross Operating Revenues (Accounts 500–516, 524).	Directly assign to reporting categories accounting records.
Earth Station Revenue (Account 522)	Allocate to reporting categories based on the allocation of international satellite rent expense.
Other Operating Revenues (Account 526)	Allocate based on gross operating revenues.
Uncollectibles (Account 530)	Attribute to reporting categories based on an analysis of accounting records.
Independent Company Settlements	Allocate based on the revenue account charged.
LL Settlements except Division of Revenue	Attribute based on the revenue account charged.
Miscellaneous Income Charges (Account 323)	Allocate based on plant in service (Account 100.1).
Interest on Customer Deposits (Account 336)	Allocate based on the toial investment in Account 100.1

Taxes—FDC Methods

Type of tax	Allocation procedures
Gross Receipts Taxes	Allocate based on the allocation of reporting category revenues.
Social Security Taxes (Account 307–05)	Allocate based on the apportionment of Maintenance, Traffic, Commercial, and Revenue Accounting salaries.
Ad Valorem Taxes (Account 307–01)	Allocate based on the allocation of plant in service (Account 100.1).
Income Adjustments for Income Tax Determination.	Allocate depreciation of capitalized items, Relief and Pensions, and Social Security Taxes capitalized based on plant in service (Account 100.1). Allocate Operating Fixed Charges based on the allocation of net investment.
State and Local Income Taxes (Account 307–02).	Allocate the actual tax incurred based on the state and local taxable income for each reporting category (net revenue less expenses, income charges, taxes excluding Federal Income Taxes, and income adjustments).
Amortization of Investment Credits	Allocate based on the allocation of plant in service (Account 100.1).
Federal Income Tax	Allocate to reporting categories by multiplying the statutory rate times the Federal taxable income for each reporting category (net revenue less expenses, income charges, other taxes, and income adjustments).

General Services and Licenses (Account 674 and LL Account 691)

Expense categories	Allocation basis
(1) Bell Telephone Laboratories Billing for Research and Systems Engineering:	
(A) Switching:	
(1) Business Communications Systems	PBX plant in service (Account 234).
(2) All other	COE switching plant in service.
(B) Transmission:	
(1) Ocean Cable	Ocean cable and associated COE Plant in service.
(2) Satellite Communications	Domsat rents.
(3) Waveguide Systems	IX plant in service.
(4) Other toll transmission	IX plant in service.
(5) Exchange transmission	Exchange plant in service.
(C) Station	Station equipment plant in service (Accounts 231 and 232).
(D) Outside plant	OSP in service, less ocean cable.
(E) General:	
(1) BIS	Assigned costs.
(2) Other	Assigned costs.
(F) Associated Work	Assigned costs.
(2) Network Planning and Design:	
(A) Central Office Planning and Design	COE plant in service.
(B) Distribution Services Planning and Design	Exchange OSP in service.
(C) Toll Transmission and Design	IX OSP + IX COE plant in service, excluding Overseas.
(D) Operator Services Planning and Design	Dial Equipment Minutes.
(E) All other	Plant in service.
(3) Network Services:	
(A) Central Office Operations and Engineering	COE plant in service.
(B) Distribution Operations and Engineering	Exchange OSP in service.
(C) Toll Transmission Operations and Engineering	IX OSP + IX COE plant in service, excluding Overseas.

General Services and Licenses (Account 674 and LL Account 691)

Expense categories	Allocation basis
(D) Operator Services Operations and Engineering	Dial Equipment Minutes.
(E) All other	Plant in service.
(4) Residence Marketing:	
(A) Customer Facilities	Station equipment plant in service (Accounts 231, 232, and 234).
(B) Customer Services	Accounts 640 and 643.
(5) Information Systems	Assigned costs.
(6) Directory & Public Services	Count of MTS and Outward Wats messages.
(7) Staff	Assigned costs.
(8) Business Marketing	Accounts 640 and 643.
(9) Business Services:	
(A) Business Services Strategy Division:	
(1) Customer Facilities	Station equipment plant in service (Accounts 231, 232, and 234).
(2) Customer Assistance	Account 640.
(B) Business Services Operations Division:	
(1) Customer Facilities	Station equipment plant in service (Accounts 231, 232, and 234).
(1) Customer Assistance	Account 640.
(10) Planning and Administration D	Assigned costs.
(11) Public Relations and Employee Information	Assigned costs.
(12) Human Resources	Maintenance, Traffic, Commercial, and Revenue Accounting salaries, combined.
(13) Labor Relations	Maintenance, Traffic, Commercial, and Revenue Accounting salaries, combined.
(14) Comptrollers	Assigned costs.
(15) Treasury	Plant in service.
(16) Tariffs and Costs	Gross revenues.
(17) Public Affairs	Assigned costs.
(18) State Regulatory Matters	Assigned costs.
(19) Federal Regulatory Matters	Assigned costs.
(20) Legal:	
(A) General Legal and Tax	Assigned costs.
(B) Patent Matters	Bell Laboratories Billing (see Item 1 above).
(C) Antitrust and MCI Docket	Assigned costs.
(21) Secretary	Assigned costs.
(22) Administrative Services	Assigned costs.
(23) Executive	Assigned costs.
(24) Operations Planning	Assigned costs.
(25) Provision for Service Pensions and Death Benefits	Results of 2 through 24 above.
(26) Other expenses	Results of 2 through 24 above.
(27) Taxes other than F.I.T.	Results of 2 through 24 above.
(28) Return Requirement (including related F.I.T. on net investment in the General Departments Account 101.1).	Results of 1 through 27 above.

Appendix B

Appendix B (SUMMARY OF COMMENTS) may be inspected on file in the Dockets Branch, Room 239, 1919 M St., NW., Washington, D.C. 20554.

Appendix C

Reporting Category Investment Calculations

This appendix provides an example of the proper calculation of reporting category investment amounts. The purpose of this appendix is to illustrate the methodology to be used to develop investment amounts utilizing the data submitted in AT&T's Revision to Wide Area Telecommunications Services, AT&T Tariff FCC No. 259, September 15, 1980. The Long Lines results, along with private line and message amounts for the Bell Operating Companies (which are provided by Jurisdictional Separations), form the total amounts for the interstate private line and message categories. We show only Account 100.1 private line investments here. The remainder of the calculations, which is the focus of this Appendix, develops the split of message investment between MTS and WATS. Reference pages come from AT&T's WATS filing.

Staff Calculations of MTS and WATS Rate Base

[In thousands of dollars]

		Source/explanation [1]
I. Investment Aggregates:		
Total 100.1	$35,841,687	Vol. 3-7, pp. 1-13.
Less Private Line 100.1	(5,880,146)	Vol. 3-7, pp. 1-16.
Total MSG 100.1	29,961,541	
Less nonplant 100.1[2]	(4,364,320)	Vol. 3-7, pp. 5-14 and 5-25.
MSG plant 100.1	25,597,221	Final.
International Earth station 100.5	18,209	Vol. 3-7, pp. 5-12 and 5-23.
Total	25,615,430	

[1] Investment data were submitted by AT&T in its proposed revision to WATS (filed September 15, 1980).

[2] Nonplant is provided by lines 25 through 28 on pages 5-14 and 5-25. These amounts are multiplied by .999358597 to make the adjustment from preliminary to final data.

Investment data for message exchange and interexchange categories are derived from volume 3-7 (Book 2) pages 5-14 and 5-25. These figures are preliminary and are adjusted by .999358597 to account for AT&T's recast MR1 process (See Section 7 Book 2).

	Preliminary	Final
Exchange:		
Exchange	$12,779,246	$12,771,049
Switchboards + local dial switching)	3,003,691	3,001,764
Interexchange:		
Interexchange	7,301,844	7,296,961
Toll dial switching	2,529,069	2,527,447
Total MSG	25,613,650	25,597,221
International Earth Station Investment		18,209
Total		25,615,430
II. Message Plant (100.1) Allocation to MTS and WATS:		
A. Exchange:		
(1) Exchange plant (allocate on relative SLU): [1]		
MTS: 12,771,047 (.771) =		$9,846,479
WATS: 12,771,049 (.229) =		2,924,570
Total		12,771,049
(2) Switchboards and local dial switching (DEM): [1]		
MTS: 3,001,764 (.782) =		2,347,379
WATS: 3,001,764 (.218) =		654,385
Total		3,001,764
B. Interexchange:		
(1) Interexchange plant (MMM): [1]		
MTS: 7,296,961 (.811) =		5,917,835
WATS: 7,296,961 (.189) =		1,379,126
Total		7,296,961
(2) Toll dial switching (switched MM): [1]		
MTS: 2,527,447 (.802) =		2,027,012
WATS: 2,527,447 (.198) =		500,435
Total		2,527,447

[1] See Volume 3-7, Book 1, Section 4 for source of SLU, DEM, MMM, and Switched MM.

	International satellite rent expense [1] [2]
III. International Satellite Earth Stations:	
A. Earth Station Investment—Account 100.5:	
MTS	$18,203
WATS	6
Total	18,209
B. Depreciation and Amortization Reserve—Account 175 (see Section VI below):	
MTS	11,544
WATS	4
Total	11,548

		Composite ratios (percent)
IV. Summary of Message Telephone Plant (100.1) and International Satellite Earth Station Investment:		
MTS	$20,156,908	78.7
WATS	5,458,522	21.3
Total	25,615,430	100.0
V. Remaining Investment ("Other"):		
A. Nonplant 100.1 (Composite Ratios from II C above):		
MTS: 4,364,320 (.787) =		$3,434,720
WATS: 4,364,320 (.213) =		929,600
Total:		4,364,320
B. Remaining rate base accounts [3] (Composite ratios from II C above):		
MTS: 865,389 (.787) =		681,061
WATS: 865,389 (.213) =		184,328
Total		865,389

VI. Depreciation and amortization Reserve [3] (Composite ratios from II C above):

		International satellite	Total
MTS: 8,818,164 (.787) =	$6,939,695 +	$11,544 =	$6,951,439
WATS: 8,818,164 (.213) =	1,878,269 +	4 =	1,878,273
Total	8,818,164	11,548	8,829,712

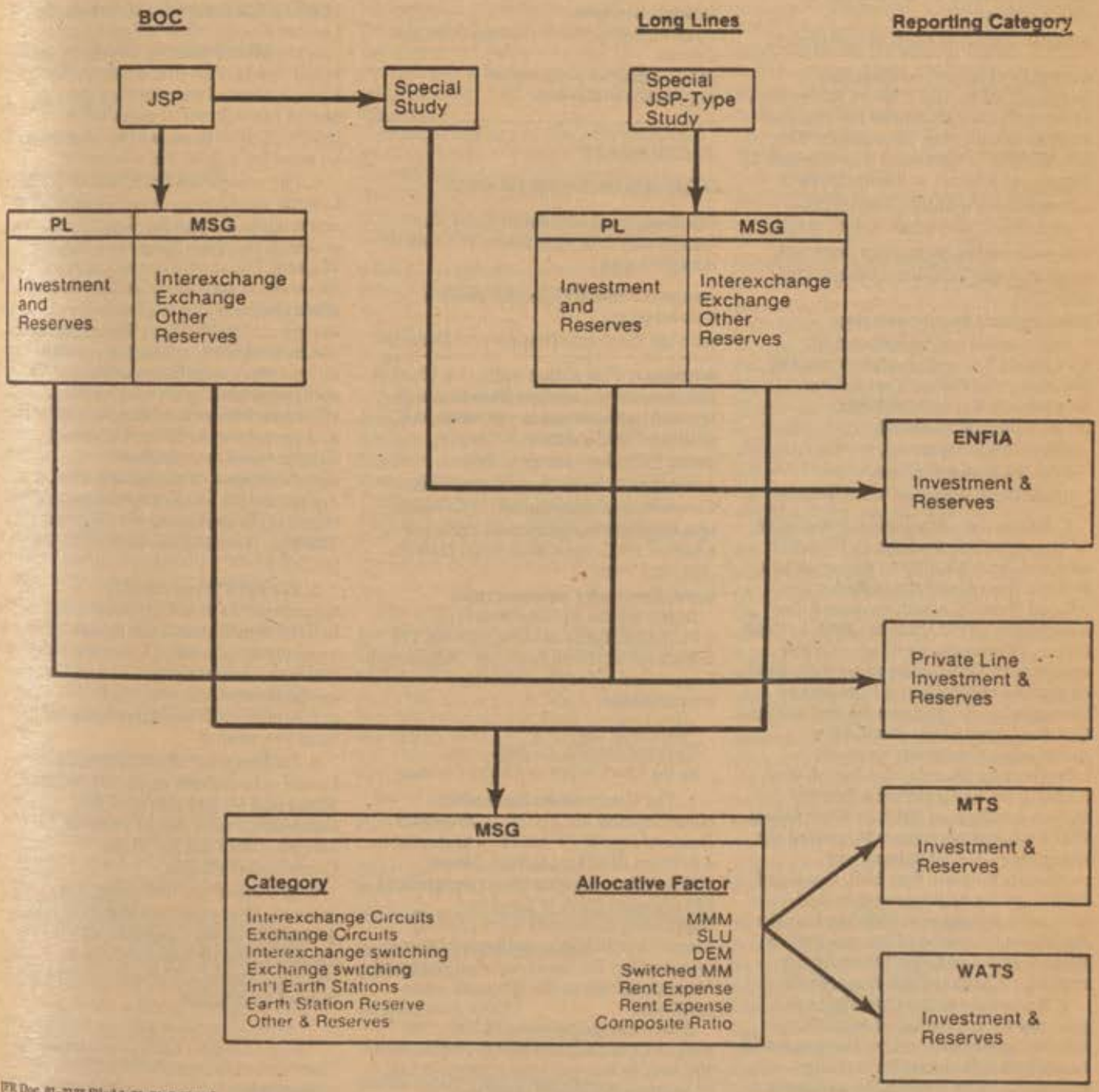
	MTS	WATS
VII. Final Summary:		
100.1 Plant + satellite	20,166,908	5,458,522
100.1 Nonplant	3,434,720	929,600
Remaining rate base	681,061	184,328
Total Investment	24,272,689	6,572,450
Less reserves	(6,951,439)	(1,878,273)
Net Investment	17,321,250	4,694,177

[1] See Vol. 3-7, Book 1, pages 1-14 and 1-15.
[2] See Vol. 3-7, Book 2, pp. 5-12 and 5-23.
[3] See Vol. 3-7, Book 2, pp. 5-21 and 5-32.

BILLING CODE 6712-0-M

Appendix D

Investments and Reserves Flowchart



[FR Doc. 81-2127 Filed 1-21-81; 8:45 am]
BILLING CODE 6712-01-C

47 CFR PART 73

[BC Docket No. 80-179; RM-3417]

FM Broadcast Station West Salem, Wisconsin; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: This action dismisses a petition filed by Good News Radio, Inc., seeking the assignment of FM channel 269A to West Salem, Wisconsin. The rule making is dismissed due to a lack of expressed interest in the assignment.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations. (West Salem, Wisconsin); Report and Order (Proceeding Terminated).

Adopted: January 6, 1981.

Released: January 12, 1981.

By the Chief, Policy and Rules Division.

1. Before the Commission is a *Notice of Proposed Rulemaking*, 45 FR 29872, adopted April 18, 1980 in response to a petition from Good News Radio, Inc. ("Good News"), which proposed the assignment of FM Channel 269A to West Salem, Wisconsin, as its second FM assignment. Good news previously filed comments stating that it is no longer interested in the assignment and asking that the Commission dismiss the rulemaking. Comments were also submitted by Everybody's Mood, Inc. ("EMI"), an applicant for a first FM station on Channel 261A in West Salem. EMI's original comments supported the assignment, but its subsequent comments indicate that EMI, like Good News, is now disinterested in the proposed assignment. EMI has become the only applicant on Channel 261A at West Salem and therefore could not apply for Channel 269A if assigned.

2. According to the Commission's procedures, a showing of continuing interest is required before a channel will be assigned. Both parties initially indicating an interest in the assignment at West Salem have now disavowed such interest. The period for filing comments in this proceeding has expired and no other party has expressed an interest in the Channel 269A assignment to West Salem.

3. In view of the foregoing, it is ordered, that the petition of Good News Radio, Inc. proposing the assignment of Channel 269A to West Salem, Wisconsin, is hereby dismissed.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 81-2234 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-194; RM-3472]

FM Broadcast Station in Lawton, Oklahoma; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: This action assigns a Class A FM channel to Lawton, Oklahoma, as the third assignment in response to a petition filed by Linda A. Meyer.

DATE: Effective March 3, 1981.

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

FOR FURTHER INFORMATION CONTACT: Michael McGregor, Broadcast Bureau, (202) 653-7586.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Lawton, Oklahoma); Report and order (Proceeding terminated).

Adopted: January 6, 1981.

Released: January 13, 1981.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rulemaking*, 45 FR 30094, in response to a petition filed by Linda A. Meyer ("Meyer"), proposing the assignment of FM Channel 237A to Lawton.[1] Supporting comments were filed by Meyer in which she reaffirmed her intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. Lawton (population 74,300),[2] the seat of Commanche County (population 108,444), is located approximately 128 kilometers (80 miles) southwest of Oklahoma City. It is currently served by two AM stations (one full-time and one daytime only) and two Class C FM stations.

3. Meyer states that Lawton is a rapidly growing community with a 1980 estimated population of 82,746. According to Meyer, the city is the home of numerous industries including the Lawton Coca-Cola Bottling Company, Lawton Manufacturing Company and Mead Foods. Fort Sill, a large military base, is located just north of the city. Meyer has submitted persuasive information with respect to Lawton and its need for a third FM assignment.

4. The assignment of Channel 237A to Lawton would cause preclusion to one community without local aural service and with a population exceeding 1,000, Walters, Oklahoma (population 2,611). However, a staff study indicates that other channels are available for assignment to Walters. The assignment of Channel 237A to Lawton involves intermixture with the two Class C FM stations presently serving Lawton. However, Meyer is willing to apply for and operate on a Class A Channel despite these competitive disadvantages. In such a situation, we are not disposed to deny the assignment based on intermixture of channels. *See Yakima, Washington*, 42 FCC 2d 548 (1973).

5. We have given careful consideration to the proposal and believe that Channel 237A should be assigned to Lawton, Oklahoma. Interest has been shown for its use and the assignment would provide the community with an opportunity for its third FM station.

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

7. In view of the foregoing, it is ordered, That effective March 3, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, as regards Lawton, Oklahoma, is amended to read as follows:

City	Channel No.
Lawton, Oklahoma	237A, 251, 268

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

9. For futher information concerning this proceeding, contact Michael A.

[1] Meyer's original proposal to assign FM Channel 285A to Lawton was modified to avoid conflict with the assignment of Channel 284 to Burburnett, Texas (BC Docket No. 79-178, RM-3357).

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

McGregor, Broadcast Bureau (202) 653–7586.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-2233 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 577

[Docket No. 80-17; Notice 1]

Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the defect and noncompliance notification regulation to require that manufacturers include the agency's toll free Auto Safety Hotline number in their defect and noncompliance notification letters. The amendment is being made to provide a means of easy access to the agency by consumers who may have complaints about the recall and remedy of their vehicles or equipment. Since it is a minor technical amendment, it is being made effective immediately without notice or opportunity for comment.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James Murray, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, D.C. 20590 (202–426–2840).

SUPPLEMENTARY INFORMATION: This notice makes a minor technical amendment to Part 577, *Defect and Noncompliance Notification*, to require manufacturers conducting recall campaigns to include the agency's toll free Auto Safety Hotline number in the notification letters.

Existing notification letters are required to state that a consumer may contact the agency if he or she feels that remedy of a defect or noncompliance is not being made without charge or in a reasonable time. Manufacturers also frequently include their address and a toll free number that consumers can call to complain to the manufacturer about the status of a remedy. The agency believes that the use of manufacturer toll free numbers is a good idea and has decided that the agency's toll free number should also be included in the letter. This will provide easy access for consumers to the agency for reporting any complaints concerning the recall or remedy of their vehicles. It also will provide timely information to our Enforcement office pertaining to the compliance with our regulations by the manufacturers.

Since this is a minor technical amendment and will result in little impact upon manufacturers, the agency finds for good cause shown that it is in the interest of safety to make the amendment effective immediately without notice and opportunity for comment.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations, Part 577, *Defect and Noncompliance Notification*, is amended by revising the introductory sentence in § 577.5(g)(1)(vii) to read as follows:

§ 577.5 Notification pursuant to a manufacturer's determination.

* * * * *

(g) * * *

(1) * * *

(vii) A statement informing the owner that he or she may submit a complaint to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 or call the toll free Auto Safety Hotline at 800–426–9393 (Washington D.C. area residents may call 426–0123), if the owner believes that—

* * * * *

The principal authors of this notice are Mr. James Murray of the Office of Defects Investigations and Roger Tilton of the Office of Chief Counsel.

(Secs. 108, 112, and 119, Pub. L. 89–563; 80 Stat. 718; Secs. 102, 103, and 104, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1408, and 1411–1420); delegation of authority at 49 CFR 1.50)

Issued on January 14, 1981.

Joan Claybrook,

Administrator.

[FR Doc. 81-2116 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1331

[Ex Parte No. 297 (Sub-No. 5)]

Motor Carrier Rate Bureaus—Implementation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of effective date of final rules and extension of date of new or amended agreements.

SUMMARY: By notice published in the **Federal Register** on December 31, (45 FR 86736), we issued final rules to govern the activities of motor carrier rate bureaus. The effective date of these rules was the **Federal Register** date of December 31, 1980. The date for filing new or amended agreements was January 19, 1981. These dates are being extended to February 2, 1981, and March 5, 1981, respectively. Cancellation of special permission authorities is rescinded and these authorities shall remain in effect until February 2, 1981.

DATE: The effective date of our final rules is now February 2, 1981. The date for filing new or amended agreements is now March 5, 1981.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: A petition was filed on January 7, 1981, by motor carrier rate bureaus requesting a postponement of the effective date of our decision in this proceeding served December 30, 1980, and a petition was filed on January 8, 1981 by the National Association of Specialized Carriers, Inc. for a stay and/or extension of compliance date of our decision.[1] Each petition asks for a 120 day extension to April 29, 1981 in which to comply with our final rules issued in our decision.

The petitions are granted in part. First, the effective date of the final rules and standards in our decision is being extended to February 2, 1981. Our December 30, 1980 decision was made effective on publication in the **Federal Register**, December 31, 1980. (45 FR 86736). This did not comply with Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) since we did not make the rules effective on at least 30 days notice nor did we find that there was good cause for departing from this notice requirement. Thus, our cancellation of special permission authorities is rescinded and these authorities shall remain in effect until February 2.

Second, we shall extend from January 19 to March 5, 1981 the period for submitting new or amended agreements in conformity with the Motor Carrier Act of 1980 as interpreted in our decision. The petitions point out that the rate bureaus are governed by bylaws that can be amended by formal procedures that require sufficient time. We believe the extension to March 5, 1981 will be adequate to allow the rate bureaus to

[1] The National Small Shipments Traffic Conference, Inc., and the Drug and Toilet Preparation Traffic Conference filed on January 9, 1981 a petition for stay pending administrative review. It is currently under consideration.

submit their amended agreements, particularly since both petitioners had previously gone through this process in submitting new agreements by October 29, 1980.

Finally, as required under 49 U.S.C. 10706(e)(2), in the period between February 2 and our approval of the new agreements, the rate bureaus must comply with the final rules and standards of our December 30 decision.

Decided: January 14, 1981.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2325 Filed 1-21-81; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 46, No. 14
Thursday, January 22, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A33]

Milk in the Southern Michigan Marketing Area; Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This action extends the fime for filing exceptions to a recommended decision concerning proposed amendments to the Southern Michigan milk order. Counsel for Michigan Milk Producers Association requested the additional time.

DATE: Exceptions now are due on or before February 4, 1981.

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

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

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

Recommended Decision: Issued December 30, 1980, published January 6, 1981 (46 FR 1279).

Notice is hereby given that the time for filing exceptions to the above listed recommended decision is hereby extended to February 4, 1981.

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 procedures governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on January 16, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-2323 Filed 1-21-81; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

(7 CFR Part 1430)

Price Support Program for Milk; Terms and Conditions of 1980-81 Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed Rule.

SUMMARY: The proposal announces that the Secretary of Agriculture is considering the semiannual adjustment of the support price for milk to be effective April 1, 1981. The Secretary may also consider other matters pertaining to the milk support program, including (1) the allocation of any change in the support price between CCC purchase prices for butter and nonfat dry milk, (2) the value of the solids-not-fat in whey used in calculating the CCC purchase price for cheese, (3) the determination of the manufacturing margins used in calculating CCC's purchase prices for butter, nonfat dry milk and cheese and (4) the determination of the sales markup for CCC-owned dairy products offered for sale for unrestricted use.

DATE: Comments must be received on or before February 17, 1981, to be sure of consideration.

ADDRESS: Director, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agricultural, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: S.E.T. Bogan, Agricultural Economist, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013, (202-447-3571).

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Donald E. Friedly at the same address and phone number.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary Memorandum 1955 to implement Executive Order 12044, and has been classified "significant". In compliance with Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988), it is determined after review of these and related regulations contained in 7 CFR Part 1430 for need, currency, clarity, and effectiveness that no additional changes be proposed at this time.

James E. Agnew, Jr., Acting Director, Procurement and Sales Division, ASCS, has determined that an emergency exists which warrants less than a 60 day comment period on this proposed action in order that all comments may be considered before the level of support for milk is announced for the midyear adjustment which begins on April 1, 1981.

Section 201(c) of the Agricultural Act of 1949, as amended, provides as follows: "The price of milk shall be supported at such level not in excess of 90 per centum nor less than 75 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Notwithstanding the foregoing, effective for the period * * * ending September 30, 1981, the price of milk shall be supported at not less than 80 per centum of the parity price therefor. Such price support shall be provided through purchases of milk and the products of milk."

Section 201(d) of the Act, as amended, provides as follows: "Effective for the period * * * ending September 30, 1981, the support price of milk shall be adjusted by the Secretary at the beginning of each semiannual period after the beginning of the marketing year to reflect any estimated change in the parity index during such semiannual

period. * * * Any adjustment unde subsection shall be announced by t Secretary not more than thirty days prior to the beginning of the period to which it is applicable."

Except as influenced by the price support program, the prices of milk and its products are arrived at competitively. Manufacturing grade milk as a percent of total milk marketed has been declining as more producers have become eligible to market fluid grade milk. However, the milk price support program remains the foundation of the entire price structure for fluid and manufacturing grade milk sold by farmers. In 1979, manufacturing grade milk was 17 percent of all milk marketed while fluid grade milk was the remainder. Fluid milk consumption represented 43 percent of milk marketings. Thus, with 57 percent of the milk used in manufactured products, more dairy products are made from fluid grade than manufacturing grade milk.

The program to support prices of manufacturing grade milk is achieved through purchases of butter, cheese and nonfat dry milk at prices calculated to enable plant operators to return the support price to the farmer. At times of significant price support purchases, market prices for these products tend to be near the purchase prices of these dairy products. Reliance is placed upon competition among manufacturers for the average price received by manufacturing grade producers to equal the announced support price. Since most of the fluid milk prices are based on prices paid for manufacturing milk, the price support program undergirds all milk and dairy product prices.

On October 1, 1979, the support price for milk was set at 80 percent of parity, which was $11.22 per hundredweight for milk of 3.5 percent milkfat content, or $11.49 for milk of national average milkfat content (3.67 percent). Effective April 1, 1980, the support price was adjusted upward 7.6 percent to $12.07 per hundredweight for milk of 3.5 percent milkfat content, based on the 7.6 percent increase in the parity index (index of prices paid by farmers for commodities and services, interest, taxes and wage rates) from October 1, 1979 to April 1, 1980.

On October 1, 1980, the beginning of the 1980–81 marketing year, the support price was set at $12.80 per hundredweight (80 percent of parity, the statutory minimum) for milk of 3.5 percent milkfat content, or $13.10 per hundredweight for milk of 3.67 percent milkfat content.

The expected midyear adjustment is based on a projected increase of 6.9 percent in the parity index from October 1, 1980 to April 1, 1981. This would result in a support price of $13.68 per hundredweight for milk of 3.5 percent milkfat content, or $14.00 for 3.67 percent milkfat content milk.

Milk production for the 1980–81 marketing year is projected to be 129.0 billion pounds, an increase of 2.0 billion pounds over 1979–80. Commercial consumption of milk is projected to be 121.0 billion pounds, up from 119.1 billion pounds in 1979–80, and CCC net removals of dairy products is projected to be the equivalent of 8.0 billion pounds of milk compared with 8.2 billion pounds in 1979–80.

Milk production increased in 1979–80 as production per cow continued to increase and the number of cows, reversing a long term trend, began to increase above year earlier numbers.

The projected CCC net removals of dairy products in 1980–81 (equivalent to 8.0 billion pounds of milk) are expected to consist of 255 million pounds of butter, 275 million pounds of cheese and 565 million pounds of nonfat dry milk. This compares with 233 million pounds of butter, 336 million pounds of cheese and 592 million pounds of nonfat dry milk purchased under the support program in 1979–80.

Proposed Rule

Notice is hereby given that the Secretary of Agriculture is considering the midyear adjustment in the support price for milk to be established for the second half of the 1980–81 marketing year as required by law, and the prices and terms of purchase by CCC of butter, cheese and nonfat dry milk, including factors used in calculating the dairy product purchase prices. Such factors include: (1) the allocation of any change in the support price between CCC purchase prices for butter and nonfat dry milk, (2) the value of the solids-not-fat in whey used in calculating the CCC purchase price for cheese, (3) the determination of the manufacturing margins used in calculating CCC's purchase prices, and (4) the determination of the sales markup for CCC-owned dairy products offered for sale for unrestricted use.

You are invited to submit in writing to the Director, Procurement and Sales Division, data, views and recommendations concerning the determinations to be made. In order to be assured of consideration, all submissions must be received by the Director not later than February 17, 1981. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Procurement and Sales Division, ASCS, USDA, Room 5741, South Building, during regular business hours (8:15 a.m.–4:45 p.m.).

(Sec. 201 (c) and (d) of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1446); and Sec. 4 and 5 of the Commodity Credit Corporation Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b and 714c))

Signed at Washington, D.C., on January 13, 1981.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-2329 Filed 1-21-81; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 18605/80-AEA-81]

Proposed Alteration of Group I Terminal Control Area (TCA)-New York, N.Y.

Correction

In FR Doc. 81–599 appearing in the issue of Thursday, January 8, 1981, at page 2088, please make the following corrections:

(1) On page 2089, third column, third paragraph, tenth line, "TAC" should be changed to read "ATC".

(2) On page 2090, second column, under "Area B", fourth line, insert "circle" between "radius" and "centered"

(3) On page 2090, third column, under "Area F", thirteenth line insert "and" between "to," and "counter-clockwise".

(4) On page 2090, third column, under "Area F", thirty-second line, insert "radius" between "10-mile" and "circle".

(5) On page 2091, first column, under "Area H", seventh line, "and 25-mile" should be inserted between "20-mile" and "circle".

(6) On page 2091, first column, under "Area I", twelfth line, insert "radius" between "mile" and "circle".

(7) On page 2091, second column, The FR Doc. line should have appeared before the **BILLING CODE** and read as follows:

[FR Doc. 81-599 Filed 1-7-81; 8:45 am]

BILLING CODE 1505-01-M

14 CFR Part 139

[Docket No. 20450; Notice No. 80-10]

Certification and Operations: Land Airports Serving CAB-Certificated Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; Publication of Letter to Congress.

SUMMARY: This publishes a letter to certain members of the Congress concerning the present status of a notice of proposed rule making to amend the rules governing the certification and operation of land airports. It advises that, after further analysis and review of the proposal in the light of comments received, the FAA has concluded that its authority to issue a rule in this area is sufficiently unclear and that rulemaking should not proceed until the statutory basis for such a rule is clarified. It is intended to bring the problem to the attention of the Congress which will be giving early consideration to pending airport and airway legislation.

FOR FURTHER INFORMATION CONTACT: Mr. Donald P. Byrne, Regulations and Enforcement Division (AGC-200), Office of the Chief Counsel, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone (202) 426-3491.

SUPPLEMENTARY INFORMATION: On June 12, 1980, the FAA published Notice of Proposed Rulemaking No. 80-10 in the Federal Register (45 FR 39857). That notice proposed amending Part 139 of the Federal Aviation Regulations (Certification and Operations: Land Airports Serving CAB-certificated Air Carriers) to require airport operating certificates for airports serving commuter air carriers.

After further analysis and review of the proposal in the light of comments by the Commuter Airline Association of America and others, the FAA has concluded that its authority to issue the proposed rule is sufficiencly unclear and that rulemaking should not proceed until the statutory basis for such a rule is clarified.

In order to bring this to the early attention of the Congress which will be considering pending airport and airway legislation, the Administrator has written several members of the Congress having responsibility for aviation legislation. The letter explains the purpose of, and need for, this rulemaking, and brings to their attention the need to clarify the FAA's authority in this area. The letter has been sent to the Honorable Bob Parkwood and the Honorable Nancy L. Kassebaum, United States Senate, and the Honorable Norman Y. Mineta, House of Representatives.

For the information of the aviation community and members of the public who are concerned with aviation safety the text of the letter is appended to this notice.

Issued in Washington, D.C., on January 15, 1981.

Langhorne Bond,

Administrator.

January 15, 1981.

Hon. Bob Packwood, *Chairman, Committee on Commerce, Science and Transportation, Washington, D.C.*

Dear Mr. Chairman: Because of your interest in aviation safety and because I am aware you will be considering pending airport and airway legislation, I am writing to advise you of the present status of the Federal Aviation Administration's (FAA) regulatory program regarding the airports that serve commuter air carriers. As you know, in June 1980 we issued a notice of proposed rule making proposing to amend the rules governing the certification and operation of land airports to require operating certificates for certain airports that serve commuter air carriers. A copy of that notice (Notice 80-10) is enclosed for your reference.

After further analysis and review of the proposal in the light of comments by the Commuter Airline Association of America and others, we have concluded that the FAA's authority to issue a rule in this area is sufficiently unclear and that rulemaking should not proceed until the statutory basis for such a rule is clarified.

Notice 80-10 was part of the FAA's implementation of the Airline Deregulation Act of 1978 (P.L. 95-504; 92 Stat. 1705), and was intended to ensure, to the extent feasible, that passengers traveling on commuter air carriers would be afforded a level of safety equivalent to that now provided to passengers of air carriers holding certificates of public convenience and necessity (CPCN). Airports that serve these CPCN holders are already required to hold airport operating certificates under FAA rules.

Section 612 of the Federal Aviation Act of 1958 (FA Act; 49 U.S.C. 1432) empowers the Administrator to issue airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board (CAB) and to establish minimum safety standards for the operation of those airports. The FAA implemented this section in 1972 by adopting Part 139 of the Federal Aviation Regulations which prescribes rules governing the certification and operation of land airports serving air carriers that hold certificates of public convenience and necessity.

With the implementation of the Airline Deregulation Act and the resulting liberalization of the CAB policies and regulations, numerous commuter air carriers are now conducting operations similar to those that were previously conducted only by CPCN holders. Commuter air carriers have been authorized to use larger aircraft. CPCN holders are being allowed to discontinue service at different terminals while commuters are gaining these terminal and route authorizations. CPCN holders are also being authorized to serve airports not included in their CPCN.

The FAA is concerned that the airports used by these commuter air carriers are not required to be certificated. For example, a commuter air carrier providing service between the same two points served by a CPCN holder could use uncertificated airports as intermediate stops. A member of the traveling public, using commuter air carrier service instead of CAB-certificated air carrier service, would likely assume that the same level of service and safety would be provided at all airports.

In passing the Deregulation Act, the Congress did not amend the authority of the FAA under Section 612 of the FA Act to provide for the certification of airports serving these new commuter operations. However, it did recognize the safety implication that could result from this comingling of operations, and Section 33(c)(3) required the Federal Aviation Administration to "impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers (holding certificates of convenience and necessity)." In Section 107(a) of that Act, the Congress expressed the intent "that implementation of the Airline Deregulation Act of 1978 result in no diminution of the high standard of safety in air transportation attained in the United States at the time of the enactment of such Act."

In view of this expression of Congressional concern and the lack of applicability of Section 612 to airports serving these new commuter operations, the FAA looked elsewhere for authority to regulate commuter airports. Section 606 of the FA Act empowers the Administrator to inspect, classify, and rate any air navigation facility (including an airport) available for the use of civil aircraft as to its suitability for such use, and to certificate such air navigation facilities. Section 313(a) empowers the Administrator to make and amend such general or special rules, regulations, and procedures, pursuant to and consistent with the provisions of the FA Act, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, the Act. Finally, Section 601(a)(6) gives the Administrator the general power and duty to prescribe such reasonable rules and regulations, or minimum standards, governing practices, methods, and procedures, as he may find necessary to provide adequately for national security and safety in air commerce.

Viewing this authority in the light of the mandate of the Deregulation Act, the FAA issued Notice 80-10 proposing to amend Part 139 to require an airport operating certificate for airports serving scheduled operations by commuter air carriers. Operations at airports above a certain minimum level of commuter activity would be covered, regardless of whether service by the commuter is substituting for that of a CPCN holder.

Several commenters on the notice of proposed rule making have challenged the FAA's authority to adopt the proposed rule changes. After review of these comments and reconsideration of our own position, it must be conceded that our authority in this matter is not clear.

As we have already noted, Section 612 of the FA Act is limited to airports served by air carriers certificated by the CAB. While Section 606 of the FA Act empowers the Administrator to inspect, classify, and rate air navigation facilities, it does not expressly provide authority to require those facilities to have a certificate in order to operate or to regulate the holder of a certificate.

In addition it must be noted that, while the Deregulation Act expresses the concern that there be no diminution of the level of safety, it appears to speak only to those operations by commuter air carriers that substitute for operations by CPCN holders, and does not speak to the level of safety to be provided by all commuter operations.

For these reasons the FAA has chosen not to proceed with rulemaking on the matter of the certification of commuter airports until its statutory authority has been clarified. Since this Congress will be giving early consideration to the pending airport and airway legislation, I wanted to bring the problem to your attention at this time.

I would also note that there are several other related issues which I believe warrant discussion between our staffs. My staff would be pleased to elaborate on these issues whenever it may be convenient for your staff.

Sincerely,

Langhorne Bond,

Administrator.

[FR Doc. 81-2089 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Publication of Revised Proposed Rule and Notice of Opportunity to Comment.

SUMMARY: On March 23, 1979, the Commission approved in principle a proposed rule to regulate funeral industry practices (the "funeral rule") and directed its staff to prepare the rule for final issuance. On May 28, 1980, the FTC Improvements Act of 1980 was signed into law. Section 19(b) of the Act limits the Commission's authority to regulate the funeral industry and states that, if the Commission elects to issue the funeral rule, the rule: (1) must be limited to those provisions which are permitted by Section 19(c), and (2) must be published for public comment. The Commission has issued a revised rule for public comment and invites all interested persons to submit written data, views, and arguments regarding the revised rule. A rebuttal period, in which parties may respond to comments submitted by other interested parties, will immediately follow the close of the public comment period. After all comment has been received, the Commission will hear oral presentations on the proposed rule.

DATES: Written comments will be accepted for a period of 60 days ending on March 23, 1981. Written rebuttal comments will be accepted for a period of 20 days beginning on March 23, 1981, and ending on April 13, 1981. An oral presentation will be held 30 days later on May 13, 1981.

ADDRESSES: Comments should be submitted to: Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., NW, Washington, DC 20580, Attention: Funeral Rule.

Requests for copies of guides submitted to the Commission by funeral trade associations or copies of the staff memoranda analyzing them should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Robert A.M. Schick, Program Advisor, Funeral Industry Project, Federal Trade Commission, Room 263, 6th & Pennsylvania Ave., NW, Washington, DC 20580, telephone (202) 523-3885.

SUPPLEMENTARY INFORMATION:

Section A—Background Information

On August 29, 1975, the Commission published an Initial Notice of Rulemaking in the **Federal Register** (40 FR 39901) for a proposed trade regulation rule regarding the funeral industry, in accordance with the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et. seq. Following publication of the Initial Notice, written comments were received on the proposed rule and public hearings were held; after the rulemaking record was closed, reports analyzing the record were written by the Presiding Officer and the staff. On March 23, 1979, the Commission approved in principle the issuance of the funeral rule, with several modifications to the rule as proposed on August 29, 1975. The Commission further directed its staff to prepare the rule for final issuance.

On May 28, 1980, the FTC Improvements Act of 1980 (Pub. L. No. 96-252) was signed into law. Section 19(b) of the Act prohibits the Commission from using funds to issue the funeral rule on any other substantially similar rule except as permitted in Section 19(c) of the Act.[1]

On December 17, 1980, the Commission met to consider revisions to the funeral rule in light of Section 19 and approved a revised version of the funeral rule for purposes of public comment. The Commission's final determination on whether to adopt the revised rule will be based upon the prior rulemaking record for the funeral rule, as well as upon the public comments, rebuttals, and oral presentations, pursuant to this Notice.

On October 8, 1980, the Commission received Guides from several funeral trade associations that were proposed as an alternative to a final rule. The staff prepared an analysis of the Guides that was forwarded to the Commission for review. At its December 17, 1980 meeting, the Commission considered the Guides and concluded that they did not

[1] Section 19(c) states:

"(c)(1) The Commission shall have authority to use the funds specified in subsection (b) to issue the funeral trade regulation rule in final form only to the extent that the funeral trade regulation rule (in its final form)—

"(A) requires persons, partnerships, and corporations furnishing goods and services relating to funerals to disclose the fees or prices charged for such goods and services in a manner prescribed by the Commission; and

"(B) prohibits or prevents such persons, partnerships, and corporations from—

"(i) engaging in any misrepresentation;

"(ii) engaging in any boycott against, or making any threat against, any other person, partnership, or corporation furnishing goods and services relating to funerals;

"(iii) conditioning the furnishing of any such goods or services to a consumer upon the purchase by such consumer of other such goods or services; or

"(iv) furnishing any such goods or services to a consumer for a fee without obtaining the prior approval of such consumer.

"(2)(A) The Commission, before issuing the funeral trade regulation rule in final form—

"(i) shall publish in the **Federal Register** for public comment a revised version of the funeral trade regulation rule which contains the provisions specified in subparagraph (A) and subparagraph (B) of paragraph (1);

"(ii) shall allow interested persons to submit written data, views, and arguments relating to such revised version of the funeral trade regulation rule, and make all such submissions publicly available; and

"(iii) may permit interested persons, or, as appropriate, a single representative of each group of such persons having the same or similar interests with respect to such revised version of the funeral trade regulation rule, to present their position orally.

"(B) The requirements established in subparagraph (A) are in addition to, and not in lieu of, any other requirements established in the Federal Trade Commission Act (15 U.S.C. 41 et seq.), or in any other provision of law, and applicable to the promulgation of trade regulation rules by the Commission. The requirements established in subparagraph (A) shall not be construed to vacate or otherwise affect any proceedings conducted by the Commission before the date of enactment of this Act with respect to the funeral trade regulation rule."

obviate the need for a continuation of the rulemaking proceeding. In particular, the Commission was concerned that the Guides did not require the disclosure of itemized prices for funeral services and goods and did not ensure that price disclosures and other representations would be given at specific times. The Commission also was concerned that additional definitions may be needed to clarify some of the terms used in the Guides. The Commission further noted that the issue of an adequate enforcement mechanism still needed to be addressed.

The Commission indicated at the meeting that comments on the proposed rule may address specific Guides provisions and discuss which, if any, would provide consumer protection comparable to provisions in the proposed rule. In order to facilitate the comment process, the Commission has directed that the Guides, the staff memoranda analyzing the Guides, and the Commission's letter discussing the Guides, be made available without charge for use in preparing comments on the proposed rule.

Section B—Proposed Revised Rule

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.
453.2 Price disclosures.
453.3 Misrepresentations.
453.4 Use of threats or boycotts.
453.5 Required purchase of funeral goods or funeral services.
453.6 Services provided without prior approval.
453.7 Retention of documents.
453.8 Comprehension of disclosures.
453.9 Declaration of Commission intent.
453.10 State exemptions.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41, et seq.

§ 453.1 Definitions

(a) *Accounting year.* "Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

(b) *Alternative container.* An "alternative container" is a non-metal receptacle or enclosure, generally not ornamented, which can hold or transport human remains and which is not a "casket" as defined in this part. Examples of alternative containers include cardboard, pressed-wood or composition containers and pouches of canvas or other material.

(c) *Cash advance items.* A "cash advance item" is any item of service or merchandise, however described, which a person other than the funeral provider supplies for the use of a customer and for which the funeral provider pays on the customer's behalf. A "cash advance item" is also any item which funeral providers state that they have obtained in this manner. Cash advance items may include, but are not limited to, the following items: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities; and death certificates.

(d) *Caskets.* A "casket" is a rigid container which is designed for the encasement and burial of human remains and which is usually constructed of wood or metal, ornamented and lined with fabric.

(e) *Commission.* "Commission" refers to the Federal Trade Commission.

(f) *Cremation.* "Cremation" is a heating process which reduces human remains. For the purposes of this rule, "cremation" includes calcination.

(g) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(h) *Customary services of funeral director and staff.* The "Customary services of funeral director and staff" are the services, not included in prices of other categories on the general price list, § 453.2(b) (4), which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

(i) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public, for use in connection with funeral services.

(j) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(k) *Funeral services.* "Funeral services" are any services which may be used to: (1) care and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(l) *Memorial society.* A "memorial society" is a nonprofit membership association which assists its members in obtaining information and making arrangements for funerals, cremation, or other methods of disposition of human remains.

(m) *Minimum services of funeral director and staff.* The "minimum services of funeral director and staff" are the services which a funeral provider furnishes in connection with immediate cremation or burial, or delivery of remains for shipment to another location, such as obtaining necessary permits and arranging for disposition or shipment.

(n) *Outer burial container.* An "outer burial container" is any container which is placed in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

§ 453.2 Price disclosures.

(a) *Unfair or Deceptive Acts or Practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish itemized price information concerning funeral goods and funeral services to persons inquiring about the purchase of funerals.

(b) *Preventive Requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.5(b)(1), funeral providers must:

(1) Telephone Price Disclosures. (i) Tell persons who call the funeral provider's place of business and ask about the funeral goods or services offered, or about their prices, that:

(A) Price information is available over the telephone; and

(B) The funeral provider will furnish, at the funeral home, a general price list, required by § 453.2(b)(4), showing prices for the services and goods offered.

Possible Additional Provisions:

(ii) Tell persons who call the funeral provider's place of business the price of any item on the general price list, required in § 453.2(b)(4), if such price is requested.

(iii) Tell persons who ask by telephone about the funeral provider's prices, any accurate price information which reasonably answers the question and which is readily available.

(iv) Tell persons who ask by telephone about the funeral provider's offerings or prices, the range of prices charged for the following, if the funeral provider sells them:

(A) The standard adult funeral (which shall include the charges on the general price list required for embalming, full services of funeral directors and staff, transfer of remains to funeral home, use of facilities for funeral ceremony, hearse or limousine);

(B) Direct disposition (which shall include charges for the services of the funeral director and staff and any goods

offered for the purpose of immediate cremation or burial);
(C) Caskets.

(2) Casket and Alternative Container Price Disclosures. (i) Give a printed or typewritten price list to people who inquire in person about the casket offerings or prices of caskets or alternative containers. The funeral provider must furnish the list before discussing or showing caskets or alternative containers. The list must contain in order, from least to most expensive, the retail prices of all alternative containers and caskets offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list and display it in a clear and conspicuous manner.
(ii) Place the following heading on the list, whether a printed or typewritten list or other format is used:
(Name of Funeral Home)
Casket [and Alternative Container]
Price List

(3) Outer Burial Container Price Disclosures. (i) Give a printed or typewritten price list to people who inquire in person about outer burial container offerings or prices. The funeral provider must furnish the list before discussing or showing the containers. The list must contain in order, from least to most expensive, the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective day for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list and display it in a clear and conspicious manner.
(ii) Place the following heading on the list, whether a printed or typewritten list or another format is used:
(Name of Funeral Home)
Outer Burial Container Price List

(4) General Price List. (i) Give a printed or typewritten price list, for retention, to people who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider must give them the list before discussing any funeral arrangments or the selection of any funeral goods or funeral services. This list must contain the retail prices (either the flat flee, or the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items:
(A) Minimum services of funeral director and staff (together with a list of services provided for any quoted price);
(B) Customary services of funeral director and staff (together with a list of services provided for any quoted price and the statement: "The charge for services may be different depending on the services you choose");
(C) Embalming;
(D) Other preparation of the body;
(E) Transfer of remains to funeral home;
(F) Use of facilities for veiwing;
(G) Use of facilities for funeral ceremony;
(H) Hearse;
(I) Limousine;
(J) Casket(s), $—— to $—— (together with the statement: "A complete price list will be provided at the funeral home");
(K) Alternative container(s), $—— to $—— (together with the statement: "A complete price list will be provided at the funeral home," if offered for sale);
(L) Outer burial container(s), $—— to $—— (together with the statement, "A complete price list will be provided at the funeral home", if offered for sale).
(ii) Place the following information on the price list, above the prices specified in paragraph (2)(b)(4)(i)(A) through (L) of this section.
(A) A heading with the following information:
(Name of Funeral Home)
(address and telephone number of home)
General Price List
(B) The effective date for the prices listed thereon;
(C) The statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your statement of funeral goods and services selected or bill."

(5) Statement of Funeral Goods and Services Selected. (i) Give a written statement for retention to each person who arranges a funeral, at the conclusion of the discussion of funeral arrangements. The statement must list the goods and services selected by that person and the price to be paid for them, broken down into at least the following categories:
(A) Transfer of remains to funeral home;
(B) Embalming;
(C) Other preparation of the body;
(D) Use of facilities for viewing;
(E) Use of facilities for funeral ceremony;
(F) Services of funeral director and staff. (This price may include only those services actually provided. The principal services included in the price must be stated in writing.);
(G) Casket or alternative container selected;
(H) Other specifically itemized charges for services, facilities, or transportation;
(I) Specifically itemized cash advances. (These prices must be given to the extent then known or reasonably ascertainable. If prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid).
(ii) Place the following heading on the statement:
(Name of funeral home)
(Address and telephone number of home)
Statement of Funeral Goods and Services Selected
(iii) If funeral providers furnish people with the general price list, required by § 453.2(b)(4), and the statement of funeral goods and services selected, required by this § 453.2(b)(5), and otherwise comply with this rule, the funeral providers may also furnish people with any other price information, in any format which the funeral providers desire.

(c) *Declaration of Intent.* Any funeral provider who complies with the preventive requirements in § 453.2(b) is not engaged in the unfair or deceptive acts or practices defined in § 453.2(a).

§ 453.3 Misrepresentations.

(a) *Embalming Provisions.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:
(i) Represent that a deceased person must be embalmed when state or local law does not require embalming;
(ii) Fail to disclose to persons arranging funerals that they may choose whether or not to have embalming performed, unless embalming is required by state or local law.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must:

(i) Place the following disclosure on the general price list, required by § 453.2(b)(4), on the line where the heading "Embalming" appears: "In general, you have the right to choose whether embalming is done. It is not required by law except in certain special cases;"

(ii) Include on the contract, final bill, or other written evidence of agreement given to the person arranging a funeral, the disclosure: "Embalming is not required by law except in certain special cases. If this was such a case, we will explain why below."

(b) *Casket for Cremation Provisions.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that a casket is required for cremation;

(ii) Fail to disclose to persons arranging cremations that alternative containers can be used for cremations.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the general price list, immediately below the disclosure on cash advance items (required by § 453.2(b)(4)(ii)(C)): "If you want to arrange a cremation, you do not have to buy a casket. A simple container (made out of materials like heavy cardboard or pressed wood) can be used for cremations." This disclosure only has to be placed on the general price list if the funeral provider arranges cremations.

(c) *Outer Burial Container Provisions.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods and services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that they may choose among cemeteries, some of which may not require an outer burial container;

(iii) Fail to disclose to persons arranging funerals that cemetery requirements can usually be met by purchase of a burial vault, or by purchase of a grave liner.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, immediately below the list's heading (required by § 453.2(b)(3)(ii): "In most areas of the country, no state or local law requires you to buy a burial vault or grave liner. However, many cemeteries require some kind of container so that the grave will not sink in. Either a burial vault or a grave liner, which is usually less expensive, will satisfy these requirements."

(d) *General Provisions on Legal and Cemetery Requirements.* (1) Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws or particular cemeteries or crematories require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive Requirements. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in § 453.3(a)(1), § 453.3(b)(1), § 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on Preventive and Protective Value Claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances when such is not the case.

(f) *Cash Advances Provisions.* (1) Deceptive Practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive Requirements. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the general price list, at the end of the cash advances disclosure (required by § 453.2(b)(1)(ii)(c)): "We charge you a fee for buying these items," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Use of threats or boycotts.

It is an unfair or deceptive act or practice for funeral providers to engage in concert in a course of conduct which consists of using any boycott against, or making any threat against another funeral provider for the purpose of preventing or restraining that funeral provider from:

(a) Advertising or otherwise providing information to the public which is not unfair or deceptive regarding the availability or prices of funeral goods or funeral services;

(b) Offering funeral goods or funeral services directly to the public;

(c) Entering into an arrangement with a memorial society or other formal or informal association for the purpose of providing funeral goods or funeral services to that association.

§ 453.5 Required purchase of funeral goods or funeral services.

(a) *Casket for Cremation Provisions.* (1) Unfair or Deceptive Acts or Practices. In selling or offering to sell funeral goods or funeral services to the public, it is unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for cremation.

(2) *Preventive Requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make alternative containers available in lieu of a casket, if they arrange cremations.

(b) *Other Required Purchases of Funeral Goods or Funeral Services.* (1) Unfair or Deceptive Acts of Practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law.

(2) Preventive Requirements. To prevent this unfair or deceptive act or practice, funeral providers must:

(i) Place the following disclosure in the general price list, immediately below the effective date for the price list, (required by § 453.2(b)(4(ii)(B)): "You may choose only the items you desire. If you have to pay for any items you did not specifically ask for, we will explain the reason in writing on our Statement of Funeral Goods and Services Selected;"

(ii) Place the following disclosure on the statement of funeral goods and services selected, immediately below the heading (required by § 453.2(b)(5)(ii)): "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

§ 453.6 Services provided without prior approval.

(a) *Unfair or Deceptive Acts or Practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any funeral provider to embalm a deceased human body for a fee without first having obtained explicit written or oral permission from a legally authorized family member or representative of the deceased, unless state or local law or regulation requires embalming in the particular circumstances, regardless of any funeral choice which the family might make.

(b) *Preventive Requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement "You don't have to pay for embalming that was done without prior permission unless it is required by state or local law."

§ 453.7 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 543.3 of this rule, funeral providers must retain and make available for inspection by Federal Trade Commission officials, true and accurate copies of records adequate to disclose compliance with § 453.2(b)(2) (casket price list), § 453.2(b)(3) (outer burial container price list), § 453.2(b)(4) (general price list), for at least two years after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least two years from the date on which the agreement was signed.

§ 453.8 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in §§ 453.2, 453.3, 453.5 and 453.6, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner.

§ 453.9 Declaration of Commission intent.

(a) Except as otherwise provided in § 453.2(c), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 453.10 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

Section C—Questions for Comment

Pursuant to Section 19(c)(2)(A) of the FTC Improvements Act of 1980, the Commission invites interested persons to submit written data, views, and arguments relating to the revised rule. Comments would be most useful if they focused upon new issues presented by the latest revisions. The Commission specifically requests comments on the following questions:

1. Are there any provisions which the Commission has retained in the revised rule which are not within the standards established by Congress in Section 19(c)(1) of the FTC Improvements Act of 1980? If so, please describe in detail why you believe the revised rule does not conform to Section 19(c)(1).

2. The Commission is considering what telephone price disclosure provisions are appropriate for inclusion in any final rule. The revised rule published for comment has four provisions specifying information which must be given over the telephone. These are: (1) a provision stating that persons calling about funeral goods or services be told that price information is available over the telephone and that a general price list is available at the funeral home (§ 453.2(b)(1)(i)); (2) a provision stating that persons calling be told the price of any item or combination of items on the general price list if they request such price (§ 453.2(b)(1)(ii)); (3) a provision stating that persons who ask by telephone be given information which reasonably answers their question and is readily available (§ 453.2(b)(1)(iii)); and (4) a provision stating that perons be told, over the telephone, the range of prices charged for standard adult funerals, direct dispositions, and caskets (§ 453.2(b)(1)(iv)). The Commission is considering for adoption the first provision (§ 453.2(b)(1)(i)) for inclusion in the revised rule, together with one or more of the three subsequent provisions.

Factors which will influence the Commission's choice of one or more of the three additional provisions include: (1) which provision, or combination of provisions, will best facilitate fast, effective comparison shopping over the telephone; and (2) which provision, or combination of provisions, will provide the funeral industry with the clearest, least burdensome telephone price disclosure requirements.

The rulemaking record developed thus far indicates that once a body is removed to a funeral home, it stays there in all but rare cases. If comparison shopping between funeral homes on the basis of price is to occur, it must be done before the body is transferred. Thus, for all practical purposes, most consumers must use the telephone to comparison shop. However, many consumers may not be aware of the structure of the transaction they are about to enter—e.g., what items are components of the type of funeral they desire—and therefore they may be unable to ask the questions anticipated by the second and third proposed rule provisions (§ 453.3(b)(1) (ii)–(iii)). Therefore, the Commission is seeking comment on whether a disclosure requirement such as that suggested in the proposed fourth additional rule provision (§ 453.2(b)(1)(iv)) is necessary to ensure that consumers are able to comparison shop effectively. The Commission also seeks comment on whether the price disclosures required by the fourth alternative provision would undermine other fundamental goals of the rule, such as discouraging the mandatory "packaging" of funeral goods and services.

The Commission is further interested in receiving comment on the compliance burden which would be imposed by its adoption of one or more of the suggested telephone price disclosure requirements. Specifically, is there any particular combination of proposed requirements that would impose the smallest possible burden on industry members while still ensuring that consumers receive adequate price information over the telephone?

Finally, the Commission is interested in receiving comment on what other specific provisions should be considered to address the concerns outlined above in lieu of or in addition to those now contained in the proposed rule.

3. The revised rule requires that funeral providers furnish consumers with three separate price lists: (1) a casket price list (§ 453.3(b)(2)); (2) an outer burial container price list (§ 453.2(b)(3)); and (3) a general price list (§ 453.2(b)(4)). Currently, the rule requires that the general price list be typewritten or printed and that it be given to consumers for retention prior to any discussion of funeral arrangements or selection of goods and services. The rule also requires that funeral providers give out price information from the general price list over the telephone. By contrast, the casket and outer burial container price lists must be shown to consumers before any discussion or showing of caskets or outer burial containers, they need not be discussed over the telephone, and they can be provided in formats other than a written or printed list as long as those formats contain the same information as would a list. The Commission seeks comment on the following questions: (1) Should the Commission specify that funeral providers make available three separate price lists, or should funeral providers be permitted to use other formats, such as consolidating the information from the casket and outer burial container price lists onto the general price list? (2) If funeral providers were permitted to use other formats and did so, would consumers be able to understand and use the information they received to the same degree as if given three separate price lists?

4. The rule requires that the prices on the casket and outer burial container price lists (§ 453.2(b) (2) and (3)) appear in order, from the least to the most expensive. The purpose of this requirement is to ensure that the prices on the lists are shown in a readily comprehensible manner and in a manner which facilitates comparison shopping. The Commission seeks comment on whether these sections should be changed to omit the requirement that goods be listed from least to most expensive and to permit funeral directors to organize these price lists in other ways. For example, a funeral director might seek to organize the price lists by manufacturer. If funeral providers could organize these price lists in sequences other than from least to most expensive, would compliance costs to funeral providers be reduced? Would sequences other than those organized by ascending price provide consumers with the same information, in as comprehensive a fashion? Should the Commission, in lieu of specifying the sequence of the price lists, require placement of the following disclosure on the casket price list: "Caskets range in price from $—— [minimum price] to $—— [maximum price]" and placement of an equivalent disclosure on the outer burial container price list?

In the alternative, should the last sentence of § 453.2(b) (2) and (3) be interpreted to give funeral directors the flexibility to organize price lists in other ways?

5. § 453.2(b)(5) of the revised rule requires that funeral providers give consumers a written statement of the goods and services which they have selected and their prices. This statement must be given at the conclusion of the discussion of funeral arrangements. The statement provides price information in addition to that contained on the price lists required by the rule, such as the cost of cash advance items and the fees to be charged for the funeral provider's services for a particular funeral. The statement also is designed to enable persons arranging a funeral to see and evaluate, in one place, the cost of all the items they are considering for purchase. However, in light of the requirement that funeral providers give price information in the form of a general price list, a casket price list and a price list for outer burial containers, the Commission seeks comment as to whether the statement of funeral goods and services selected is necessary to ensure adequate price disclosure to consumers.

6. In drafting the definitions of "alternative containers" (§ 453.1(b)) and "casket" (§ 453.1(d)), the Commission's intent is to provide a workable distinction between the two types of burial containers. Are there examples of containers currently in use which could not be readily classified into one of these two categories? If so, what other definitions of "alternative container" and "casket" would eliminate or mitigate any such problem?

7. Section 19(c)(1)(B)(ii) permits the Commission to prohibit persons who sell funeral goods and services from "* * * engaging in any boycott against, or making any threat against * * *" any other person providing funeral goods and services. Section 453.4 has been drafted to limit the practices it prohibits to conduct involving threats or boycotts. By contrast, former versions of the rule prohibited other forms of conduct, such as the use of disparagement, or the misuse of state administrative or judicial processes for the purpose of intimidation or harassment. In addition, the Commission has limited the revised rule to concerted conduct by two or more funeral providers. By contrast, former rule versions also would have applied to conduct engaged in by an individual funeral provider. The Commission seeks comment upon whether the rulemaking record shows that the acts and practices addressed by the more limited provision in the revised rule are sufficiently prevalent to warrant their prohibition in an industry-wide trade regulation rule.

8. Section 453.5(a)(2) of the revised rule requires funeral providers who arrange cremations to make alternative containers available to consumers. The revised rule also prohibits funeral providers from requiring a casket for cremation (§ 453.5(a)(1)), prohibits any representation that a casket is required for cremation (§ 453.3(b)(1)(i)), and requires that funeral providers disclose to consumers on the general price list that an alternative container may be used for cremation in lieu of a casket (§ 453.3(b)(2)). The Commission invites public comment on whether it is necessary to require that alternative containers be made available by funeral providers who arrange cremations, and on the extent to which this provision may create a burden on funeral providers. The Commission also seeks comment on whether the prohibition on requiring a casket for cremation and the disclosure that caskets are not required could ensure that persons arranging cremations do not, in fact, have to purchase a casket. Alternatively, the Commission seeks comment on whether it should substitute for the current rule requirement that funeral providers stock alternative containers, a requirement that any funeral provider who offers cremations but does not stock alternative containers must disclose that fact in any advertisement or telephone discussion in which the availability of cremations is mentioned.

9. Under 453.5(b) of the revised rule, persons arranging funerals are given the right to select only those items from the funeral provider's general price list which they wish to purchase. The

provision would require funeral providers to deal with consumers on an item-by-item basis, and would prohibit any refusal to deal because the consumer refuses to purchase a "package" of funeral goods and services. (However, the rule would not affect a funeral provider's right to refuse to deal with any individual consumer for other legitimate business reasons, such as a particular consumer's poor credit history.)

It is possible that situations could be imagined in which a consumer's choice of a combination of individual items would create practical problems for the funeral provider. The Commission recognizes the need for common sense flexibility in its implementation of any rule that may be promulgated. If there are any such situations and they present a genuine problem, one way to deal with them would be through compliance guides outlining any cases that would be treated as exceptions to the general prohibition on mandatory "package" selling.

However, at this point in the proceeding, the Commission is also interested in receiving comment on whether the rule itself can be reworded to avoid creating a technical rule violation in any such aberrant situations without vitiating the goals of the rule's itemized pricing provisions.

10. The rule currently requires (§ 453.6) that funeral providers obtain explicit written or oral permission from a legally authorized family member or representative of the deceased prior to embalming for a fee. The rule makes an exception to this requirement in those instances where state or local law or regulations require embalming, regardless of any decision which the family might have made. The Commission is considering whether an additional exception should be included in the embalming provision. This exception would permit unauthorized embalming for a fee if a funeral provider could show that despite diligent efforts, a legally authorized family member or representative could not be found to give permission to embalm. To what extent would the embalming provision, without such an exception, result in funeral providers' not embalming where the family would have desired that embalming be performed? To what extent, if the exception were added to the provision, would it result in embalming where the family would not have desired that embalming be performed? Does Section 3 of the industry Guides address these problems more or less adequately than the proposed rule?

11. Section 453.3(f)(2) of the revised rule requires affirmative disclosure on the general price list that a fee is charged for cash advance items, if that is the case. Is such an affirmative disclosure necessary or are the prohibitions of § 453.3(f)(1) adequate to protect consumers against misrepresentations about the prices for cash advance items?

Opportunities for Public Comments

Pursuant to Section 19(c)(2)(A) of the FTC Improvements Act of 1980, the Commission solicits written data, views, and arguments relating to the revised rule from all interested persons. The Commission has additionally decided to establish a rebuttal period, which will immediately follow the close of the public comment period. During the rebuttal period, persons who have participated in the funeral rule proceedings prior to the rebuttal period may present written responses to comments submitted during the public comment period.

After the rebuttal period is completed, the Commission will allow some persons who have previously participated in the rulemaking proceeding to make oral presentations before the Commission on the revised rule. The oral presentations will be held on May 13, 1981. The presentations must be confined to information already in the rulemaking record. Requests to participate in the oral presentation must be submitted to the Commission during the initial public comment period, ending on March 23, 1981. The Commission will select participants from among those persons who have requested the opportunity to appear. The Commission will seek to ensure that all viewpoints are presented. A single representative may be chosen by the Commission to represent the views of persons having the same or similar interests.

Public comments, rebuttal comments and requests to appear in the oral presentation should be sent to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Ave., NW., Washington, D.C. 20580, Attention: Funeral Rule. When possible and not burdensome, three copies of each comment or request to appear should be submitted.

Issued: January 13, 1981.

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc.81-2100 Filed 1-21-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 715, 816, and 817

Surface Coal Mining and Reclamation Operations Interim and Permanent Regulatory Programs; Use of Explosives

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Proposed amendments to interim and permanent rules.

SUMMARY: The provisions of the Interim Program Regulations, Surface Mining Control and Reclamation Act of 1977 (SMCRA; the Act), published at 42 FR 62639 (Dec. 13, 1977), included standards governing the use of explosives, specifically blasting standards restricting the peak particle velocity of the ground motion caused by a blast to 1-inch per second and requiring regulatory authority approval of a variance for blasting at distances closer than 1,000 feet to inhabited buildings. Amendments are also proposed to similar provisions of the Permanent Regulatory Program. Sections 816/817.65 and 67 which limited distance and particle velocity criteria are proposed for change.

The Act, which is intended to protect the public and the environment, mandates in Section 515(b)(15)(C) that the Office of Surface Mining (OSM; the Office) issue performance standards that limit the size of blasts to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area. The amendments to the interim and permanent regulatory program proposed herein carry out the responsibilities of the Office under the Act by establishing blasting standards that will protect persons and property from the hazards of using explosives during surface coal mining operations.

Section 816.65(f) was suspended by reference in notice September 15, 1980 (45 FR 61123). Amended interim § 715.19(e) and permanent regulations Sections 816/817.65 and 817.67 are proposed herein with accompanying justification. These amendments, if adopted, replace regulations under suspension.

DATES: The comment period on this proposed amendment will extend until March 23, 1981. All written comments must be received by 5:00 p.m. on that date. Comments received after that hour and those delivered during the comment period to locations other than that

specified below will not be considered or included in the administrative record for the final rulemaking.

Hearings will be held February 11 and 18, 1981. See Supplementary Information for function details.

Requests to testify at a public hearing should be received on or before February 9, 1981. See Supplementary Information for details.

ADDRESSES: Written comments must be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record Office, Room 153, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240. All comments will be available for inspection at the Administrative Record Office.

Hearings will be held in Washington, D.C., Knoxville, TN, Indianapolis, IN, and Denver, CO. See Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Russell F. Price, P.E., Division of Technical Services, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; 202–343–4022.

SUPPLEMENTARY INFORMATION:

Background

In litigation over the interim regulations, the United States Court of Appeals for the District of Columbia Circuit issued a decision May 2, 1980 (In re: Surface Mining Regulations Litigation, No. 78–2190, 78–2191, and 78–2192). That decision addressed two blasting issues: (1) The 1,000-foot limitation on blasting in § 715.19(e)(1)(vii) and (2) the one-inch per second limitation on particle velocity produced by blasting in § 715.19(e)(2)(ii). The 1,000 foot limit was found to be inconsistent with the Act, Sections 522(e)(2) and (5), and the 1 inch per second vibration limit was invalidated as arbitrary, capricious and lacking technical support.

In response to that decision, these blasting rules have been reviewed by the office and amendments are proposed in this notice to conform with the intent of the Court of Appeals' ruling.

Availability of Copies

Copies of this proposed amendment may be obtained from the following OSM offices:

Headquarters, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Ave., NW., Washington, DC 20420; 202–343–4728
Region I, 603 Morris Street, Charleston, WV 25301; 303–342–8125.
Region II, Suite 500, 530 Gay St., SW., Knoxville, TN 37902; 615–637–8060
Region III, Room 502, Federal Building & U.S. Courthouse, 46 East Ohio St., Indianapolis, IN 46204; 317–269–2600
Region IV, Scarritt Building, 5th Floor, 818 Grand Ave., Kansas City, MO 64106; 816–374–2618
Region V, Brooks Towers, 1020 15th St., Denver, CO 80202; 303–837–5511

Public Hearings

Public hearings on this regulation will be held on the dates and at the locations below to hear all those who wish to testify. The hearings will begin at 9:30 a.m., local time.

Washington—Department of the Interior Auditorium, 18th and C Sts., NW., Washington, D.C., February 11, 1981
Indianapolis—Indiana War Memorial, 431 North Meridian St., Indianapolis, IN. February 18, 1981
Knoxville, TN—530 Gay Street, Suite 500, Knoxville, TN., February 11, 1981
Denver—Court House, 1961 Stout St., Rm. C–503, Denver, Colo., February 11, 1981

Persons wishing to testify at the public hearings on this proposed amendment should contact persons listed under Public Meetings for the appropriate location on or before February 9, 1981. Individual testimony at these hearings may be limited at the discretion of the hearing panel depending on the number of speakers. The hearings will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearings would greatly assist OSM officials who will attend the hearings. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specfic information from the person testifying.

The public hearings will continue on the day indicated above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. Each hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Public Meetings

Representatives of OSM will be available to meet between January 22, 1981 and March 23, 1981, at the request of members of the public, State representatives, and industry organizations to receive their advice and recommendations concerning the content of these proposed amendments. Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington Office or any of the five regional offices. Persons to contact to schedule or attend such meetings are as follows:

Washington—Russ Price 202–343–4022
Charleston—Jesse Jackson 304–342–8125
Knoxville—William Thomas 615–637–8060
Indianapolis—Allen Perry 317–269–2656
Kansas City—Richard Dawes 816–374–5109
Denver—John Hardaway 303–837–4072

OSM representatives will be available for these meetings between 9:00 a.m. and noon, and 1:00 and 4:00 p.m., local time, Monday through Friday excluding holidays, at the OSM offices. All such meetings are open to the public. Notices of the date, time, and place of the meetings will be posted in advance to the extent possible. A written summary of each meeting will be made a part of the administrative record and will be available to the public.

Public Comments

Written and oral comments should be as specific as possible. OSM will appreciate any and all comments, but those most useful and likely to influence decisions on these amendments will be those which include a rationale based on fact, not opinion, for any given recommendation.

Explanation of Proposed Amendment Concerning the 1,000 Foot Limitation on Blasting

The rule governing distance limitation from inhabited buildings and structures for surface blasting was desinged to protect persons and property from the dangers of flyrock, airblast, and ground vibration. The rule as issued December 13, 1977 (42 FR 62639), required that a regulatory authority must approve blasting operations to be conducted within 1,000 feet of inhabited buildings and 500 feet of utilities and other structures.

The U.S. District Court of Appeals cited the 300 foot limitation in Section 522(e)(5) of the Act (Pub. L. 95–87) as the statutory basis for restricting surface mining operations, including blasting, and found that the 1,000-foot blasting limit was inconsistent with the 300 foot provision.

The statutory basis of this rule is protection of persons, property and water resources as directed by Section

515(b)(15)(C) of the Act. To protect the public, OSM added additional precautions which are considered to be necessary when blasting is conducted in close proximity to inhabited areas and presents an imminent danger to persons and property. This is interpreted to include both before and after protection afforded by technical control of blast designs, monitoring for adverse effects, and recording of the actual blasting operation. To accomplish these goals several alternatives were considered.

Option 1—Retain the prior regulation establishing 1,000-foot limitation requiring regulatory authority approval of any variance to those limitations.

Option 2—Delete all distance limitations for blasting near inhabited buildings except the statutory limit of no mining within 300 feet and those imposed by the Act depending on other performance standards to provide protection to persons and property.

Option 3—Delete § 15.19(e)(1)(vii)(A) and add new rules which require blast design certification, monitoring of all blasts conducted within 1,000 feet of inhabited buildings, and specific restrictions on flyrock range.

Option 1

After considering whether to retain the prior rule, OSM believed that intent of the requirement for regulatory authority approval of a waiver to blast within 1000 feet of inhabited buildings during the permit process was not to place a restriction on blasting or mining, but to require additional precautions for blasts near inhabited areas. It was found that waivers of the distance limit by State regulatory authorities, if approved on the basis of preblast surveys, do not necessarily consider blast design and actual site-specific conditions of blasting. As proposed for the permanent regulations 43 FR 41888 Sep. 18, 1978, the preblast survey would analyze the structural condition and the report would recommend blasting restraints. However, as currently issued, the requirement for a preblast survey only catalogs visually apparent structural condition. Also, as stated on the preamble (44 FR 15048) to the permanent program regulations "difficulty would exist in providing detailed information on blasting operations at the permit application stage." Therefore, under the interim and final rules, no detailed data is evaluated or considered for blasting within the limitations, and no specific requirements are placed on monitoring. Instead, the waiver is granted if an operator can demonstrate the ability and intent to comply. Therefore, OSM believes that this option should be rejected and that the rule which applies standards which protect people and property should be adopted.

Option 2

In order to evaluate the effect of this alternative, the past actions of the State regulatory authorities in granting approval for blasting within 1,000 feet of specified structures must be considered. Under current rules State regulatory authorities can grant such approval on the basis that preblast surveys were conducted or offered to each specified structure within 1,000 feet of the applicant's proposed blasting. Generally, approval of the distance limitation is given at the time the permit is issued and therefore prior to any blasting, however some states set monitoring and reporting requirements which must be met.

On the basis of the above description of these anticipated procedures, and the lack of a detailed evaluation and recommendation in the preblast survey, relying on the 300 foot mining limit alone, would provide limited additional protection to persons or property. Residents or owners of structures within one-half mile already are eligible for preblast surveys upon request (Section 515(b)(15)(E) of the Act). Essentially, this is the same investigation that the regulatory authorities have employed to grant approval for blasting under the 1,000 foot restrictions. Therefore, deleting the distance limits and relying on the 300 foot mining restriction would place the burden of protection on vibration and airblast limits which are designed to reduce the possibility of damage but are generally observed after the blast has occurred.

Procedures developed by the state regulatory authorities vary for the design and loading of blasts within 1,000 feet of structures. In some instances blasts within 1000 feet of residences have not been scrutinized any more closely than those at greater distances, while other regulators have required submission of blast plans and seismographic records of adjacent areas. The preparation of a blast design is especially pertinent in evaluating the possibility of flyrock. The design and actual configuration of blast under the permanent program rules are evaluated only after detonation and in most cases, only if a complaint is filed, damage recorded, or an injury occurs. Therefore, it appears that regulatory restrictions do not afford residents adequate safeguards against adverse effects of blasting, especially flyrock, unless additional emphasis is given to those blasts where it is recognized that uncontrolled flyrock will present an imminent hazard.

OSM believes that adherence to performance standards which govern flyrock, airblast, and ground vibrations will generally preclude damage to property and injury to the public under normal blasting conditions. Flyrock and airblast can be reduced by applying design criteria. The concept of preparing a blast design when blasting within 1000 feet of structures that are particularly susceptable to the hazards of flyrock, will insure that a design rationale is applied to consider these performance standards prior to the blast. Through this demonstration of their ability to meet the standards for flyrock range, airblast, and ground vibration limits, the operator will provide the regulatory authority and the homeowners the protection anticipated by the Act. This rationale parallels the design precautions incorporated into construction of spoil fills and impoundments. The application of best available design techniques and certification implies, that to the knowledge of the operator, the standards developed to prevent damage and injury have been incorporated in the blasting operation. Additionally, this concept reiterates the liability and responsibilities which the operator and blaster-in-charge undertake, and should help when obtaining the required insurance for personal liability and property damage in the use of explosives required under § 806.16.

OSM believes that insufficient protection of the public would be afforded by Option 2 because other performance standards restricting damage due to ground vibration and airblast are only evaluated after the blast has occurred and a 300 foot limit is inadequate to preclude damage and hazards from flyrock. Therefore, Option 2 must be rejected because it would not provide the degree of safety required by Section 515(b)(15)(C) of the Act.

Option 3

This alternative proposes to revise the philosophy of granting a waiver to distance restrictions on blasts within 1,000 feet of inhabited buildings during the permit approval process, and to provide rules which provide a zone of additional protection by adding specific requirements in conducting blasts near inhabited areas not generally required for blasts outside that zone. This Option would require an operator to submit to the regulatory authority a copy of a certified blast design 10 days prior to conducting any blast within 1,000 feet of a dwelling or other inhabited building. This option does not prohibit blasting in

close proximity to houses, but requires that all blasts within 1000 feet of inhabited buildings would be developed and conducted with close scrutiny. This differs substantially from the prior rule, because it affords knowledge of the blast design and site-specific information, rather than the broad permit requirements. In this manner, the regulatory authority will be notified of blasting within 1000 feet and have the data on file if an analysis is necessary. This will not constitute or be assumed to include or require the regulatory authority approval. The blaster-in-charge is responsible for approving and conducting all blasts under his cognizance. This will, however, allow the regulatory authority to (1) be notified of such blasts and to be aware of the design of the blast before the blast is conducted, with the opportunity for review and to make recommendations, if deemed necessary, (2) allow the regulatory authority to monitor blasts within the distance limitations, and (3) insure that a certified blaster has considered the hazards by certifying the blast design. These requirements are appropriate to ensure that specific attention will be given to designs for blasts having a greater potential of causing personal injury or property damage. In addition, the regulatory authority will be able to compare the blast design and the actual shot record if problems arise.

The Act places emphasis on preventing injury to persons and damage to property. The potential for such injury and damage is greatest in inhabited areas. OSM believes that the provisions of the Act in protecting persons from injury and property from damage can be best achieved through control of blasting within distance limits. Blasting in close proximity to inhabited areas must be considered more hazardous to the public than remote blasts.

The distance limits of 1,000 feet for inhabited buildings are required to establish a zone of added protection from that commonly used in blasts outside the zone. Coupled with fly rock standards, limits on airblast and the peak particle velocity, this additional emphasis on controlled blasting near inhabited buildings accomplishes the intent of the Act, by tying site-specific conditions with the protection of property and persons from injury.

In a study by Management Science Associates (Roth and others, 1977), 28 of 34 accidents to mine workers during scheduled blasts were attributed to flyrock. Although these statistics were derived to provide safety to miners and quarry personnel, the unpredictability of flyrock also applies to the safety of the public when blasting is conducted close to inhabited areas.

Flyrock range is analyzed by Roth in Appendix F, and the study provides fromulas by which to predict flyrock range. Table F–1 relates blasts and their design to both predicted and observed flyrock ranges. Flyrock was observed to travel up to 4,500 feet in a hard rock quarry. The study also addressed possible reasons the large range was attained. OSM believes that using accepted blast design standards, (i.e., proper burden, spacing, and stemming) an operator can prevent most flyrock. Additionally, performance standards governing airblast and ground vibration have a beneficial effect on reducing flyrock by dictating other constraints on the geometry of blasts because of limits on the amount of explosives per delay and requirements for adequate stemming.

Hazards of flyrock were discussed in the preamble to the final permanent program rules (44 FR 15195). Flyrock damage in several States was also discussed (44 FR 15193). An additional provision is proposed here to prevent injury from flyrock, by restricting the travel of flyrock to one-half the distance to the nearest inhabited building beyond the area of regulated access, or to the permit boundary whichever is less. A similar provision was issued under provisions of the permanent regulations (30 CFR 816.65.(g)), and underwent public comment and analysis (44 FR 15195, paragraph VIII).

Preferred Alternative

The proposed rule is based on Option 3. The new language of § 715.19(e)(2)(vii) and (viii) of the interim rules and Section 816/817.65(f) of the permanent rules would (1) alert the regulatory authority of proposed blasting to be conducted within defined distance limits, (2) allow regulatory authorities and consultants to evaluate the correlation of blast design and actual field data if citizen complaints are received or as a basis for modifying the blast design, (3) require a certified blaster to prepare the blast design, and (4) provide specific restraints on the travel of flyrock to prevent personal injury or property damage. OSM believes that the zone of 1,000 feet is reasonable to provide protection to the public as required by the Act, but will consider suggested alternatives, accompanied by a reasonable rationale, in the drafting of final rules. In proposing this amendment, OSM believes that the inconsistencies with Section 522(e)(5) of the Act found by the Court of Appeals are resolved because the proposed rule does not restrict blasting, except under the general restrictions of surface mining under the statute. The limits proposed create a safety zone, rather than imposing a blanket limitation on blasting, and are believed to comply with Section 515(b)(15)(C). The need for the zone of additional precaution stems from the statute in requiring protection of the public from injury and property from damage. OSM believes that in requiring additional attention to design standards, optional monitoring, and certification of blasts near inhabited areas that the protection provisions of Section 515(b)(15) can be carried out. The requirement for a blaster-in-charge to certify the design is considered to be similar to certification of design plans by a qualified professional in the specific field of expertise required by other sections of the Act and rules. As noted in the rules the blaster-in-charge is always responsible for the blasting operation. The concept of blaster certification is believed to be consistent with this rule and ultimately, each State will certify blasters in surface coal mines, under a program approved by OSM under rules of Subchapter M. Until the final rules of Subchapter M are effective and a State program approved, the current State program, if any, will apply to the design submission provision. An operator must appoint a certified blaster who will be responsible for blasting operations, to comply with this provision until the OSM certificates program is promulgated. A beneficial saftey condition is achieved by incorporating the effects of other regulatory requirements such as airblast limits and use of the scaled-distance equation on the hazards of flyrock.

Explanation of Proposed Amendments on Ground Vibration Standards

In proposing this amendment to the blasting regulations, OSM has reviewed the Court of Appeals, decision, which found the original provision arbitrary and without technical support. In this proposed amendment OSM relies upon the recent Bureau of Mines Report of Investigations by Siskind and others (1980) for its technical support and Section 515(b)(15)(C) as the statutory basis for this rule. This amendment allows the flexibility for site-specific conditions, preblast conditions and evaluating critical factors in blast vibration damage criteria. In establishing the maximum allowable ground vibration limits, parameters which provide a low probability of damage and reasonable protection to property interests have been chosen.

The ground vibration rules are designed to protect property both public and private, underground mines, and water resources from adverse effects of blasting performed in connection with surface coal mining activities. The prior rules restricted ground vibration to a maximum peak particle-velocity of 1 inch per second. The 1 inch per second limitation differed from the Bureau of Mines (1971) Bulletin 656 which recommended a safe blasting limit of 2 inches per second, and it was cited as imposing an additional constraint on the industry which had accepted the Bureau of Mines limit. In initiating this rulemaking, several alternatives have been considered. (1) Delete the 1-inch per second standard for peak particle velocity and accept the previous BOM 2 inch-per-second standard; (2) Repromulgate rules supporting a 1-inch-per second standard; and (3) Develop a rationale incorporating the Bureau of mines (1980) (RI 8507) research study in establishing safe blasting limits.

Prior to the enactment of SMCRA, the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs heard extensive testimony on the extent and the nature of the hazards associated with blasting in surface mining. (Surface Mining Control and Reclamation Act of 1977. Hearings on H.R. 2 before the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs, 95th Cong., 1st Sess. (1977).) Those hearings indicated that the process of surface coal mining often requires a great deal of blasting to fracture the rock strata which overlies the coal seam.

The Court of Appeals in responding to litigation found the 1-inch rule remanded by the court in the interim regulatory program has the identical counterpart in the permanent program. Therefore, the proposed amendments to ground vibration limits will address changes in both the permanent and interim programs.

In promulgating the prior permanent program rules governing blasting, OSM analyzed the technical references which were available through the fall of 1978. Those materials formed the basis for a 1-inch per second peak particle velocity standard in the permenent rules (30 CFR 816.65). The discussions published on March 13, 1979 (44 FR 15196–15199), are hereby incorporated by reference for this rulemaking, and the reference material listed (44 FR 15179) is relied upon for further reference.

Additional and more recent technical documents considered by OSM in the development of these revised rules are as follows:

Siskind, D. E., Stagg, M. S., Stachura, V. J., 1979, Safe ground vibration and airblast criteria: 51st Annual Meeting, Eastern Section Seismological Society of America, October 1979, Blacksburg, Va.

Siskind, D. E., Stagg, M.S., Kopp, J. W., Dowding, C. H., 1980, Structure Response and Damage Produced by Ground Vibration From Blasting: U.S. Bureau of Mines Report of Investigations (RI 8507) including all applicable references.

Bollinger, G. A., 1971, Blast vibration analysis: Southern Illinois Univ. Press.

Hemphill, Gary B., 1980, Blasting Operations: McGraw-Hill. Roth, J., Britton, K. C., Campbell, R. W., Ketler, W. R., 1979, Evaluation of surface mining blasting procedures: Management Science Associates.

Option 1. The prior blasting rules instituted a 1 inch-per-second peak particle-velocity ground vibration limit, based partly on interpretation of the Bureau of Mines' Bulletin 656 and other referenced publications. This bulletin indicated that damage points existed below the Bureau's 2 inch per second "safe blasting criteria" and the damage points on the graphs were classified into two groups "minor damage" and "major damage." The two inch-per-second standard was established to preclude minor damage. Edwards and Northop classified damage into three categories "threshold," "minor," and "major" and related this damage to the strength of a structure after damage. This report cited visual cracking as threshold damage, minor as more superficial damage to plaster or inelastic members but not affecting structural ability, and major damage as serious weakening of the structure. The Dvorak study cited three parameters for classifying damage with threshold and major damage criteria similar to Edwards and Northop, but described minor damage as loosening and falling of plaster and minor cracking in masonry and cited minor damage occuring between 1.2–2.4 inches/second. In addition, Dvorak predicted threshold damage at levels of 0.4–1.2 inch/second. It was pointed out that these limits were considered conservative at that time. OSM established the 1-inch per second standard to preclude threshold damage (i.e. damage which would be clearly visible and create public criticism).

Since the acceptance of BOM 656, research studies and technical discussions have demonstrated that dynamic qualities of material to be blasted and dynamic response of structures to be protected, enter into the consideration of damage probablility. The use of BOM Bulletin 656 and the 2 inch per second "safe blasting limit" at this time would ignore recent studies and would appear to provide an inadequate degree of protection to property in proximity to surface coal mining operations. OSM therefore chose to reject Option 1, relying upon a 2 inch-per-second particle velocity as adequate protection because the "safe blasting criteria" outlined in BOM 656, while clearly preventing major damage, appears to border on the possibility of minor damage, and may not prevent threshold damage, as documented in the Bureau's latest study (Siskind et al., 1980) (RI 8507).

Option 2. In analyzing the prior 1-inch per second standard, the court cited OSM's interpretation of Bulletin 656 as without technical support in the interim rules. As discussed in Option 1, the Bulletin 656 "safe blasting limit" does not provide the degree of certainty necessary to fulfill the requirements of Section 515(b)(15)(C) of the Act. Based on the most recent Bureau of Mines Report of Investigations, RI 8507 Structure Response and Damage Produced by Ground Vibrations from Blasting (Siskind, 1980)), the Office appears to have been correct in rejecting the Bureau's 2-inch per second standard as applicable to surface coal mines and correct in establishing a lower value. This reduction is substantiated in the report (Siskind 1980) by relating damage criteria (threshold, minor and major) to frequency of blast vibration and demonstrating that at lower frequencies the damage level occurs at lower peak particle velocities. Also, supporting this finding is the histogram which indicates that blasts at surface coal mines normally produce lower frequencies than quarry or construction blasting operations. This relationship further supports the need for maximum allowable peak particle velocity less than 2 inches per second, and the one inch-per-second was chosen based on those premises. However, the latest BOM report (Siskind 1980) recommends that the damage limits for threshold damage be reduced as low as 0.5 inch-per-second for older homes with plaster-on-lath construction and sensitive structural elements, and 0.75 inch per second for dwellings with modern gypsum-board construction. This recommendation covers the predominate frequencies which are realized in coal mine blasting.

In view of the latest BOM Report (Siskind 1980) and corroborating evidence in (Langefors and Kihlstrom 1979) that low frequency blasts can cause greater damage, OSM rejects the constant application of a 1 inch-per-second blasting standard because the degree of protection may not consistently fulfill provisions of the Act, especially in areas where older homes and critical residential structures may

be subjected to 1 inch-per-second peak-particle velocities. In rejecting Option 1 and Option 2, OSM has chosen to accept Option 3 based on the most recent BOM findings and design criteria to prevent damage to property, thereby achieving the standard of Section 515(b)(1)(C)(ii) of the Act.

Option 3. The BOM's recent report (Siskind, 1980 RI 8507) provides extensve analysis of field data compiled during research projects conducted at BOM's Twin Cities Research Center relating blasting damage to ground vibration and geophysical data recorded from actual surface mining operations both by the BOM and previous research studies. This research generated a technical paper (Siskind and others, 1979) and a report of investigations (Siskind, and others, 1980, RI 8507). Those documents provide data on the subject of blast frequency vs. displacement, demonstrate the use of response spectra analysis of building elements, and analyze the conditions which contribute to structural damage. These research studies indicate that blasting damage to structures may not be totally avoided by setting a constant particle-velocity limitation alone; instead structural damage from blasting may only be prevented by requiring an analysis of the amplitude and frequency of the particle velocity, as well as the natural frequency, construction material, and condition of the affected structure. The studies demonstrated that vibration levels below 1 inch per second continually disturb residents and may cause threshold damage (Table A–1) to structures when the frequency of the ground wave is below 40 Hertz (Hz). Frequency histograms presented by Siskind (Figure 1), indicate that the predominant frequency of blasts in surface coal mines is between 5 and 30 Hz. Therefore, a lesser damage criteria for blast vibrations of low frequencies must be established to preclude damages to structures under specific site conditions. This phenomenon is similar to that experienced under earthquake conditions where displacement of the surface wave may be of more concern than the velocity in evaluating the damage threshold. The data provided by the Bureau of Mines indicates that the relationship between peak particle velocity and degree of damage may vary with frequency, and minor damage is more probable as the frequency decreases (Siskind, 1980).

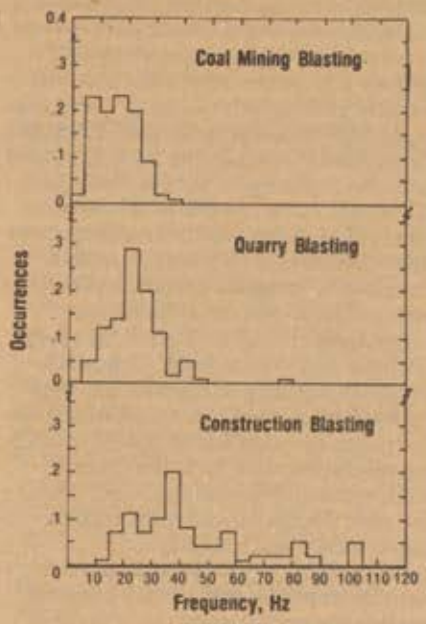


Figure 1 Predominate Frequencies Of Blast Vibrations From Coal Mining,Quarry And Construction Blasting (FROM Siskind And Others, 1980)(Fig. 2)

Table A–1.—*Damage Classification*

[(From Siskind and others, 1980) (Table 10)]

Uniform classification	Description of damage	As described in studies of blasting damage
Threshold	Loosening of paint; small plaster cracks at joints between construction elements; lengthening of old cracks.	Threshold: Dvorak; Edwards and Northwood; Northwood, Crawford, and Edwards: Thoenen and Windes.
Minor	Loosening and falling of plaster; cracks in masonry around openings near partitions; hairline to 3-mm cracks (0 to ⅛ in.); fall of loose mortar.	Minor: Dvorak; Edward and Northwood; Northwood Crawford, and Edwards; Langefors, Westerberg, and Kihlstrom. Major: Thoenen and Windes.
Major	Cracks of several mm in walls; rupture of opening vaults; structural weakening; fall of masonry, e.g., chimneys; load support ability affected.	Major: Dvorak; Edwards and Northwood; Northwood Langefors, Westerberg, and Kihlstrom.

Table A–1.—*Damage Classification*—Continued

[(From Siskind and others, 1980) (Table 10)]

In Table A–1 taken from the report of investigations, Siskind defines the three damage classifications and relates these to past studies used as corroborating data. As presented in Table A–1, threshold, minor and major damage are defined in terms of the resultant change one could expect in evaluating the pre-blast to post-blast condition of a structure. Threshold damage as defined, includes visually apparent crack propagation, lengthening of existing cracks and chipping of paint. These cracks although not considered minor damage, do diminish the value of the property because to a prospective buyer, an insignificant crack may mean the beginning of major problems. Also, a threshold crack caused by blasting, even if barely noticeable, is an invasion on the property which if blasting did not occur, may never happen. Therefore, OSM has interpreted the Act as providing protection to prevent any damage which might affect the property, by conducting blasting operations. The most prevalent cracks which would be observed are those occuring at intersecting construction elements (such as window frames and door frames). Minor damage can be more readily indentified since plaster will fall and inelastic construction materials such as concrete masonry, brick and mortar joints receive permanent deformation (cracks). Major damage can be evaluated as structural failure of construction members.

In evaluating the parameters for providing protection to property, OSM has accepted threshold damage as the target level of damage to avoid when blasting. As stated above, threshold damage describes the level of protection to one's property which the Act provides

in limiting the use of explosives in surface coal mining operations.

Below the threshold classification lies the area of no damage as observed in the studies cited in the Siskind report. Many observations were plotted which indicate both below and above the recommended standard that no damage would occur. This may be predicated on the type of structure (number of stories, dimensions); the construction material or maintenance (upkeep): All criteria which affect the ability to withstand ground vibration. The condition referred to as threshold damage has been described as actual damage, and not merely the possibility of damage likely in residences. Major damage, as defined, is highly unlikely in residences since it requires structural failure and it is not considered to be a problem at particle velocities less than 2 inches per second regardless of the blast frequency. Therefore, the damage most prevalent in residential structures which must be absolutely prevented is minor damage, and thereshold damage is to be avoided. The Siskind report indicates that the frequency of blast vibrations predict the threshold damage level; and that under good conditions most threshold damage is avoided when blast vibrations are below 0.75 inch per second: However, if the structual conditions warrant a factor of 0.5 inch-per-second is recommended and may be imposed. Therefore, OSM has set the allowable particle velocity as determined by frequency under normal conditions, and provided that, when other determining factors govern, a more stringent particle velocity may be assigned.

Proposed Amendment

The proposed new rule provides that, as determined by certain site specific criteria, the regulatory authority may establish an allowable maximum peak particle velocity within specific limits if surrounding conditions indicate that blasting will have adverse effects on critical structures. In evaluating the allowable peak particle-velocity, the regulatory authority may require that an analysis be performed on affected structures to relate natural frequency to blast-vibration data in order to support the need to establish the maximum allowable peak particle velocity. The analysis, if the operator decides to submit, one would be considered part of the permit application, and used to evaluate and determine the allowable peak particle-velocity. Any such analysis of a residence, not provided by the operator as part of the evaluation requested by the regulatory authority, would be at an owner's expense with a final decision of allowable peak particle-velocity to be made by the regulatory authority. The evaluation will require analysis of blast vibration frequency in the geologic strata to be affected, to determine the predominant response frequency.

In view of the latest research by the BOM (Siskind and others, 1980), OSM has decided that the maximum allowable peak particle velocity for surface coal mines must not exceed a particle velocity which has a reasonable probability of causing threshold damage. In addition the regulatory authority must have the authority to reduce the allowable value at sites where seismic monitoring or the condition of structures demonstrate that damage may result from blasts using the assigned allowable value of peak particle velocity.

OSM, on the basis of the BOM study (Siskind and others 1980), proposes to establish a peak particle-velocity limit for each permit area in compliance with the requirement of Section 515(b)(15)(C) for regulations that limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon *the physical conditions of the site* so as to prevent damage to public and private property outside the permit area.

The U.S. Bureau of Mines (Bulletin 656) Blasting Vibrations and Their Effects on Structures (1971) established values of minimal damage and set the "safe" peak particle velocity limit at 2 inches per second. The latest BOM report (Siskind, 1980, RI 8507) cites Bulletin 656 as containing blast data on generation and propagation of vibrations from 25 quarry operations and having relatively weak damage analysis. The new report (RI 8507) analyzes blasting data for different blasting situations (quarry, construction, and coal mining), and concludes that surface coal mine blasting produces the lowest predominant frequencies of the three operations (Figure 1) and that "damage potential for low frequency blasts (less than 40 Hz) is considerably higher than those for high frequency blasts (greater than 40 Hz) (Siskind et al., 1980, conclusions)." Although quarry blasts should also be considered as low-frequency blasts, they generally cause frequencies from 10 to 60 Hz, while coal mining blasts range predominantly from 5 to 30 Hz. (Figure 1). Considering the relationship between frequency (f) and velocity (v) a coal mining blast will usually generate the same displacement (A) as a quarry blast at 20 percent less peak particle-velocity (v) due to its lower frequency (f) from the equation $A=V/2\pi f$. This is explained in the study, in stating the "low frequency vibration (eq. 5 Hz) corresponds to larger displacement and produces more strain on sensitive structural elements such as brick, concrete block and

plaster" (Siskind, 1980). This higher displacement appears to relate to the large number of the occurrences of minor and major damage at low frequencies (Figure 2).

Coal mining blasts generally have lower frequencies of blast vibration than quarry blasts because the sonic velocity of the blasted material and the propagation medium are lower. This difference in propagation velocity due to differing ground strata and its affect on the frequency of blast vibrations has been analyzed with the conclusion that damage factors for the frequencies of wave velocity in the ground are proportional to the relative ground vibration velocity (Langefors & Kihlstrom, 1979) (Table A–2). This reference indicates that structures on strata such as sand, clay or loose material with a sonic velocity of 300–1500 meters/second (900–4500 f/s) would experience cracking (threshold values) at 6–30 mm/sec (0.23–1.18"/sec) whereas structures on dense strata (such as limestone or granite) with high sonic velocities 4500–6000 m/s (14,000–18,000 f/s) would not experience threshold cracks with particle velocities as high as 4"/sec. Coal mines, however, usually have strata which generally have low sonic velocities. Therefore, the probability of threshold damage in coal mine blasing as supported by the historgram in Figure 1, is considered a greater risk at lower particle velocities than in quarry or roadbuilding operations. Tables A–3 & A–4 from the Bureau's study (Siskind, 1980) (RI 8507) indicate other research data which relates sound propagation velocities in geologic strata with particle-velocity damage indicators. Although no attempt was made in these tables to relate blast vibration frequency with propagation velocity, the same effect is realized when comparing particle velocity to blast vibration frequency (Figure 2) where a constant particle velocity of 2 inches per second can be attributed to no damage at high frequencies 40 Hz and minor damage at frequencies less than 40 Hertz. Using this rationale, graphically extending limits for 1 inch per second and 0.5 inch per second, would be required to avoid minor damage and threshold damage points, at frequencies less than 25 Hertz (See Figure 2).

Table A-2.—*Damage Levels From Blasting, Modified From Langefors and Kihlstrom* (1978) (Table 9:1)

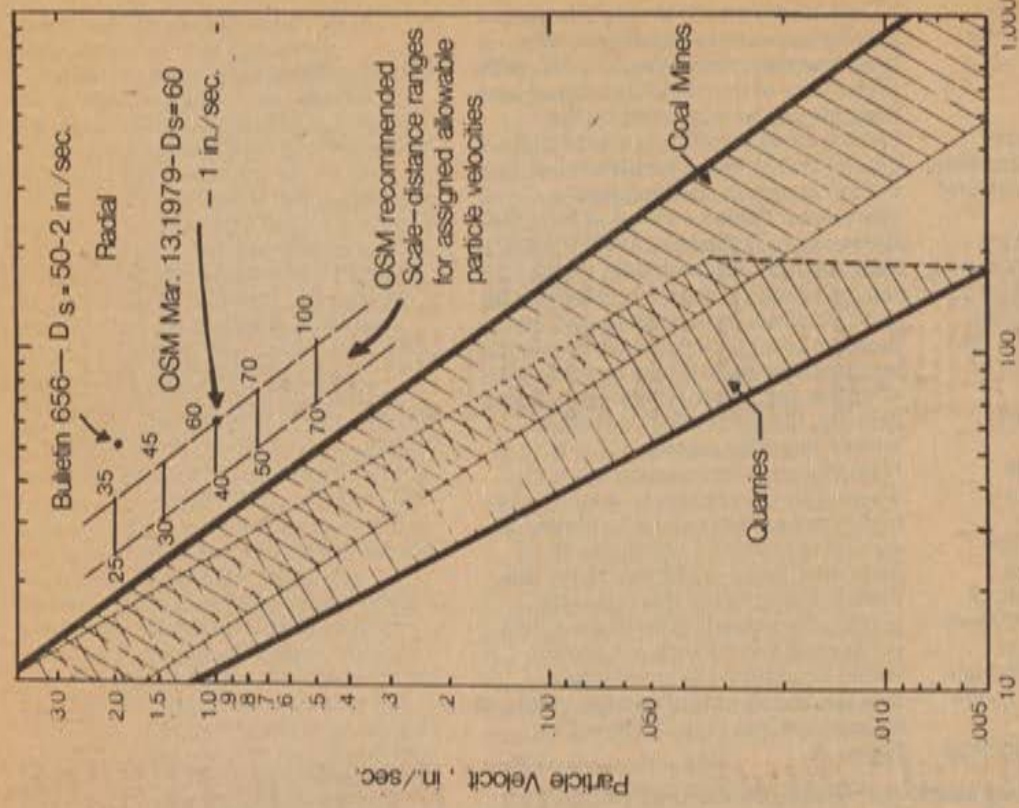
Damage effects	Peak particle velocity					
	Sand, gravel clay below water level; c=1,000–1,500 meters per second		Moraine, slate, or soft limestone; c=2,000–3,000 meters per second		Granite, hard limestone, or diabase; c=4,500–6,000 meters per second	
	Millimeters per second	Inches per second	Millimeters per second	Inches per second	Millimeters per second	Inches per second
No noticable crack formation	4–18	0.16–0.71	35	1.4	70	2.8
Fine cracks and falling plaster threshold	6–30	.23–1.2	55	2.2	110	4.3
Severe cracks	12–60	.47–2.4	115	4.5	230	9.0

Table A-3.—*Limiting and Safe Vibration Values, After Ashley (From Siskind and Others, 1980) (Table A–2)*

Type of construction	Peak particle velocity	
	Millimeters per second	Inches per second
Ancient and historic monuments	7.5	0.30
Housing in poor repair	12	.50
Good residential, commercial, and industrial structures	25	1.0
Welded gas mains, sound sewers, engineered structures	50	2.0

Table A-4.—*Limiting Safe Vibration Values of Pseudo Vector Sum Peak Particle Velocities, After Esteves (17)*

Type of construction	Peak particle velocity					
	Incoherent loose soils, soft coherent soils, rubble mixtures; c less than 1,000 m/sec, c less than 3,000 ft/sec		Very hard to medium consistence coherent soils, uniform or well-graded sand; c=3,000–2,000 ft/sec		Coherent hard soils and rock c greater than 2,000 m/sec, c greater than 6,600 ft/sec	
	Millimeters per second	Inches per second	Millimeters per second	Inches per second	Millimeters per second	Inches per second
Special care, historical monuments, hospitals, and very tall buildings	2.5	0.10	5	0.20	10	0.40
Current construction	5	.20	10	.40	20	.80
Reinforced construction, e.g., earthquake resistant	15	.60	30	1.20	60	2.40



Zones of mean propagation regressions for two major types of blasting.

Figure 3 (modified from Siskind and others, 1980, Figure 11)

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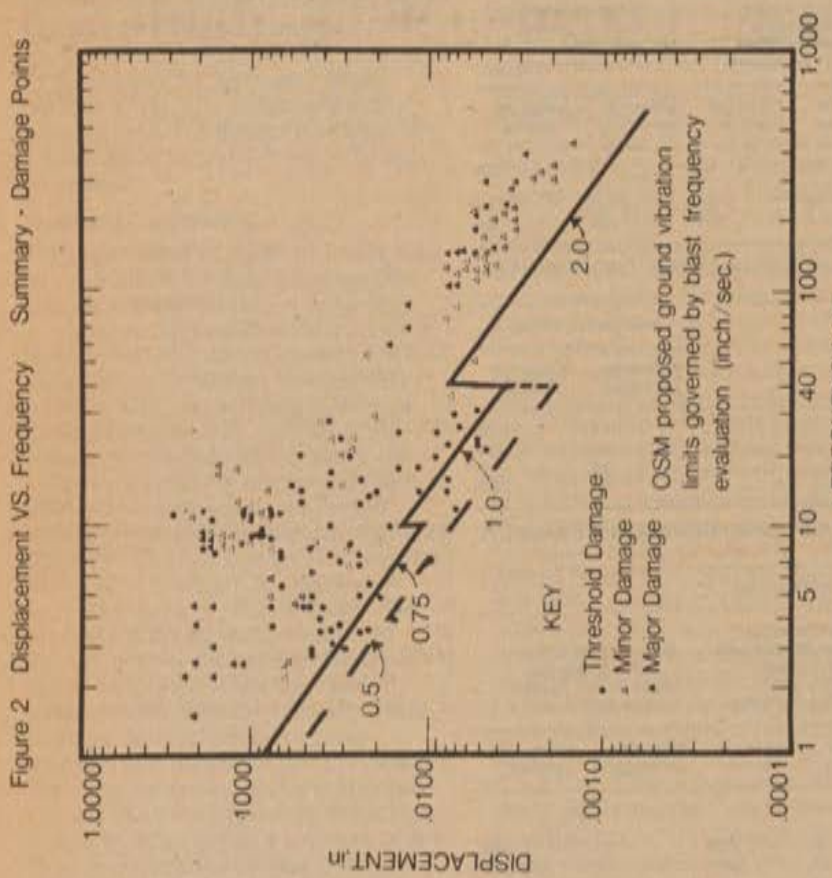


Figure 2 Displacement VS. Frequency Summary - Damage Points

(modified from Siskind and others, 1980) Figure 52

The (Siskind, 1980) (RI 8507) study also analyzes the probability of damage due to low-frequency blasting vibrations. The data presented predicts threshold damage to 20 percent of affected structures for blasts at 1 inch per second at one particular site (Siskind et al., 1980) (RI 8507). OSM believes that the rules should allow the regulatory authority the option of reducing the allowable peak particle velocity if low-frequency blast vibrations are observed. Additionally, from data presented (Siskind et al., 1980, Figure 3) on vibrations propagated during a blast related to scaled distance, OSM has determined that using the scaled-distances of 60 ground vibrations will not generally exceed 1 inch per second and will most likely create ground vibration 0.2 to 0.7-inch-per-second. Figure 2 establishes data points for a test dwelling for which major, minor, and threshold damage was observed through instrumentation. As the vibration frequency decreases, the occurrence of minor-damage points coincides with lower peak particle velocities for example, a minor-damage point at 37 Hz related to a displacement of 0.008 inches (1.85 inches per second.) However, the same degree of damage at 8 Hz was observed to result from 0.02 inches displacement (1.0 inches per second). In considering the histogram from Figure 1, coal mining operations have predominant frequencies in the range from 5 to 35 Hz. The peak particle velocity, at low frequencies, must be less than 1 inch per second to provide a degree of assurance that structures will not be subjected to minor and threshold damage (Siskind 1980) (RI 8507). Superimposing a network of velocity intercepts on Figure 2 and plotting the normal frequencies for coal mining operations places the threshold level at 0.5 inch per second, minor damage at 1.0 inch per second, and major damage at a 2.0-inch-per-second limit. Frequencies less than 5 Hz occur in about 4 percent of the coal mine blasts; however, blast vibrations below 15 Hz occurred about 50 percent of the time. Therefore, OSM believes that allowing a peak particle velocity of greater than 1 inch per second has a high probability of causing threshold damage at residences near surface coal mine operations.

The Siskind 1980 report states that "Practical safe criteria for blasts which generate low-frequency ground-vibrations are 0.75 inches per second for modern gypsum-board houses and 0.50 inches per second for plaster on lath interiors." This applies to conditions where normal ground vibration frequencies are below 40 Hz. Figure 1 cites all coal mining operations as having blast vibrations less than 40 Hz. Also, Siskind states that "human reaction to blasting can be the limiting factor." Blast vibration levels as low as 0.5 inch per second can be annoying and that complaints may be expected. Table A–4 establishes the safe level of blast vibration at 2 inches per second at residences in cases where the predominant frequency of the ground-wave vibration equals or exceeds 40 Hz. If the data presented by Siskind in Figure 52 is related to predominant coal mining frequencies, e.g. vibration frequencies of 5–35 Hz, it would require peak particle velocities less than 0.5 inch per second to avoid all threshold damage points, 1.2 inches per/second to avoid all minor-damage points, and about 2 inches per second to avoid major damage.

Table A–4.—*Bureau of Mines Recommended Safe Levels of Blasting Vibrations for Residential Type Structures*

[From Siskind and Others, 1980 (Table 13)]

Type of structure	Ground vibration—peak particle velocity, in/sec	
	At low frequency[1] (less than 40 Hz)	At high frequency (greater than 40 Hz)
Modern homes, Drywall interiors	0.75	2.0
Older homes, plaster on wood lath construction for interior walls	0.50	2.0

[1] All spectral peaks within 6 dB (50 pct) amplitude of the predominant frequency must be analyzed.

In evaluating the maximum peak-particle velocity applicable to a particular permit site, the regulatory authority must consider the type of structure to be protected, the condition of the structure (as determined in a preblast survey) and the predominate ground vibration frequency. In applying the acceptable standards derived by Siskind, OSM has developed Figure 4 for determining the maximum allowable peak particle velocity for structure type, condition and predominate frequency of blast vibrations. OSM has chosen to allow establishment of varying peak-particle velocity standards to specific mine sites in keeping with the Act Section 515(b)(15)(C). In developing these standards, Tables 51 and 54 of the Siskind study were used to determine the lower of particle velocities within the level occurrence of threshold damage which would apply for varying frequency levels of blast vibration. Siskind recommends that all blasts less than 40 Hertz not exceed 0.75 inch per second and those greater than 40 Hertz be restricted to 2 inches per second. OSM has proposed the application of three elements, each of equal consideration in determining the allowable particle velocity. The minimum particle velocity for any of the three factors is the maximum allowed. Independently, a value for one of the factors might allow a 2 inch per second standard, but another factor may indicate that a 0.75 inch per second standard is necessary to prevent damage. Therefore, a 0.75 inch per second standard would be set.

The three elements of this determination are as follows:

Structure Type: The first factor to consider is the type of structure to be protected. As indicated in (Siskind 1980 (RI 8507), conslusion 5), "Home construction is also a factor in the minimum expected damage levels. Gypsum-board (Drywall) interior walls are more damage resistant than old plaster on wood-lath construction," and (Table A–4 from Siskind 1980) recommended particle velocities of 0.75 and 0.50 respectively for these structures where frequency of blast vibration was less than 40 Hz. Therefore, five structural types have been identified for setting blast vibration limits for frequencies less than 40 Hz. All structural types are grouped together when frequencies exceed 40 Hertz, since it has been demonstrated that the structural type has little bearing on damage at high frequencies.

Structural Condition. The condition of a structure is the capability or integrity of the building construction to undergo stress and strain. The preblast survey catalogs the preblast conditions. Through structural analysis and evaluation of the building elements and their dynamic response characteristic, a prediction can be made determining the maximum particle velocity which would pertain to a structure. These factors have been categorized into general condition statements which would require supporting documentation to determine the maximum peak particle.

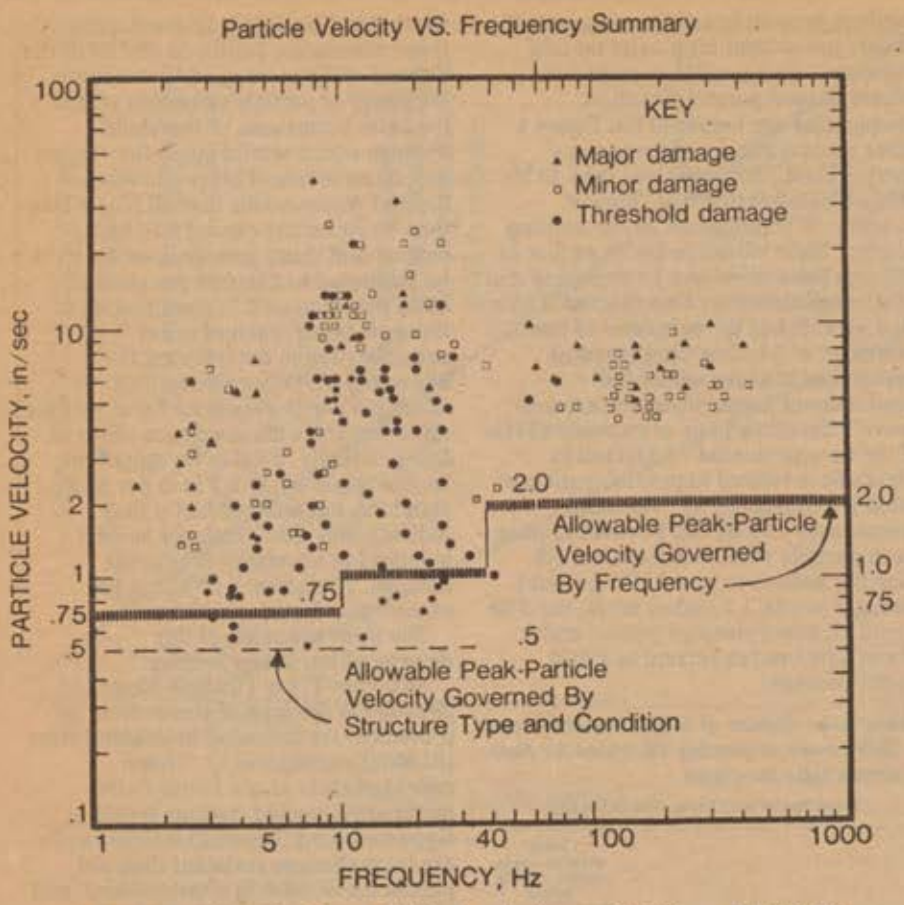


Figure 4 (modified from Siskind and others, 1980) Figure 54

Blast Vibration Frequency: This single parameter as determined by seismic investigation received great emphasis in the Siskind 1980 Study (RI 8507). The report concluded that damage relating to ground vibration frequency divided into two catagories less than 40 Hz and greater than 40 Hz. OSM has chosen to follow this philosophy, but believes that a transition phase is necessary in applying allowable ground vibration standards to frequency data. Therefore, OSM has subdivided the frequency ranges into addtional categories. The lower frequencies (less than 40 Hz) relate to lower values of peak particle velocity. Blast frequencies having values greater than 40 Hz correspond to the BOM 2 inch per second recommendation. OSM believes that a stepped approach to particle velocity determination can be used to provide a rational basis for limiting the use of explosives, without imposing a blanket limit which might be unnecessary in specific circumstances.

Relating this procedure to the one-inch per second standard issued in the interim and permanent program rules, the application of maximum particle-velocity limits vary from a 0.5 inch per second to 1.0 inch per second for coal mining operations. If, however, frequencies and conditions warrant, a 2 inch per second standard could be authorized.

Based on the occurrence of predominant frequencies expressed in Figure 1 and the limits proposed by OSM Figure 2, the following percentages of surface coal mines would be assigned allowable peak particle velocities in the ranges listed. If frequency governs, the allowable particle velocity must be from Column 4. If structure type and condition are critical, the particle velocity applicable to a site may be set as low as the minimum value in Column 3.

1	2	3	4
Blast frequency	Percent coal mining blasts	Particle velocity ranges	Particle velocity freqency governed
0–10Hz	25	0.5-.75	0.75
10–40Hz	75	0.5-1.0	1.0
40 Hz and up	0	2.0	2.0

In amending the rule governing peak particle velocity of ground vibration, OSM proposes to establish limits for the regulatory authority to assign to set-specific blasting operations. In reducing the allowable peak particle velocity to 0.75 inch per second, from the prior 1.0 inch per second standard, OSM has determined that the scaled distance equation using a factor (Ds) of 60 must be re-evaluated to preclude damage at a lesser value than 1 inch per second if used without instrumentation and as an exception to an assigned maximum peak particle velocity. Therefore, OSM proposes to amend the scale-distance factor to (Ds=70) for general application without instrumentation and without assignment of a specific peak particle velocity. This use of the factor of 70 will initially assume that blasts complying with this formula will produce ground vibrations less than or equal to the lowest particle velocities associated with threshold damage (i.e. ppv=.75 inch per second). The rule also provides that, if the use of the equation proves to exceed the acceptable limit, a modified equation may be developed. This proposed process would require an analysis of site-specific conditions, including the condition of structures, for the regulatory authority or qualified blasting consultant to evaluate and establish the maximum ground vibration allowable. In cases where a particle velocity is not assigned, the operator may choose to utilize the scaled-distance formula $W=(D/Ds)^2$ where $D^2=70$. An operator assigned a peak particle velocity of 1.0 inch per second allowable ground vibration might choose to use a scaled-distance equation using $D_s=50$, and, if approved by the regulatory authority, would not be required to monitor each blast. This, then, would not be considered as the maximum allowable to be used without seismic monitoring unless supported by detailed seismic and structural condition survey in setting higher allowable values. (Siskind 1980 conclusion 3) "Where the opertor wants to be relieved of the responsibility of instrumenting all shots, he could design for a conservative square-root-scale distance of 70. The typical vibration levels at this scaled distance would be 0.08 to 0.15 in/sec.". This typical level provides an appropriate safety factor in its application. In using the above formula the maximum charge weight (W) of high explosives to be detonated in any 8-millisecond period is calculated by measuring the distance in feet (D), to the nearest dwelling, church, school, or commercial or industrial building, and calculating the equation. A table of values of (D) distance and (W) weight of explosive is provided in the rule.

Scaled Distance: In addition to the factors for determining particle velocity this amendment also contains a recommended scaled-distance value (Ds), which has been evaluated to achieve associated particle velocities.

Ds values are recommended to calculate the maximum charge weight of explosives per delay when a maximum particle-velocity has been assigned, and may be used as a guide for safe blasting at other locations where the applicable particle-velocity is required.

Recommended ranges of Scaled-distance factors associated with particle velocity limits which provide a similar safety factor are as follows: (See Figure 3 for graphic interpretation.)

Particle velocity	DS [in equation W=(D/DS)2]
0.5 inch/second	70–100
0.75	50–70
1.0	40–60
1.5	30–45
2.0	25–35

Reviews of Figures 2 and 4 lead to the theory that a constant particle velocity may not be appropriate since the degree of protection would vary. The Siskind report also cites the damage from blasts at very low frequency as having a higher occurrence probability. Therefore, OSM has subdivided the range into a stepped maximum particle-velocity to follow the damage occurrences, as follows.

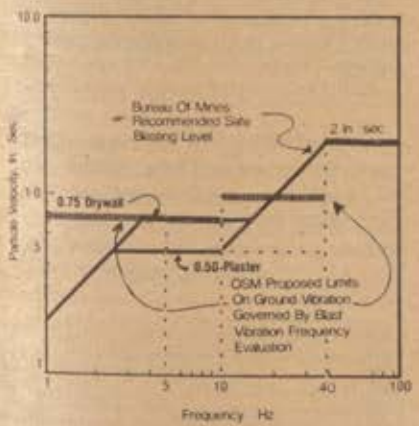


Figure 5 (Modified From Siskind And Others, 1980) Fig B 1

Frequency	Particle velocity
Less than 10 Hz	0.75
10–40 Hz	1.00
Greater than 40 Hz	2.00

This rationale follows the basic Siskind recommendation, but allows a transition to account for the frequency change. The stepped arrangement would be the lower limit of threshold damage in the Siskind report as depicted by developing a threshold damage envelope in Figure 2.

The adaptation of a stepped allowable particle velocity based on blast frequency applies the Siskind recommendation safe-blasting levels shown in figure 5, for low frequency blasts. However, other evaluation factors such as Structure Type and Structural Condition will serve to reduce the allowable particle velocities as Siskind recommends to safe levels of 0.5 or 0.75 inch per second if the regulatory authority determines site conditions warrant.

In conjunction with the modification to the 1 inch-per-second standard, § 715.19(e)(3) of the interim rules and §§ 816.67 and 817.67 of the permanent program have been amended to reflect reference to the approved peak particle velocity rather than the specific 1 inch-per-second standard. Therefore, sections where the 1 inch-per-second ground vibration standard was specifically addressed have been deleted and the remaining reference to peak-particle-velocity meaning *the approved value*, has been retained.

Correlation of interim rule changes with the permanent program rules has been made in this rulemaking because the issues remanded or proposed for amendment follow closely from the interim to permanent rules. The corresponding proposed amendments to portions of the permanent rules are proposed in this notice. Specific comments on each section will be assumed to apply to both interim and permanent program rules in an attempt to issue final rules in the most efficient time frame. The following comparison is provided:

Subject	Interim program	Permanent program
Airblast measurement.	715.19(e)(1)(vi)(B).	816/817.65(o)(4).
500' of underground mines.	715.19(e)(1)(vii).	816.79
Particle velocity	715.19(e)(2)(ii).	816/817.65(l).
Scale-distance equation.	715.19(e)(2)(iv) and (v).	816/817.65(k) and (l).
Flyrock	715.19(e)(2)(vii)(new).	816/817.65(g).
Seismic measurements modified and equation distance limitations.	715.19(e)(3) 715.19(e)(1)(vii).	816/817.67(a) and (b). 816/817.65(f).

Statements of Significance and Environmental Impact

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. A document supporting the finding of nonsignificance has been filed in the administrative record. Section 501(a) of SMCRA provides that the interim program regulations are exempt from the requirements of Section 102(2)(C) of the National Environmental Policy Act of 1969. Findings of no significant impact and an environmental assessment have been prepared and placed in the administrative record. The Department has determined that these rules will not affect the quality of the human environment.

Certification of no Significant Economic Impact

The amendment to rules proposed herein have been found not to have significant economic effect on a substantial number of small entities. This finding is based on estimates the compliance with the standards of these amendments will result in modest increased blasting costs for only small percentage of the total number of small operators subject to the rules. Therefore, in accordance with 43 CFR Part 14, I certify that the rules described above will not have significant economic effect on a substantial number of small entities.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary for Energy and Minerals.

A. Proposed Amendments to the Interim Regulations

PART 715—GENERAL PERFORMANCE STANDARDS

1. It is proposed to amend 30 CFR 715.19(e) as follows:

(a.) Paragraph (e)(1)(vi) is redesignated as (e)(1)(vi)(A).

(b.) Paragraph (e)(1)(vi)(B) is added to read as set forth below.

(c.) Paragraph (e)(1)(vii) is revised to read as set forth below.

(d.) Paragraph (e)(2)(ii) is amended and expanded to include (e)(2)(ii)(A), (B), (C), and (D) and to read as set forth below.

(e.) Paragraph (e)(2)(iv) is revised to read as set forth below.

(f.) Paragraph (e)(2)(v) is revised to read as set forth below.

(g.) Paragraph (e)(2)(vii) is added to read as set forth below.

(h.) Paragraph (e)(2)(viii) is added to read as set forth below.

(i.) Paragraphs (e)(3)(i) and (ii) are revised to read as set forth below.

§ 715.19 Use of explosives.

* * * * *

(e) *Blasting procedures*—(1) *General.* * * *

(vi) *Airblast.* (A) * * *

(B) The regulatory authority may require an operator to monitor airblast of any or all blasts, to ensure compliance with paragraph (e)(1)(vi)(A) of this section, and may specify the location where measurements are to be taken.

(vii) Except where lesser distances are approved by the regulatory authority, based upon a preblasting survey or other appropriate investigations, blasting shall not be conducted within—

(A) 500 feet of facilities including, but not limited to, disposal wells, petroleum- or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas- or oil-collection lines, or water and sewage lines; and

(B) 500 feet of an underground mine not totally abandoned, except with the concurrence of the Mine Safety and Health Administration (MSHA).

(2) *Blasting standards.* (i) * * *

(ii)(A) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity of ground vibration shall not exceed the value established by the regulatory authority as prescribed in paragraph (e)(2)(ii)(C) of this section as applicable to surface coal mining activities at the location of any dwelling, public building, school, church, or commercial or industrial building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of the three measurements.

(B) The regulatory authority shall approve a maximum peak particle velocity based on the physical site conditions of each permit area. Ground vibrations due to blasting shall not exceed the approved limit at the nearest critical structure. The regulatory authority may reduce the maximum peak particle velocity if it determines that a lower value is required because of density of population, land use, age or type of structure, geology, hydrology, repetition of blasting operations, or other factors.

(C) The maximum peak particle velocity for surface coal mining activities shall be assigned by the regulatory authority following a detailed evaluation of the types of structures to be protected, geologic formations, seismic factors, degree of protection necessary to prevent threshold damage to public and private property, and adverse impacts on hydrology, underground mines, and other structures. The permittee shall submit detailed information as described above to the regulatory authority by which to evaluate the allowable ground vibration standard. Permittees who do not request a peak particle-velocity determination shall comply with paragraph (e)(2)(iv) of this section.

(D) The peak particle velocity authorized by the regulatory authority for surface blasting operations shall not exceed the limits established herein for structure type, structural condition, or the predominant frequency of the ground vibration due to blasting operations or equivalent test blast, or the charge weight per delay shall not exceed the amount allowed by the scaled distance factor in paragraph (e)(2)(A) of this section.

Type of structure	Condition of structure	Frequency of ground vibrations in hertz	Peak particle velocity, in inches/second
0	Poor		0.50
1	Poor to fair	0–10	.75
2, 3	Fair to good	10–40	1
1, 2, 3, 4	Excellent	Greater than 40	2

Note.—
0. Sensitive or protected structures such as historic buildings and residences with deteriorated plaster interiors and rough stone foundation walls.
1. Older homes more than 20+ years old, with plaster-on-lath interiors.
2. Modern homes less than 20 years old, with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations and wood-frame structures.
3. Critical structures with safety considerations such as water towers, impoundments, tunnels, pipelines, underground mines.
4. Engineered structures, such as those designed to withstand dynamic loads (i.e. earthquakes, traffic and wind).

(iii) * * *

(iv) All surface coal mining operations not assigned a maximum peak particle velocity as in paragraph (e)(2)(ii) of this section or choosing not to submit data by which to analyze the ground-vibration parameters, Shall use the equation found in paragraph (e)(2)(v) of this section (scaled-distance equation) for determining the maximum charge weight of explosives that can be detonated within any 8-millisecond period. If the blasting is conducted in accordance with the equation of paragraph (e)(2)(v)(A) of this section, the peak particle velocity shall be deemed to be acceptable unless either site-specific conditions necessitate a reduced charge weight per delay or conditions of paragraph (e)(2)(ii) of this section are met.

(v)(A) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W=(D/Ds)^2$, where W=the maximum charge weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D=the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building, and Ds=a scaled distance factor of 70. A modified equation with a (Ds) value other than 70 may be approved for use by the regulatory authority for site-specific areas where a regulatory authority assigns a specific peak particle velocity.

(B) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight, in pounds (W)
300	18
350	25
400	33
500	51
600	73
700	100
800	130
900	165
1,000	204
1,100	248
1,200	294
1,300	345
1,400	400
1,500	460
1,600	522
1,700	590
1,800	660
1,900	736
2,000	815
2,500	1,275
3,000	1,840
3,500	2,500
4,000	3,265
4,500	4,130
5,000	5,100

* * * * *

(vii) Flyrock, including blasted material traveling along the ground, shall not be cast more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (e)(1)(iv) of this section.

(viii)(A) The regulatory authority shall require an operator to submit to the regulatory authority a copy of a typical blast design as prepared by a certified blaster for blasting operations at least 10 days prior to conducting surface blasting within 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(B) The blast design shall demonstrate that the operator has considered the necessary precautions to protect property from damage and persons from injury, shall adhere to particle-velocity limits or scaled-distance calculations of paragraph (e)(2)(v)(A) of this section, and shall include sketches of the types of blasts, direction, drill patterns, delays, decking, type and amount of explosives to be used, critical dimensions, and the locations and general condition of structures to be protected. The design shall be certified by a blaster-in-charge, as prepared by a certified blaster or a qualified blasting consultant. The regulatory authority may require a design for each blast, if determined necessary, but a typical blast design with specific locations indicated on a map may be acceptable. A blaster-in-charge shall be responsible for designing and conducting all blasts conducted during surface coal mining operations.

(C) The regulatory authority may require seismic and airblast monitoring by the operator of blasts conducted within 1,000 feet of inhabited buildings, to ensure scaled-distance values are not exceeding predicted values.

* * * * *

(3) *Seismograph measurements.* (i) Where a seismograph is used to monitor the velocity of ground motion and the assigned peak particle-velocity limit is not exceeded, the equation in paragraph (e)(2)(v)(A) of this section need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot.

(ii) The use of a modified equation to determine maximum change weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition from the operator accompanied by reports of blasting operations including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle-velocity limit required in paragraph (e)(2)(ii) of this section would be exceeded.

* * * * *

B. Proposed Amendments to the permanent regulations

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. It is proposed to amend 30 CFR Part 816 as follows:

1. Section 816.65 (f), (i), (k) and (l) would be revised to read in their entirety as set forth below.

§ 816.65 Use of Explosives: Surface blasting requirements.

* * * * *

(f)(1) The regulatory authority shall require an operator to submit to the regulatory authority a copy of a typical blast design at least 10 days prior to conducting surface blasting within—

(i) 1,000 feet on any building used as a dwelling, school, church, hospital, or nursing facility; and

(ii) 500 feet of facilities including, but not limited to, underground mines, disposal wells, petroleum- or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas- or oil-collection lines, or water and sewage lines.

(2) The blast design shall demonstrate that the operator has considered the necessary precautions to protect property from damage and persons from injury, shall adhere to allowable particle-velocity limits or to scaled-distance calculations of § 816.65(1)(1) and shall include sketches of the type of blast, direction, drill patterns, delays, decking, type and amount of explosive to be used, critical dimensions, and the locations and general condition of structures to be protected. The design shall be certified by a blaster-in-charge, prepared by a certified blaster or a qualified blasting consultant. The regulatory authority may require a design for each blast, if determined necessary, but typical blast designs with specific locations indicated on a map may be acceptable. A blaster-in-charge shall be responsible for designing and conducting all blasts conducted during surface coal mining operations.

(3) The regulatory authority may require seismic and airblast monitoring of blasts conducted within the distances specified in paragraph (f)(1) of this section, to ensure continued compliance and establish data, even if a scaled-distance equation is used.

* * * * *

(i)(1) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle-velocity of ground vibration shall not exceed the value established by the regulatory authority as applicable to surface coal mining activities at the location of any dwelling, public building, school, church, or commercial or industrial building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of the three measurements.

(2) The regulatory authority shall approve a maximum peak particle-velocity based on the physical site conditions of each permit area. Ground vibrations due to blasting shall not exceed the approved limit at the nearest critical structure. The regulatory authority may reduce the maximum peak particle-velocity if it determines that a lower value is required because of density of population, land use, age or type of structure, geology, hydrology, repetition of blasting operations, or other factors.

(3) The maximum peak particle velocity for surface coal mining activities shall be assigned by the regulatory authority following a detailed evaluation of the types of structures to be protected, geologic formations seismic factors, degree of protection necessary to prevent threshold damage to public and private property, and adverse impacts on hydrology, underground mines, and other structures. The permitte shall submit information to the regulatory authority by which to evaluate the allowable ground-vibration standard as part of the permit application under Parts 779 and 780. Permittes not requesting a peak particle-velocity determination shall comply with paragraph (k) of this section.

(4) The peak particle velocity authorized for surface blasting operations shall not exceed the limits established herein for structure type, structural condition, or the predominant frequency of the ground vibration due to blasting operations or equivalent test blasts.

Type of structure	Condition of structure	Frequency of ground vibration, in hertz	Peak particle velocity, in inches/second
0	Poor		0.50
1	Poor to fair	0–10	.75
2,3	Fair to good	10–40	1
1,2,3,4	Excellent	Greater than 40	2

Note.—

0. Sensitive or protected structures such as: historic buildings and residences with deteriorated plaster interiors and rough stone foundation walls.

1. Older homes more than 20+years old, with plaster-on-lath interiors.

2. Modern homes less than 20 years old, with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations, and wood-frame structures.

3. Critical structures with safety considerations such as water towers, impoundments, tunnels, pipelines, underground mines.

4. Engineered structures, such as those designed to withstand dynamic loads (i.e. earthquakes, traffic and wind.)

* * * * *

(k) All surface coal operations not assigned a maximum peak particle velocity as in paragraph (i) of this section or choosing not to submit data by which to analyze the ground-vibration parameters, shall use the equation in paragraph (l) (scaled-distance equation) for determining the maximum charge weight of explosives that can be detonated within any 8-millisecond period or limit ground vibration to a maximum peak particle-velocity of 0.75 inch per second. If the blasting is conducted in accordance with the equation of paragraph (l), the peak particle velocity shall be deemed to be within an acceptable limit. When a lower limit is required, a modified equation may be developed by the regulatory authority and authorized for operator use.

(l)(1) The maximum weight of explosives to be detonated within any 8-millisecond period if not conducting seismic monitoring may be determined by the formula $W=(D/70)^2$, where W = the maximum charge weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between 300 and 5,000 feet, solution of the equation results in the following weights:

Distance, in feet (D):	Maximum weight, in pounds (W)
300	18
350	25
400	33
500	51
600	73
700	100
800	130
900	165
1,000	204
1,100	246
1,200	294
1,300	345
1,400	400
1,500	460
1,600	522
1,700	590
1,800	660
1,900	736
2,000	816
2,500	1,275
3,000	1,840
3,500	2,500
4,000	3,265
4,500	4,130
5,000	5,100

2. Section 816.67(a) and (b) are amended by removing reference to "1 inch per second". Revised paragraphs (a) and (b) are set forth below.

§ 816.67 Use of explosives: Seismographic measurements.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit is not exceeded, the equation in § 816.65(l) need not to be used. However, if an approved equation is not used, a seismograph record shall be obtained for every shot.

(b) The use of a modified equation to determine maximum charge weight of explosives for blasting operations at a particular site may be approved by a the regulatory authority on receipt of a petition accompanied by report including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the established peak particle velocity limit of § 816.65(i) would be exceeded.

* * * * *

C. Proposed Amendments to the Permanent Regulations

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

It is proposed to amend 30 CFR Part 817 as follows:

1. Section 817.65(f), (i), (k), and (l) are proposed to be revised to read as set forth below.

§ 817.65 Use of explosives: Surface blasting requirements.

* * * * *

(f)(1) The regulatory authority shall require an operator to submit to the regulatory authority a copy of a typical blast design at least 10 days prior to conducting surface blasting within—

(i) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(ii) 500 feet of facilities including, but not limited to, underground mines, disposal wells, petroleum- or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(2) The blast design shall demonstrate that the operator has considered the necessary precautions to protect property from damage and persons from injury, shall adherence to allowable peak particle velocity limits or scale-distance calculations of paragraph (l) of this section and include sketches of the types of blast, direction, drill patterns, delays, decking, type and amount of explosives to be used, critical dimensions, and the locations and general condition of structures to be protected. The design shall be certified by a blaster-in-charge, as prepared by a certified blaster or a qualified blasting consultant. The regulatory authority may require a design for each blast, if determined necessary, but typical blast designs with specific locations indicated on a map may be acceptable. A blaster-in-charge shall be responsible for designing and conducting all blasts conducted during surface coal mining operations.

(3) The regulatory authority may require seismic and airblast monitoring of blast conducted within distance criteria of paragraph (f)(1) of this section, to ensure continued compliance and to establish blasting data, even if a scaled-distance equation is being used.

* * * * *

(i)(1) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle-velocity of ground vibration shall not exceed the value established by the regulatory authority as applicable to surface coal mining activities at the location of any dwelling, public building, school, church, or commercial or industrial building. Peak particle velocities shall be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity shall be the largest of the three measurements.

(2) The regulatory authority shall approve a maximum peak particle velocity based on the physical site conditions of each permit area. Ground vibrations due to blasting shall not exceed the approved limit at the nearest critical structure. The regulatory authority may reduce the maximum peak particle velocity if it determines that a lower value is required because of density of population, land use, age or type of structure, geology, hydrology, repetition of blasting operations, or other factors.

(3) The maximum peak particle-velocity for surface coal mining activities shall be assigned by the regulatory authority following a detailed evaluation of the types of structure to be protected, geologic formations, seismic factors, degree of protection necessary to prevent threshold damage to public and private property, and adverse impacts on hydrology, underground mines, and other structures. The permittee shall submit information to the regulatory authority by which to evaluate the allowable ground vibration standard as part of the permit application under Parts 783 and 784. Permittees not requesting a peak particle-velocity determination shall comply with paragraph (k) of this section.

(4) The peak particle velocity authorized for surface blasting

operations shall not exceed the limits established herein for structure type, structural condition, or the predominant frequency of the ground vibration due to blasting operations or equivalent test blast.

Type of structure *	Condition of structures	Frequency of ground vibrations, in hertz	Peak particle velocity, in inches/second
0	Poor		0.50
1	Poor to fair	0–10	.75
2,3	Fair to good	10–40	1
1,2,3,4	Excellent	Greater than 40	2

* Note.—
0. Sensitive or protected structures such as historic buildings or residences with deteriorated plaster interiors and rough stone foundation walls.
1. Older homes more than 20+ years old, with plaster-on-lath interiors.
2. Modern homes less than 20 years old, with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations and wood frame structures.
3. Critical structures with safety considerations such as water towers, impoundments, tunnels, pipelines, underground mines.
4. Engineered structures, such as those designed to withstand dynamic loads (i.e. earthquakes, traffic and wind).

* * * * *

(k) All surface coal operations not assigned a maximum peak particle velocity as in paragraph (i) of this section or choosing not to submit data by which to analyze the ground-vibration parameters shall use the equation found in paragraph (1) of this section (scaled-distance equation) for determining the maximum charge weight of explosives that can be detonated within any 8-millisecond period or limit ground vibrations to a maximum peak particle velocity of 0.75 inch per second. If the blasting is conducted in accordance with the equation of paragraph (l) of this section, the peak particle velocity shall be deemed to be within an acceptable limit. When a lower limit is required, a modified equation may be developed by the regulatory authority and authorized for operator use.

(l)(1) The maximum weight of explosives to be detonated within any 8-millisecond period if not conducting seismic monitoring may be determined by the formula $W=(D/70)^2$ where W=the maximum charge weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D=the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight, in pounds (W)
300	18
350	25
400	33
500	51
600	73
700	100
800	130
900	165
1,000	204
1,100	248
1,200	294
1,300	345
1,400	400
1,500	460
1,600	522
1,700	590
1,800	660
1,900	736
2,000	816
2,500	1,275
3,000	1,840
3,500	2,500
4,000	3,265
4,500	4,130
5,000	5,100

2. Section 817.67(a) and (b) are proposed to be amended by removing reference to "1 inch per second". Revised paragraphs (a) and (b) are set forth below.

§ 817.67 Use of explosives: Seismograph measurement.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit is not exceeded, the equation in § 817.65(1) need not to be used. However, if an approved equation is not being used, a seismograph record shall be obtained for every shot.

(b) The use of a modified equation to determine maximum charge weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by a report including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle-velocity limit required in § 817.65(i) would be exceeded.

* * * * *

(Sec. 102, 201, 501, 503, 504, 508, 515, 517, 519, 701, 717, and 719, of Pub. L. 95–87, 91 Stat. 448, 449, 467, 470, 471, 478, 486, 498, 501, 516, and 526 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1258, 1265, 1269, 1291, 1307, and 1309)).

[FR Doc. 81–2213 Filed 1–21–81; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Parts 731 and 732

Surface Coal Mining and Reclamation Operations; Procedures for State Programs and Hearing Announcement

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

ACTION: Proposed rules.

SUMMARY: OSM is proposing to amend 30 CFR Parts 731 and 732 to provide that a State which has not received approval of a State program by a final decision of the Secretary may resubmit a State program at any time after that decision, rather than waiting until a Federal program is implemented, as presently required.

DATE: Written comments on the proposed rules must be received at the address below by 5:00 p.m. on or before February 23, 1981. A public hearing on the proposed rules has been scheduled for February 12, 1981, at the Office of Surface Mining, Room 251, Interior South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Any person interested in making an oral or written presentation at the hearing should contact Mr. Art Abbs at the address and phone number listed below by February 2, 1981. If no person by this date has contacted Mr. Abbs to express an interest in participating in the hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the **Federal Register.**

ADDRESSES: Written comments must be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Art Abbs, State Program Manager, Division of State Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–5361.

SUPPLEMENTARY INFORMATION: On March 13, 1979, the Secretary promulgated final rules for the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). The rules, among other things, established requirements and procedures for the development, review and approval of programs submitted by States for the purpose of obtaining primary jurisdiction under the Act to regulate surface coal mining and reclamation operations on non-Federal and non-Indian lands within their respective borders.

Certain provisions of the rules establish requirements with respect to dates when States may resubmit programs following a final decision of the Secretary to disapprove a State program.

Section 731.12(b)91) provides that States may submit a proposed program at any time later than June 3, 1980, if "implementation of a Federal program

under 30 CFR Part 736 has been completed * * *." Similarly, the rules provide that after a final decision disapproving a State program, the State may submit another proposed State program at any time after implementation of a Federal program (*see* 30 CFR 732.14 and the preamble at 44 FR 14961). These provisions preclude a State which has failed to receive approval of its program from submitting another State program until after a Federal program has been implemented in the State.

As noted in the preamble to the final rules (44 FR 14961), § 732.14 was based on the express language of Section 504(e) of the Act, which provides that a "State which has failed to obtain approval of a State program prior to implementation of a Federal program may submit a State program at any time *after such implementation*" (emphasis supplied).

Comments to the proposed final regulations suggested that § 732.14 be changed to allow submission of a new proposed State program at any time. North Dakota Public Service Commission, comments F–22.5, F–48.8, p. 44; Soil Conservation Society of America, comment F–177; Carter Oil Co., comment F–428. These commenters argued that it would be wasteful to force a State to wait until after a Federal program was completely implemented before submitting a new program. Once that State program is accepted, the newly implemented Federal program would have to be dismantled (30 U.S.C. 504(e); 30 CFR 736.16). The response to these comments stated that Section 732.14 was authorized by Sections 504(a)(2) and 504(e) of the Act (44 FR 14961, March 13, 1979.

A re-examination of § 504(e) of the Act indicates that while it authorizes 30 CFR 732.14, it does not mandate the restriction on resubmission of proposed State programs. The language in Section 504(e) is permissive in that it states that a State *may* submit a new program after the Federal program is implemented. It may be inferred from this permissive language that Congress intended this section simply to mean that the implementation of a Federal program would not end the chance for resubmission of a proposed State program.

The Findings of Congress in drafting this legislation support this interpretation. Section 101(f) states that the States are better suited to regulate the surface mining of coal because of the diversity of physical conditions among the various States (30 U.S.C. 1201(f)). The States, after a disapproval, should therefore be able to submit revised proposed programs as often and as early in the regulatory scheme as necessary to gain primacy.

There is nothing in the legislative history that contradicts this interpretation. The Conference Report on the Act described Section 504(e) as a procedure for smooth transition from Federal to State regulation (H. Conf. Rep. No. 493, 95th Cong., 1st Sess. 102 (1977)). Allowing a State to submit a proposed program before the Federal program is implemented will not affect the smoothness of the transition from Federal to State; in fact, the transition may not be necessary if the State program is approved before the Federal program is implemented

Accordingly, 30 CFR 731.12 and 732.14 are proposed to be amended by adding provisions to allow submission of a State program at any time following a final decision by the Secretary, rather than waiting unitl a Federal program is implemented.

Note.—The Assistant Secretary has determined that, pursuant to § 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on these rules. The Assistant Secretary has determined that these rules are not significant under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292 *et seq.* (December 12, 1979). The Assistant Secretary has further determined that the propsed rules will not have a significant economic effect on a substantial number of small entities as the rules are essentially a procedural change with no direct impact on small entities. Primary author of this document is Mary Crouter, Division of State Programs, Office of Surface Mining.

Dated: January 15, 1981.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

Text of Proposed Amendment

PART 731—SUBMISSION OF STATE PROGRAMS

§ 731.12 [Amended]

1. 30 CFR 731.12(b)(1) is proposed to be amended by redesignating it as 731.12(b)(2).

2. 30 CFR 731.12(b)(2) is proposed to be amended by redesignating it as 731.12(b)(3).

3. 30 CFR 731.12(b)(3) is proposed to be amended by redesignating it as 731.12(b)(4).

4. 30 CFR 731.12(b) is proposed to be amended by adding a new 731.12(b)(1) to read: "By a final decision, the state program submitted under 30 CFR 731.12(a) is disapproved; or * * *."

5. Revised 30 CFR 731.12(b) would read:

§ 731.12 Submission of State programs.

* * * * *

(b) States may submit a proposed program at any time later than June 3, 1980, if:

(1) By a final decision, the State program submitted under 30 CFR 731.12(a) is disapproved; or

(2) Implementation of a Federal program under 30 CFR Part 736 has been completed; or

(3) There have been no surface coal mining and reclamation operations since August 3, 1977, but coal exploration or surface coal mining operations are anticipated; or

(4) A State program has been enjoined by a court of competent jurisdiction, in which case the requirements of 30 CFR 730.12 shall apply."

* * * * *

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

§ 732.14 [Amended]

6. 30 CFR 732.14 is proposed to be amended by inserting after the words Regional Director in the first sentence "at any time after the date of the final decision; or."

7. Revised 30 CFR 732.14 would read in its entirety:

§ 732.14 Resubmission of State programs.

If, by a final decision, the program is disapproved, the State may submit another proposed state program to the Regional Director at any time after the date of the final decision, or at any time after implementation of a Federal program for that State under 30 CFR 736. Resubmitted State programs must meet the requirements of 30 CFR 731.14 and will be acted upon pursuant to 30 CFR 732.12–732.16.

[FR Doc. 81-2200 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-05-M

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Alternative Service; Proposed Concept

AGENCY: Selective Service System.

ACTION: Proposed Concept of Alternative Service.

SUMMARY: The Selective Service System is considering revising its concept of alternative service in accord with the document reproduced below.

Alternative service could be required only after the induction of persons into the armed forces has been authorized. That authority does not exist at the present time. Should the Congress in the future authorize the resumption of

inductions, the Selective Service System must be prepared also to implement a program of Alternative Service.

DATE: Comments that are received on or before March 31, 1981 will be considered.

ADDRESS: Selective Service System, ATTN: Manager, Alternative Service, 600 E Street, NW., Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: William D. McCann, Manager, Alternative Service, 600 E Street, NW, Washington, D.C. 20435. Phone (202) 724-0003.

SUPPLEMENTARY INFORMATION: Alternative service is administered under authority of section 6(j) of the Military Selective Service Act (50 U.S.C. App. 456 (j)). Present regulations governing alternative service appear in 32 CFR Part 1660.

Bernard Rostker

Director of Selective Service.

January 16, 1981.

The proposed concept is:

Alternative Service Concept Paper; Selective Service System

January 1981.

Introduction

Following a long tradition in U.S. History, the Military Selective Service Act imposes a general citizen obligation for military service. All men, aged 18 to 26, are subject to be called for training and service in the Armed Forces. Within the general citizen obligation, the Act recognizes that there are individuals whose religious or moral beliefs prohibit them from participating in any type of warfare. Thus, under the Act, Conscientious Objectors are exempted from military service, but must, in lieu of induction, fulfill their citizen obligation by performing "such civilian work contributing to the maintenance of the national health, safety or interest as the Director may deem appropriate". The Director of Selective Service is specifically charged with the responsibility "for the placement of such persons (Conscientious Objectors) in appropriate civilian work". (50 U.S.C. App. 456(j) Supp.)

This paper presents a concept for an Alternative Service Program whereby the Director of Selective Service can insure that Conscientious Objectors will meet their obligation through their placement in non-military jobs contributing to the national health, safety or interest. The concept embraces a confluence of civilian work force priorities, specific job openings appropriate for alternative service and individual skills in an efficient and systematic way which will treat Conscientious Objectors fairly and with dignity.

Program Structure

The Alternative Service Program for Conscientious Objectors would operate under a structure which would provide for the interaction of three primary program components. These are:

1. *Priorities.* The Alternative Service Program must identify areas of crucial civilian work force shortages and set placement priorities.

2. *Jobs.* Within the priority areas, the Alternative Service Program must identify specific job openings.

3. *People.* The Alternative Service Program must be able to determine the aptitudes and abilities of participating Conscientious Objectors and match them with jobs contributing to the national health, safety or interest.

Priorities

Alternative service would be performed by Conscientious Objectors in lieu of induction into the Armed Forces, therefore, the program would be activated only during a national emergency and mobilization. In such an emergency, it is expected that shortages in the civilian work force would develop as large numbers of young people enter military service, and industrial needs place new stresses on the labor market. These circumstances would create a need for national and regional resource and work force management. As the agency within the Federal Government designated to serve as the focal point for emergency activities, the Federal Emergency Management Agency (FEMA) has a direct concern in matters of policy which affect the distribution of, or powers to control, the distribution of work force between military and civilian users in a mobilization.

FEMA's responsibilities relate to Selective Service because Conscientious Objectors placed in work in the national health, safety or interest would constitute a workforce pool which could be used to fill shortages in essential civilian areas. Selective Service would obtain from FEMA, the Department of Labor and other Federal agencies, information pertinent to prioritizing civilian work gaps. Selective Service would make every attempt to place Conscientious Objectors in accordance with the priorities so long as the jobs were in conformity with the legal requirements for alternative service.

There would also be an important corollary to the process of determining priorities: public and private agencies would become aware of their respective work force shortages. This awareness would presumably lead them to take the initiative in filling work force shortages. To the extent that their needs could be met by Conscientious Objectors, they would be as eager to enlist them as Selective Service would be to place them. This would facilitate the placement process and permit all agencies concerned to move expeditiously toward the accomplishment of their objectives.

Selective Service National Headquarters would be responsible for overall management and coordination with FEMA and the other agencies. On the regional level, the Selective Service System would review employment priorities as they are channeled down from the national headquarters. An evaluation of job descriptions submitted to the regional offices would be conducted based on the employment priorities. In addition, the Regional Alternative Service office would conduct operational evaluations of the Alternative Service work programs within the region.

As a program designed in part to help alleviate civilian work force shortages in a national mobilization, it is crucial that the Alternative Service Program be designed to insure a rapid and efficient placement of workers to priority areas. The Alternative Service Program must be able to stimulate employers to participate. Moreover, the Alternative Service Program must be able to guarantee the timely placement of Conscientious Objectors. For these reasons, it is anticipated that the Federal Government fund alternative service work through a system of stipends or employer tax incentives.

Jobs

The work force placement priorities determined through the efforts of FEMA, the Selective Service System and the Department of Labor, would be applied to job openings identified as suitable for alternative service placements. The listing of approved job openings would be derived from job openings submitted to the regional offices. Job openings submitted to the regional offices for evaluation would come from several different sources. Liaison activities between local Selected Service System offices and State Employment Security Agency offices could provide a broad source of job openings. Local Alternative Service office contacts with state and local governments, community health and service organizations would also provide a source of available jobs. Additionally, job openings in Federal agencies could be identified through the Office of Personnel Management and the respective agencies. Following the

evaluation for appropriateness to alternative service, a job description would either be deemed acceptable, and subsequently entered into the data files established for approved job descriptions, or unacceptable, in which case it would be dropped from the program.

Job openings submitted for evaluation by the various sources would be entered into the data banks through terminals located at designated Alternative Service offices. The data system, established to maintain the Alternative Service Program information files, would consist of a data bank at the national level with input coming from and output flowing to the designated area and regional Alternative Service offices. The data system would provide two types of output: output about all Conscientious Objectors who are or were involved in the program and data about the jobs available and unfilled, and those jobs already filled in the program.

The job identification and development function would require assistance from FEMA, the Office of Personnel Management, Department of Labor and Selective Service System National Headquarters to encourage employers experiencing work force shortages to submit their job openings. Additionally, the Department of Labor would serve the Alternative Service Program by facilitating a cooperative effort between the Alternative Service area offices and the State Employment Security Agency offices in identifying potential job placements. Personnel from State Employment Security Agency offices, serving in a liaison capacity, could assist these offices in identifying potential job placements.

In order to identify public agencies, private and religious organizations which would be prepared to sponsor Conscientious Objectors, the Alternative Service Program staff will undertake a series of discussions with such potential sponsors in advance of mobilization. These organizations would be encouraged to develop employment programs for Conscientious Objectors. The programs would have to meet guidelines established by Selective Service to insure that they would contribute to the national health, safety or interest and be appropriate for alternative service. Selective Service would develop agreements, which would include provisions for compemsation, placement, and monitoring with the sponsoring organizations, so that the employment programs would be ready to operate and accept Conscientious Objectors shortly after a mobilization.

People

A viable and successful Alternative Service Program must seek to match the skills and abilities of Conscientious Objectors with the priority job openings. Skill and aptitude tests could be administered to incoming Conscientious Ogbjectors. Additionally, Conscientious Objectors could be interviewed by alternative service personnel at the local Selective Service office. Potential job placements would be made from the job bank. Conscientious Objectors could be placed in individual job openings or in approved group work projects.

Unlike virtually all other placement agencies, alternative service would perform no recruitment functions whatsoever. It would not be the function of the Alternative Service Program to find Conscientious Objectors for all the work force shortages that may exist in an emergency. Rather, it would be the job of the Alternative Service Program to place everyone who was classified as a Conscientious Objector in an alternative service job which contributed to the maintenance of the national health, safety or interest. This calls for a placement process oriented to the Conscientious Objectors rather than to the jobs to be filled.

Alternative service personnel would be responsible for giving to persons entering alternative service (1) information concerning citizenship obligations and alternative service as a concept and (2) information about the Alternative Service Program, including pay, leave, duration of service and medical coverage. Depending on the nature of the emergency, it is also possible that alternative service entrants would receive training in areas such as first aid. Although alternative service placements are expected to be quite varied, this common training would equip them, regardless of their alternative service job, to render a much needed humanitarian service in an emergency.

Alternative Service would seek to maximize the Conscientious Objector's job retention. It is anticipated that most Conscientious Objectors would remain with their employers throughout their terms of service. In case emergencies arise, it may be necessary to transfer temporarily some Conscientious Objectors to meet such emergencies. The job training and day-to-day supervision of Conscientious Objectors in the program would be the responsibility of the employer. Both the employer and the Conscientious Objector would have reporting requirements to Alternative Service and be subject to audits.

In the placement and oversight of alternative service work projects, Alternative Service would seek ways to insure that both the participants and the public were aware that alternative service is a necessary and legitimate fulfillment of the Conscientious Objector's obligation as a citizen. Alternative Service Program representatives would visit work sites to maintain close contact with Conscientious Objectors. Employers and beneficiaries of alternative service work would be encouraged to publicly recognize the contribution of the program.

The proposed function and responsibilities of each agency are summarized in Chart I. It depicts the responsibilities of the national, regional and local branches of Federal agencies, state and local governments and private employers participating in the Alternative Service Program.

Administration

As the Alternative Service Program is a necessary component to Selective Service's mission of providing an untrained work force in a national emergency, Selective Service must retain all administrative and programmatic control over the Alternative Service Program. To promote efficiency and accountability, the structure of the Alternative Service Program would parallel the Selective Service structure as closely as feasible. Like inductees, Conscientious Objectors would be processed completely at the local level by alternative service personnel stationed in designated area offices.

In order to meet its responsibility in a timely fashion, Selective Service will explore possibilities for the rapid processing and placement of Conscientious Objectors. Discussions will be held with educational institutions and other organizations that may be interested in hosting a number of Conscientious Objectors. It is anticipated that a number of pre-emergency agreements will be made between Selective Service and sponsoring organizations.

BILLING CODE 8015-01-M

CHART I

FUNCTIONS OF COOPERATING AGENCIES IN ALTERNATIVE SERVICE

	SELECTIVE SERVICE SYSTEM	DEPARTMENT OF LABOR	FEDERAL EMERGENCY MANAGEMENT AGENCY	OPM AND FEDERAL AGENCIES	STATE AND LOCAL GOVERNMENT/PUBLIC SERVICE EMPLOYERS
NATIONAL	•Policy Development •Program Guidance •Maintains Job Bank •National Job Development and Priorities •Administration •Coordination with Other Federal Agencies •Chairs Alternative Service Interagency Committee	•Supplies Manpower Data to FEMA and SSS •Participates in Priority Setting •Directs SESA in SSS/SESA Coordination •Member of Alternative Service Interagency Committee	•Coordinate with SSS in Planning to Include Alternative Service in National Emergency Preparedness Plan •Member of Alternative Service Interagency Committee	•Develop and Submit Manpower Shortages to FEMA •Organize Existing Programs for Possible Employment of CO's •Member of ASP Committee	•Participation on Alternative Service Advisory Committee
REGIONAL	•Administrative Support for Local Offices •Determines Acceptability of Job Openings for ASP •Review and Interpret Employment Priorities •Operational Evaluating of ASP Work Program in Region •Receives Job Listings	•Supplies Manpower Data		•Submit Manpower Needs to Agency's National Headquarters	
LOCAL	•Administrative Responsibility for CO's •Interviews and Places CO's •Oversight of Local ASP Work Projects •Review Job Listings •Coordinate with SESA Office •Local Job Development	•SESA Offices Estsblish Liaison with Alternative Service Local Office •Submits Job Listings to Alternative Service •Assists in Local Job Development		•Submit Specific Job Openings •Day-to-Day Job Supervision of CO's •Training of CO's •Reporting to Local ASP Offices	•Submit Specific Job Openings •Day-to-Day Job Supervision of CO's •Training of CO's •Reporting to Local ASP Offices

BILLING CODE 6015-01-C

In addition to their job placement function, alternative service personnel would be the primary administrative contact for both participating employers and working Conscientious Objectors within the area of jurisdiction. The alternative service personnel would continue to be the contact points for Conscientious Objectors throughout their service. Alternative service personnel would be responsible for initiating and maintaining the files of Conscientious Objectors involved in the program. They would handle travel arrangements and payments to Conscientious Objectors. Additionally, alternative service personnel would be responsible for receiving reports from and auditing participating employers. Selective Service regional offices would provide administrative and logistical support to alternative service personnel. Operational evaluation of the Alternative Service Program placements within the regions would be conducted by alternative service officials.

At the national level, the Selective Service System would initiate all administrative policy and establish the necessary guidelines to enable individual employers to supervise the Conscientious Objectors under their authority. The Alternative Service Program National Headquarters would provide overall management and monitoring of the program.

Advisory and Coordinating Committee

The participation of a number of federal agencies on a standing coordinating committee is a viable means of providing the coordination and input needed in implementing the Alternative Service Program. Policy and guidance established by the Selective Service System would be presented to the committee agencies for dissemination. The committee would also provide the agencies with a contact point for expressing both work force needs and input for priority determinations in meeting those needs. The agencies involved would include, but not be limited to, Selective Service System, FEMA, OPM and the Department of Labor. The Selective Service System would form and chair the coordinating committee.

In addition to a federal coordinating committee, it would be advantageous to have an advisory committee on alternative service. Organizations or individuals interested in Conscientious Objectors and alternative service and employers participating in the program could be represented on the committee. If the plan for a broader Selective Service Advisory Committee is carried out, a panel of that committee could be devoted to alternative service.

Summary

The Director of Selective Service is required by law to place Conscientious Objectors in appropriate civilian work. This paper sets forth a conceptual framework within which Conscientious Objectors can meet their alternative service obligation with fairness and dignity.

The framework is constructed from a tripod consisting of priorities, jobs and people. Conscientious Objectors would make a civilian contribution by working in areas of natiuonal priority. Most of the actual jobs in alternative service would be generated locally a result of extensive contacts between area alternative service officers and a host of private, public service organizations, such as hospitals, and with public agencies, such as the State Employment Security Agency.

Finally, Conscientious Objectors would be placed in priority jobs appropriate to their abilities. The placement process would be assisted by a job data bank which would also maintain a continuing profile of alternative service jobs and people.

Such an Alternative Service Program would fulfill the Selective Service Director's responsibility under the law; would contribute to the nation's health, safety and interest in a critical time; would render humanitarian assistance that would otherwise be neglected; and would sustain the faith of those who defend the nation.

[FR Doc. 81-2207 Filed 1-21-81; 8:45 am]
BILLING CODE 8015-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 64

Museum Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Institute of Museum Services proposes an amendment to its regulations governing a program of Federal financial assistance to museums under the Museum Services Act. The proposed amendment expands the types of assistance offered under the program to include assistance for institutional assessment.

DATES: Comments must be received on or before February 23, 1981.

ADDRESSES: Comments should be addressed to Mrs. Lee Kimche (Room 4110, Switzer Building), 400 Maryland Ave., SW, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mrs. Lee Kimche, telephone (202) 245-0413.

SUPPLEMENTARY INFORMATION:

Nature of Program

The Museum Services Program is aughorized by the Museum Services Act, which is Title II of the Arts, humanities, and Cultural Affairs Act of 1976. The Museum Services Act ("the Act") was enacted on October 8, 1976. The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

> It is the purpose of this (Act) to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (NMSB) and a Director. A more detailed description of the structure of the Institute and the provisions of the Act may be found in 43 FR 45166 (September 29, 1978).

Current Program Regulations

Current program regulations for IMS were issued on August 11, 1980 by the Secretary. These regulations were published at 45 FR 53414. The current regulations provide rules for the definition of "museum" (under the program); the eligibility of museums for assistance; the types of assistance available; the requirements which applicants must meet; and the criteria used to judge applications. The program regulations provide for assistance to museums for one year general operational support (GOS) and for project support. The Secretary has also issued regulations under the Government in the Sunshine Act governing the conduct of NMSB meetings in 45 FR 53412 (Aug. 11, 1980).

Proposed Change; Museum Assessment

The Secretary proposes to amend the program regulations by adding a new Subpart B which would provide rules for the award of grants to museums to assist and encourage them to obtain institutional assessment. The assessment process generally involves review of a museum's overall programs and operations; diagnosis of their strengths and weaknesses; recommendations for long range planning; and suggestions for further

technical assistance requests. Assessment is carried out by qualified surveyors (through arrangements with a professional organization) in accordance with accepted professional standards. Section 206 of the Museum Services Act authorizes the Director of IMS, subject to the policy direction of NMSB, "to make grants to museums to increase and improve museum services." 20 U.S.C. 965. The purpose of this subpart, in furtherance of the objectives set out in sections 202 and 206 of the Act, is to aid museums in improving their services by providing them with the means, at least in part, to obtain expert assistance in evaluating those services, through the assessment process. When such an evaluation is complete, the museum can use what it has learned to serve its community more effectively.

A museum may use a grant under the proposed subpart for expenses of assessment such as registration fees; surveyor honorariums, travel and other expenses of a surveyor; and technical assistance materials.

Grants under this subpart may not exceed $600.00.

Following careful consideration of this issue by the National Museum Services Board, the Secretary has concluded that assisting and encouraging museums to obtain the services involved in the assessment process will help participating museums to improve their services; to enhance their institutional capacity; and to increase their level of financial support from private and other non-federal sources. Information received from museums—particularly those which are located in rural areas or which have limited resources—indicates that experience with the assessment or similar processes has had a positive impact upon the day to day operations of the institutions affected. While grants under this subpart are awarded for limited amounts, there is reason to believe that these amounts will stimulate museums to seek and employ assessment services.

Finally, this program will enable IMS to use its resources to reach a significant number of additional museums which could not otherwise participate in IMS programs, thus helping to improve museum services in a wider geographic area.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed amendment to the regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before February 23, 1981, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4008, Switzer Building, Washington, D.C. between the hours of 8:30 am. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.115, Museum Services Program)

Dated: January 16, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary of Education proposes to add a new Subpart b to Part 64 of Title 34 of the Code of Federal Regulations to read as follows:

PART 64—INSTITUTE OF MUSEUM SERVICES

Subpart A—General Operational and Project Support

Sec.

64.1 Purpose of Museum Services Program.

* * * * *

Subpart B—Museum Assessment

64.20 Purpose of program.
64.21 Eligibility.
64.22 Allowable costs.
64.23 Form of assistance; limitation on amount.
64.24 Conditions of participation.
64.25 Funding and award procedures.
64.26 Responsibility of museum.

Subpart D–F [Reserved]

Subpart G—Meetings of the National Museum Services Board

* * * * *

Authority: Secs. 201–210, Pub. L. 94–462, 90 Stat. 1975.

(20 U.S.C. 961–968); (5 U.S.C. 552b).

Subpart B—Museum Assessment

§ 64.20 Purpose of program.

The Secretary makes grants under this subpart to assist museums in carrying out institutional assessments to enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards.

§ 64.21 Eligibility.

(a) A museum as defined in § 64.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for assessment assistance in the same or a subsequent fiscal year.

§ 64.22 Allowable costs.

A museum may use a grant under this subpart for expenses of institutional assessment such as registration fees; surveyor honariums; travel and other expense of a surveyor; and technical assistance materials.

§ 64.23 Form of assistance; limitation on amount.

(a) The Secretary makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed $600.00.

(c) The aggregate amount of the grants under this subpart may not exceed $200,000 for a fiscal year.

§ 64.24 Conditions of participation.

The Secretary considers an application (on a form supplied by IMS) by a museum for a grant under this subpart for assessment assistance only if:

(a) The museum applies for assessment to an appropriate professional organization as defined in paragraph (c) and

(b) That organization notifies IMS that the application for assessment is complete and the museum is eligible for assessment.

(c) An appropriate professional organization for purposes of this subpart means (1) the American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and so designated by notice published in the **Federal Register.**

§ 64.25 Funding and award procedures.

(a) The Secretary approves applications meeting the requirements of this subpart on a first-come, first-served basis, in the order in which it is determined that such requirements have been met, until a date in the fiscal year to be established by publication in the **Federal Register.**

(b) There are no selection criteria.

(c) Section 64.16 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) The following sections of the Education Department General Administrative Regulations, 34 CFR Part 75, relating to selection criteria and grantmaking procedures, do not apply to the museum assessment program:

(1) Selection criteria, §§ 75.200–75.222; and

(2) Grantmaking procedures, §§ 75.230–75.234.

§ 64.26 Responsibility of museum.

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 64.13(h) (a criterion for evaluation of general operational support applications) applies to the use of funds under this subpart.

[FR Doc. 81-2235 Filed 1-21-81; 8:45 am]
BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 52

[A-6-FRL 1732-5]

Approval and Promulgation of State Implementation Plans; Louisiana Submission of Volatile Organic Compound (VOC) Regulations for Set II Control Technique Guideline Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes approval and/or conditional approval of revisions to the Louisiana State Implementation Plan (SIP) which were submitted by the Governor on December 10, 1979 and September 12, 1980. Specifically, the State has revised Regulations 4.0 and 22.0 of the Louisiana Air Control Commission Regulations to include new definitions and legally enforceable regulations for several of the source categories addressed in the EPA Control Technique Guideline (CTG) documents which were issued between January 1978 and January 1979 (Set II CTGs). These revisions were submitted in response to the Clean Air Act Amendments of 1977. The Administrator's memorandum of February 24, 1978 (43 FR 21673, May 19, 1978), and the General Premable for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas (44 FR 20372, April 4, 1979) discussed the minimum requirements for the stationary source portion of an approvable ozone SIP revision.

DATES: Interested persons are invited to submit comments on this proposed action on or before March 23, 1981.

ADDRESSES: Written comments should be submitted to the address below: Evironmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following locations:

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

State Land and Natural Resources Bldg., Office of Environmental Affairs, Air Quality Division, 625 N. 4th St., 6th Floor, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donna M. Ascenzi, Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270 (214) 767-1518.

SUPPLEMENTARY INFORMATION:

Introduction

Provisions of the Clean Air Act enacted in 1977 (the Act) required States to revise their State Implementation Plans (SIPs) for areas that had not attained the National Ambient Air Quality Standards (NAAQS). Each State was to submit a SIP revision by January 1, 1979, providing for the attainment of the primary NAAQS as expeditiously as practicable, but no later than the end of 1982 (or the end of 1987 for areas with approved extensions which have particularly difficult ozone or carbon monoxide problems).

The requirements for an approvable SIP were set out in Section 110 and Part D of the Act. The Administrator's memorandum of February 24, 1978, published in the **Federal Register** at 43 FR 21673 (May 19, 1978), summarized the elements that an approved SIP must contain in order to meet the requirements of Part D. EPA also published at 44 FR 20372 (April 4, 1979), a General Preamble for proposed rulemaking on approval of SIP revisions for nonattainment areas, summarizing the major considerations guiding EPA's evaluation of nonattainment area plan revisions. EPA published the General Preamble in order to assist the public in commenting on the approvability of the State SIP revisions. See, also, supplements to the General Preamble published at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

For areas not attaining the ozone NAAQS, the Administrator's memorandum and the General Preamble stated that, at a minimum, the stationary source portion of an approvable ozone SIP revision must include legally enforceable regulations that reflect the application of reasonably available control technology (RACT) to those volatile organic compound (VOC) sources for which EPA had published a control technique guideline (CTG) by January 1978, and provide for adoption and submittal of additional legally enforceable RACT regulations on an annual basis beginning January 1980 for VOC sources covered by CTGs that have been published by January of the preceding year. RACT requirements for sources covered by the CTGs issued between January 1978 and January 1979 (Set II CTGs) were to be adopted and submitted to EPA by January of 1980. However, on November 25, 1980, EPA revised the deadline for submission of the RACT regulations for Set II CTG sources when it became apparent that the regulatory adoption process was going to take longer than originally anticipated 45 FR 78121. EPA notified States that plan revisions setting forth RACT regulations for the following Set II CTG sources were due by January 1, 1981.

Factory Surface Coating of Flatwood Paneling
Petroleum Refinery Fugitive Emissions (Leaks)
Pharmaceutical Manufacture
Rubber Tire Manufacture
Surface Coating of Miscellaneous Metal Parts and Products
Graphic Arts (Printing)
Dry Cleaning, Perchloroethylene
Gasoline Tank Trunks, Leak Prevention
Petroleum Liquid Storage, Floating Roof Tanks

On February 14, 1980, EPA issued final conditional approval to the revisions to the Louisiana SIP which were submitted in response to the requirements of Part D of the Act. These revisions included legally enforceable regulations that reflected the application of RACT to those VOC sources for which EPA had published a CTG by January 1978 (Set I CTGs). In the regulatory portion of that notice, under the "Approved Status" section, EPA stated that continued satisfaction of the requirements of Part D for the ozone portion of the SIP was contingent on the adoption and submittal of future VOC RACT regulations.

On December 10, 1979 and September 12, 1980, the Governor submitted, among other things, revisions to Regulation 22.0 of the Louisiana Air Control Commission (LACC) Regulations which consisted of legally enforceable regulations for the following Set II CTG source categories; perchloroethylene dry cleaning, graphic arts systems, pharmaceutical manufacture, gasoline tank trucks, surface coating of miscellaneous metal parts and products, flatwood paneling, and petroleum

refinery leaks. In addition, the Governor's submittal of December 10, 1979 contained certification that there were no major stationary sources in the State which manufactured pneumatic rubber tires. Also, this submission contained revisions to Regulation 4.0 (i.e., the addition of 4.99 through 4.116), which consisted of new definitions pertaining to these source categories. On September 12, 1980, the Governor submitted revisions to Regulation 22.0 which included a legally enforceable regulation for petroleum liquid storage in floating roof tanks, and a revision to Section 22.20.2 which clarified the exemption allowed under graphic arts. EPA has reviewed the State's submittal and developed an evaluation report [1] which discusses the technical aspects of the revisions in detail. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other addresses listed above.

The July 2, 1979 supplement to the General Preamble of April 4, 1979, outlined, among other things, the criteria for conditional approval. EPA proposes to conditionally approve these revisions where there are minor deficiencies and the State has provided assurances that it will submit corrections by a specific deadline. The notice solicits comments on what items should be conditionally approved, and it solicits comments on the deadlines where specified in this notice. A conditional approval will mean that the restrictions on new major source construction will not apply unless the State fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

It should be noted that only those revisions to Regulation 22.0, pertaining to control requirements for the Set II CTG source categories, are dealt with in this notice.

Revisions to Regulation 22.0

As previously noted, the State has revised Regulation 22.0 to include legally enforceable regulations which address the application of RACT for the Set II CTG source categories discussed above.

EPA has reviewed the revisions to Regulation 22.0 and found several deficiencies in the State's approach to the control of VOC emissions from these source categories. The CTGs provide information on available air pollution control techniques and contain recommendations of what EPA calls the "presumptive norm" for RACT. Based on the information in the CTGs, EPA believes that the submitted regulations represent RACT, except as noted below. On the points noted below, the State regulations are not supported by the information in the CTGs, and the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the CTGs. The specific deficiencies are outlined below.

1. Section 22.9.2 which pertains to the control of VOC emissions from surface coating operations for miscellaneous metal parts and products, and flatwood paneling must be revised to include the appropriate test procedures for determining compliance with the requirements for add-on controls.

2. The exemptions specified under Subsection 22.19.2 (a) and (b) must be revised to require that the dry cleaning facilities described therein, are exempt only from the add-on control requirements but still subject to the operational requirements specified in the regulation.

3. Section 22.20.3, which pertains to the control of VOC emissions from graphic arts systems, must be revised to include the appropriate test for determining compliance with the requirements for add-on controls.

4. Subsection 22.21.2(e), which pertains to the control of VOC emissions from petroleum refinery leaks, must be revised to require that pressure relief valves be monitored within 24 hours after being vented to the atmosphere.

5. Section 22.23, which pertains to the control of VOC emissions from pharmaceutical manufacturing facilities, must be revised to include the appropriate test methods.

EPA proposes to conditionally approve the revisions to §§ 22.9.2, 22.19, 22.20, 22.21, and 22.23 of Regulation 22.0 on the following conditions: (1) the regulation is revised in accordance with the requirements discussed above within 90 days from the publication of this notice and (2) the State submit the revised portions of the regulation within 120 days from the publication of this notice. EPA also proposes to approve §§ 22.3, 22.22, and 22.9.3(b) which pertain to the control of VOC emissions from the storage of VOCs, gasline tank trucks and vapor collection systems, and test methods for low solvent coatings respectively. In addition, EPA proposes to approve the revisions to Regulation 4.0 (i.e. the addition of 4.99 through 4.116).

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements. Moreover, due to the nature of the Federal-State relationship, Federal inquiry into the economic reasonableness of the State actions would serve no practical purpose and could well be improper.

In addition, EPA proposed to approve the revisions to Regulation 4.0, (i.e. the addition of 4.99 through 4.116).

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. 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.

This notice of proposed rulemaking is issued under the authority of Sections 110(a) and 42 U.S.C. 7410(a) and 7501.

Date: December 22, 1980.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 81-2193 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

[1] EPA Review of Louisiana's State Implementation Plan Revisions for the Set II CTG Source Categories, November 1980.

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40 CFR Part 52

[A-3-FRL 1730-8]

State of Pennsylvania; Proposed Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: A proposed revision to the Pennsylvania State Implementation Plan (SIP) for the attainment of the ozone standard in the Scranton/Wilkes-Barre Metropolitan Region (Luzerne and Lackawanna Counties) was submitted by Governor Thornburgh to EPA, Region III, on May 29, 1980, and subsequently revised and resubmitted by Clifford Jones, Secretary of the Pennsylvania Department of Environmental Resources (DER) on September 19, 1980. The proposed revision: (a) demonstrates that the National Ambient Air Quality Standard for ozone can be achieved in the Scranton/Wilkes-Barre area prior to December 31, 1982, (b) deletes Pennsylvania's previous request for an extension of time beyond December 31, 1982 to attain the ozone standard, and (c) requests deletion of the portion of the 1979 SIP pertaining to implementation of an automobile emissions inspection and maintenance (I/M) program in the Scranton/Wilkes-Barre area. EPA is preposing this SIP revision concurrent with Pennsylvania's proposal of this revision (see the discussion in the supplementary information section of

this notice for a further description of this concurrent proposal).

DATE: Comments must be submitted on or before February 21, 1981.

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

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Tenth Floor, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, Attn: Henry Alexander

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M St. SW (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before 60 days of publication of this notice will be considered and should be directed to: Mr. Glenn Hanson, Chief, PA, DE, WVA Section (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: AH301PA.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Shoener (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, Tel. No. 215/597–8179.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act) as amended in 1977 requires that all areas that are nonattainment areas for the National Ambient Air Quality Standard (NAAQS) for ozone (O_3) demonstrate attainment of that NAAQS by 1982. If a State cannot demonstrate attainment of the O_3 NAAQS by 1982 the State may request up to an additional five-year period (until 1987) extension to attain the O_3 NAAQS. However, if an extension is requested, Section 172 of the Act requires, among other things, that the State must "establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program." Implementation of this program is required no later than December 31, 1982, under Section 172 of the Act.

Pennsylvania's 1979 SIP, as required under Part D of the Act, projected the need for extension of the attainment date. The 1979 SIP was approved by EPA on May 20, 1980, 45 FR 33607 (1980). In the 1979 SIP submittal, Pennsylvania used 1976 as the base year and developed a non-methane hydrocarbon (VOC) emissions inventory for 1976. Pennsylvania then projected VOC emissions reductions for 1982 and estimated that there would be a 33.6% reduction in VOC emissions between 1976 and 1982. The 1979 SIP also used ambient ozone data from 1975 to 1977 which showed that a 36.2% reduction in VOC emissions was needed to attain the O_3 NAAQS by 1982. The projected 33.6% reduction in VOC emissions fell short of the needed 36.2% reduction and, therefore, the O_3 NAAQS, according to this analysis would not be attained by 1982 and an extension beyond 1982 to attain the O_3 NAAQS was necessary. Accordingly, an I/M program was necessary.

Since the 1979 SIP was submitted, there has been a substantial improvement in the monitored O_3 ambient levels in the Scranton/Wilkes-Barre area and more recent VOC emissions inventory data has been developed which allowed DER to reevaluate the need for an extension. Based on this re-evaluation, on May 29, 1980, Governor Thornburgh submitted a proposed revision to the SIP recommending deletion of the I/M requirement for the Scranton/Wilkes-Barre area. The DER subsequently revised this SIP revision and resubmitted it on September 19, 1980. The remainder of this document will review the Commonwealth's re-evaluation of the need for an extension.

Analysis of ozone data: As required under EPA guidelines, the most recent complete three years of ambient O_3 air quality data was evaluated. Data came from the Commonwealth of Pennsylvania Ambient Monitoring Stations in the Scranton and Wilkes-Barre areas for the years 1977, 1978 and 1979.

The Scranton and Wilkes-Barre ambient O_3 air quality was analyzed using the Larsen statistical method referenced in the EPA guideline document "Guideline for the Interpretation of Ozone Air Quality Standards" (EPA 45015–79–003). This method calculates the O_3 design value by ranking observed values using a frequency distribution. This procedure calculated an O_3 design value of 0.171 ppm.

Inventory: In the submittal the base year VOC emissions inventory has been updated to 1979 to reflect more recent data on the stationary source and off-highway gasoline engine categories and to incorporate the VOC emission reductions which have occurred from 1976 to 1979. The projected 1982 VOC emission inventory has also been updated to reflect these refinements. Using the updated VOC emissions inventories it is estimated there was 37,403 tons of VOC emissions in the Scranton/Wilkes-Barre area in 1979 and it is projected there will be 25,806 tons of VOC emissions in 1982; a 31.0% reduction from 1979 levels.

Modeling: The Commonwealth used the linear rollback model to forecast O_3 concentrations by 1982. The results of the analysis show that, with a design value of 0.171 ppm, the model requires a reduction of 29.8%. As discussed above under inventories, the region will achieve a reduction of 31.0% (of the 1979 base year inventory). Thus, based upon this analysis the Scranton/Wilkes-Barre area is projected to attain the O_3 NAAQS by 1982.

Conclusion: EPA has made a thorough review of the State's submissions. The data from the monitors in Scranton/Wilkes-Barre and the modeling data have been determined to be vaild and in accordance with EPA guidelines. EPA proposes to approve this revision of the Pennsylvania SIP because the Commonwealth of Pennsylvania has demonstrated that the Scranton/Wilkes-Barre area can achieve the O_3 NAAQS by 1982 and therefore, will not need an extension of the attainment date. Accordingly, Pennsylvania will not need to implement an automobile emissions I/M program in the Scranton/Wilkes-Barre area at this time. However, if at some time in the future O_3 ambient air quality levels increase in the Scranton/Wilkes-Barre area or projected VOC emission reductions, as calculated, do not occur, it may be demonstrated that the O_3 NAAQS can not be achieved by 1982. In that case extension of the attainment date would be required, necessitating the implementation of an I/M program.

In order to expeditiously process this proposed SIP revision, EPA will hold a public comment period concurrently with DER. DER notified the public of this proposed SIP revision by placing ads in newspapers in the Scranton/Wilkes-Barre area on December 20, 1980. DER will hold a 60-day public comment period (closing on February 20, 1981) with a public hearing on January 21, 1981 at DER's office in Wilkes-Barre, Pennsylvania. EPA's public comment periods begins today and will close on February 21, 1981. The public is invited to submit comments to the EPA to the address stated above on whether the Commonwealth's SIP should be approved. At the close of its public comment period DER will submit the revision in final form. If the final SIP revision differs in any substantive manner from this proposed revision EPA

will repropose the revision and open another public comment period.

The Administrator's final decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendment meets the requirements of Section 110(a)(2) and 172 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

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. It imposes no new requirements. In fact, this action, if promulgated would remove several regulatory requirements.

Note.—Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the order or whether it may follow other specialized development procedures. 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.

(42 U.S.C. 7401–642)

Dated: January 2, 1981.

Thomas Voltaggio,

Acting Regional Administrator.

[FR Doc. 81–2190 Filed 1–21–81; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 52

[A–7–FRL 1724–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Missouri has submitted revisions to its State Implementation Plan (SIP) involving start-up, shutdown, and malfunction conditions. These changes to the Missouri regulations provide the owner or operator of an installation the opportunity to sumbit data regarding conditions resulting in excess emissions of air pollutants. The data will be used by the state to determine whether the excess emissions were due to start-up, shutdown or malfunction conditions. Enforcement action can then be taken at the state's discretion.

This notice advises the public that EPA proposes to approve the Missouri submission. Interested persons are invited to submit comments on this proposal.

DATES: Comment must be received before March 23, 1981.

ADDRESSES: Comments should be sent to Mr. Wayne G. Leidwanger, Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the state submission and the EPA prepared rationale document are available at the above address and at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816–374–3791 (FTS 758–3791)

SUPPLEMENTARY INFORMATION: On September 5, 1980, the state of Missouri submitted Rule 10 CSR 10–6.050, Start-up, Shutdown, and Malfunction Conditions, as a SIP revision. Included with the new rule were revisions to Rule 10 CSR 10–6.020 Definitions and deletion of start-up, shutdown and malfunction provisions from existing regulations in Rules 10 CSR 10–2.030, 10–3.050, 10–3.060, 10–3.080, 10–4.030, 10–4.040 and 10–5.050. These latter provisions generally allowed automatic exemptions from emission limitations during periods of excess emissions due to start-up, shutdown or malfunction conditions. The new rule is more restrictive in that the source must demonstrate that the excess emissions, although constituting a violation, were due to an unavoidable malfunction. The state will determine at its discretion whether additional enforcement action is warranted based upon data submitted by the owner or operator of a source showing that the excess emissions were the consequence of a malfunction, start-up or shutdown.

EPA believes that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator is not appropriate under certain conditions. However, because the SIP must provide for attainment and maintenance of the national ambient air quality standards (NAAQS), provisions on malfunctions, start-ups and shutdowns must be narrowly drawn. Regulations which provide for automatic exemptions where a malfunction is alleged by a source will not be approved by EPA. Automatic exemptions may aggravate air quality so as to result in not providing for attainment of the NAAQS as required by the Clean Air Act.

Start-ups and shutdowns must be treated similarly. Routine phasing in and out of process equipment is part of the normal operation of a source. It is reasonable to expect that careful planning or additional control equipment will eliminate violations of emission limitations during such periods. If excess emissions should occur during routine phasing in and out of such equipment, the excess emissions cannot be considered as having resulted from an exempted upset unless the source can demonstrate that such emissions were actually caused by a sudden and unforseeable breakdown in the equipment.

The state has adopted a regulation which EPA believes is consistent with its policy regarding malfunctions, start-ups, and shutdowns. The rule provides that malfunctions are not automatically exempt nor is the routine phasing in and out of process equipment exempt from enforcement action. However, upon receipt of a notice of excess emissions, the source may provide information showing that the excess emissions were the consequence of a malfunction, start-up or shutdown. Based upon this information, the state will determine whether additional enforcement action is warranted.

Proposed Action

EPA proposes to approve Rule 10 CSR 10–6.050, Start-up, Shutdown, and Malfunction Conditions, and the revisions to Rules 10 CSR 10–6.020, 10–2.030, 10–3.050, 10–3.060, 10–3.080, 10–4.030, 10–4.040 and 10–5.050 as a revision to the State Implementation Plan.

The public is invited to submit comments on whether the Missouri submission should be approved as a revision to the SIP. The Administrator's decision to approve or disapprove will be based upon the comments received and on a determination of whether the amendments meet the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. 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.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended.

Pursuant to the provisions of 5 U.S.C. 605(b), I herby certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. Moreover, due to the nature of the federal-state relationship, federal inquiry into the economic reasonableness of the state's action would serve no practical purpose and could well be improper.

Dated: January 14, 1981.

Kathleen Camin,

Regional Administrator.

[FR Doc. 81-2196 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 1724-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: This notice proposes to revise sulfur dioxide (SO_2) emission limitations in the federally promulgated Ohio State Implementation Plan (SIP) for sources in Pike and Wayne Counties. USEPA is proposing the revisions in response to a remand by the United States Court of Appeals for the Sixth Circuit in "Northern Ohio Lung Association v. EPA." 572 F.2d 1182 (1978). The Court held that the federally promulgated plan did not include specific provisions for meeting the secondary National Ambient Air Quality Standards for sulfur dioxide. Following the remand, USEPA reviewed the secondary standard modeling analyses it had performed in developing the plan. This review established that EPA had evaluated and set emission limits to protect the secondary standard in all but four counties: Delaware, Pike, Wayne, and Gallia counties. USEPA will propose rulemaking on Gallia County in a separate Notice of Proposed Rulemaking. Further analysis indicated that the current limits protect the secondary standards in Delaware County. Accordingly, EPA is not revising the plan for Delaware County. USEPA solicits comments on the revised sulfur dioxide emission limitations for sources in Pike and Wayne Counties.

DATES: Comments on this proposed review must be received on or before February 23, 1981. Requests for a public hearing must be received no later than February 6, 1981.

ADDRESSES: Written comments and requests for a hearing should be sent to Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The docket for this revision (#5A-80-16) is on file at the above address and at Central Docket Section, U.S. Environmental Protection Agency, West Tower Lobby, Gallery 1, 401 M Street SW, Washington, D.C. 20460. The docket may be inspected and copied during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mary Gade, Assistant Regional Counsel, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, Phone: 312/886-6073.

SUPPLEMENTARY INFORMATION: Section 110(a)(1) of the Clean Air Act (Act) requires each State to adopt and submit to USEPA a plan which provides for attainment and maintenance of the primary and secondary national ambient air quality standards. The plan for achieving the secondary standard may be submitted as part of a State's plan for achieving the primary standard or as a separate plan. The primary standard plan must provide for attainment no later than three years from plan approval. Attainment of the secondary standard must be within a reasonable time.

Under Section 110(c) of the Act, USEPA promulgated its substitute sulfur dioxide plan for the State of Ohio on August 27, 1976 and set emission limitations for Ohio sources to attain and maintain the national ambient air quality standards for sulfur dioxide. See 41 FR 36324, 41 FR 52455, and 42 FR 27588. As explained in USEPA's Final Technical Support Document, the federal plan was designed to insure attainment of *both* the primary and secondary sulfur dioxide standards within three years of plan approval.

On February 9, 1978, the U.S. Court of Appeals for the Sixth Circuit remanded to USEPA for its further consideration two aspects of the plan. "Northern Ohio Lung Association v. EPA", 572 F.2d 1182 (6th cir. 1978). The Court held that the plan did not comply with the requirements of section 110(a)(2)(F) of the Act and did not include specific provisions for meeting the secondary ambient air quality standards for SO_2. This notice addresses the secondary standard portion of the remand.

Following the remand, USEPA reviewed the secondary standard modeling analyses it had performed in developing the sulfur dioxide plan. This review established that USEPA had evaluated and set emission limits to protect the secondary standard in all but four counties: Gallia, Delaware, Pike, and Wayne Counties. In Gallia County, USEPA had not analyzed the secondary standard for Ohio Valley Electric Company's Kyger Creek power plant and Ohio Power Company's Gavin power plant. USEPA is remodeling the Gavin and Kyger Creek power plants to evaluate the secondary standards. Once the remodeling is completed, EPA will publish the results and if necessary, will revise the emission limitations. In Delaware, Pike and Wayne Counties, USEPA had evaluated the secondary standard, but had overlooked secondary standard violations and had not set adequate emission limitations for sources in those three counties.

Upon review of an updated emissions inventory which was submitted by the Ohio EPA, USEPA found that the emissions inventory used in the original USEPA modeling for Delaware and Pike Counties was outdated. The revised inventory for Pike County consisted of only one minor change and has no effect on the regulation. However, the updated inventory for Delaware County showed two substantial changes to the original USEPA inventory. Further discussion of the inventory changes can be found in the Technical Support Document in the docket. Therefore, USEPA conducted a modeling analysis of the updated inventory with the current emission limitation for Delaware County. The results indicate that the secondary standard is being protected with the current emission limitation. Therefore, no revision to the Delaware County regulation is required.

For Wayne and Pike Counties, USEPA has corrected the emission limitations based on the original EPA modeling and proposes the following revisions to assure that the secondary standard is protected.

The CRSTER modeling analysis for Pike County shows that the highest 3 hour ground level concentration of the Portsmouth Gaseous Diffusion Plant (previously ERDA) facility is 1102 μg/m3. Using the background concentration employed in the original modeling of 25 μg/m3 it was determined that a 15.6% increase above the base year level of 2.291.9 nanogram/joule (ng/J) (5.33 lbs. SO_2/MMBTU) will protect the NAAQS. Therefore USEPA proposes to revise the emission limitation for Pike county from 3.010 ng/J (7.00 lbs. SO_2/MMBTU) to 2.648.8 ng/J (6.16 lbs. SO_2/MMBTU). The CRSTER modeling analysis for Wayne County shows the second highest 3 hour ground level concentration for the

Orrville Municipal Power Plant is 1066 μg/m3. Using a background of 77 μg/m3 it was determined that a 14.7% increase above the base year level of 2.485.4 ng/J (5.78 lbs. SO_2/MMBTU) is permitted for the Orrville Municipal Power Plant. No other changes in the Wayne County strategy are needed. Consequently, the emission limitations remain the same for the Morton Salt Company and the Packaging Corporation of America. Therefore, USEPA proposes to revise the emission limitation for the Orrville Municipal Power Plant from 3.010 ng/J (7.00 lbs. SO_2/MMBTU) to 2.850.9 ng/J (6.63 lbs. SO_2/MMBTU)

Final promulgation of this revision will follow an analysis of all comments submitted and will depend on its consistency with Section 110 of the Clean Air Act.

Note.—Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended, 42 U.S.C. 7410)

Dated: December 8, 1980.

John McGuire,

Regional Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart KK—Ohio

1. Section 52.1875 is amended by revising footnote "f" to the table in paragraph (a).

§ 52.1875 [Amended]

* * * * *

(a) * * *

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983, the utilities listed in (3) which are subject to an attainment date of June 19, 1983, and all companies in Pike County and the Orrville Municipal Power Plant in Wayne County which are subject to an attainment date of (3 years from the effective date of promulgation).

2. Section 52.1881(b)(52) and (b)(64) are revised as follows:

§ 52.1881 Control Strategy: Sulfur Oxides (sulfur dioxide)

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

* * * * *

(52) In Pike County, no owner or operator of any fossil fuel-fired steam generating unit shall cause or permit the emission of sulfur dioxide from any stack in excess of 2.648.4 ng/J (6.16 lbs. SO_2/MMBTU).

* * * * *

(64) In Wayne County.

(i) The Morton Salt Company or any subsequent owner or operator of the fossil fuel-fired steam generating units at the facility shall not cause or permit the emission of sulfure dioxide from any stack in excess of 3.010 ng/J (7.00 lbs. SO_2/MMBTU).

(ii) The Packaging Corporation of America or any subsequent owner or operator of the fossil fuel-fired steam generating units at the facility shall not cause or permit the emission of sulfur dioxide from any stack in excess of 3.010 ng/J (7.00 lbs. SO_2/MMBTU).

(iii) The Orrville Municipal Power Plant or any subsequent owner or operator of the fossil fuel-fired steam generating units at the facility shall not cause or permit the emission of sulfur dioxide from any stack in excess of 2.850.0 ng/J (6.63 lbs. SO_2/MMBTU).

* * * * *

3. Section 52.1882 is amended by adding subsection (j).

§ 52.1882 Compliance schedules.

* * * * *

(j) The Federal compliance schedule for sources in Pike County and the Orrville Municipal Power Plant in Wayne County is set forth in § 52.1882(b) except that all references to June 17, 1977 are changed to (the effective date of promulgation).

[FR Doc. 81-2197 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 81

[A-7-FRL 1724-3]

Designation of Areas for Air Quality Planning Purposes: State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: Section 107(d) of the Clean Air Act, as Amended, requires the states and EPA to determine the status of all areas in regard to the National Ambient Air Quality Standards (NAAQS). All designations are recommended by the state and approved or revised as necessary by EPA. Designation of areas as either attainment, nonattainment or unclassified was published in the **Federal Register** on March 3, 1978. On December 7, 1979, the Nebraska Environmental Control Council adopted requested changes to these designations as part of its State Implementation Plan (SIP). EPA is acting on these requests today to redesignate areas in Cass, Douglas and Sarpy Counties for total suspended particulate (TSP). Nebraska has notified the state of Iowa of requests for redesignations which are applicable to their interstate regions.

COMMENTS: Comments received on or before March 23, 1981 will be considered in EPA's final decision on redesignations.

ADDRESSES: Copies of the state submittal and EPA's evaluation document are available at the following locations:

Environmental Protection Agency, Public Information and Reference Unit, Room 2922, 401 M Street, SW, Washington, D.C. 20460

Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509

Lincoln-Lancaster County Air Pollution Control Agency, 2200 St. Mary's Avenue, Lincoln, Nebraska 68502

Permits and Inspection Division, Housing and Community Development Department, 1819 Farnam, Room 402, Omaha, Nebraska 68102

Lincoln-Lancaster County Planning Commission, 555 South Tenth Street, Lincoln, Nebraska 68508

Omaha-Council Bluffs Metropolitan Area Planning Agency, 7000 West Center Road, Omaha, Nebraska 68106

FOR FURTHER INFORMATION CONTACT: Eloise Reed at (816) 374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 required each state to prepare a list of areas which had attained the NAAQS, had failed to meet the NAAQS, or had insufficient data to make a determination for each pollutant for which there is a standard. An attainment area is one in which the measured or predicted air quality does not exceed the ambient air quality standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there is insufficient data to determine whether the area is attainment or nonattainment.

In order to designate an area as attainment, the state is required to

examine at least two years of valid air quality data. If the most current year's data show that the standards were not exceeded, the state examines the data for the previous year. If there are two consecutive years showing the standards were not exceeded, the area can be classified attainment. However, certain rural or non-urban areas can also be designated attainment if the criteria for fugitive dust are met, even if the NAAQS were exceeded.

For rural parts of a state, the EPA allows those areas which experience violations of the TSP standards which could be attributed to fugitive dust to be designated attainment, if these areas have (1) a lack of major industrial development or an absence of significant industrial particulate emissions, and (2) low urbanized population.

All designations are recommended by the state and approved or modified as necessary by EPA.

On September 25, 1980, the state of Nebraska submitted a number of redesignation requests as part of the SIP revision required by the 1977 Clean Air Act Amendments. Certain requests also seek 18-month extensions until July 1, 1980, to submit a SIP which addresses attainment of the secondary standard for TSP. EPA will propose action on these extensions in a separate **Federal Register** notice.

Redesignation requests

The state's requested changes in attainment status and EPA's proposed action are discussed for each applicable pollutant in this section.

If an area is redesignated to an attainment or unclassified status a nonattainment plan for the applicable standard is not required for that area. Areas that remain nonattainment will be required to submit nonattainment plans.

(a) *Douglas County*—The country is presently classified as nonattainment for TSP, however, the final report of a study by a consulting firm indicates the actual nonattainment areas are within a one-half mile radius of two monitoring sites in Omaha. The state is requesting that the primary TSP nonattainment area be redefined as:

(1) An area bounded on the north by Interstate 80 from 42nd Street east to the Missouri River, south to Harrison Street, west to 36th Street, north to "Q" Street, west to 42nd Street, and then north to the point of beginning.

(2) An area bounded on the north by Ames Avenue from 30th Street east to 24th Street, south to Pinkney Street, east to the western limits of Carter Lake, Iowa, south to Locust Street, east to the eastern limits of Carter Lake, Iowa to the Missouri River, in a southerly direction to Leavenworth Street, west to 20th Street, north to Dodge Street, west to the east side of Interstate 480, north along the east edge of Interstate 480 and the North Freeway to Lake Street, west to 30th Street, and then north to the point of beginning.

The state also requests that the remainder of the city of Omaha be reclassified to secondary nonatainment and that the remainder of Douglas County be reclassified as attainment. An 18-month extension is requested to submit a SIP to address the secondary TSP standard.

Two years valid data (1977 and 1978) are submitted in support of this request.

Proposed Action. EPA proposes that the current primary nonattainment TSP status for Douglas County be revised to (1) retain the primary TSP nonattainment area for the 24th and "O" Street and 11th and Nicholas sites described above, (2) remove the primary and retain TSP nonattainment designation for the remainder of Omaha, and (3) redesignate Douglas County, excluding Omaha, as attainment for TSP.

(b) *Sarpy County*—The county is currently designated as not meeting the primary TSP standard. The state requested that EPA classify Sarpy County as attainment and submitted 24 months of data (April 1977 to April-1979) in support of the request. Although there were violations of the secondary standard at the Bellevue site, the state sought to have Bellevue reclassified to attainment in accordance with EPA's Fugitive Dust Policy. EPA believes that the EPA Fugitive Dust Policy is not applicable to Bellevue because three major sources of industrial particulate emissions are located in the area. EPA further determined that the City of Bellevue should be reclassified to a secondary nonattainment area for TSP. The state has requested an 18-month extension to submit a secondary SIP for Bellevue. Monitoring data submitted justifies reclassifications of Sarpy County, excluding Bellevue, to attainment.

Proposed Action. EPA proposes that the current TSP nonattainment status for Sarpy County be revised to (1) remove the primary nonattainment designation and retain the secondary nonattainment designation for Bellevue, and (2) reclassify all of Sarpy County, excludng Bellevue, as an attainment area.

(c) *Cass County*—The county is currently designated nonattainment for the primary TSP standard. The state requests reclassification of Cass County to attainment for TSP, with the exception of the cities of Weeping Water and Louisville which they believe should remain primary TSP nonattainment areas. Two years of data (1977 and 1978) for the monitoring sites in these cities are submitted in support of this request. An 18-month extension is requested for submitting the TSP secondary SIP for Louisville and Weeping Water.

The request for redesignation of the remainder of Cass County to attainment is inconsistent with EPA policy because it is not based on either monitoring or modeling data. Because of the lack of monitoring data outside of the municipal boundaries of Louisville and Weeping Water, EPA believes it to be advisable to redesignate Cass County, excluding the municipalities of Louisville and Weeping Water, as unclassified for TSP until such time as sufficient monitoring or modeling data are available and submitted by the state to substantiate a redesignation.

Proposed Action. EPA proposes that the current primary nonattainment classification for Cass County be revised to (1) redesignate Cass County, exluding the municipal boundaries of Weeping Water and Louisville, as unclassified for TSP, and (2) retain the primary TSP nonattainment designation for the area within the municipal boundaries of Weeping Water and Louisville.

Note.—Under Executive Order 12044, the 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 lables these other regulations "specialized." EPA has determined that this is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 107 of the Clean Air Act Amendments of 1977.

Pursuant to the provision of 5 U.S.C. 605(b) I hereby certify that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only changes area air quality designations. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

Dated: January 14, 1981.

Kathleen Camin,

Regional Administrator.

[FR Doc. 81-2195 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 763

[OPTS 61004; FRL 1594-5]

Friable Asbestos-Containing Materials in Schools; Proposed Identification and Notification

Correction

In FR Doc. 80-28624, appearing on page 61966 in the issue of Wednesday, September 17, 1980, make the following corrections:

1. In § 763.2, on page 61987, the first column, seventh line, the word "insures" should have read "inures".

2. In the same column, in the seventh line of § 763.3 the word "intered" should have read "entered".

3. On page 61987, in the second column, the heading for § 763.6 should have read:

§ 763.6 Warnings and notifications.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Parts 432, 433

Cost Allocation Plans for Public Assistance Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The proposed rule would revise existing regulations concerning the preparation, submission and approval of State agency cost allocation plans used in computing claims for Federal Financial Participation under Title XIX of the Social Security Act. It would also reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13262). The current rule has been rewritten so that it is clearer, easier to understand and more specific.

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

ADDRESS: Interested parties are invited to submit written data, views, or comments regarding the proposed regulations to the Director, Office of Grant and Contract Financial Management, Office of Grants and Procurement, Office of the Assistant Secretary for Management and Budget, U.S. Department of Health and Human Services, Room 544G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W. Washington, D.C. 20201. Comments will be available for public inspection at the above address Monday through Friday from 9:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Henry G. Kirschenmann (202) 245-8771.

SUPPLEMENTARY INFORMATION: By concurrent Notice published elsewhere in this issue of the **Federal Register**, this Department is revising the current regulations on the preparation, submission and approval of the State cost allocation plans for public assistance programs to reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13262). The proposed regulation, Subpart E of 45 CFR Part 95, consolidates on a Department-wide basis all cost allocation requirements for public assistance agencies into a single regulation. 42 CFR 432.60(c) is being deleted because the major provisions of this section are included in the new Subpart E.

Dated: December 15, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 432—STATE PERSONNEL ADMINISTRATION

§ 432.60 [Amended]

A. 42 CFR 432.60(c) is removed.

PART 433—STATE FISCAL ADMINISTRATION

B. 42 CFR 433.34 is revised to read as follows:

§ 433.34 Cost allocation.

A State plan under Title XIX of the Social Security Act must provide that the single or appropriate Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

[FR Doc. 81-1777 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-12-M

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45 CFR Parts 95, 205, 232, 302, 304, 1395

Cost Allocation Plans for Public Assistance Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rule Making.

SUMMARY: This proposed rule would revise existing regulations concerning the preparation, submission and approval of State agency cost allocation plans used in computing claims for Federal Financial Participation under public assistance programs. It would also reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13262). The current rule has been rewritten so that it is clearer, easier to understand and more specific.

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

ADDRESS: Interested parties are invited to submit written data, views or comments regarding the proposed regulations to the Director, Office of Grant and Contract Financial Management, Office of Grants and Procurement, Office of the Assistant Secretary for Management and Budget, U.S. Department of Health and Human Services, Room 544G, Hubert H. Humphrey Building, 200 Independence Avenue, SW. Washington, D.C. 20201. Comments will be available for public inspection at the above address Monday through Friday from 9:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Henry G. Kirschenmann (202) 245-8771.

SUPPLEMENTARY INFORMATION: This proposed rule would revise current regulations on the preparation, submission and approval of the State cost allocation plans used in computing claims for Federal Financial Participation under Title I, IV-A, IV-B, IV-C, IV-D, IV-E, X, XIV, XVI (AABD), XIX, and XX of the Social Security Act. It would also reflect the transfer of responsibility for review and approval of the plans to the Department's Regional Divisions of Cost Allocation. This responsibility was previously assigned to the Social and Rehabilitation Service which was abolished by Secretarial Order published on March 9, 1977 (42 FR 13262). The current rule has been rewritten so that it is clearer, easier to understand and more specific. For example, the proposed rule includes

definitions, the requirement that an organization chart be submitted with each cost allocation plan, a description of the activities performed by each organizational unit and, where not self-explanatory, an explanation of the benefit to Federal programs.

The proposed rules improve upon current rules by making several changes. First the proposal contains one set of rules for cost allocation plans to all programs administered by a State public assistance agency. Thus the rule consolidates the cost allocation regulations currently found in 45 CFR 205.150 (applicable to programs supervised by the Office of Family Assistance); 45 CFR 302.16 (applicable to programs supervised by the Office of Child Support Enforcement); 45 CFR 1395.2 (applicable to programs supervised by the Office of Human Development); and in 42 CFR 433.34 (applicable to programs supervised by the Health Care Financing Administration). The proposed rule also applies to awards made under the Refugee Act of 1980.

The proposed rule also clarifies the requirements for the preparation and amendment of cost allocation plans. The rule describes when a State must submit a plan or plan amendment and when a plan or plan amendment becomes effective. Under current regulations, State agencies must submit new cost allocation plans at least annually. Under the proposed regulation, State agencies may submit new plans or plan amendments, or may simply certify annually that the existing plan is still accurate and should remain in effect. These changes should reduce the number of disputes that have arisen in the past concerning when a plan or plan amendment should have been submitted.

The proposed rules also revise the procedure by which a State agency can appeal the disapproval of a cost allocation plan or plan amendment or the disallowance of administrative costs. Previously, the State agency was subject to the appeal procedure of each funding agency and to 45 CFR Part 75 where common administrative costs involving more than one program are involved. The proposed rule provides that the appeal process set out in 45 CFR Part 75 will be the single avenue for appealing the disapproval of a cost allocation plan or plan amendment or the disapproval of administrative costs claimed under a cost allocation plan. The Department has found use of more than one appeals process to be confusing and inefficient, and thinks that establishment of a single appellate procedure will benefit all involved.

In describing the appeals process, the proposed rule refers to the decision of the Director, Division of Cost Allocation (DCA). This Office is part of the Regional Administrative Support Center which was formally referred to as the Assistant Regional Director for Financial Management (Regional Comptroller) in 45 CFR Part 75. In addition, the Title of the Regional Director has been changed to the Principal Regional Official. The proposed rule uses these new titles and Part 75 will be amended at a later date to reflect these changes.

Finally, the proposed rules contain several technical changes. The current requirements at 45 CFR 205.150, 302.16 and 1395.2 are being replaced with a cross-reference to Subpart E of 45 CFR Part 95. 45 CFR 232.30(a) is being deleted because the major provisions of this section are included in the new Subpart E. 42 CFR 433.34 is being amended via a concurrent notice published elsewhere in this issue of the **Federal Register.**

Dated: December 15, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

A. 45 CFR 205.150 is revised to read as follows:

§ 205.150 Cost allocation.

A State plan under Title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

PART 1395—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

B. 45 CFR 1395.2 is revised to read as follows:

§ 1395.2 Cost allocation.

A State plan under Title XX of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that Subpart are not met.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

§ 232.30 [Amended]

C. 45 CFR 232.30 paragraph (a) is removed, and the (b) preceding the second paragraph is also removed.

PART 302—STATE PLAN REQUIREMENTS

§ 302.16 [Redesignated as § 304.15 and Revised]

D. 45 CFR 302.16 is redesignated as § 304.15 and is revised to read as follows:

A State Agency in support of its claims under Title IV-D of the Social Security Act must have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR Part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE

E. 45 CFR Part 95 is amended by adding a new Subpart E to read as follows:

Subpart A-D—[Reserved]

Subpart E—Cost Allocation Plans

Sec.

95.501 Purpose.
95.503 Scope.
95.505 Definitions.
95.507 Plan requirements.
95.509 Cost allocation plan amendments and certifications.
95.511 Approval of the cost allocation plan or plan amendment.
95.513 Disapproval of the cost allocation plan or plan amendment.
95.515 Effective date of a cost allocation plan or plan amendment.
95.517 Claims for Federal financial participation.
95.519 Cost disallowance.

* * * * *

Authority: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

Subpart A-D—[Reserved]

Subpart E—Cost Allocation Plans

§ 95.501 Purpose.

This subpart establishes requirements for:

(a) Preparation, submission, and approval of State agency cost allocation plans for public assistance programs; and

(b) Adherence to approved cost allocation plans in computing claims for Federal financial participation.

§ 95.503 Scope.

This subpart applies to all administrative costs applicable to awards made under Title I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX, and XX of the Social Security Act, and under the Refugee Act of 1980, Pub. L. No. 96–212, Title IV, Chapter 2 of the Immigration and Nationality Act.

§ 95.505 Definitions.

As used in this subpart:

"Administrative costs" include all costs incurred by the State agency except expenditures for financial assistance, medical vendor payments, and payments to third party providers in compensation for services and goods provided directly to program recipients such as day care services, family planning services or household items as provided for under the approved State program plan.

"Cost allocation plan" means a narrative description of the procedures that the State agency will use in identifying, measuring, and allocating all administrative costs incurred in support of all programs administered or supervised by the State agency.

"FFP" or "Federal financial participation" means the Federal Government's share of expenditures made by a State agency under any of the programs cited in § 95.503.

"Principal operating components" (POCs) means the HHS organizational components responsible for administering public assistance programs. These components are the Social Security Administration, Office of Human Development Services, Office of Child Support Enforcement, Health Care Financing Administration, and Office of Refugee Resettlement.

"Public assistance programs" means the programs cited in § 95.503.

"State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, and Guam.

"State agency" means the State agency administering or supervising the administration of the State plan for any program cited in § 95.503.

"State Plan" means a comprehensive written commitment by the State agency to administer or supervise the administration of any of the public assistance programs cited in § 95.503 in accordance with all Federal requirements.

§ 95.507 Cost allocation plan requirements.

(a) A State agency shall submit its cost allocation plan to the Director, Division of Cost Allocation (DCA), in the appropriate HHS Regional Office. The plan shall:

(1) Describe the procedures used to identify, measure, and allocate administrative costs to each of the programs operated by the State agency;

(2) Conform to the accounting principles and standards prescribed in Federal Management Circular 74–4, and other pertinent Department regulations and instructions;

(3) Be compatible with the State plan for public Assistance Programs described in 45 CFR Chapters II, III and XIII, and 42 CFR Chapter IV Subchapter C; and

(4) Contain sufficient information in such detail to permit the Director, Division of Cost Allocation, after consulting with the POCs, to make an informed judgement on the correctness and fairness of the State's procedures for identifying, measuring, and allocating administrative costs to each of the programs operated by the State agency.

(b) The cost allocation plan shall contain the following information:

(1) An organizational chart showing the placement of each unit whose costs are charged to the programs operated by the State agency.

(2) A listing of all Federal and all non-Federal programs performed, administered, or serviced by these organizational units.

(3) A description of the activities performed by each organizational unit and, where not self-explanatory an explanation of the benefits provided to Federal programs.

(4) The procedures used to identify, measure, and allocate administrative costs to each benefiting program and activity (including activities subject to different rates of FFP).

(5) The estimated cost impact resulting from the proposed changes to a previously approved plan. These estimated costs are required solely to permit an evaluation of the procedures used for identifying, measuring, and allocating costs. Therefore, approval of the cost allocation plan shall not constitute approval of these estimated costs for use in calculating claims for FFP;

(6) A statement stipulating that wherever costs are claimed for services provided by a governmental agency outside the State agency, that they will be supported by a written agreement that includes, at a minimum (i) the specific service(s) being purchased, (ii) the basis upon which the billing will be made by the provider agency (e.g. time reports, number of homes inspected, etc.) and (iii) a stipulation that the billing will be based on the actual cost incurred. This statement would not be required if the costs involved are specifically addressed in a State-wide cost allocation plan, local-wide cost allocation plan, or an umbrella/department cost allocation plan.

(7) A certification by a duly authorized official of the State agency stating:

(i) That the information contained in the proposed cost allocation plan was prepared in conformance with Federal Management Circular 74–4.

(ii) That the costs are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.

(iii) That an adequate accounting and statistical system exists to support claims that will be made under the cost allocation plan; and

(iv) That the information provided in support of the proposed cost allocation plan is accurate.

(8) Other information as is necessary to establish the validity of the procedures used to identify, measure, and allocate costs to all programs being operated by the State agency.

§ 95.509 Cost allocation plan amendments and certifications.

(a) The State agency shall promptly amend its cost allocation plan and submit the amended plan to the Director, DCA if any of the following events occur:

(1) The procedures shown in the existing cost allocation plan become outdated because of organizational changes, changes in Federal law or regulations, or significant changes in program levels affecting the validity of the approved cost allocation procedures.

(2) A material defect is discovered in the cost allocation plan by the Director, DCA or the State.

(3) The State plan for public assistance programs is amended so as to affect the allocation of costs.

(4) Other changes occur which make the allocation basis or procedures in the approved cost allocation plan invalid.

(b) If a State agency has not submitted a plan or plan amendment during a given State fiscal year, the State agency shall submit an annual statement to the Director, DCA certifying that its approved cost allocation plan is not outdated. This statement shall be submitted within 60 days after the end of that fiscal year.

§ 95.511 Approval of the cost allocation plan or plan amendment.

(a) The Director, DCA, after consulting with the affected POCs, shall notify the State agency in writing of his/

her findings. This notification will be made within 60 days after receipt of the proposed plan or amendment and shall either: (1) Advise the State agency that the plan or plan amendment is approved or disapproved, (2) advise the State agency of the changes required to make the plan or amendment acceptable, or (3) request the State agency to provide additional information needed to evaluate the proposed plan or amendment. If the DCA cannot make a determination within the 60-day period, it shall so advise the State agency.

(b) For purpose of this subpart, State agency cost allocation plans which have been approved by the Regional Commissioner of the Social and Rehabilitation Services or the Director, DCA prior to the effective date of this regulation are considered approved until such time as a State agency is required by § 95.509(a) to submit a new plan or plan amendment.

§ 95.513 Disapproval of the cost allocation plan or plan amendment.

(a) The Director, DCA shall notify a State agency in writing of the disapproval of its cost allocation plan or plan amendment. The notification will set forth the reasons for the determination and the basic changes required in sufficient detail to enable the State agency to respond and will inform the State agency of its opportunity for reconsideration of the determination under 45 CFR Part 75.

(b) If the State agency in accordance with 45 CFR Part 75, wishes to request a reconsideration of the DCA's determination, the application for reconsideration must be postmarked no later than 30 days after the postmark date of the DCA's determination letter.

§ 95.515 Effective date of a cost allocation plan amendment.

As a general rule, the effective date of a cost allocation plan amendment shall be the first day of the calendar quarter following the date of the event that required the amendment (See § 95.509). However, the effective date of the amendment may be earlier or later under the following conditions:

(a) An earlier date is needed to avoid a significant inequity to either the State or the Federal Government.

(b) The information provided by the State Agency which was used to approve a previous plan or plan amendment is later found to be materially incomplete or inaccurate, or the previously approved plan is later found to violate a Federal statute. In either situation, the effective date of any required modification to the plan will be the same as the effective date of the plan or plan amendment that contained the defect.

(c) It is impractical for the State to implement the amendment on the first day of the next calendar quarter. In these instances, a later date may be established by agreement between the State and the DCA.

§ 95.517 Claims for Federal financial participation.

(a) A State must claim FFP for administrative costs associated with a program only in accordance with its approved cost allocation plan. However, if a State agency has submitted a plan or plan amendment, it may, at its option claim FFP based on the proposed plan or plan amendment, unless otherwise advised by the DCA. However, where a State has claimed costs based on a proposed plan or plan amendment the State, if necessary, shall retroactively adjust its claims in accordance with the plan or amendment as subsequently approved by the Director, DCA. The State agency may also continue to claim FFP under its existing approved cost allocation plan for all costs not affected by the proposed amendment.

§ 95.519 Cost disallowance.

If costs under a Public Assistance program are not claimed in accordance with the approved cost allocation plan (except as otherwise provided in § 95.517), or if the State agency failed to submit an amended cost allocation plan as required by § 95.509, the costs improperly claimed will be disallowed.

(a)(1) If the issue affects the program(s) of only one POC and does not affect the programs of other POCs or Federal departments, that POC will determine the amount of the disallowance and will also inform the State agency of its opportunity for reconsideration of the determination in accordance with the POC's procedures. Prior to issuing the notification, however, the POC shall consult with the DCA to ensure that the issue does not affect the programs of other POCs or Federal departments.

(2) If the State agency wishes to request a reconsideration of the POC's determination, it must submit the request in accordance with the POC's procedures.

(b)(1) If the issue affects the programs of more than one POC, Federal department or the State, the Director, DCA, after consulting with the POCs, shall determine the amount inappropriately claimed under each program. The Director, DCA will notify the State agency of this determination, of the dollar affect of the determination on the claims made under each program, and will inform the State agency of its opportunity for reconsideration of the determination under 45 CFR Part 75. The State will subsequently be notified by the appropriate POC as to the disposition of the funds in question.

(2) If the State agency, in accordance with 45 CFR Part 75, wishes to request a reconsideration of the DCA's determination, the application for reconsideration must be postmarked no later than 30 days after the postmark date of the DCA's determination letter.

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[FR Doc. 81-1778 Filed 1-21-81; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 20418; RM-2346; RM-2727]

Petition for Rulemaking To Amend Television Table of Assignments To Add New VHF Stations in the Top 100 Markets and To Insure That the New Stations Maximize Diversity of Ownership, Control and Programming; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration; Extension of comment and reply comment period.

SUMMARY: This action extends the time for filing statements in support of, or in opposition to, petitions for reconsideration that were filed in the matter of Petition for Rulemaking to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming ("VHF Drop-In" proceeding), Docket No. 20418. This extension is in respone to requests from the Knoxville Broadcasting Corporation and WIIC-TV Corporation.

DATES: Statements in support of, or in opposition to, the petitions for reconsideration must be filed on or before January 16, 1981, and responses to those statements must be filed on or before January 26, 1981.

ADDRESS: Statements, oppositions and replies should be filed with, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger D. Holberg, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of petition for rulemaking to amend television table of assignments to add new VHF stations in the top 100 markets and to insure that the new stations maximize diversity of ownership, control and programming. Order (see also 45 FR 83316, December 18, 1981).

Adopted: January 8, 1981.

Released: January 12, 1981.

By the Chief, Policy and Rules Division:

1. Before the Commission for its consideration are a "Motion for Extension of Time" filed by Knoxville Broadcasting Corporation (hereinafter "Knoxville") and a "Motion to Consolidate Time for Filing Oppositions or Statements Regarding Petitions for Reconsideration" filed by WIIC–TV Corp. (hereinafter "WIIC"). The Knoxville Motion asks that the Commission extend for two weeks (from January 2, 1981, to January 16, 1981) the deadline for filing respones to a "Petition for Reconsideration" and a "Petition for Stay" filed in this proceeding by South Central Broadcasting Corporation. WIIC requests that the time for filing oppositions or statements relative to all of the petitions for reconsideration in this matter (which now number nine) be consolidated to the same date. Notice of the petitions for reconsideration that have been filed were published in the Federal Register on two separate dates resulting in two separate deadlines for filing statements in support of, or opposition to, those petitions.

2. Knoxville has shown good cause for the extension of the filing deadline until January 16, 1981. As is noted in its pleading, the Christmas and New Year holidays occurred in the midst of the period for preparing such comments. This could have hindered not only Knoxville, but others as well, in preparing responses to the South Central Broadcasting Corporation filings. Nor does it appear that any prejudice to any party would result from the extension of the filing deadline. While Knoxville requested that it be permitted to file its response until January 16, 1981, we believe that most of the factors that hindered it in preparing its response may have also impacted upon others and, thus, a generalized extension of the response period is in order. Accordingly, any party wishing to comment on the South Central filings will have until January 16, 1981, to do so. Additionally, in accordance with the provisions of § 1.429(g) of the Commission's Rules, the time for filing replies to oppositions to the subject pleadings will be extended to January 26, 1981.

3. WIIC notes that there currently are a number of different filing deadlines with regard to petitions for reconsideration of actions taken in this proceeding. This resulted from the publication of notice of the filing of those petitions in the Federal Register on different dates. The time for filing oppositions and replies to oppositions to petitions for reconsideration in rule making proceedings is determined with reference to the date of publication of notice of the filing of the petition in the Federal Register. (See § 1.429(f) of the Commission's Rules). As the various sets of petitions for reconsideration concern the same subject matter, it does not seem to be desirable to have separate filing deadlines. To have such differing deadlines would require a party to respond to issues regarding the same subject in separate pleadings because of the different filing deadlines. We believe that the public interest is better served by having the same filing deadlines for statements in support of, or in opposition to, the various petitions for reconsideration in this matter. Since we are extending the filing deadline for one of those petitions as a result of the Knoxville request, we shall both consolidate the filing deadlines for all of the petitions and extend that deadline until January 16, 1981. The deadline for filing replies will be extended until January 26, 1981. Of course, any parties that have already filed statements, oppositions, or replies with reference to any of the subject petitions for reconsideration may take advantage of this extension to supplement their filing. In this way parties that labored under the original filing deadlines will not be prejudiced by this extension.

4. Accordingly, It Is Ordered, That the deadline for filing statements in support of, or in opposition to, any or all of the petitions for reconsideration already filed in this proceeding, Is Extended, until January 16, 1981. It Is Further Ordered, That the filing deadline for replies to any statements in support of, or in opposition to, any of the subject petitions, Is Extended, until January 26, 1981.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-2231 Filed 1-21-81; 8:45]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78–19; Notice 1]

Federal Motor Vehicle Safety Standards; Pedestrian Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new safety standard applicable to passenger cars that would require them to protect pedestrians by subjecting them to lower impact forces. The proposal would require some redesign of the front structures of passenger cars by the addition of softer materials to reduce impact forces. The soft materials would substantially reduce the severity of the injuries suffered by pedestrians when struck by a vehicle. The industry is already beginning to use some softer materials, e.g., plastics and urethane foams, in vehicle front structures to reduce the weight of cars and thereby improve their fuel economy. The agency proposes this requirement now to channel these industry efforts in a way that will produce significant benefits in stemming the increasing number of pedestrian deaths and injuries.

DATES: Comments to the notice must be received on or before May 22, 1981. Proposed effective date: September 1, 1984.

ADDRESSES: Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours: 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Crashworthiness Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: Each year thousands of pedestrians are hit by motor vehicles. Pedestrian fatalities have numbered between 7,000 and 9,000 annually. Data from the agency's Fatal Accident Reporting System (FARS) and the Pedestrian Injury Causation Study (PICS) indicate that approximately 137,000 pedestrians are injured annually. These statistics show clearly that pedestrian injuries and fatalities are major safety issues.

Through the use of statistical techniques that are fully developed in the regulatory evaluation for this rulemaking action, the agency has projected the future growth of pedestrian accidents. (The regulatory evaluation is available to the public in the docket under the number listed for this action.) The agency projects that 145,000 pedestrians will be struck by vehicles in 1994. The total number of fatalities projected from this number of accidents is 8,700.

The agency has tentatively concluded that any new pedestrian protection activity should be directed toward reducing the severity of pedestrian injuries and thereby reducing fatalities. Of the 137,000 people struck annually, many suffer serious and often permanent impairment. Accordingly, the agency is exploring ways of reducing the severity of injuries sustained during pedestrian impacts. The best way of reducing the severity of pedestrian injuries appears to be making vehicle front structures softer.

When the agency commenced this action, it determined that rulemaking should concentrate initially upon the vehicles and vehicle structures that represent the majority of the pedestrian impact problem. Accordingly, the agency reviewed the available accident statistics from its FARS and PICS files, National Accident Sampling System (NASS) and the National Electronic Injury Surveillance System. These data sources indicate that of the 137,000 persons impacted each year in 1977 and 1978, approximately 72 percent were hit by passenger cars. Further, of those accidents involving passenger cars, approximately 74 percent of the pedestrians were struck by the front structure of the vehicle. Transforming these percentages into numbers shows that in 1979 approximately 73,000 pedestrians were hit by the front structures of passenger cars.

BASIS for This Action

The agency has been conducting research since the early 1970's designed to provide information on the causation of pedestrian injuries and how the severity of these injuries might be reduced. Throughout this research process, abundant data have been generated that give a clearer picture of the reaction of a pedestrian when struck by a passenger car. NHTSA test reports are all available in the docket under the number listed for this action.

When an adult pedestrian is struck by the front of an existing production passenger car, the area of first impact is the knee region. The portion of the vehicle which makes this contact is the bumper. Subsequently, the upper part of the grille or front edge of the hood impacts the pedestrian's pelvic area. Finally, the pedestrian's upper body and head may impact the hood of the vehicle before he or she is thrown to the ground.

The agency decided in the early stages of research that it would divide the pedestrian accident rulemaking into two areas. The first area would focus on reductions that might be made in the pedestrian knee and pelvis impact problem. The pedestrian knee impact problem is the subject of this notice of proposed rulemaking. Pelvis impacts will be addressed in a future rulemaking notice. The second area involves the benefits that might be attainable in reducing the severity of the upper body and head impacts sustained by pedestrians. In connection with a long term rulemaking action, effort is underway to examine the magnitude of those benefits.

Having obtained data detailing the nature of pedestrian impacts and having decided to focus initially on the knee area, the agency then tentatively determined which test speed would be most appropriate. The agency wanted to propose a rule that would provide the best combination of benefits and costs. In analyzing available data from our PICS file, the agency found that 91 percent of the accidents occur at or below 20 mph. The corresponding figure for speeds at or below 25 mph was 96 percent, and for speeds at or below 30 mph, 98 percent. The number of pedestrian accidents that occur at 30 mph or less is not substantially greater than the number which occur at 20 mph or less. However, at 25 or 30 mph, manufacturers would have to use substantially more energy absorbing material than would be necessary at 20 mph. Based upon these data, the agency tentatively concluded that a 20 mph test speed would provide the best combination of costs and reduced injuries and fatalities and was a reasonable starting point for exploring the appropriate goals of pedestrian protection rulemaking. The agency anticipates that if the test speed were set at 20 mph, some benefits will be realized at speeds above 20 mph. Comments are requested to aid the agency in evaluating the appropriateness of that test speed and the alternative 25 mph test speed discussed in the regulatory evaluation.

The agency conducted several impact tests of production vehicles using adult cadavers and dummies to find out the severity of injuries currently sustained by pedestrians when struck at a variety of test speeds. The results of these tests are in the docket under the docket number for this notice. In summary, the tests showed that adults were likely to be subjected to very high impact forces in the knee area. These extremely high forces predictably result in serious injury and the possibility of death. Through an analysis of data relating to impact forces on the human body, the agency determined that injury severity and the possibility of death could be significantly lowered if the impact forces were reduced to 100 g's in the leg area.

To examine the magnitude of the reduction in these acceleration forces that could be achieved by softening vehicle fronts, the agency modified a 1978 Pontiac LeMans. The agency chose this vehicle because it was representative of a typical class of passenger car then in production. NHTSA reasoned that if the feasibility of reducing the severity of pedestrian impacts could be shown with the LeMans, the results could be applied with appropriate adjustments to other production vehicles.

The agency tested the modified LeMans with eight impacts using both child and adult test dummies. The dummies were instrumented to provide readings of the peak accelerations of the foot, knee, pelvis, chest, and head areas. The results of these tests are also available in the docket. The test results showed a remarkable lessening of the peak accelerations on the test dummies.

Based upon these test results, the agency tentatively concluded that major benefits could be achieved by modifying passenger car frontal structures. Subsequent analysis and study showed that these benefits could be achieved with any vehicle modified in a similar manner. Accordingly, NHTSA also tentatively found that it was technologically feasible to reduce significantly the impact forces borne by pedestrians.

Proposed Test Requirements

The essence of the test is that all cars would be struck at a speed up to 20 mph with a device designed to simulate the impact response of an adult's lower leg. The impact acceleration response and rebound velocity are limited to levels which will significantly reduce the severity of injury and likelihood of death.

The lower leg impact simulation device consists of 4 components which are rigidly attached to form a 7 pound unit. The four components are an impactor, a bracket, an accelerometer, and a ram. The impactor is a rectangular block of wood with a thickness that varies from about 2 to 2½ inches and an

impact surface that is a 4 inch by 6 inch section of a right circular cylinder with an 8 inch radius. The bracket is a metal plate attached to the impactor on the side opposite the impact surface and used primarily for ballast and attachment of other parts.

The accelerometer is a device capable of measuring acceleration in one direction and is attached to the bracket. The ram is a circular metal tube with a radius of approximately 2 inches which is also attached to the bracket and acts as a piston in a cylinder used to propel the simulator and as the means of guiding and maintaining the orientation of the simulator during the test. Precise descriptions of the simulator are in section 5 of the proposed rule.

All passenger cars would be struck in the bumper area with the lower leg impact simulator. At the required compliance speed of 20 mph or any lesser speed, the maximum acceleration response of the simulator may not exceed 100 times the acceleration of gravity during contact with the vehicle and the rebound velocity subsequent to contact may not exceed 60 percent of impact velocity.

The proposed test procedures and vehicle test areas are very simple and are described in more detail in the proposed rule. The lower-leg simulator has also been carefully detailed in the proposed rule. Commenters wishing to see examples of the simulator should contact the person listed in the beginning of this notice. The device that propels the simulator has not been detailed in the proposal. Any device that can achieve the desired impact speed and propel the test simulator in the specified manner would be suitable for testing purposes. However, the device must be capable of measuring the g's and rebound velocity. If commenters desire information about the device that the agency would use to propel the simulator, they should write or call the contact person listed in this notice.

Effectiveness of Proposed Rule

The agency has attempted to determine the extent to which the reduction in impact force upon pedestrians will lower a pedestrian's injury severity and reduce his or her likelihood of death. To accomplish this task, the agency has conducted an exhaustive analysis of pedestrian injuries and their severity as measured by the Abbreviated Injury Scale (AIS). An AIS is a measurement that rates the severity of any injury. For example, an injury which is rated at the AIS 1 level is considered a minor injury. At the other extreme, an AIS 6 injury is always fatal.

Using information obtained from agency testing to determine the reduction in impact force levels on test dummies as a result of modifying vehicles in accordance with the proposal, the agency was able to compute the likely reductions in AIS severity for injuries sustained by pedestrians in impacts at 20 mph and below. The computations involve projecting the injury reduction observed from agency testing to national injury exposure statistics. The agency has decided to predict an upper and lower bound of injury reduction benefits. The key element of the upper bound of the range is the projection that AIS 2, 3, and 4 injuries caused by impact with the bumper would be reduced to AIS 1 injuries. The projection on which the lower bound is based is that AIS 3 and 4 injuries would be reduced to AIS 2 injuries. The agency believes that the available data and analysis more closely support benefit figures in the upper portion than in the lower portion of the range.

A full discussion of how these benefit calculations were achieved is in the regulatory evaluation for this rulemaking. Knowing the number of pedestrian injuries in the lower-leg area in each AIS level prior to the implementation of this proposed rule, the agency could use the projected reduction in the AIS level of injuries to determine the number of injuries whose severity would be reduced. NHTSA determined that from 5,000 to 13,000 injuries would be reduced in severity when the full fleet of passenger cars has been modified in 1994, 10 years after implementation of the proposed rule.

Since the cumulative severity of an accident victim's injuries determines the likelihood of his or her death, the agency was able to calculate the fatality reduction using the two different projects for AIS injury reduction, the data on current pedestrain injuries, and the Injury Severity Score (ISS). The ISS is a formula developed to project fatalities and is discussed in detail in the regulatory evaluation. In summary, the ISS score reflects the severity of the 3 most severe injuries suffered by an accident victim during an accident. The premise of the ISS is that there is a direct relationship between the probability of fatality and the severity score and that there is a specific level of probability for each score. Thus, reducing the severity of one or more of the three most severe injuries will reduce the probability of fatality by some quantifiable amount. By using this technique and applying it to all accidents in which pedestrians were struck by car fronts, the agency calculated the extent to which the probability of fatality was reduced. By applying an effectiveness ratio (explained in the regulatory evaluation) to the total number of pedestrians killed as a result of being struck by car fronts, the agency calculated a fatality reduction of between 323 and 340 in 1994 depending upon which projections of AIS injury level reduction was used.

Although other benefits will result from this proposed rulemaking, the uncertain magnitude of those benefits has led the agency not to rely extensively upon them in reaching its decision to issue this proposal. They are being mentioned here primarily for the purpose of discussion and to solicit comments from individuals or groups that might have information in any of these areas.

The first additional benefit involves the possibility of reducing injury severity to body regions above the knee. Agency test data indicate that the speed of the impact of a pedestrian's upper body with the vehicle hood is reduced as a result of the lower portion of the person's body being struck by the softer frontal system. These agency tests suggest that upper body injury severity would also be reduced by this rulemaking action. A reduction in the severity of head injuries could prove very beneficial in further reducing fatalities and permanently disabling injuries resulting from pedestrian impacts.

A second additional benefit from this regulation is one that might accrue to motorcyclists and bicyclists. They should be struck less severely by a car with a softer front than a current production car has. However, the agency has limited data to aid it in measuring the extent of the benefits from such reductions. The agency tentatively concluded that research efforts to quantify such benefits are not now necessary since the existing benefit analysis supports issuance of this proposal.

Third, equipping a car with softer front ends may reduce the damage which the car inflicts when it runs forward into another vehicle. In one test conducted by Battelle Columbus Laboratories, the results of which are in the docket, a car with a modified front end was run into the side of another vehicle. The damage inflicted on the side of the struck vehicle was compared with the damage done to the side of an indentical target vehicle struck under similar conditions by a vehicle with an unmodified front end. In the former crash, there was less damage done to the side of the struck vehicle. This leads

the agency to believe that soft front end vehicles may produce some benefits in damage reduction in low speed side impacts. The agency seeks comments from any individual or group, especially insurance companies, as to whether they have any information bearing on the possibility that damage reduction benefits may result from this rulemaking.

Costs and Other Impacts

In accordance with E.O. 12221, the agency has evaluated the costs associated with this proposal and has determined that this proposal is not significant within the meaning of that order. Further, the agency has prepared a regulatory evaluation and placed it in the docket for this notice. Comment is requested on the evaluation and the alternatives discussed in it.

Over the past several years, the agency has conducted three different cost studies to evaluate the impacts of this proposal. Each study had some limitations regarding its ability to predict costs that would be borne by the fleet of redesigned, smaller cars to be manufactured in the mid to late 1980's.

This proposal would, in effect, require vehicles to be constructed with some type of energy absorbing structure on the front which would be covered with a polyurethane type facia or other soft covering. If the agency were to compute the cost of the energy absorbing material and facia based upon today's vehicles, it might significantly understate or overstate the amount of weight that would be added to or reduced from each vehicle as well as the total cost associated with the rulemaking if it is implemented in model year 1985 as proposed. The reasons for this are many. First, bumpers on current passenger cars are largely constructed of heavy steel. However, the motor vehicle industry is already experimenting with lighter weight aluminum and plastic bumper structures to reduce vehicle weight and increase fuel economy. To the extent that any of these advances are incorporated in production vehicles over the next few years, the cost of modifying a vehicle to comply with this proposed standard for model year 1985 should be decreased. Similarly, the highest cost item associated with modifying a vehicle to comply with this proposal would be the soft facia on the vehicle exterior. This is the major cost item because the facia material is made of more expensive plastics and requires some molding operations. Several vehicles such as the Mustang and Camero have these facias today. The agency has been informed through several trade publications that the industry plans to produce many vehicles with this type of facia by the mid-1980's because it is popular for styling and has some fuel economy and perhaps repairability benefits. To the extent that the use of these facias increases voluntarily over the next few years, the cost of complying with this regulation in a manner similar to the agency's concept would drop dramatically.

The agency has summarized the above matters to show that it understands the problems of assessing the cost of this proposal and to assure the industry and others that the agency is considering cost impacts. The agency concludes that this proposal would reduce vehicle weight and that little or no cost increase would occur for the average car. It is even possible that a cost decrease might occur. A full discussion of the agency's cost analysis is in the regulatory evaluation.

NHTSA has also examined other potential impacts of this proposal including effects upon car fuel economy and weight. The problems with projecting these effects are similar to those which exist for assessing the cost impacts of the proposal. NHTSA data indicate that large passenger cars would achieve a large net weight loss and a resultant fuel economy gain through compliance with this proposal. This would occur because weight could be removed from the large and relatively heavy bumber systems on existing production vehicles.

Small cars, which will constitute the largest percentage of the vehicle fleet in the future, might have a very small weight increase as a result of this proposal. A slight weight gain can occur because most smaller vehicles have undergone significant weight reductions already and do not now have additional weight in their bumper systems that can be easily removed through material substitution or other means. In the regulatory evaluation for this proposal, the agency has indicated the average weight gain or loss associated with each vehicle size class. Further, NHTSA has projected the sales volume of each vehicle size class to arrive at an estimate of the total impact of the proposal on vehicle fleet weight.

Pursuant to the Regulatory Flexibility Act, the agency has considered the possible impact of this proposal on the small businesses to which it would apply. The agency does not believe that this proposal is likely to have a significant economic impact on a substantial number of small manufacturers of passenger cars. The agency also notes that, as in the case of other safety standards, small manufacturers can apply on the basis of economic hardship for exemptions for this safety standard if it is adopted.

Effect on Other Regulations

The agency has explored the possibility that this proposed regulation might affect the efforts of manufacturers to comply with some of the other safety standards applicable to passenger cars. NHTSA has concluded that compliance with this proposal will not have any negative effect on compliance with the crash worthiness or crash avoidance standards. The agency looks particularly closely at the possibility that redesigned new vehicle front structures would affect crash sensor devices used for air bags. The agency concluded that any effect on air bag sensors would be minimal, requiring nothing more than the sort of adjustments that would be made for sensors when any new vehicle model is introduced. The technological feasibility of using air bag sensors in vehicles with soft frontal structures has been shown in the agency's research safety vehicles.

The agency has also evaluated the interrelationship of this proposal and Part 581, *Bumper Standard.* Implementation of this proposal might increase the cost of complying with the pendulum test requirement of that Part since that requirement would require a significant upgrading of the bumper designed solely to comply with this proposal. The agency thinks that continued compliance with the current pendulum test requirement might be unnecessary since a pedestrian protection bumper may have damage reduction possibilities beyond those of the existing Part 581 bumper systems. These damage reduction possibilities include the lessened impact forces on vehicles struck by pedestrian bumpers. Accordingly, the agency tentatively plans to issue a proposal to amend Part 581 to alter the pendulum test in a way that would optimize the benefits of that regulation. In order to make full use of all available data, the agency will not issue the bumper proposal until comments have been received on this notice. This will permit the agency to incorporate comments from this notice into the bumper proposal and to obtain a further round of comments specifically on that issue. The leadtime for the effective date for pedestrian protection standard will take into consideration the effect of a Part 581 bumper amendment.

Alternatives

The agency explored other alternatives to this regulation and found them not as useful or cost beneficial as the chosen alternative. Alternatives are

more fully developed in the regulatory evaluation for this regulation. The alternative of compliance test speeds has already been discussed.

Other possible methods of reducing pedestrian accidents through changing vehicle technology and design have been explored and subsequently set aside when it was shown that they would not have nearly so significant an impact on the pedestrian safety problem as the proposal the agency is issuing today. For example, NHTSA considered lowering the bumper height of passenger cars. Lowering the bumper height would not reduce the force of impact, but would lower the point of contact with an adult pedestrian below the knee. By moving the impact area, injury severity at the sensitive knee area might be reduced. This would likely result in lowering long term or permanent knee impairment resulting from pedestrian impacts. The agency decided that lowering bumper height would have the effect of causing serious problems when vehicles with lower bumper heights impacted older vehicles with higher bumpers. As a result, this option was not adopted.

The agency also considered improved braking as a means of preventing pedestrian accidents. Although the agency closely follows advances made in vehicle braking and always considers this to be an area for safety improvements NHTSA concluded that only a slight reduction in the occurence and little if any reduction in the severity of pedestrian impacts were likely to be gained at this time through brake improvement.

The agency also explored alternatives such as driver and pedestrian education and other non-vehicle options. To reduce pedestrian impacts, the Federal government and States have worked together to develop and implement a variety of programs including improved street crossings, education of the public, and other traffic safety programs. NHTSA efforts, for example, in the training, public safety messages, and pedestrian traffic safety regulations areas have demonstrated decreases in selected types of pedestrian accidents ranging from 20 to 77 percent. An active crash avoidance program continues in these areas as the agency focuses on other types of pedestrian accidents. However, the agency also wants to improve the chances of survivability of persons who are impacted. The agency has tentatively concluded that effort must be addressed at reducing injury severity so that fewer people will have to go through life with permanently disabling injuries that could have been prevented by improving vehicle front structures.

Based upon an analysis of all of these options and some others that are not discussed here, the agency tentatively concluded that the present crash-mitigation proposal provides the best complementary activity to the crash-avoidance approach and has a high possibility for achieving significant pedestrian benefits for the lowest cost to the industry to the consumer.

Leadtime

The agency explored the possibility of a very early implementation as well as a long-term leadtime for this regulation. Based upon an evaluation of several considerations, NHTSA has decided to propose an effective date of September 1, 1984, for this standard.

Although an earlier implementation of this regulation would advance the date on which the regulation begins producing benefits, the agency tentatively concluded that such an implementation schedule would increase the costs of retooling for the production of soft vehicle frontal systems disproportionately compared with the added benefits of that schedule. The proposed date is therefore deemed preferable, especially in light of the current circumstances of the motor vehicle industry.

NHTSA also studied a later implementation date that would have permitted manufacturers to incorporate the new forntal systems into more of their newly designed vehicles as they are being downsized. Although at first glance this option looks attractive, when more fully explored, it appears that very little cost reduction is achieved by establishing a later implementation date. Extensive and costly vehicle redesign would not be required by this standard. The main cost of compliance with the standard might be the soft facia and underlying foam. Except as a function of prevailing petroleum prices, this cost does not vary if a date later than September 1, 1984, is established. Further, delaying the implementation of the regulation would cause a loss of the benefits that could be achieved by a more expeditious implementation of the standard.

In light of this analysis and particularly since the costs would not be decreased substantially by a delayed effective date, the agency tentatively chose September 1, 1984, as the proposed date for implementing this standard.

Future Rulemaking

The agency has conducted research in the hood edge area of passenger cars to determine the effect of the impact of this area of a passenger car on pedestrian safety. As part of the testing for the lower impact test proposed in this notice, the agency conducted tests designed to determine whether benefits were possible in the hood edge area as well. Using adult cadavers and dummies, the agency showed that it is possible to reduce significantly the severity of impact forces on the hip and pelvic areas as a result of softer vehicle structures in the hood edge area. The agency has included the results of its testing in this docket for the information of all commenters.

As stated earlier, the agency plans to proceed with rulemaking on the hood edge area in the future. Since the final test parameters have not yet been determined, a proposal is not being made at this time to incorporate a hood edge requirement. However, the agency encourages manufacturers who may be experimenting in the bumper area to consider redesign of the entire vehicle frontal structure in a way that might provide comprehensive protection for pedestrians. Several options appear to be possible from agency data to accomplish this task. On some vehicles, for example, the lowering of the hood edge would substantially reduce the injury hazard to pedestrians. Other vehicles could recess rigid components on the front leaving a relatively soft sheet metal to absorb impacts. Finally, vehicles could be redesigned in a way that soft materials and facias could be used over their entire frontal surfaces. Industry initiative in this area could make it unnecessary for the agency to pursue rulemaking in the vehicle hood edge area.

The agency has been working toward the development of improved pedestrian protection for over 10 years. Today, NHTSA has vast amounts of data from numerous tests and studies that lead the agency to conclude that the time to go forward with this rulemaking proposal is now. However, NHTSA realizes that this rulemaking raises a variety of questions. The agency believes that the costs are far outweighed by the benefits that will result from this regulation. The agency by this notice wants to involve the public and the industry more closely in the development of a regulation that has such significance to the public in general and to children in particular. NHTSA welcomes debate of this subject and encourages all interested parties to comment. So that the public can be involved to the greatest extent possible and to permit time for thorough and well-considered comments on this notice, NHTSA is providing a 120-day

comment period. Further, a public meeting, which will be announced shortly, is being scheduled in Washington, D.C. The agency hopes that all interested persons will take the opportuunity to participate in this public meeting and let their views be known. Also they are encouraged to submit written comments and information in accordance with the guidelines set forth below.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, it is proposed that a new safety standard, Standard No. ——, *Pedestrian Impact Protection*, be added to Part 571 of Volume 49 of the Code of Federal Regulations as set forth below.

§ 571.——, Standard No. ——, Pedestrian Impact Protection

S1 *Scope.* This standard specifies vehicle performance requirements limiting the force of impact with pedestrians.

S2 *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries that occur to pedestrians as a result of their being struck by vehicles.

S3 *Application.* This standard applies to passenger cars.

S4 *Requirements.* Each vehicle shall comply with the requirements of S4.1.

S4.1 *Impact test requirements.* When a stationary vehicle is impacted in accordance with S6.1 and S6.2 with the pedestrian lower leg simulator described in S5.1:

(a) The acceleration of the simulator shall not be greater than 100 times the acceleration of gravity for a time period longer than 0.003 second (3 milliseconds) for any one peak; and

(b) The rebound velocity of the simulator shall not be greater than 60 percent of the impact velocity.

S5 *Pedestrian simulator.*

S5.1 *Lower leg simulator.* The lower leg simulator consists of the four components specified in paragraphs (a) through (d) of this section. The four components have a combined weight of 7.00 pounds. (See Figure 1)

(a) Impactor. The impactor is a rectangular solid except that the side which serves as the impact surface is curved. The shape and dimensions of the impactor are the same as the portion of a 6 inch high, 8 inch radius right circular cylinder that includes the curved surface of the cylinder and is bounded by:

(1) a plane parallel to and located 5.5 inches from the longitudinal axis of the cylinder, and

(2) two planes that are perpendicular to the first plane and are located on opposite sides of the axis a a distance of 2 inches from the axis.

The impactor is a solid piece of white pine with a density of 35 to 40 pounds per cubic foot. The grain of the wood is parallel to the 6-inch dimension (See Figure 2).

(b) Bracket. The bracket is a 4-inch by 6-inch metal plate which is rigidly attached to the impactor on the side opposite the impact surface.

(c) Ram. The ram is a rigid hollow cylinder with an outside diameter of 1.75 to 2.5 inches and a length of 20 to 25 inches. It is rigidly attached to the bracket surface at its geometric center.

(d) Accelerometer. The accelerometer is a linear, uniaxial, 2000 g—1,000 cps min. acceleration transducer oriented with its sensitive axis coaxial with the longitudinal centerline of the ram. The output of the accelerometer and of the data channel conforms to the requirement of SAE Recommended Practice J–211b, December 1974 of Channel Class 180. The mounting of the accelerometer and the entire lower leg simulator have no resonance frequency less than 3 times the cut-off frequency of the 1980 Channel Class.

S6 *Test conditions and procedures.*

S6.1 *General test conditions and procedures.*

(a) The vehicle is loaded to its curb weight and positioned on a flat, level surface.

(b) The vehicle engine is shut off.

(c) If the vehicle is equipped with an automatic transmission, the transmission is in the Park position and if the vehicle is equipped with a manual transmission, the transmission is in one of the forward gears.

(d) The ambient temperature of the test site is 72 degrees Farenheit with a pretest soak of the vehicle for not less than 12 hours.

S6.2 *Impact test.*

S6.2.1 *Vehicle impact zone.* The vehicle impact zone is the area bounded:

(a) On the top by a horizontal plane 20 inches directly above and parallel to the vehicle's resting surface;

(b) On the bottom by a horizontal plane 16 inches directly above and parallel to the vehicle's resting surface; and

(c) On the right and left by vertical longitudinal planes that are 2 inches inboard from vertical longitudinal planes that intersect and outermost points of the vehicle that are less than 18 inches rearward of the vehicle's forwardmost point.

S6.2.2 *Impact test procedures.*

(a) The point of initial contact of the simulator with the vehicle is less than 1

inch from a horizontal plane passing through the center of the ram. (See Figure 3.)

(b) At the point of initial contact—

(1) The simulator is traveling at any speed not greater than 20 mph.

(2) The direction of the simulator's travel is parallel to the vehicle's longitudinal axis.

(3) The 6-inch surfaces of the impactor are vertical.

(4) The ram is oriented so that the horizontal centerline of the ram passes through the vehicle impact zone. (See Figure 2.)

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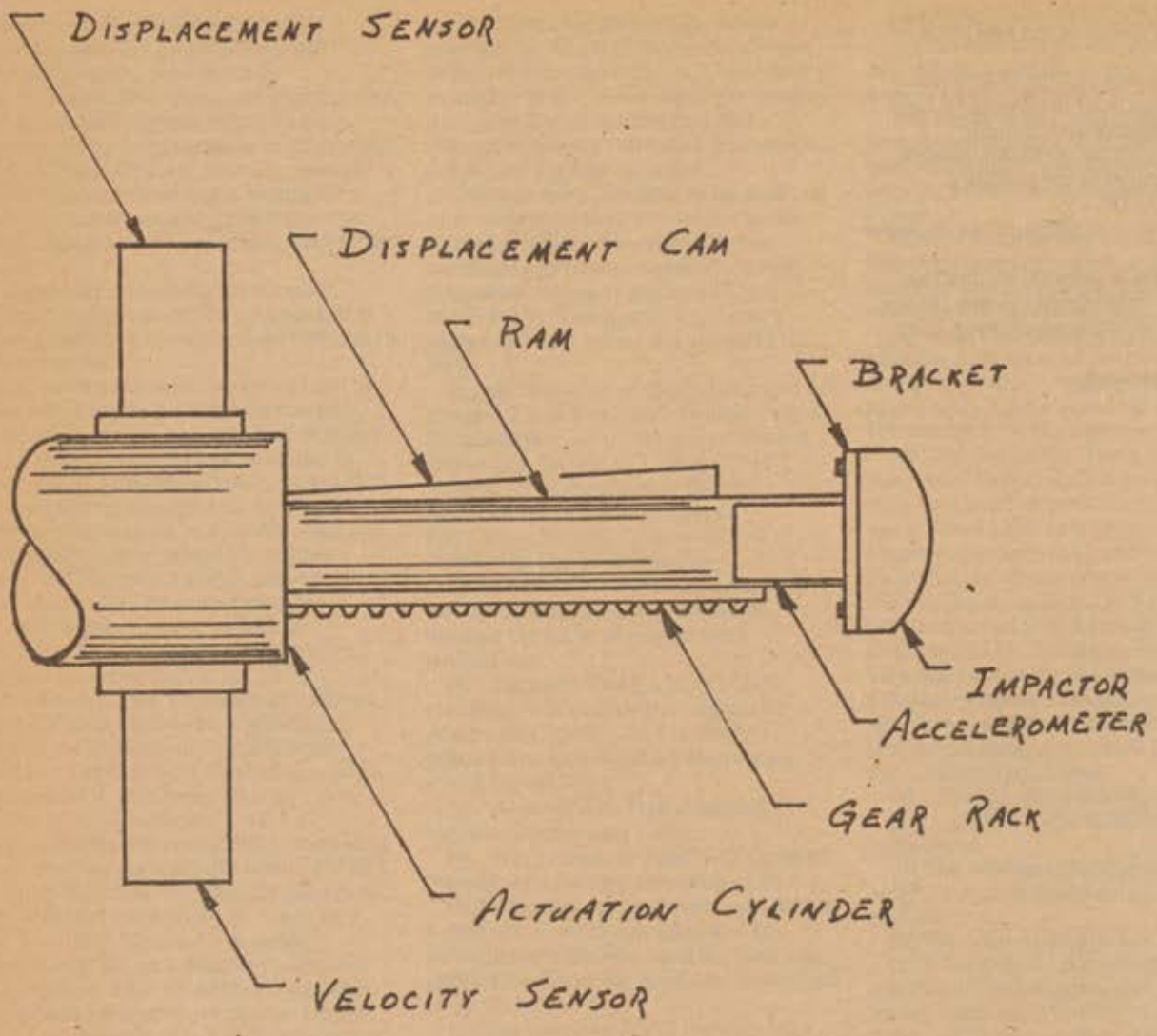


FIGURE 1 — TOP VIEW OF TYPICAL LOWER LEG SIMULATOR SHOWING LOCATION OF INSTRUMENTS

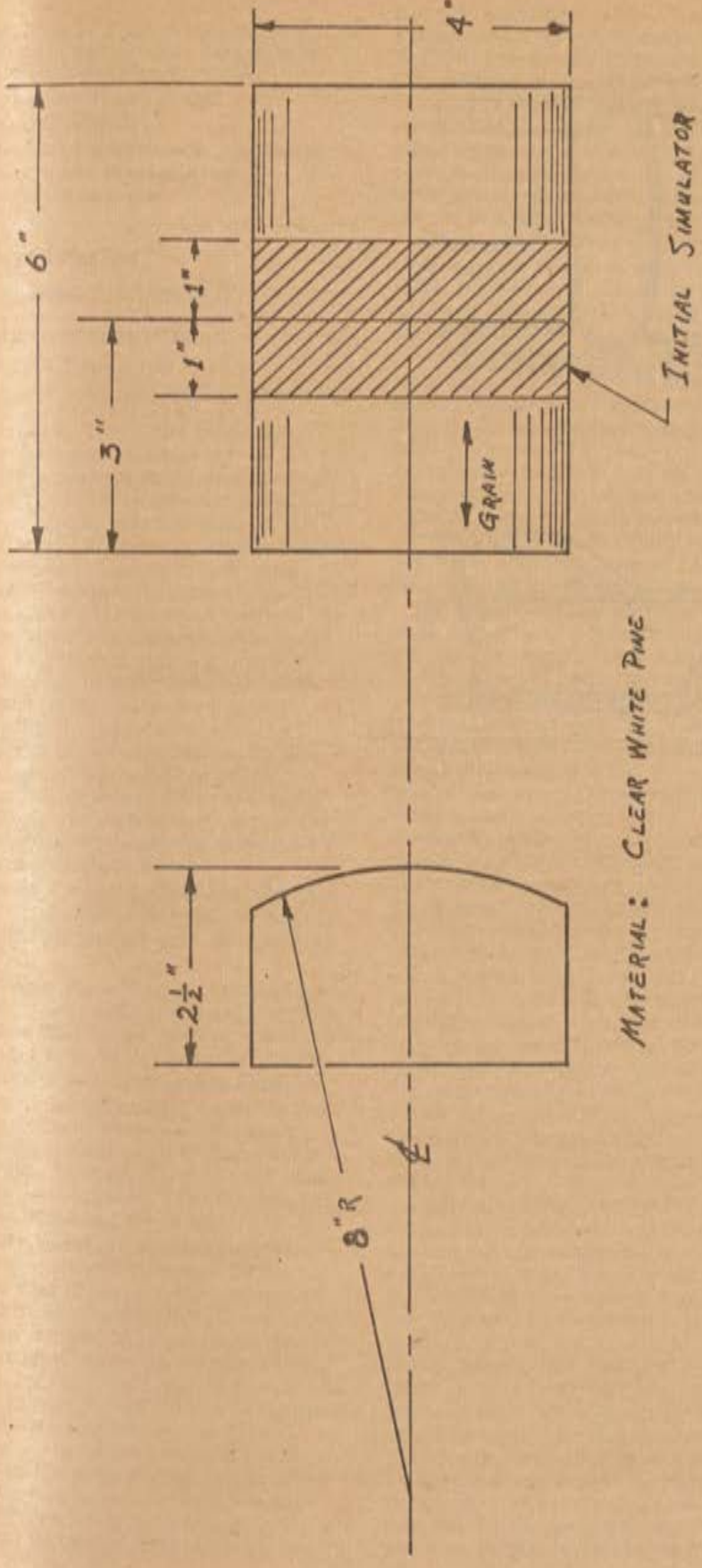


FIGURE 2 - IMPACTOR

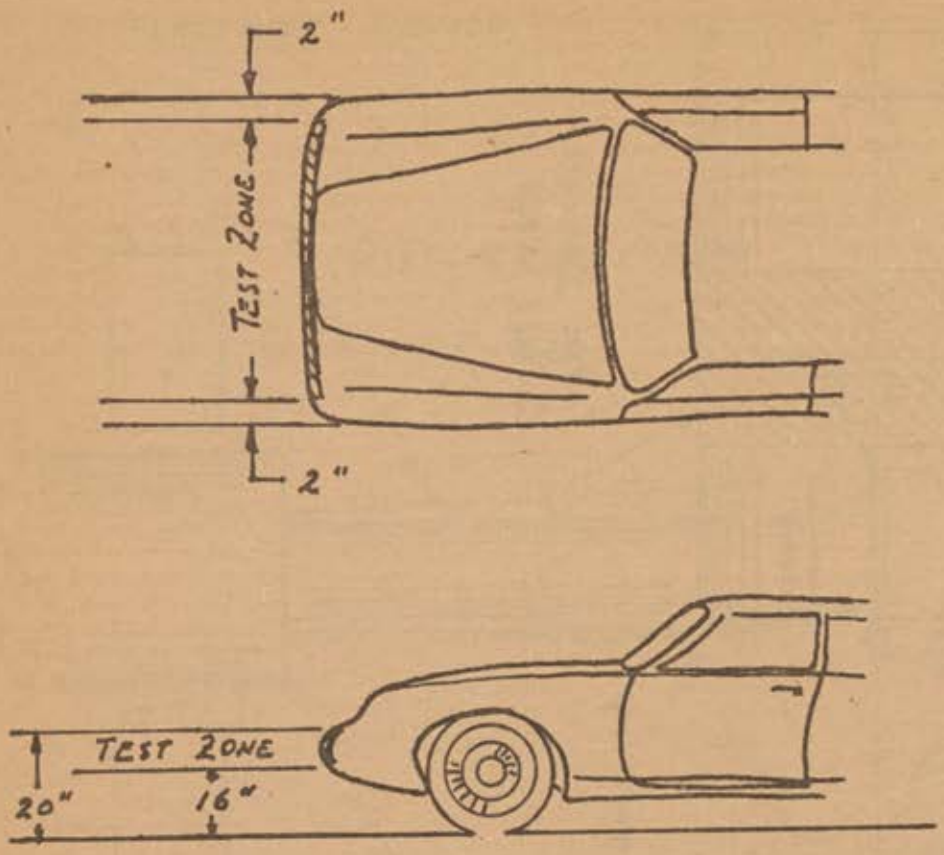


FIGURE 3 - TEST ZONE

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(Secs. 103 and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 16, 1981.

Michael Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-2187 Filed 1-16-81; 2:00 pm]

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49 CFR Part 583

[Docket No. 79-17; Notice 1]

Crashworthiness Ratings

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes establishment of a new car crashworthiness performance ratings program in which information to be developed by manufacturers on the ability of their passenger motor vehicles to protect occupants in high speed collisions would be made available to consumers. The proposal responds to the increased importance of occupant crash protection resulting from the current trend toward smaller, lighter weight cars. The agency intends, through the proposed program to provide prospective purchasers with comparative information on the crashworthiness of different vehicle models, and thereby to encourage the purchase of cars offering the highest level of crashworthiness.

DATES: Comment due date: Comments must be received on or before April 22, 1981. Proposed effective date: June 1, 1982.

ADDRESSES: Comments should refer to the docket number and be submitted to Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Mr. Steve Zaidman, Office of Automotive Ratings, National Highay Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-416-1740.

SUPPLEMENTARY INFORMATION: The traditional approach taken by the National Highway Traffic Safety Administration (NHTSA) in promoting improvements in vehicle safety has been to issue performance standards under the National Traffic and Motor Vehicle Safety Act of 1966. While this approach affords manufacturers substantial latitude in selecting their means of compliance, the NHTSA has been searching for ways to suppplement minimum safety standards with a program using market forces to encourage the manufacture of safer automobiles. One way identified by NHTSA is to provide consumers with information which enables them to compare new vehicles based on their relative safety performance. A similar effort, combining standards and performance information, is already being effectively implemented with respect to automotive fuel economy.

Although NHTSA has disseminated consumer information on new vehicle safety for some time, the information has been exclusively concerned with accident avoidance, e.g., braking capability. Until last year, the agency had not attempted in any systematic fashion to disseminate information on crashworthiness, an aspect of vehicle performance that is of crucial importance. The public interest in crashworthiness information and the agency's desire to pursue methods of providing regulatory flexibility have led NHTSA to propose a program for rating the crashworthiness of new cars.

This proposal is issued under Title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941, *et seq.*) and the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) (15 U.S.C. 1391, *et seq.*) Title II directs NHTSA to devise ways in which information relating to the crashworthiness of passenger motor vehicles can be developed and communicated to consumers to aid them in selecting new cars. Congress' adopted this provision recognizing that although the ability of a vehicle to protect its occupants in a collision is an important consideration in the selection of a motor vehicle, prospective purchasers presently have no way of evaluating the relative crashworthiness of competing vehicles. Section 112(d) of the Safety Act (15 U.S.C. 1401(d)) complements Title II by requiring manufacturers to supply the agency with performance and safety data on their vehicles and to notify prospective purchasers of such data.

Studies conducted by NHTSA and others have confirmed that safety information is of substantial interest to vehicle purchasers. A survey conducted for NHTSA by Booz-Allen & Hamilton, Inc., "Automobile Consumer Information Study, Title II, Pub. L. 92-513, Final Phase I Report, June 1976", DOT-HS-4-00904, (Docket 79-17, Notice 1, No. 133) indicates that consumer purchasing decisions would be influenced by crashworthiness ratings of new cars. More recent studies by Peter Hart and Associates (Docket 79-17, Notice 1, No. 134) and the Automobile Club of Southern California (Docket 79-17, Notice 1, No. 135) also conclude that safety performance is a major concern of new car purchasers. Through the establishment of a crashworthiness ratings program, the agency intends to provide information of value to consumers in evaluating and comparing the safety performance of passenger cars. Although the primary focus of NHTSA's efforts is on the individual new car purchaser, the agency hopes that crashworthiness ratings information will also be relied upon by private and government fleet operators and by used car purchasers.

In addition to aiding consumers in making better informed purchasing decisions, the ratings program should foster competition among automobile manufacturers in the design of safer products. NHTSA sees the use of marketplace forces as a means by which design flexibility can be enhanced and costs minimized, while improving vehicle safety performance. Thus, the agency expects the automotive ratings program to be a valuable supplement to the vehicle safety standards.

Development of NHTSA's Crash Test Program

NHTSA considered several alternatives in its search for the best means of providing meaningful crashworthiness ratings. Among the options studied were using historical data to assess the performance of vehicles-in-use, using information about vehicle designs to predict the performance of new vehicles, and determining new vehicle performance through new-car crash testing. Of these, NHTSA has found that the crash test approach provides the best prospect for the development of information useful to new car purchasers.

NHTSA studied several possible sources of historical crashworthiness data, that is, data on the performance of vehicles involved in actual highway collisions. The agency found that police and insurance company accident reports lacked precise information on variables, such as crash speed and injury severity, which are of vital importance to a crashworthiness ratings system. While crash investigation files compiled by NHTSA through the Fatal Accident Reporting System (FARS), the National Crash Severity Study (NCSS), and the National Accident Sampling System (NASS) are more reliable and may provide a useful source of information in the future, they are presently too limited in scope to be helpful in rating individual vehicles. In any event, the delay inherent in compiling a sufficient volume of crash data for any historical ratings system would severely limit the

value of such a system to new-car buyers. Also, historical data reflects the combined influence of vehicle and driver factors, and may not always be suitable for assessing purely vehicular differences. Thus, while NHTSA believes that historical data merits further study, the agency has tentatively concluded that such data is not the best available basis for a new car ratings system at this time.

NHTSA has also considered the use of predictive techniques employing computer assisted mathematical models to project vehicle crash performance from design data. However, questions remain regarding the accuracy of existing predictive techniques, particularly in modeling restraint system performance in preventing injuries. Thus, the agency believes that existing predictive techniques do not provide the best means of rating automotive crashworthiness.

While predictive approaches require additional research, extensive testing conducted by NHTSA under the New Car Assessment Program (NCAP) indicates that controlled crash testing of new cars containing instrumented anthropomorphic dummies, represents a viable means of deriving crashworthiness ratings. Based on the years of developmental testing leading to the issuance of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection (49 CFR § 571.208), which will be phased into effect beginning September 1, 1981, and the fact that the majority of serious injuries and deaths in auto accidents result from frontal collisions, see "National Crash Severity Study—Passenger Cars, June 1977–March 1979", UM–HSRI–80–36, June 1980 (Docket 79–17, Notice 1, No. 136), the FMVSS No. 208 test procedure was made the primary focus of the NCAP program. To determine whether some vehicles could exceed minimum occupant protection and other standards, the agency tested new cars at 35 mph instead of the 30-mph speed specified in the standards. A 35-mph collision represents a significant (36%) increase in kinetic energy over a 30-mph crash.

Substantial safety benefits are offered by vehicles capable of meeting FMVSS No. 208 criteria at 35 mph instead of 30 mph. Data collected by the Agency using its NCSS data system indicate that many hundreds of deaths and serious injuries could be avoided annually in the United States, if all cars were capable of providing 35-mph frontal crash protection. See, "Estimated Benefits of the New Car Assessment Program", Appendix to "Regulatory Analysis on Crashworthiness Performance Ratings for New Cars", Docket 79–17, Notice 1, No. 137).

To determine whether significant differences exist in the crashworthiness of vehicles at speeds above the required 30-mph standard, cars in the NCAP were tested in accordance with the frontal barrier crash procedures of FMVSS No. 208, at an impact speed of 35 mph. That test procedure requires, among other things, that a vehicle provide a specified level of occupant protection when tested in a 30-mph frontal collision with a stationary rigid barrier. Occupant protection is determined by the application of specified injury criteria to measurements from instrumented dummies representing a driver and a front seat passenger. Head injuries are measured by composite acceleration values known as Head Injury Criteria (HIC numbers). Chest and upper leg injuries are measured by chest deceleration and femur (thigh bone) load values. While FMVSS No. 208 will mandate the use of automatic occupant restraints, NHTSA believes the crash test procedure is also valid for vehicles equipped with manual belt systems.

Vehicle performance was also evaluated against three other safety standards involving 30-mph barrier crashes: FMVSS No. 212, Windshield Mounting (49 CFR 571.212); FMVSS No. 219, Windshield Zone Intrusion (49 CFR 571.219); and FMVSS No. 301, Fuel System Integrity (49 CFR 571.301). As with tests involving the FMVSS No. 208 procedures, impact speeds for these tests were increased to 35 mph for NCAP testing. The 35-mph impact speed proved in the testing to be a speed at which significant differences in occupant protection are apparent.

NCAP Test Results

NCAP testing conducted by NHTSA in 1979 and 1980 involved a wide variety of domestic and foreign cars of all sizes. Vehicles tested ranged from a Honda Civic weighing 2180 lbs. to a Lincoln Continental weighing 4846 lbs. NHTSA tested 44 1979 and 1980 models in 35-mph frontal crashes. Of these vehicles, 32 failed to meet one or more of the FMVSS No. 208 occupant protection criteria. Major differences among the cars were found in all performance areas, with HIC numbers ranging from a low of 429 to a high of 2904 (1000 is a passing reading under the FMVSS No. 208 Procedure), chest deceleration readings extending from 33 g's to 108 g's (60 g's is passing), and femur loads ranging from 67 to 3116 lbs. (2250 lbs. is passing).

Test results available in Docket No. 79–17 indicate that significant differences in crashworthiness exist among vehicles within size classes. Since the FMVSS No. 208 procedure and the other test procedures used in NCAP simulate collisions between vehicles of the same mass, and vehicle mass is a major factor that affects crash severity, NCAP data is useful only for comparing vehicles within weight classes.

Within classes of competing cars differences in crashworthiness were marked. A 1979 Ford Mustang test produced HIC readings of 819 for the driver and 567 for the passenger, while a 1980 Honda Prelude scored 2904 and 1759 for the driver and passenger respectively. A 1980 Chevrolet Chevette had HIC readings of 668 and 699 for the driver and passenger, while a similarly sized 1980 Honda Civic provided corresponding HIC numbers of 2626 and 1506. HIC readings of over 1000 are considered by the agency to indicate a likelihood of serious injury or death.

Significant differences in performance were also evident in the other areas tested. Some models experienced no fuel leakage as a result of 35-mph front and rear impacts, while others sustained serious fuel tank ruptures. Most vehicles tested passed the FMVSS No. 212 and 219 requirements at 35-mph, although several tests produced potentially dangerous failures.

In addition to establishing the existence of major differences in crashworthiness among vehicle models, the NCAP tests and the examples given below suggest that significant safety improvements are possible in many cars at moderate costs. Thus, competition induced by publication of safety ratings could result in equipment upgrading with substantial safety benefits.

The greatest number of failures in the NCAP 35-mph tests resulted from high HIC readings, involving, with rare exceptions, contact of the test dummy's head with the dashboard or steering wheel. In some cases, the steering column was displaced upward into the passenger compartment, aggravating the extent of injury. In many cases, technologically attainable improvements in steering column or seat belt design, such as restricting upward movement of the steering column and limiting belt stretch and spool out, could have substantially improved test performance by preventing head impacts with the vehicle interior. NHTSA believes that for most cars tested the necessary steering column changes and restraint system improvements could be accomplished without major increases in costs. Similarly, many of the fuel system failures encountered in the testing could have been avoided by inexpensive measures such as improved

positioning of the fuel tank or the elimination of puncture-causing protrusions. See, "Implications of the New Car Assessment Program for Small Car Safety" by Brownlee, Hackney, and Abney, Docket No. 79–17, Notice 1, No. 138.

Need For Crashworthiness Information

The need for crashworthiness information is increasing substantially as a result of the growing popularity of small cars. In 1976, according to Automotive News figures, subcompact, compact, and foreign cars made up approximately 47 percent of total sales of new automobiles. Since January 1980, these vehicles have comprised approximately 60 percent of new-car sales. Occupants of small cars generally face a greater risk in a collision due to the smaller physical structure of the vehicle capable of absorbing crash forces and the more limited distance between the occupant and the contactable portions of the vehicle interior. Statistics indicate that small car occupants accounted for 51 percent of all fatalities in single vehicle crashes in 1979, while small cars made up only 38 percent of the vehicle fleet. See, "Safety Consequences of the Shift to Small Cars in the 1980's" by Boehly and Lombardo, Docket No. 79–17, Notice 1, No. 139. Given this increased risk, purchasing a vehicle capable of providing greater occupant protection takes on added importance.

Response to NHTSA's release of NCAP test data indicates that, in fact, the public is concerned about crashworthiness and would be influenced by crashworthiness ratings. Following release of these data, the agency received numerous calls and letters from consumers desiring information on which models scored well in the tests or on how particular models performed. The tests also attracted considerable attention in the news media. Market reaction in recent years to various safety defect recalls and to safety allegations concerning certain new cars provides additional evidence of the public awareness and use of safety information.

The Proposal

The regulation proposed in this notice would establish a new Part 583, Crashworthiness Ratings. The primary element of Part 583 would be a requirement for manufacturers to disclose to prospective purchasers on a window sticker and certify to the NHTSA Administrator whether or not their passenger cars conform to the occupant protection criteria of FMVSS No. 208, when tested under the frontal fixed rigid barrier crash procedures of that safety standard, but at a speed of 35 mph.

Under the proposal, anthropomorphic test dummies, as described in Part 572, Anthropomorphic Test Dummies (49 CFR Part 572), would be placed in the front seats of the vehicle, in accordance with the dummy positioning procedures of FMVSS No. 208. The injury criteria to be applied, incorporated by reference from S6 in 49 CFR § 571.208, would set upper limits of 1000 HIC for head injuries, 60g's (over 3 milliseconds) for chest loads and 2250 lbs. for femur compressive loads.

Manufactuers would also be required to certify to the NHTSA Administrator for distribution to prospective purchasers whether or not their passenger cars comply with the requirements of FMVSS Nos. 212 and 219, and the front impact, rear impact, and rollover requirements of FMVSS No. 301, when tested at an impact speed of 35 mph. FMVSS No. 212 specifies windshield retention requirements for frontal collisions with a fixed collision barrier. FMVSS No. 219 limits the displacement into the windshield area of motor vehicle components like the hood during a frontal crash with a fixed barrier. FMVSS No. 301 sets limits on the amount of fuel spillage which may be incurred in a frontal impact with a fixed barrier, in a rear impact with a moving barrier, and when the vehicle is rotated on its longitudinal axis to each successive increment of 90 degress following these impacts. The lateral moving barrier crash requirements of FMVSS Nos. 208 and 301 apply to lower speed collisions and therefore have been omitted from this proposal, as has the rollover test of FMVSS No. 208.

Under the proposal, manufacturers may at their option certify to NHTSA and specify on the window sticker that their vehicles meet the stated standards when tested at an impact speed greater than 35 mph. Actual testing by manufacturers is not required by the proposal. However, manufacturers choosing not to verify compliance at 35 mph or a higher speed would nonetheless be required to state that their vehicles have failed to comply with the criteria at speeds higher than 30 mph.

The disclosure sticker would be applied to the windshield or front driver's side window of each vehicle by its manufacturer. A separate sticker could be used or the information could be combined with either the fuel economy lablel required by section 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006) or with the price sticker required by the Automobile Information Disclosure Act (15 U.S.C. 1232). The sticker would be required to conform to a specified format and would only contain information on compliance with the FMVSS No. 208 occupant protection criteria, recognizing the greater importance to vehicle safety of the occupant protection standard. Readers would be referred to a separate booklet for comparative data, information on compliance with the other criteria, and an explanation of the ratings system.

Manufacturers' certifications would be submitted to NHTSA 90-days before their vehicles are first offered for sale. This requirement would permit NHTSA to compile and disseminate in booket form a comparative listing of crashworthiness ratings in all four performance categories early in each model year. Manufacturers would be required to distribute the booket to their dealerships. Dealers would then be required to display the materials and order additional copies as needed. NHTSA believes that the 90-day advance notification would not impose an unreasonable burden on industry, since certification testing for FMVSS compliance is generally conducted well before the introduction of new vehicle models. To permit the agency to monitor possible deliberate underrating of performance, manufacturers would also be required to submit with their certification a summary of the factual basis for the ratings assigned, including the number of tests conducted by the manufacturer, a description of the vehicles tested, and the outcome of the tests. The regulation would be implemented beginning with the 1983 model year.

Issues of Particular Interest

In compiling comparative information based on the crashworthiness ratings, NHTSA has tentatively concluded that size classes based on vehicle weight would provide the best means of grouping vehicles so as to minimize the effects of mass differential. Would uniform weight increments (e.g., 400 lbs.) or a system which approximates the weight ranges of market classes provide a better basis for grouping? How broad should the weight classes be? What are the limitations of other systems, such as the interior volume technique employed by the Environmental Protection Agency in its fuel economy bookets?

Another issue of major importance to the ratings system is assigment of the responsibility for data development. Under the proposed rule, any data development for the ratings program would be conducted by manufacturers, with the decisions on whether to test

and how much to test for particular models being left to the manufacturers' discretion. NHTSA is concerned that this approach may be subject to abuse by manufacturers declining to conduct any testing and routinely making negative declarations.

While NHTSA believes that market forces will discourage this type of activity, the agency requests the view of interested parties on whether the agency's tentative conclusion that voluntary manufacturer testing, coupled with a mandatory declaration regarding performance, provides the best means of obtaining information for the program. What is the prospect for deliberate underrating under this system? Would required testing by manufacturers be a more promising alternative? If so, how much testing should be required? Would testing conducted by the agency provide greater certainty of obtaining accurate information at a reasonable cost? Would the agency be able to obtain and test vehicles in time to disseminate the information sufficiently early in the model year?

The proposal calls for dissemination of information to prospective purchasers by means of a window sticker bearing information applicable to the particular vehicle model to which the sticker is affixed. Information would also be submitted to NHTSA for inclusion in a comparative booklet to be made available by NHTSA through automobile dealerships. Is the agency correct in its tentative judgment that these measurers provide the most effective means of communicating ratings information to consumers? Would dissemination of a comparative booklet without window sticker disclosure be sufficient?

NHTSA anticipates that dissemination of crashworthiness information to prospective vehicles purchasers would lead to competition among manufacturers in seeking to achieve occupant crash protection at higher speeds. Has NHTSA accurately estimated the cost likely to be incurred by consumers and industry as a result of this competition? In analyzing the potential benefits of improved crashworthiness performance, NHTSA uses a hypothetical average vehicle overdesign of 10 percent at both the 30 and 25 mph crash test performance goals. See, "Regulatory Analysis on Crashworthiness Performance Ratings for New Cars" (Docket 79-17, Notice 1, No. 140). Does 10 percent accurately represent manufacturers' actual or contemplated levels of overdesign for these test goals? Is there any evidence that safety trade-offs (e.g., reduced safety performance in other accident modes or in frontal impacts at lower speeds) may be associated with efforts to improve high speed occupant protection?

On December 9–11, 1980, the NHTSA sponsored an International Automotive Ratings Symposium in Lancaster, Pennsylvania. One of the purposes of the Symposium was to obtain suggestions from representatives of the automobile and insurance industries, marketing experts, consumer representatives, and other interested parties on the agency's plans for a crashworthiness ratings program.

Some Symposium participants suggested, as an alternative to the type of system proposed above, that the NHTSA develop an indexing procedure which would combine head and chest deceleration and femur load readings developed in frontal crash tests into a composite measure of crashworthiness. This would permit a numerical ranking of automobiles according to their crashworthiness performance.

Other Symposium attendees felt that the variability of crash test results for a particular automobile make or model would significantly increase with increases in crash test speeds. Thus, automobile manufactureres, who would have reasonable confidence in certifying 30-mph test performance in conformance with minimum FMVSS's may refrain from claiming 35-mph occupant protection performance under the ratings system as proposed. It was suggested that the agency establish a "compliance band" bordering the crashworthiness grading goals of 1000 HIC, 60 chest g's and 2250 lbs. femur load. For example, under this alternative, if three cars of the same model yield driver HIC scores of 950, 1000, and 1100 in the 35-mph frontal crash test, and similar scores for the occupant dummy, this model could be considered to have met the head injury criterion at 35 mph (assuming a maximum band of 100 bordering the HIC threshold of 1000).

Another suggested approach would entail rating cars on a continuum of crash test speeds. Contrary to the proposed rule, which requires satisfaction of the crash test criteria at a minimum of 35 mph before a manufacturer can make a positive crashworthiness certification, a continuous ratings system would allow manufacturers to disclose test speeds greater than 30 mph at which their cars meet the occupant protection criteria.

NHTSA is seeking comments on these alternative ratings approaches as well as on the proposal described above. Specifically, the NHTSA is interested in receiving information on the possibility of establishing a crashworthiness indexing procedure in lieu of the ratings approach described at length in this notice. Also, should the disclosure requirements be relaxed somewhat to account for the possible existence of greater test variability at crash speeds above 30 mph? Should this be accomplished by the insertion of a "compliance band" or window bordering the current maximum allowable test readings? If so, how wide should this band be? Finally, if disclosure were permitted at any speed in excess of 30 mph, in lieu of the proposed 35-mph minimum requirement, would minor differences in crash speeds significantly reflect improved crashworthiness performance? Would consumers be able to adequately distinguish among cars providing, for example 30, 32, or 34 mph occupant protection?

Comment is also requested on the desirability of adopting a provision exempting model types of cars whose annual production is limited to 1,000 vehicles. A similar exemption was incorporated in the Uniform Tire Quality Grading System Regulation by an amendment published April 7, 1980 (45 FR 23442).

Related Issues for Future Consideration

The proposed regulation, which relies primarily on fixed barrier collisions to assess crashworthiness, in effect bases its test for 35-mph performance on the ability of a vehicle to protect its occupants in a collision with a vehicle of identical mass traveling at the same speed in the opposite direction. Small cars are at a disadvantage when involved in a collision with vehicles of greater mass. The proposed system does not provide a means of comparing occupant protection performance of cars in different weight classes.

The Booz-Allen & Hamilton study cited above indicates that, in purchasing a motor vehicle, most consumers first select a size class which is suitable for their needs, then compare vehicles within the class before making a purchasing decision Accordingly, the agency has concluded that the system as proposed should provide valuable information to consumers and that the effect of differential vehicle mass is not critical to the initial phase of the crashworthiness ratings program.

Nevertheless, NHTSA is exploring means to account for vehicle mass in future crashworthiness ratings. For example, if a moving barrier test were employed, the barrier mass could be altered to simulate the effect of a collision between vehicles of differing mass. The agency seeks comment on

whether the crashworthiness ratings should be supplemented at some future time with information on crashworthiness performance in collisions with vehicles of differing mass.

If information relating to differential mass effects would be of value, the agency desires comments on the advantages and disadvantages of moving barrier tests, car-to-car collisions, and any other available methods by which mass effects could be evaluated. What are the prospects for development of a deformable barrier which would accurately represent the behavior of a vehicle in a 35-mph crash? If a moving barrier test procedure could be developed, should it be used in addition to or as a substitute for the fixed barrier test? Would average vehicle weight for a given model year be the most appropriate determinant of barrier mass? If car-to-car crash testing were conducted, how could a standardized test car be selected?

The proposed regulation calls for disclosure of whether a vehicle meets the FMVSS No. 208 injury criteria at 35 mph, or at a higher speed chosen by the manufacturer. Could a composite index be developed whereby each injury criterion is weighted taking into account the frequency of serious injuries or death attributable to each relevant body region? What are the limitations, costs, and feasibility of such an alternative rating format?

As noted above, frontal collisions are the cause of the majority of all serious injuries and deaths resulting from auto accidents. All the crash tests proposed for use in the crashworthiness rating program involve frontal impact, with the exception of the rear moving barrier test for fuel system integrity. NHTSA plans to explore side impact ratings using the side impact dummy and test procedure now being developed to upgrade FMVSS No. 214. Should the ratings system include ratings derived from side impacts and other crash configurations, and if so, how should this information be developed?

The current FMVSS No. 208 test procedure uses a 50th percentile Part 572 dummy that incorporates a maximum permissible chest load of 60 g's, and FMVSS No. 208 has previously permitted chest loads up to a chest severity index of 1000 for some restraint systems. NHTSA is currently conducting a program to evaluate several 50th percentile anthropometric test devices, including the Part 572 device, the GM Hybrid III device, and the Association Peugeot-Renault device. Sled tests are being conducted with these devices impacting a driver air bag and knee bolster system, and a 3-point belt system. Some human volunteer and cadaver test data is already available for these restraint systems. Depending on the outcome of these tests, NHTSA may consider employment of a different test dummy and modification and expansion of its injury criteria for the vehicle ratings tests. For example, shoulder belt loads could be used to evaluate the potential for serious or fatal chest injury with safety belt systems. Similarly, tibia (shin bone) loads and knee shear as well as femur load may be important in evaluating air bag or automatic belt systems that employ a knee bolster for lower body restraint. Also, the chest severity index could be used in conjunction with or in lieu of chest g's for evaluation of the occupant crash protection systems. How could the rating system reflect recent developments in dummies and injury criteria? Would additional injury criteria permit more complete evaluation of occupant crash protection performance?

This proposed regulation is considered significant for purposes of Departmental regulatory policies and procedures implementing Executive Order 12221. A draft Regulatory Analysis evaluating the economic and other consequences of the proposed regulation has been placed in the docket for this notice and is available for public review and comment. Copies of the draft Regulatory Analysis may be obtained by writing to the Chief, Technical Reference Branch, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The costs for the crashworthiness ratings program are relatively small. All manufacturers together will incur a first year cost of approximately $3 million in model year 1983 to develop the ratings. The annual cost for each successive years would be only $240,000.

This notice has been reviewed under the Regulatory Flexibility Act. If limited production model types are exempted from the requirements of program, the notice would not have a significant impact on a substantial number of small passenger car manufacturers. Comment on such an exemption is requested in this notice.

In consideration of the foregoing, it is proposed that a new Part 583, Crashworthiness Ratings, be added to Title 49 of the Code of Federal Regulations, as follows:

PART 583—CRASHWORTHINESS RATINGS

Sec.

583.1 Scope.
583.2 Purpose.
583.3 Application.
583.4 Definitions.
583.5 Information requirements.
583.6 Certification criteria.
583.7 Optional certification.

Authority: Secs. 201, 203; Pub. L. 92–513, 80 Stat. 947 (15 U.S.C. 1941, 1944); secs. 112, 119; Pub. L. 89–503, 80 Stat. 718 (15 U.S.C. 1401, 1407)

§ 583.1 Scope.

This part requires manufacturers and dealers of passenger motor vehicles to provide information on the ability of their vehicles to protect occupants from serious injury or death in high speed collisions.

§ 583.2 Purpose.

The purpose of this regulation is to provide prospective vehicle purchasers with comparative information with which to evaluate the crashworthiness of new motor vehicles offered for sale.

§ 583.3 Application.

This part applies to manufacturers and dealers of passenger cars and to passenger cars manufactured on or after September 1, 1982.

§ 583.4 Definitions.

(a) Statutory definitions. All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391) are used as defined in that statute.

(b) Other definitions. All terms used in this part that are defined in § 571.3(b) of this chapter are used as defined in that paragraph.

§ 583.5 Information requirements.

(a)(1) Except as provided in § 583.7, each manufacturer shall affix or cause to be affixed to each of its vehicles subject to this part, which it has found meets the performance criteria specified in § 583.6(a) when tested in accordance with the conditions and procedures specified in that paragraph, a label in the form illustrated in Figure 1. Each manufacturer shall affix or cause to be affixed to each of its vehicles subject to this part, which it has not found meets the performance criteria specified in § 583.6(a) when tested in accordance with the conditions and procedures specified in that paragraph, a label in the form illustrated in Figure 2. Labels on all vehicles produced prior to September 1, 1983, and labeled in accordance with this paragraph, shall include the footnote indicated by an asterisk in Figures 1 and 2.

(2) The label shall:

(i) Be affixed to the windshield or front driver's side window prior to the offer for sale to the consumer of the vehicle to which it applies,

(ii) Be readily legible from the exterior of the vehicle, and

(iii) Remain affixed and legible until the time the automobile is delivered to the possession of the first purchaser for purposes other than resale.

(b) Except as provided in § 583.7, each manufacturer shall, for each of its motor vehicles covered by this part, certify in writing to the Administrator at least 90 days before the vehicle is first offered for sale to the consumer, whether or not the vehicle has been found to meet one or more of the performance criteria specified in § 583.5 (a), (b), (c), and (d), when tested in accordance with the conditions and procedures specified in those paragraphs. Accompanying the certification provided under this pargraph, or under § 583.7, each manufacturer shall submit a concise summary of the factual basis for that certification, including the number of tests, if any, conducted by or for the manufacturer pertaining to certification under this part, a listing of the vehicles tested, and a statement of the outcome of each test.

(c) Each dealer of passenger motor vehicles shall provide without charge and in sufficient quantity to be available for retention by prospective purchasers a booklet containing information comparing the crashworthiness of vehicles of different manufacturers. The booklet shall be prominently displayed by the dealer in the same manner and in the same location used to display brochures describing the automobiles offered for sale by the dealer. The booklet will be furnished by the National Highway Traffic Safety Administration (NHTSA) to vehicle manufacturers. Each manufacturer shall provide sufficient copies of the booklet to each dealer of its passenger motor vehicles with whom the manufacturer has a contractual, proprietary, or other legal relationship, or who has such a relationship with a distributor of the manufacturer, and shall, on request of such dealer, promptly supply necessary additional copies. The booklet shall be furnished to the dealer by the manufacturer not later than 30 days after the manufacturer's receipt of the booklet from NHTSA. The booklet shall be made available to prospective purchasers by the dealer not later than 45 days after receipt of the booklet by the manufacturer. The dealer shall request from the manufacturer additional copies of the booklet as necessary.

§ 583.6 Certification Criteria.

The certification and labeling required by § 583.5 (a) and (b) and 583.7 shall be based on the following performance criteria:

(a) Occupant crash protection. When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30° in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions and procedures of S8.1, S10 and S11 of § 571.208 of this chapter, with anthropomorphic test devices conforming to Subpart B of 49 CFR Part 572 at each designated seating position described in (1) or (2) for which a barrier crash test is required under S4 of § 571.208, the vehicle meets the injury criteria of S6 of § 571.208. An anthropomorphic test device is placed—

(1) In the case of a vehicle equipped with bucket seats, at each front designated seating position; and

(2) In the case of a vehicle equipped with a frontal bench seat, at the driver's designated seating position and at any other one front designated seating position.

(b) Windshield mounting. When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S6 of § 571.212 of this chapter, the windshield mounting of the vehicle retains not less than the minimun portion of the windshield periphery specified in S5.1 and S5.2 of § 571.212.

(c) Windshield zone intrusion. When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S7 of § 571.219 of this chapter, no part of the vehicle outside the occupant compartment, except windshield molding and other components designed to be normally in contact with the windshield, penetrates the protected zone template, affixed according to S6 of § 571.219, to a depth of more than one quarter inch, and no such part of the vehicle penetrates the inner surface of that portion of the windshield, within the daylight opening, as defined in S4 of § 571.219, below the protected zone described in S6 of § 571.219.

(d) Fuel system integrity.

(1) Each vehicle meets the criteria of either barrier crash test described in § 583.6(d) (2) and (3), followed by a static rollover, without alteration of the vehicle during the test sequence. A particular vehicle need not meet further criteria after having been subjected to a single barrier crash test and a static rollover test.

(2) When the vehicle traveling longitudinally forward at a speed of 35 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30° in either direction from the perpendicular to the line of travel of the vehicle, with 50th-percentile test dummies as specified in Subpart B Part 572 of this chapter at each front outboard designated seating position and at any other position whose protection system is required to be tested by a dummy under the provisions of § 571.208 of this chapter, under the applicable conditions of S7 of § 571.301, fuel spillage, as defined in S4 of § 571.301, does not exceed the limits of S4 of S5.5 of § 571.301.

(3) When the vehicle is impacted from the rear by a barrier moving at 35 mph, with test dummies as specified in Part 572 of this chapter at each front outboard designated seating position, under the applicable conditions of S7 of § 571.301 of this chapter, fuel spillage, as defined in S4 of § 571.301, does not exceed the limits of S5.5 of § 571.301.

(4) When the vehicle is rotated on its longitudinal axis to each successive increment of 90° following an impact crash of § 583.6(d) (2) or (3), fuel spillage, as defined in S4 of § 571.301 of this chapter, does not exceed the limits of S6 of § 571.301.

§ 583.7 Optional certification.

When any vehicle meets the performance criteria of § 583.6 (a), (b), (c), or (d), when tested in accordance with the conditions and procedures specified in those paragraphs, but at an impact speed greater than 35 mph, the manufacturer may, at its option, indicate that the vehicle so conforms by specifying the higher impact speed in the certification required by § 583.5(b) and, in the case of § 583.6(a), on the label required by § 583.6(a).

Figure 1

DOT Crashworthiness Ratings

Passenger car must meet a minimum Federal occupant crash protection standard in a 30 mph frontal barrier crash.[*] Some cars provide greater occupant protection by meeting the criteria of the standard at speeds higher than 30 mph. The speed at which this car meets the occupant protection criteria is specified below.

Occupant Crash Protection [35] mph

This safety rating should only be used in comparing cars of the same weight class. A booklet containing ratings for all cars, grouped by weight class, and a full explanation of the ratings system, is available from your dealer. The booklet also

contains ratings for windshield retention and intrusion and fuel system integrity.

WARNING: The occupant crash protection rating applies only if the car's occupants are correctly using available restraint systems.

[*The standard does not apply to some model year 1983 passenger cars, although all such vehicles have been rated under this program.]

Figure 2

DOT Crashworthiness ratings

Passenger cars must meet a minimum Federal occupant crash protection standard in a 30 mph frontal barrier crash.[*] Some cars provide greater occupant protection by meeting the criteria of the standard at speeds higher than 30 mph.

THIS CAR HAS FAILED TO MEET THE OCCUPANT PROTECTION CRITERIA AT SPEEDS HIGHER THAN 30 MPH.

This safety rating should only be used in comparing cars of the same weight class. A booklet containing ratings for all cars, grouped by weight class, and a full explanation of the ratings system, is available from your dealer.

WARNING: The occupant crash protection rating applies only if the car's occupants are correctly using available restraint systems.

[*The standard does not apply to some model year 1983 passenger cars, although all such vehicles have been rated under this program.]

Interested persons are invited to submit comments on any aspect of the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

Those persons desiring to be notified upon receipt of their comments in the rulemaking document should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be sumitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available to the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The principal author of this proposal is Richard J. Hipolit of the Office of the Chief Counsel.

(Secs. 201, 203; Pub. L. 92-513, 80 Stat. 947 (15 U.S.C. 1941, 1944); secs. 112, 119; Pub. L. 89-503, 80 Stat. 718 (15 U.S.C. 1401, 1407))

Issued on: January 16, 1981.

Neil Goldschmidt,

Secretary.

[FR Doc. 81-2257 Filed 1-16-81; 3:55 pm]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

49 CFR Part 638

[Docket No. 80-N]

Maintenance Requirements

Note.—This document was originally published in the **Federal Register** of Wednesday, January 21, 1981. It is reprinted in this issue to meet the Monday/Thusday publication schedule assigned to the Urban Mass Transportation Administration.

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing a policy that will insure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort and preservation and expansion of transit service. UMTA is seeking public comment to assist in the development of maintenance guidelines and procedures.

DATE: Comments must be received by May 22, 1981.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-N, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with the comment.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-6997.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered in the development of guidelines and procedures. Comments received after the expiration of the comment period will be considered to the extent feasible.

The Administrator has determined that the proposed action is significant under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979) since it concerns a matter on which there may be substantial controversy and since it initiates a substantial change in policy.

A draft Regulatory Evaluation has been prepared and has been placed in the public docket, and is available at the address above.

Discussion

The Urban Mass Transportation Administration is proposing a policy that will insure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort, and preservation and expansion of transit sevice. This policy will be applicable to all funds administered for the maintenance and expanison of mass transportation systems by UMTA discretionary Grant funds (Section 3 (49 U.S.C. 1602)); Formula Grant funds (Section 5 (49 U.S.C. 1604)); Section

16(b)(2) funds (49 U.S.C. 1612(b)(2)): Interstate Transfer funds (23 U.S.C. 103) and Urban System funds (23 U.S.C. 142).

Federal investments in the capital and operating cost of transit equipment and facilities are substantial, totalling several billion dollars annually. The use of public transit depends largely upon its ability to provide efficient and reliable service. Efficiency and reliability are functions of the type and level of maintenance performed. Systematic maintenance practices by transit operators have proven effective in reducing service interruptions and in ensuring the useful life and operating expectancy of vehicles and equipment.

Although maintenance procedures impose time and cost burdens on transit operations, UMTA believes such an investment in preventive maintenance practices reduces the likelihood of costly replacement of facilities or equipment before they have reached the end of their useful life or costly repairs that could have been prevented if maintenance practices had been employed. UMTA recognizes the importance of the interrelationship of maintenance, transit reliability and the expense of maintaining vehicle and equipment. Proper maintenance demands a commitment by transit operators to secure the necessary financial and manpower resources often not sought because of immediate operating needs, and limited budgets. UMTA recognizes the difficulties faced by transit operators in establishing maintenance as a local priority and wishes to provide assistance to transit operators in this important area. Because we do not have the benefit, as yet, of systematic analyses of the relationship between maintenance practices and vehicle performance, no simple standard procedure will guarantee improvement in maintenance practices. The Federal government does, however, have a strong interest in ensuring that federal funds available for mass transportation assistance are used prudently and with maximum effectiveness. Therefore UMTA will begin to emphasize the importance of maintenance through this ANPRM, and its intent to identify and evaluate opportunities for improvement in maintenance practices and to initiate needed actions.

Section 116 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2698, requires State cerification and Federal oversight for maintenance of Interstate highways. Although there is no similar statutory requirement for Federal oversight of maintenance of transit facilities and equipment, both Section 3(A)(1)(D) and Section 5(d)(1) of the Urban Mass Transportation Act, as amended, provide the Secretary with the authority to subject grants and loans "to such terms, conditions, requirements and provisions as the Secretary determines necessary or appropriate." In addition, Section 5(d)(2) provides the Secretary with the authority to "issue such regulations as he deems necessary to administer this subsection * * * including requirements for improving the efficiency of transit services." These sections provide UMTA with the authority to require adequate maintenance for rail rolling stock, buses, and related transit equipment and facilities. As further support of bus maintenance in particular, the House Committee on Public Works and Transportation indicated in the legislative history to the 1978 Act, House Report No. 1485, dated August 11, 1978, that fourth tier formula funds may "be used to purchase bus equipment needed to maintain the usefulness of the buses pruchase." In addition, OMB Circular A-102, Attanchment N, Prescribes uniform property management standards for grantees of Federal agencies requiring in Section (d)(5) that "adequate maintenance procedures shall be implemented to keep the property in good condition."

The pressure for transit capacity, and the Federal Government's interest in ensuring that federal funds available for mass transportation assistance be used prudently and in a productive manner all necessitate increased attention to transit maintenance practices. UMTA wishes, however, to proceed thoughtfully in the development of alternative strategies for improved maintenance practices. Public comments are requested to assist in the development of future maintenance guidelines and procedures.

Vehicle reliability, therefore total system reliability, varies greatly because of the disparity in operator maintenance practices throughout the country and the many inherent variables in local situations. Manufacturers, however, do provide either maintenance manuals or standards for the warranty period and/or useful life of vehicles, equipment, and facilities.

Assumptions

Because a systematic evaluation of the tradeoffs between reliability, vehicle availability and maintenance costs as a basis of proof of benefit to operators in terms of reduction in overall operating costs has not been established, it is necessary that assumptions be made regarding maintenance practices at all levels. These assumptions are:

1. There is a perceived cost savings resulting from adequate maintenance practices since service life, reliability and availability of equipment and facilities are increased.

2. Proper maintenance practices postpone and perhaps reduce the need for costly capital investments in new equipment.

3. The actual tradeoffs between reliability and maintenance costs vary from property to property. There is no standard definition of "adequate" maintenance as variables such as climate and road conditions necessitate the need for flexible maintenance practices.

4. A Federal policy which would require transit operators to institute routine maintenance practices would:

a. Provide the motivation for increased attention and allocation of local dollars for maintenance activities;

b. Increase performance and useful life of equipment and facilities;

c. Minimize replacement costs;

d. Result in cost savings for both Federal and local interests;

e. Require enforcement.

In the interest of making all transit operators and the general public aware of the issues to be considered by UMTA in developing a long term policy on maintenance, we specifically request comments on the following alternative requirements, the discussion of compliance, and the discussion of sanctions:

Alternative Maintenance Requirements

The alternatives outlined below are not mutually exclusive. Many could be combined depending upon the direction that evolves. It should be noted that the alternatives encompass various "innovative regulatory techniques" such as use of performance standards; use of voluntary standards; and tailoring of the standards to suit the particular characteristics of the grantee (size of the transit property, geographic location, and weather conditions). These techniques should be considered in commenting on the alternatives. The advantages and disadvantages listed for each alternative represent only our initial analysis. We invite commentors to provide additional advantages and disadvantages.

1. Reinforce UMTA's current authority by specifically requiring maintenance as a condition for UMTA assistance.

Advantages

a. Easy to implement.

b. Allows flexibility in implementation,

c. Accomodates local variables regarding maintenance needs and capabilities.

Disadvantages

a. Provides no uniform or consistent application of the policy because of the wide variety of interpretations of "adequate maintenance."

b. Provides no method of evaluation or monitoring.

c. Compliance is not defined, leading to possible confusion as to when sanctions might be applied.

2. Require grantees to develop and implement a maintenance plan for all vehicles, equipment, and fixed facilities. This plan would be based upon published manufacturers' equipment standards, or these standards and practices combined with an operator's judgment and experience which would result in maintenance practices designed for a specific operation. This plan would cover the warranty period and the stated service life of the equipment and facilities. UMTA would review and approve the plan and ensure compliance through on-site inspections or other means. UMTA also would require that maintenance records be kept.

Advantages

a. Through systematic reviews of the plans, UMTA could ensure some level of uniformity and consistency in maintenance practices among similar properties by comparing various maintenance plans with performance.

b. Provide flexibility in maintenance practices by allowing operators to develop individual maintenance plans.

Disadvantages

a. UMTA would need additional staff and perhaps different expertise to review maintenance plans or conduct inspections.

b. Development of such plans or recordkeeping may be perceived as costly and a paperwork burden.

c. Would not ensure any uniformity or consistency in application of maintenance practices.

3. Require grantees to develop and implement a maintenance plan for all vehicles, equipment, and fixed facilities. This plan would cover the warranty period and the stated service life of the equipment and facilities. UMTA would evaluate the adequacy of the plan by comparing it to the published minimum maintenance standards established by UMTA, on-site inspections, etc. UMTA also would require that maintenance records be kept.

Advantages

a. UMTA would have a standard or criterion against which to evaluate maintenance plans for each property and grantees would have guidelines for the development of such plans.

b. UMTA would be able to ensure consistency and uniformity among maintenance plans developed and maintenance practices.

c. Would provide UMTA with more direct involvement in operators' maintenance practices.

d. Would ensure protection of Federal investment.

Disadvantages

a. Would require additional expertise and staff resources to develop standards and monitor compliance.

b. May be perceived as unwarranted and improper Federal intervention in industry practices.

c. Could encourage adherence to a lower level of maintenance activity.

d. Does not account for variables in local conditions.

e. Could result in Federal Government assuming responsibility for equipment failures.

4. Require grantees to develop and implement a maintenance plan for all vehicles, equipment and fixed facilities. UMTA would require that the plan be made available for review upon request only.

Advantages

a. Provide flexibility in maintenance practices by allowing operators to develop individual maintenance plans.

b. Would not require additional UMTA staff or expertise to ensure compliance.

Disadvantages

a. UMTA would have no standard or criterion against which to evaluate the maintenance plans.

b. Would not ensure national consistency and uniformity in development of plans or application of maintenance practices.

c. Would not necessarily ensure protection of Federal investment.

d. Would not necessarily result in improved maintenance practices.

5. As part of the bid specification, require manufacturers to provide maintenance schedules to grantees for all facilities and equipment for their entire useful life, as do bus manufacturers, and require that these schedules be implemented.

Advantages

a. Minimum amount of involvement by UMTA.

b. Places responsibility for maintenance on grantee and manufacturers.

c. Easy to implement.

d. If a cost is attached to various maintenance activities, it could be used as part of life cycle costing procurement.

Disadvantages

a. Because the manufacturers' primary goal is to produce, the impact and usefulness of manufacturers' maintenance recommendations may be questionable.

b. UMTA would have no way of assessing the usefulness of such schedules except over time by comparing them with performance.

c. May impose a burden on manufacturers who do not recommend maintenance practices to develop such.

d. Manufacturers who do not or choose not to issue maintenance schedules may lose business.

6. Set aside a percentage of Section 5 funds to be used for maintenance activities and/or maintenance training and require that grantees use a percentage of each fiscal year's Section 5 apportionment for these activities.

Advantages

a. Would be easy to track.

b. Would provide visibility for such an emphasis.

c. Such funds also could be used to develop training or information-sharing workshops or courses for transit operators.

Disadvantages

a. Might not result in a satisfactory level of maintenance.

b. Would be difficult, if not impossible, to develop a basis for earmarking Section 5 funds or ensuring equitable distribution of funds among grantees.

c. Would not reflect grantees needs therefore might not have the desired effect.

d. UMTA would have no way of assessing the appropriateness of impact of the training provided or maintenance practices.

e. Earmarking funds by grantee or area may result in a reduction in amount expended on that activity. Could become a ceiling, rather than a floor.

f. Would open the way for earmarking funds for other "priority" activities, a policy discouraged in the past.

7. Establish a formal policy stating that UMTA will not replace vehicles or equipment prior to the end of the manufacturer's specified useful life unless extraordinary conditions warrant replacement before such time.

Advantages

a. Avoids UMTA involvement in specific maintenance requirements.

b. Provides grantees maximum flexibility to maintain vehicles and equipment as they deem appropriate.

c. May provide incentive to manufacturers to produce better quality products or provide improved guidance on maintenance practices.

Disavantages

a. May result in manufacturers recommending a reduced useful life.

b. May result in products of lesser quality or reduced attention by manufacturers to recommended maintenance practices.

c. May not be possible for manufacturer to determine "useful life" for all facilities and equipment.

d. Would put UMTA in position of refusing to replace failed equipment, thereby causing disruption of transit service.

e. Does not account for local variations in climate, terrain, service use, which affect useful life.

8. Initiate maintenance studies in the areas of maintenance planning, manuals, recordkeeping and actual maintenance practices.

Advantages

a. Would provide the cost data to support various levels of bus maintenance practices and resultant performance levels.

b. Would provide additional basis for developing guidance.

Disadvantages

a. May be difficult to obtain appropriate data with which to analyze cost effectiveness of various levels of maintenance.

Compliance

UMTA could impose one or more methods for ensuring grantee compliance with a maintenance requirement.

1. Do the minimum, essentially alternative No. 1.

2. Annual grantee certification to UMTA stating that grantee is in compliance with the chosen maintenance requirement.

3. Review of grantee maintenance records.

4. On-site inspections of grantee maintenance practices. These methods have associated impacts which should be considered in assessing the practicality of their implementation. For instance, on-site inspections and review of grantee maintenance records by UMTA may require additional UMTA staff and such involvement may be perceived as unwarranted Federal involvement in daily transit operations; depending upon the level required, recordkeeping may be considered a costly, time-consuming, paperwork burden.

Sanctions

UMTA could impose a variety of sanctions fro non-complicance with the chosen maintenance requirement depending upon the content of that requirement. Types and time limits for sanctions could vary depending upon the specifics of individual cases in question. Sanctions could include:

1. Submission of a corrective action plan if maintenance practices are found deficient.

2. A requirement that funds be used for the express purpose of correcting deficiencies within a specified time period.

3. Denial or suspension of operating assistance or capital assistance for replacement facilities or equipment or fleet expansion.

The applicability of each sanction to a specific operator's problem should be considered carefully in order to ensure its usefulness and practicality in achieving the desired goal of the chosen maintenance requirement. Withholding Section 5 operating assistance would have the desired immediate impact but also would deny the very funds needed to correct the maintenance deficiency cited. Witholding capital assistance would have a less immediate and perhaps less harmful impact but is an equally undesirable sanction. Regardless of the sanction chosen, UMTA would ensure a clear understanding of the intent of the policy and a clearly defined procedure for due process through which this policy would be implemented.

Dated: January 15, 1981.

Theodore C. Lutz

Administrator.

[FR Doc. 81-2062 Filed 1-15-81; 4:10 pm]

BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611 and 658

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Notice of extension of comment period.

SUMMARY: On November 7, 1980, plan approval and proposed regulations for the shrimp fishery of the Gulf of Mexico were published in the **Federal Register** (45 FR 74178). Subsequently, a correction designating a contact person and phone number was published (45 FR 79126, November 28, 1980).

Comments were invited until December 31, 1981. However, the State of Alabama requested an extension of the comment period, based on information by the Justice Department that the plan would be implemented within water areas which are the subject of the case of *United States* v. *Louisiana*, No. 9, Original, October Term 1979. Consequently, the comment period on the regulations is extended until January 31, 1981.

DATE: Comments are invited until January 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Burgess, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893-3721.

Signed at Washington, D.C. this 16th day of January, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-2326 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 46, No. 14
Thursday, January 22, 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.

ACTION

Performance Review Board; Members

AGENCY: Action.

ACTION: Notice.

SUMMARY: Action publishes the names of the members of the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Robert S. Currie, Executive Officer, ACTION, 806 Connecticut Avenue, NW, Washington, D.C. 20525 (202/254-7264).

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The persons named below have been selected to serve on the Performance Review Board.

ACTION Senior Executive Service Performance Review Board

Robert S. Currie, Executive Officer, Chairman
James B. Lancaster, Jr., Assistant Director for Administration and Finance
Donald Green, Executive Assistant for Programs
Janet B. Watlington, Assistant Director for Legislative and Governmental Affairs
Edward J. Guss, Deputy Assistant Director for Administration and Finance
Dana Rodgers, Deputy Assistant Director for Policy and Planning
Leo E. Palensky, Director of Accounting
Dr. Robert Lee, Professor of Public Administration, Pennsylvania State University

Issued in Washington, D.C., on January 14, 1981.

Sam Brown,
Issuance System Manager.

[FR Doc. 81-2152 Filed 1-21-81; 8:45 am]
BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Disqualification of Individual for Judging or Managing Any Horse Show

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Disqualification.

PURPOSE: This notice is to advise the general public and the horse industry of the disqualification of the following individual, under section 6(c) of the Horse Protection Act, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for the period indicated.

Frank Parnell, Newbern, Tennessee

Frank Parnell has been disqualified from showing or exhibiting any horse, judging or managing any horse show, horse exhibiting, or horse sale or auction for a period of 2 years which is to run from November 22, 1980, through November 21, 1982.

SUPPLEMENTARY INFORMATION: Section 6(c) of the Horse Protection Act states in relevant part that, * * * any person * * * may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibiting or horse sale or auction for a period of not less than 1 year for the first violation and not less than 5 years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to civil penalty of not more than $3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than $3,000 for each violation * * *.

This will serve as notification to the general public and the horse industry that Frank Parnell has been disqualified as indicated, and that allowing a disqualified person to participate in prohibited activities is a violation of section 6(c) of the Act and is subject to the penalties indicated therein.

Done at Washington, DC., this 16th day of January, 1981.

R. P. Jones,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 81-2171 Filed 1-21-81; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Forest Land and Resource Management Plan for the White River National Forest, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt, and Summit Counties, Colo.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act fo 1976, the Forest Service, Department of Agriculture, will prepare an environmental impact statement on the Forest Land and Resource Management Plan (Forest Plan) for the White River National Forest.

Alternative ways to allocate land use and apply management prescriptions to land will be analyzed and evaluated. Three alternative plans which emphasize current management, environmental quality and production of market commodities will be analyzed and evaluated along with other alternatives which emphasize various mixes of providing for environmental quality, non-market and market outputs. The selected plan will provide policy and program direction for management of National Forest System lands under the administration of the Forest Supervisor for the White River National Forest, including the District on the Arapaho National Forest.

The work plan for completing the Forest Plan is available for public review at the Forest Supervisor's Office, White River National Forest, P.O. Box 948, Glenwood Springs, Colorado 81601, telephone (303) 945–6582.

The scope of the planning effort will be determined by the public issues and management concerns identified early in the planning process. The public including Federal, state, and local agencies will be contacted to determine existing or emerging issues. Management concerns of the Forest Service will also be identified.

The plan will be sensitive to public issues. Public notices will be given, public meetings held and written public comment solicited to assure that the public is informed of and involved in the planning process.

The specific date, time, place, and description of meetings will be published in newspapers and sent to those on the Forest Plan mailing list more than 30 calendar days before a meeting is scheduled. All requests for written public response will allow at least 30 calendar days for reply. The planning process and resultant plan will be coordinated with local, county, state, and other Federal agencies.

The planning action documentation for public issues, management concerns, and management opportunities; planning criteria; data bases; and, analysis of the management situation are currently scheduled to be available for public review around June 1982. Documentation for alternatives, effects of alternatives, and evaluation of alternatives will be available for public review as part of the draft environmental impact statement.

Based on the regulations implementing the National Forest Managment Act, it appears that the planning process will require about two years. The draft environmental impact statement is scheduled for completion in December 1982. A 90-day period for public review and comments will follow. The final environmental impact statement is scheduled for transmitting to the Environmental Protection Agency in September 1983 with implementation of the Forest Plan to begin in October 1983.

Craig W. Rupp, Regional Forester for the Rocky Mountain Region, is the responsible official. Richard E. Woodrow, Forest Supervisor, is responsible for preparation of the environmental impact statement and Forest Plan.

Please contact Richard E. Woodrow, Forest Supervisor, White River National Forest, P.O. Box 948, Glenwood Springs, Colorado 81601, telephone (303) 945–6582, for further information and any adjustments in the scheduled availability of planning action documentation or for comments on this Notice of Intent and the Forest Plan.

Dated: January 12, 1981.

Craig W. Rupp,

Regional Forester.

[FR Doc. 81–2215 Filed 1–21–81; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

[Order 81–1–75; Docket Nos. 38965, 39158]

Application of Wings International Airways, Inc. for a Certificate of Public Convenience and Necessity.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause 81–1–75, Docket 38965 and Fitness Investigation of Wings International Airways, Inc., Docket 39158.

SUMMARY: The Board is issuing an order in which it tentatively finds and concludes that it is consistent with the public convenience and necessity to grant the application of Wings International Airways, Inc., for a certificate autorizing the air transportation of persons, property and mail between New York, N.Y. and Newark, N.J., on the one hand, and the coterminal points Los Angeles, Ontario and Long Beach, Calif. on the other hand. Certification is subject to a favorable determination of the applicant's fitness in the Wings International Airways Fitness Investigation (Docket 39158), instituted concurrently.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findinds and conclusions shall file by February 18, 1981, a statement of objections together with a summary of testimony, statistical data and other material expected to relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

Persons wishing to file petitions to intervene in the Wings International Airways Fitness Investigation shall file their petitions in Docket 39158 prior to the prehearing conference and serve such filings on all persons listed below. Notice of the prehearing conference shall be published in the Federal Register.

ADDRESSES: Objections to the issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 38965, application of Wings International Airways, Inc. for a certificate of public convenience and necessity.

In addition, copies of such filings should be served on Wings International Airways, Inc., the Mayors of New York, Newark, Los Angeles, Ontario and Long Beach, the airport managers at New York (LaGuardia), Newark, Los Angeles, Ontario and Long Beach, the New York Department of Transportation, the New Jersey Department of Transportation and the California Public Utilities Commission.

FOR FURTHER INFORMATION CONTRACT: Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; (202) 673–5333.

SUPPLEMENTARY INFORMATION. The complete text of Order 81–1–75 is available from our Distribution Section, Room 516, 1825 Connecticut Ave., NW, Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81–1–75 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: January 15, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81–2249 Filed 1–21–81; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Data 100 Systems, Ltd.; Order

The Office of Export Administration, International Trade Administration, United States Department of Commerce, having determined to initiate adminstrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96–72, to be codified at 50 U.S.C. app. sec. 2401, *et seq.)* and Part 388 of the Export Administration Regulations (44 FR 59897, October 17, 1979) against Data 100 Systems, Ltd. ("Data 100 Ltd."), based on allegations that Data 100 Ltd. violated §§ 387.2, 387.4 and 387.6 of the Export Administration Regulations [15 CFR Part 388, *et seq.* (1979)] (the "Regulations"); and

The Department and Data 100 Ltd. having entered into a Consent Agreement whereby Data 100 Ltd. has agreed to settle this matter by payment of a civil penalty in the amount of $22,000 and by undertaking certain corrective measures to ensure compliance with the Regulations; and

The Deputy Assistant Secretary for Export Administration having approved the terms of the Consent Agreement in complete settlement of the matter;

It is therefore ordered,

First, that a civil penalty in the amount of $22,000 is assessed against Data 100 Ltd.;

Second, that Data 100 Ltd., within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the sum of $11,000, which is one-half of the total civil penalty assessed against it;

Third, that payment of the remaining $11,000 by data 100 Ltd. shall be suspended for a probation period of one year from the date of entry of this Order, with payment of the suspended civil penalty to be waived at the end of the probation period provided that there are no further violations of the Regulations by Data 100 Ltd. and that it has undertaken the corrective measures specified in the Consent Agreement;

Fourth, that Data 100 Ltd. shall take the measures specified in the Consent Agreement, incorporated herein by reference, to ensure future compliance;

Fifth, that the proposed Charging Letter and the Consent Agreement be made available to the Public and this Order be published in the **Federal Register**; and

Sixth, that Data 100 Ltd. submit a report to the Director, Compliance Division, Office of Export Administration, within six months after the date of entry of this Order specifying in detail the steps it has taken to implement the corrective measures specified in the Consent Agreement.

Entered this 19th day of December, 1980

Eric L. Hirschhorn

Deputy Assistant Secretary for Export Administration.

[FR Doc. 81-2211 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Northern Telecom Systems Corp.; Order

The Office of Export Administration, International Trade Administration, United States Department of Commerce, having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app. sec. 2401, *et seq.*) and Part 388 of the Export Administration Regulations (44 FR 59897, October 17, 1979) against Data 100 Corporation ("Data 100") and its successor, Northern Telecom Systems Corporation ("NTSC"), based on allegations that Data 100 and NTSC violated §§ 387.2, 387.4 and 387.6 of the Export Administration Regulations [15 CFR Part 368, *et seq.* (1979)] (the "Regulations"); and

The Department and NTSC having entered into a Consent Agreement whereby NTSC has agreed to settle this matter by payment of a civil penalty in the amount of $61,400 and by undertaking certain corrective measures to ensure compliance with the Regulations; and

The Deputy Assistant Secretary for Export Administration having approved the terms of the Consent Agreement in complete settlement of the matter;

It is therefore ordered,

First, that a civil penalty in the amount of $61,400 is assessed against NTSC;

Second, that NTSC, within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the sum of $30,700, which is one-half of the total civil penalty assessed against it;

Third, that payment of the remaining $30,700 by NTSC shall be suspended for a probation period of one year the date of entry of this Order, with payment of the suspended civil penalty to be waived at the end of the probation period provided that there are no further violations of the Regulations by NTSC and NTSC has undertaken the corrective measures specified in the Consent Agreement;

Fourth, that NTSC shall take the measures specified in the Consent Agreement, incorporated herein by reference, to ensure future compliance;

Fifth, that the proposed Charging Letter and the Consent Agreement be made available in the *Federal Register*; and

Sixth, that NTSC submit a report to the Director, Compliance Division, Office of Export Administration, within six months after the date of entry of this Order specifying in detail the steps it has taken to implement the corrective measures specified in the Consent Agreement.

Entered this 19th day of December, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 81-2214 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Sycor, Inc.; Order

The Office of Export Administration, United States Department of Commerce, having initiated administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app. sec. 2401, *et seq.*) and Part 388 of the Export Administration Regulations (44 FR 59897, October 17, 1979) against Sycor Inc. ("Sycor"), based on allegations that Sycor violated §§ 387.2, 387.4 and 387.6 of the Export Administration Regulations [15 CFR Part 368, *et seq.* (1979)] (the "Regulations"); and

The Department and Northern Telecom Systems Corporation ("NTSC"), as successor to Sycor, having entered into a Consent Agreement whereby NTSC has agreed to settle this matter by payment of a civil penalty in the amount of $16,000 and by undertaking certain corrective measures to ensure compliance with the Regulations; and

The Hearing Commissioner having approved the terms of the Consent Agreement in complete settlement of the matter;

It is therefore ordered,

First, that a civil penalty in the amount of $16,000 is assessed against NTSC;

Second, that NTSC, within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the sum of $8,000, which is one-half of the total civil penalty assessed against it;

Third, that payment of the remaining $8,000 by NTSC shall be suspended for a period of six months from the date of entry of this Order, with payment of the suspended civil penalty to be waived at the end of the probation period provided that there are no further violations of the Regulations by NTSC and that NTSC has undertaken the corrective measures specified in the Consent Agreement;

Fourth, that NTSC shall take the measures specified in the Consent Agreement, incorporated herein by reference, to ensure future compliance;

Fifth, that the Charging Letter and the Consent Agreement be made available to the public and this Order be published in the **Federal Register**; and

Sixth, that NTSC submit a report to the Director, Compliance Division, Office of Export Administration, within six months after the date of entry of this Order specifying in detail the steps it has taken to implement the corrective measures specified in the Consent Agreement.

Entered this 9th day of December, 1980.

Betram Freedman,

Hearing Commissioner.

[FR Doc. 81-2206 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Discrete Semiconductor Device Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: February 10, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Conference Room B, 14th Street and Constitution Avenue, NW., Washington, D.C. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202–377–2583.

SUPPLEMENARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formaly determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matter listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

Dated: January 14, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2219 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Microcircuit Subcommitee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Microcircuit Subcommittee was formed to study microcircuit and acoustic wave devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: February 10, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 5611, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202–377–2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to closed meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

Dated: January 14, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2220 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Numerically Controlled Machine Tool Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to numerically controlled machine tool or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilaterial controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: February 25, 1981, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

AGENDA:

General Session

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Continuation of discussion pertaining to robots.

(4) Any new business.

Executive Session

(5) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202–377–2583.

Dated: January 14, 1980.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81–2218 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Semiconductor Manufacturing Materials and Equipment Subcommittee was formed to study the technical and strategic value of semiconductor device production equipment and materials for the purpose of maintaining a continuous review of the export control technical parameters, and the formulation of recommendations to the Commerce Department for parameter updating as appropriate for reasons of national security.

TIME AND PLACE: February 10, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202–377–2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

Dated: January 14, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81–2216 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductors, or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: February 11, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 6802, 14th Street and Constitution Ave., NW, Washington, D.C.

AGENDA:

General Session.

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Committee preparation for the next list review.

(4) Subcommittee reports:

a. Discrete Semiconductor Device,

b. Microcircuits and

c. Semiconductor Manufacturing Materials and Equipment.

Executive Session

(5) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10 (d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT:

Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202–377–2583.

Dated: January 14, 1981.

Saul Padwo

Director of Licensing, Office of Export Administration.

[FR Doc. 81-2217 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

National Radio Astronomy Observatory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW Washington, D.C. 20230.

Docket Number: 80–00335. Applicant: National Radio Astronomy Observatory, Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson AZ 85705. Article: Repair of Klystron VRT–2123B14. Manufacturer: Varian Canada, Inc., Canada. Intended use of article: See Notice on page 47895 in the **Federal Register** of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instruments or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article operates at a frequency range of 132–140 gigahertz. The National Bureau of Standards advises in its memorandum dated November 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commmerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2240 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Papanicolaou Cancer Research Institute; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00146. Applicant: Papanicolaou Cancer Research Institute, 1155 N.W. 14th St., (POB 016188), Miami, Florida 33101. Article: NMR Spectrometer, Model FX–90Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of Article: See Notice on page 25442 in the **Federal Register** of April 15, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (September 28, 1979).

Reasons: The foreign article provides the capability for measuring T_1-rho, the spin-lattice relaxation time in the rotating frame. The most closely comparable domestic instrument is the Model XL–200 manufactured by Varian Assoicates. The XL–200 provides the capability for T_1-rho measurements. However at the time the foreign article was ordered, the Model XL–200 did not provide the capability for making T_1-rho measurements. The National Bureau of Standards advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2244 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

University of California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 80–00320. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, CA 97420.

Article: Electron Beam Ionizer.

Manufacturer: Anac Inc., New Zealand. Intended use of Article: See Notice on page 45936 in the **Federal Register** of July 8, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a guaranteed 40 microampere beam current. The National Bureau of Standards advises in its memorandum dated October 9, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2238 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

University of California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importantion Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00351. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, CA 94720. Article: Cryo Microtome. Manufacturer: LKB Produkter AB, Sweden. Intended use of Article: See Notice on page 56122 in the **Federal Register** of August 22, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article cuts 20–100 micron thick sections of a large area (160×150 millimeters) without decalcification. The Department of Health and Human Services advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81–2241 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

University of Illinois; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 80–00344. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Superconducting High-Resolution Magnet System (250 MHz). Manufacturer: Oxford Instruments, United Kingdom. Intended use of article: See Notice on page 56121 in the **Federal Register** of August 22, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article guarantees a field homogeneity of 10^{-6} over a 20 × 20 millimeter cylindrical sample using superconducting shims. The Department of Health and Human Services advises in its memorandum dated November 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81–2239 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

University of Illinois/Urbana-Champaign; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00290. Applicant: University of Illinois/Urbana-Champaign, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Electron Energy Analyzer. Manufacturer: Leybold Heraeus, West Germany. Intended use of article: See Notice on page 42000 in the **Federal Register** of June 23, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a surface sensitivity equal to or better than 0.90 electron volts Full Width Half Maximum at 40,000 counts per second. The National Bureau of Standards advises in its memorandum dated October 24, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81–2243 Filed 1–21–81; 8:45 am]

BILLING CODE 3510–25–M

Yale University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket Number: 80–00328. APPLICANT: Yale University, 10½Hillhouse Avenue, New Haven, CT 06520. Article: Laser, TEA 103–2

and Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: See Notice on page 47894 in the Federal Register of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides 50 milliwatts power per pulse. The National Bureau of Standards advises in its memorandum dated October 24, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-2242 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

Leather Wearing Apparel From Colombia; Preliminary Affirmative Countervailing Duty Determination; Correction

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

ACTION: Correction.

Several lines were inadvertently omitted from the notice published in the Federal Register on January 14, 1981, entitled "Leather Wearing Apparel from Colombia; Preliminary Affirmative Countervailing Duty Determination" (46 FR 3255–56). The first paragraph under the heading "Administrative Procedures" (page 3256) should read as follows:

Administrative Procedures

In accordance with Section 703(d) of the Act (19 U.S.C. 1671b(d)) Customs officers will be directed to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after the date of publication of this notice in the Federal Register. In consideration of the fact that the Colombian exporter, Confecciones Amazonas Orinoco, has voluntarily renounced the receipt of the CAT payments and has entered into negotiations with the Department of Commerce for a suspension agreement, we have preliminarily determined not to order the posting of a cash deposit or bond on entries of the subject merchandise by this exporter. The renunciation is in the full amount of the subsidy on exports to the United States on or after January 1, 1981, of all merchandise currently classified under TSUS 791.76.

B. Waring Partridge,

Acting Deputy Assistant Secretary for Import Administration.

January 15, 1981.

[FR Doc. 81-2130 1-21-81; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Federal Standard COBOL (FIPS Pub. 21-1); Proposed Interpretation

Correction

In FR Doc. 80-40344 appearing at page 85806 in the issue of Tuesday, December 30, 1980, of page 85807, second column, in line fifteen, the word "reinitiate" should read "reinitialize".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings With Partially Closed Sessions

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended in 1976 by Public Law 94-409, notice is hereby given of partially closed sessions of public meetings of the Western Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265). The closed sessions of the meetings are being held to discuss personnel matters regarding the selection of a Fiscal Officer; the selection of individuals to fill vacancies on advisory subpanels, the Scientific and Statistical Committee, and planning teams which are composed of members or employees of the Council, Scientific and Statistical Committee or Advisory Panel. The sessions of the meetings which will be open to the public will address approval of the final fishery management plan for the billfish fisheries; approve a work plan for the bottomfish fisheries, and review progress of programmatic activities.

DATES: The closed sessions of the meetings will be held on February 3, 1981—1 p.m. to 2 p.m., and on February 4, 1981—10 a.m. to 11:30 a.m. The open sessions of the meetings will be held on February 3, 1981—2 p.m. to 5 p.m.; February 4, 1981—1 p.m. to 5 p.m., and on February 5, 1981—9 a.m. to 2 p.m.

ADDRESS: On February 3, 1981, the meetings will take place at the Saipan Continental Hotel, Chalan Kanoa Village, Saipan, and on February 4–5, 1981, the meetings will take place at the Guam Daichi Hotel, Tumon Bay, Agana, Guam.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523-1368.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of its General Counsel, formally determined on , pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed sessions may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6). These portions of the closed meetings are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 5317, Department of Commerce.) All other portions of the meetings are open to the public.

Dated: January 19, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-2638 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Futures Contracts; Proposed Rules of Major Economic Significance; Terms and Conditions of the Futures Contract Based on the Spot Values of Certain Equity Portfolios of the Chicago Board of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rules of contract markets.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in eleven futures contracts, each of which is based on the spot values of certain equity portfolios. As proposed, each of ten of the portfolios is comprised of a specified number of shares of stock in companies designated by the CBT as representative of a particular industry (*e.g.*, air transport, banking, chemical). The eleventh equity portfolio is a composite of those ten industry portfolios. All of the proposed contracts are identical in terms and conditions, except for the stock composition of each particular portfolio. The Commodity Futures Trading Commission ("Commission") has determined that the proposed terms and conditions of the proposed futures contracts are of major economic significance and that, accordingly, publication of the proposed terms and conditions is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 23, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to CBT Portfolio Futures Contracts.

FOR FURTHER INFORMATION CONTACT: George L. Garrow, Jr., Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The terms and conditions of CBT's proposed portfolio futures contracts are as follows:

*Postfolio Futures Contract**

XX01.00 *Authority*—Index and Equity Related Futures Contracts—Trading in index futures contracts and equity related futures contracts may be conducted under such terms and conditions as the Board may prescribe by regulation. Trading in such futures contracts shall be supervised as directed by the Board.

XX02.01 *Application of Regulation*—Futures transactions in ———* Portfolios shall be subject to the general rules of the Association as far as applicable and shall also be subject to the regulations contained in this chapter, which are exclusively applicable to trading in ———* Portfolios.

XX04.01 *Unit of Trading*—The unit of trading shall be the quantity of common stock specified in the Standards (Regulation XX36.01) as contract grade. The unit of trading is defined as a Portfolio.

XX05.01 *Months Traded In*—Trading in Portfolios shall be conducted in any month as determined by the Financial Instruments Committee or the Board.

XX06.01 *Price Basis*—The minimum price movement shall be twelve dollars and fifty cents ($12.50) per contract grade Portfolio.

XX07.01 *Hours of Trading*—The hours of trading for future delivery in Portfolios shall be determined by the Board.

XX08.01 *Trading Limits*—The Board shall determine the limits on price movement for a single trading day in futures contracts of Portfolios.

XX09.01 *Last Day of Trading*—The last day of trading in Portfolio futures contracts deliverable in the current delivery month shall be the fourth business day prior to delivery day.

XX09.02 *Liquidation During the Delivery Month*—After trading in contracts for future delivery in the current delivery month has ceased, in accordance with Regulation XX09.01 of this chapter, outstanding contracts for such delivery shall be liquidated by the delivery, on delivery day, of a Certified Promissory Note, as prescribed in Regulation XX42.01.

Each Clearing Member shall transmit to the Clearing Corporation, by 8 p.m. on the third business day prior to delivery day, the position of each and every customer and the house position that is open in addition to other data normally submitted.

XX10.01 *Margin requirements*—Margin requirements shall be as determined by the Board by regulation.

XX36.01 *Standards*

A. *Contract Grade Portfolio.*

The contract grade for futures trading made under these regulations shall be the Spot Market Value (Regulation XX48.01) of a group of common stock. The group of common stock shall be defined as the ———* Portfolio (the ———* Portfolio shall be referred to in this chapter as the "Portfolio"). The Board shall determine the firms and share quantities that comprise the contract grade portfolio.

Ownership of a Portfolio futures contract shall not extend any rights of ownership, including but not limited to any right to cash distributions or dividends, in the common stock of firms that comprise the Portfolio.

B. *Share Adjustment Mechanism.*

After futures trading has commenced, the contract grade Portfolio's firm composition and share quantities are adjusted only for stock splits, stock dividends, and delistings from the New York Stock Exchange involving the firms included in the Portfolio. Specifically, share adjustments will not be made to the Portfolio for cash dividends or cash distributions.

Fractional shares are never included in the Portfolio. Fractional shares of two or more firms are never combined into whole shares. Fractional shares that result from share quantity adjustments are rounded to a complete share. A fractional share less than one-half is rounded down to the last complete share. A fractional share equal to or greater than one-half is rounded up to an additional complete share.

Adjustments of the Portfolio shall be made in the following manner.

(1) *Stock Split and Reverse Stock Split*—When a firm included in the Portfolio declares a stock split or reverse stock split (hereafter referred together as a "split"), the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Split Factor". The Split Factor is the number of shares of common stock that a shareholder is entitled to receive on the *ex-dividend* date for a single share of outstanding stock held prior to the split.

(ii) Multiply the firm's share quantity in the Portfolio prior to the *ex-dividend* date associated with the split by the "Split Factor". The resulting product is the firm's Portfolio share quantity after the split.

The firm's share quantity in the Portfolio shall be adjusted for a split on the ex-dividend date associated with the split. A split does not affect the share quantities of firms in the Portfolio other than the firm declaring the split.

(2) *Stock Dividend*—When a firm included in the Portfolio declares a stock dividend, the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Stock Dividend Factor" using the following formula:

Stock Dividend Factor $=1+R/R$, where

R=The number of the firm's shares a stockholder must own to receive one whole share of stock dividend.

(ii) Multiply the firm's share quantity in the Portfolio prior to the stock dividend's *ex-dividend* date by the "Stock Dividend Factor". The resulting product is the firm's Portfolio share quantity after the stock dividend.

The firm's share quantity in the Portfolio shall be adjusted for a stock dividend on the stock dividend's ex-dividend date. The stock dividend does not affect the share quantities of firms in the Portfolio other than the firm declaring the stock dividend.

(3) *Delisting from the New York Stock Exchange*—When a a firm included in the Portfolio is delisted from the New York Stock Exchange, the firms and share quantities which comprise the Portfolio are adjusted according to the following procedure:

(i) Obtain the Spot Market Value of the shares (Regulation XX48.01) included in the Portfolio on the third business day prior to the effective date of the firm's delisting.

(ii) Using the Spot Market Values obtained in (i), calculate the "Delisting Adjustment Factor" using the following formula:

Delisting Adjustment Factor $=P/P-F$, where

P=Spot Market Value of the Portfolio, and

F=Spot Market Value of the delisted firm.

(iii) Multiply the Delisting Adjustment Factor by the pre-delisting share quantities of the firms in the Portfolio not being delisted. The resulting products are the share quantities for the firms remaining in the Portfolio after the delisted firm is eliminated from the Portfolio.

The adjustment to the Portfolio resulting from a delisting occurs on the effective date of the firm's delisting.

The shares of the delisted firm are eliminated from the Portfolio on the day the

Portfolio's share quantities are adjusted for the delisting.

The shares of the delisted firm are eliminated from the Portfolio on the day the portfolio's share quantities are adjusted for the delisting.

Firms not originally included in the Portfolio are never added to the Portfolio.

XX42.01 *Delivery on Futures Contracts*—Delivery against the Portfolio futures contract shall be by delivery of a Certified Promissory Note (Regulation XX43.01).

The value of the Certified Promissory Note will equal the Portfolio's Spot Market Value (Regulation XX48.01) on the fourth business day prior to delivery day.

All open positions are reported to the Clearing Corporation by 8:00 p.m. on the third business day prior to delivery day.

The Clearing Corporation will, by 4:00 p.m. the second business day prior to delivery day, inform the Clearing Members with open positions of their matchings.

The Short Clearing Member will invoice the Long Clearing Member for delivery no later than 2:00 p.m. on the first business day prior to delivery day. The invoice price for delivery of the Certified Promissory Note shall equal the settlement price on the last day of trading of the current delivery month.

The Short Clearing Member will deposit by 10:00 a.m. on delivery day with the Clearing Corporation the funds required for the Clearing Corporation's co-signature on the Certified Promissory Note.

Delivery of the Certified Promissory Note shall be made no later than 12:00 noon on delivery day.

XX43.01 *Certified Promissory Note*—A promissory note is certified when the note is co-signed by the Clearing Corporation, guaranteeing payment on the note.

As a condition for receiving the Clearing Corporation's co-signature, the Short Clearing Member is required to deposit with the Clearing Corporation one-hundred percent (100%) of the value of the Certified Promissory Note to be delivered.

The Short Clearing Member can regain the funds deposited with the Clearing Corporation as a condition for co-signature when either:

(a) The Short Clearing Member presents to the Clearing Corporation a Certified Promissory Note cancelled by the Long Clearing Member indicating payment on the note having been made, or

(b) The Long Clearing Member has not presented to the Short Clearing Member the Certified Promissory Note for payment within ten business days of delivery day (inclusive).

The Short Clearing Member is required to pay immediately the value of the Certified promissory Note when the note is presented by the Long Clearing Member.

Only the Long Clearing Member who received delivery of the Certified Promissory Note may collect payment on the note. Certified Promissory Notes are not transferable.

A Certified Promissory Note delivered into the contract is void on and after the eleventh business day subsequent to delivery day (inclusive). Collection on the note must be made prior to the eleventh business day after delivery day to receive payment.

XX46.01 *Date of Delivery*—Delivery day shall be the last business day of the delivery month unless the last business day is a Friday, in which case delivery day shall be the first business day prior to that Friday.

XX47.01 *Payment*—Payment will be by certified or cashier's check drawn on a Bank in the vicinity of the Board of Trade. The certified or cashier's check will be transferred to the Short Clearing Member from the Long Clearing Member by 12:00 noon on delivery day.

XX48.01 *Spot Market Value*—The Spot Market Value of a share included in the Portfolio is its average price per share traded for a day's trading on the New York Stock Exchange as reported by a source designated by the Board.

The Spot Market Value of a share in the Portfolio on a specified day is calculated from the share's trading on that day. If, on the specified day, the share did not trade on the New York Stock Exchange, the Spot Market Value for the share is calculated from trading on the first day prior to the specified day in which the share did trade on the New York Stock Exchange.

The Spot Market Value of a firm in the portfolio is equal to the Spot Market Value of the firm's share multiplied by the number of the firm's shares included in the Portfolio.

The Spot Market Value of the Portfolio is the sum of the Spot Market Values of the firms in the Portfolio.

3.2.1a *Contract Titles*

The regulations for the industry portfolio contracts in the Portfolio Futures Complex are exactly the same for all the contracts. Only the contract titles are explicitly unique to each contract.

The asterisks included in the contract title and regulations XX02.01 and XX36.01 mark the locations where the contract titles are to be inserted. Below, the specified word(s) which replaces the asterisk in each contract is listed.

Portfolio Future Contract Market	*Asterisk Replacement*
Air Transport Portfolio	Air Transport.
Automotive Portfolio	Automotive.
Banking Portfolio	Banking.
Chemical Portfolio	Chemical.
Drug Portfolio	Drug.
Information Processing Portfolio	Information Processing.
Petroleum Portfolio	Petroleum.
Photo-Optic Portfolio	Photo-Optic.
Retail Portfolio	Retail.
Telecommunication Portfolio	Telecommunication.

3.2.1b *Contract Grade Portfolios: The Industry Portfolios*

As specified in the *Standards* (Regulation XX36.01–A), the Board of Directors has selected the following firms and share quantities to comprise the contract grade portfolio for the corresponding industry portfolio contracts. The shares specified are common stock.

Air Transport Portfolio

Delta Airlines, Inc., Nortwest Airlines, Inc., Tiger International, Trans World Corp., UAL Inc.—300 shares each.

Automotive Portfolio

American Motors Corp., Chrysler Corp., Ford Motor Co., General Motors Corp., International Harvester Co.—300 shares each.

Banking Portfolio

BankAmerica Corp., Chase Manhattan Corp., Citicorp, Continental Illinois Corp., J. P. Morgan & Co.—300 shares each.

Chemical Portfolio

Allied Chemical Corp., American Cyanamid Co., Dow Chemical, E. I. DuPont De Nemours, Union Carbide Corp.—300 shares each.

Drug Portfolio

Eli Lilly & Co., Merck & Co., Pfizer Inc., Smithkline Corp., Squibb Corp.—300 shares each.

Information Processing Portfolio

Burroughs Corp., Control Data Corp., International Business Machines Corp., NCR Corp., Xerox Corp.—300 shares each.

Petroleum Portfolio

Atlantic Richfield Co., Exxon Corp., Gulf Oil Corp., Mobil Corp. Co., Standard Oil Co. (Indiana)—300 shares each.

Photo-Optic Portfolio

Bausch & Lomb Inc., Bell & Howell Co., Eastman Kodak Co., Minnesota Mining & Mfg. Co., Polaroid Corp.—300 shares each.

Retail Portfolio

Federated Depart. Stores, Inc., J. C. Penney Co., May Department Stores Co., R. H. Macy & Co., Sear, Roebuck & Co.—300 shares each.

Telecommunication Portfolio

American Telephone & Telegraph, Continental Telephone Corp., General Telephone & Electronics, United Telecommunications, Western Union Corp.—300 shares each.

Industry Composite Portfolio Futures Contract

XX01.00 *Authority*—Index and Equity Related Futures Contracts-Trading in index futures contracts and equity related futures contracts may be conducted under such terms and conditions as the Board may prescribe by regulation. Trading in such futures contracts shall be supervised as directed by the Board.

XX02.01 *Application of Regulation*—Futures transactions in Industry Composite Portfolios shall be subject to the general rules of the Association as far as applicable and shall also be subject to the regulations contained in this chapter, which are exclusively applicable to trading in Industry Composite Portfolios.

XX04.01 *Unit of Trading*—The unit of trading shall be the quantity of common stock specified in the Standards (Regulation XX36.01) as contract grade. The unit of trading is defined as a Portfolio.

XX05.01 *Months Traded In*—Trading in Portfolios shall be conducted in any month as determined by the Financial Instruments Committee or the Board.

XX06.01 *Price Basis*—The minimum price movement shall be twelve dollars and fifty cents ($12.50) per contract grade Portfolio.

XX07.01 *Hours of Trading*—The hours of trading for future delivery in Portfolios shall be determined by the Board.

XX08.01 *Trading Limits*—The Board shall determine the limits on price movement for a single trading day in futures contracts of Portfolios.

XX09.01 *Last Day of Trading*—The last day of trading in Portfolio futures contracts deliverable in the current delivery month shall be the fourth business day prior to delivery day.

XX09.02 *Liquidation During the Delivery Month*—After trading in contracts for future delivery in the current delivery month has ceased, in accordance with Regulation XX09.01 of this chapter, outstanding contracts for such delivery shall be liquidated by the delivery, on delivery day, of a Certified Promissory Note as prescribed in Regulation XX42.01.

Each Clearing Member shall transmit to the Clearing Corporation, by 8:00 p.m. on the third business day prior to delivery day, the position of each and every customer and the house position that is open in addition to other data normally submitted.

XX10.01 *Margin Requirements*—Margin requirements shall be as determined by the Board by regulation.

XX36.01 *Standards*

A. *Contract Grade Portfolio.*

The contract grade for futures trading made under these regulations shall be the Spot Market Value (Regulation XX48.01) of a group of common stock. The group of common stock shall be defined as the Industry Composite Portfolio (the Industry Composite Portfolio shall be referred to in this chapter as the "Portfolio"). The Board shall determine the firms and share quantities that comprise the contract grade Portfolio.

Ownership of a Portfolio futures contract shall not extend any rights of ownership, including but not limited to any right to cash distributions or cash dividends in the common stock of firms that comprise the Portfolio.

B. *Share Adjustment Mechanism.*

After futures trading has commenced, the contract grade Portfolio's firm composition and share quantities are adjusted only for stock splits, stock dividends, and delistings from the New York Stock Exchange involving the firms included in the Portfolio. Specifically, share adjustments will not be made to the Portfolio for cash dividends or cash distributions.

Adjustments to a firm's share quantities that result in fractional shares shall be rounded to the tenth share. An incremental share less than five one-hundredths (0.05) of a share shall be rounded down to the last complete tenth share. An incremental share equal to or greater than five one-hundreths of a share is rounded up to an additional tenth share.

The equities which comprise the Portfolio shall be segmented into groups. When a firm in the Portfolio is delisted from the New York Stock Exchange, only the share quantities of the firms included in the delisted firm's equity group are adjusted in response to the delisting. The Board shall determine the equity groups within the Portfolio.

Adjustments of the Portfolio shall be made in the following manner.

(1) *Stock Split and Reverse Stock Split*—When a firm included in the Portfolio declares a stock split or reverse stock split (hereafter referred together as a "split"), the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Split Factor". The Split Factor is the number of shares of common stock that a shareholder is entitled to receive on the *ex-dividend* date for a single share of outstanding stock held prior to the split.

(ii) Multiply the firm's share quantity in the Portfolio prior to the *ex-dividend* date associated with the split by the "Split Factor". The resulting product is the firm's Portfolio share quantity after the split.

The firm's share quantity in the Portfolio shall be adjusted for a split on the *ex-dividend* date associated with the split. A split does not affect the share quantities of firms in the Portfolio other than the firm declaring the split.

(2) *Stock Dividend*—When a firm included in the Portfolio declares a stock dividend, the firm's share quantity in the Portfolio shall be adjusted according to the following procedure:

(i) Calculate the "Stock Dividend Factor" using the following formula:

Stock Dividend Factor = 1 + R/R,

where

R = The number of the firm's shares a stockholder must own to receive one whole share of stock dividend.

(ii) Multiply the firm's share quantity in the Portfolio prior to the stock dividend's *ex-dividend* date by the "Stock Dividend Factor". The resulting product is the firm's Portfolio share quantity after the stock dividend.

The firm's share quantity in the Portfolio shall be adjusted for a stock dividend on the stock dividend's *ex-dividend* date. The stock dividend does not affect the share quantities of firms in the Portfolio other than the firm declaring the stock dividend.

(3) *Delisting from the New York Stock Exchange*—When a firm included in the Portfolio is delisted from the New York Stock Exchange, the firms and share quantities which comprise the delisted firm's equity group are adjusted according to the following procedure:

(i) Obtain the Spot Market Value of the shares (Regulation XX48.01) included in the equity group on the third business day prior to the effective date of the firm's delisting.

(ii) Using the Spot Market Values obtained in (i), calculate the "Delisting Adjustment Factor" using the following formula:

Delisting Adjustment Factor = P/P − F,

where

P = Spot Market Value of the equity group, and

F = Spot Market Value of the delisted firm.

(iii) Multiply the Delisting Adjustment Factor by the pre-delisting share quantities of the firms in the equity group not being delisted. The resulting products are the share quantities for the firms remaining in the equity group after the delisted firm is eliminated from the Portfolio.

The adjustment to the Portfolio resulting from a delisting occurs on the effective date of the firm's delisting.

The shares of the delisted firm are eliminated from the Portfolio on the day the Portfolio's share quantities are adjusted for the delisting.

Firms not originally included in the Portfolio are never added to the Portfolio.

XX42.01 *Delivery on Futures Contracts*—Delivery against the Portfolio futures contract shall be by delivery of a Certified Promissory Note (Regulation XX43.01).

The value of the Certified Promissory Note will equal the Portfolio's Spot Market Value (Regulation XX48.01) on the fourth business day prior to delivery day.

All open positions are reported to the Clearing Corporation by 8:00 p.m. on the third business day prior to delivery day.

The Clearing Corporation will, by 4:00 p.m. the second business day prior to delivery day, inform the Clearing Members with open positions of their matchings.

The Short Clearing Member will invoice the Long Clearing Member for delivery no later than 2:00 p.m. on the first business day prior to delivery day. The invoice price for delivery of the Certified Promissory Note shall equal the closing price on the last day of trading of the current delivery month.

The Short Clearing Member will deposit by 10:00 a.m. on delivery day with the Clearing Corporation the funds required for the Clearing Corporation's co-signature on the Certified Promissory Note.

Delivery of the Certified Promissory Note shall be made no later than 12:00 noon on delivery day.

XX43.01 *Certified Promissory Note*—A promissory note is certified when the note is co-signed by the Clearing Corporation, guaranteeing payment on the note.

As a condition for receiving the Clearing Corporation's co-signature, the Short Clearing Member is required to deposit with the Clearing Corporation one-hundred percent (100%) of the value of the Certified Promissory Note to be delivered.

The Short Clearing Member can regain the funds deposited with the Clearing Corporation as a condition for co-signature when either:

a) The Short Clearing Member presents to the Clearing Corporation a Certified Promissory Note cancelled by the Long Clearing Member indicating payment on the note having been made, or

b) The Long Clearing Member has not presented to the Short Clearing Member the Certified Promissory Note for payment within ten business days of delivery day (inclusive).

The Short Clearing Member is required to pay immediately the value of the Certified Promissory Note when the note is presented by the Long Clearing Member.

Only the Long Clearing Member who received delivery of the Certified Promissory Note may collect payment on the note. Certified Promissory Notes are not transferable.

A Certified Promissory Note delivered into the contract is void on and after the eleventh business day subsequent to delivery day (inclusive). Collection on the note must be made prior to the eleventh business day after delivery day to receive payment.

XX46.01 *Date of Delivery*—Delivery day shall be the last business day of the delivery month unless the last business day is a Friday, in which case delivery day shall be the first business day prior to that Friday.

XX47.01 *Payment*—Payment will be by certified or cashier's check drawn on a Bank in the vicinity of the Board of Trade. The certified or cashier's check will be transferred to the Short Clearing Member from the Long Clearing Member by 12:00 noon on delivery day.

XX48.01 *Spot Market Value*—The Spot Market Value of a share included in the Portfolio is its average price per share traded for a day's trading on the New York Stock Exchange as reported by a source designated by the Board.

The Spot Market Value of a share in the Portfolio on a specified day is calculated from the share's trading on that day. If, on the specified day, the share did not trade on the New York Stock Exchange, the Spot Market Value of the share is calculated from trading on the first day prior to the specified day in which the share did trade on the New York Stock Exchange.

The Spot Market Value of a firm in the Portfolio is equal to the Spot Market Value of the firms' share multiplied by the number of the firm's shares included in the Portfolio.

The Spot Market Value of the Portfolio is the sum of the Spot Market Values of the firms in the Portfolio.

3.2.2a *Contract Grade Portfolio: The Industry Composite Portfoio*

The Board of Directors has selected as contract grade for the Industry Composite Portfolio all fifty firms that comprise the industry protfolios listed in Section 3.2.1c. Each firm in the Industry Composite Portfolio shall be initially represented by thirty (30) shares of common stock.

The Board has also determined that the equity groups which must be specified within the contract grade portfolio (Regulation XX36.01–B) correspond exactly to the contract grade protfolios of the industry portfolio contracts.

* * * * *

The Commission also will make available any other materials submitted by the CBT in support of its application for contract market designation to the extent that such materials are not entitled to confidential treatment under Part 145 of the Commission's regulations (17 CFR Part 145). Copies of such materials submitted by the CBT in support of its application for designation will be available through the Commission's Secretary or its offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CBT in support of its application for contract market designation, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581, by March 23, 1981.

Issued in Washington, D.C., on January 15, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-2225 Filed 1-21-81; 8:45 am]

BILLING CODE 6351-01-M

COMMUNITY SERVICES ADMINISTRATION

Waiver of Non-Federal Share Requirements for National Paralegal Institute

AGENCY: Community Services Administration.

ACTION: Notice of Non-Federal Share Waiver.

SUMMARY: The Community Services Administration is filing a Notice of Waiver of Non-Federal Share requirements for the National Paralegal Institute with regard to FY'80 and '81 funds. The waiver is based on the nature of the services provided by the grantee, the specialization function of the grantee and the fact that such services and functions are not the kind that lend themselves to generation of non-Federal share.

FOR FURTHER INFORMATION CONTACT: Carl Shaw, Telephone (415) 556–7895.

(Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); Sec. 225(c) (42 U.S.C. 2812))

Richard Rios,

Director.

Notice of Waiver of Non-Federal Share Requirements

1. *Purpose.* This notice is issued to inform the public of a waiver of the non-Federal share requirement for the National Paralegal Institute, and the criteria on which the waiver is based.

2. *Background.* Section 225(c) of the Economic Opportunity Act of 1964, as amended, authorizes the Director to waive the non-Federal share matching requirements where he/she determines the waiver would further the purposes of the EOA. Title II of the EOA provides financial assistance for the purposes of enhancing community capabilities to achieve self sufficiency for poor community residents. From time to time, the imposition of a matching share requirement for a grant inhibits essential projects that otherwise further this mission. This is particularly true of projects that provide techincal assistance and training for community action agencies and community based organizations. In these situations the grantee may lack the ability to generate the non-Federal match either in-kind or cash because the grantee is specialized in functions and lacks the financial and constituent base that would normally provide such a contribution.

The Director has determined that when a grantee is unable to meet non-Federal share requirement for the reason stated above such grantee may be eligible for waiver of such non-Federal share.

3. *Waiver.* The National Paralegal Institute (NPI) is a CSA grantee funded to provide valuable training and technical assistance to community action agencies, community based organizations and numerous other agencies that assist the poor. As such, NPI is unable to generate non-Federal match either in-kind or cash because it is specialized in functions and lacks the financial and constituent base that would normally provide such a contribution. The Director has concluded that NPI meets the criteria for waiving the non-Federal share requirement pursuant to his authority under Section 225(c) of the EOA and hereby is waiving such requirement with regard to NPI's fiscal 1980 and 1981 CSA grants.

[FR Doc. 2037– Filed 1-21-81; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Relocation of Navy Resale and Services Support Office From Brooklyn, N.Y. to Staten Island, N.Y. Finding of No Significant Impact

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act [40 CFR 1508.13 (1979)], the Department of the Navy gives notice that an environmental impact statement is not being prepared for the relocation of the Navy Resale and Services Supoort Office (NAVRESSO) from Brooklyn, N.Y., to three existing buildings located at Fort Wadsworth, Staten Island, N.Y. This action is being taken as the present Brooklyn location is to be vacated by 1984 (the building is unsafe and further repair is considered uneconomical) and Fort Wadsworth is the preferred alternative among possible facilities investigated. Other alternatives were the Gertz Building in Queens, N.Y; a Federal building on Varick Street in lower Manhattan and Willowbrook Hospital on Staten Island. Approximately 800 personnel are involved in th relocation which will add an approximate 7 miles commuting

distance across the Verrazano Bridge to the new location.

The environmental assessment of this action indicates that the proposed relocation will not cause significant impacts on the environment except for a possible minimal increase in energy use associated with that portion of the office population that will elect to commute by personal automobiles and the fact that some personnel (less than 10%) might choose to seek alternate employment. This information is derived from personnel questionnaires completed by NAVRESSO personnel. No archeological or cultural properties and no endangered flora or fauna will be affected by the reloction. Depending on the eventual mix of private automobiles and carpools, there may be a problem concerning parking. However, provisions can be made for parking overflow if required.

Pursuant to the Council on Environmental Quality's regulations implementing the procedural provisions of the National Environmental Policy Act, economic or social effects by themselves do not require the preparation of an environmental impact statement. 40 CFR 1508.14.

As a result of the environmental assessment, it has been determined that preparation and review of an environmental impact statement is not required.

The environmental assessment prepared by the Navy addressing this action is on file and may be reviewed by interested parties both at the point of origin, Logistics Plans and Policy Control Division, Naval Supply Systems Command, Room 704, Crystal Mall No. 3, Arlington, VA 20376 [(202)695–5932], and at the Environmental Protection and Occupational Safety and Health Division, Office of the Deputy Chief of Naval Operations (Logistics), Room BD 766, The Pentagon, Washington, D.C. 20350 [(202) 697–3668]. This document is available for public review for a period of 30 days from the date of publication of this notice (February 23, 1981). Additionally, a limited number of copies of the environmental assessment are available to fill single copy requests made to Logistics Plans and Policy Control Division (NSUP–042), Naval Supply Systems Command Headquarters, Department of the Navy, Washington, D.C. 20376, or to Environmental Protection and Occupational Safety and Health Division (OP–45), Office of the Deputy Chief of Naval Operations (Logistics), Department of the Navy, Washington, D.C. 20350.

For further information, contact: Mr. E. J. McDermott (NSUP–0422), Naval Supply Systems Command Headquarters, Department of the Navy, Washington, D.C. 20376, telephone (202) 695–5932.

Dated: January 16, 1981.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 81-2229 Filed 1-21-81; 8:45 am]

BILLING CODE 3810-71-M

DEPARTMENT OF EDUCATION

National Center for Education Statistics (NCES); Vocational Education Data System; Extension of Data Submission Date

AGENCY: Department of Education.

ACTION: Notice of Extension of Submission Date for Vocational Education Data System (VEDS) Data.

SUMMARY: Certain data collection activities are required to be announced publicly under the provisions of section 400A (Control of Paperwork) of the General Education Provisions Act. Accordingly, the VEDS data requirements (along with other data requirements) were published in the **Federal Register** on September 26, 1979 (44 FR 55424). The VEDS data requirements are stated under the activity titled, "The National Vocational Education Data Reporting and Accounting System." Paragraph (h)(2) of these requirements established the "Time of Collection" or submission date as November 15, 1980. That date was extended to December 1, by an announcement in the **Federal Register** on April 22, 1980 (45 FR 27018).

The submission date is again extended to February 2, 1981, as the new "postmark" date by which States are to submit the data collected to meet the 1979–80 VEDS data requirement of NCES.

This notice does not affect the first round of VEDS data collected for the 1978–79 period. The date for the second round of VEDS data collection, for the 1979–80 period, was previously extended from November 15, 1980 to December 1, 1980, in an affort to establish a regular annual date for all VEDS data collections. However, because the previous announcements have caused confusion about which collections were due on a particular date it has become necessary again to extend the "postmark" or submission date to February 2, 1981.

It is important that States submit their collections to NCES by February 2, 1981, in order to allow NCES the time necessary to review data from all the States and to make a determination either under 34 CFR 400.118 that a State fully meets the VEDS requirements, or under 34 CFR 400.119 that a State substantially meets the VEDS requirements. A State which does not submit its data by the extended submission data risks the late compliance review of its data.

The forms for the submission of the 1979–80 VEDS data, including the uniform definitions and the information elements to be included, were sent by NCES to the sole Boards for Vocational Education of each State in June of 1980.

The VEDS data submission is to be mailed or hand-delivered to the: VEDS Staff, National Center for Education Statistics, Presidential Building, Room 205, 6525 Belcrest Road, Hyattsville, Maryland 20782.

States should note that if a State is seeking a finding of substantial compliance under the provisions of 34 CFR 400.119, *all* substantial compliance materials required by that section are to be submitted to NCES according to the same "postmark" or submission date, February 2, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Morgan, VEDS Director, National Center for Education Statistics, Presidential Building, Room 905, Telephone: (301) 436–6348.

Dated: January 16, 1981.

Terry Saario,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 81-2230 Filed 1-21-81; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Education

Follow Through Research and Development; Public Input Meetings

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: The National Institute of Education (NIE) announces two meetings for the public to provide input about Follow Through research and development to be supported by NIE.

DATE AND LOCATIONS: One meeting is to be held on February 24, 1981 in Room 239, Federal Building, 1961 Stout Street, Denver, Colorado. The public may offer comments between the hours of 1:00 p.m. and 5:00 p.m. The other meeting will be held on February 26, 1981 in Room 3619, Kluczynski Building, 230 South Dearborn, Chicago, Illinois. The public may offer comments between the hours of 1:00 p.m. and 5:00 p.m.

Procedure: Registration from individuals, agencies, projects, and other groups wishing to offer comments will

be accepted at each meeting location from 12:30 p.m. to 4:30 p.m., or until all speaking allotments are exhausted. Individuals are asked to limit their oral comments to no more than ten minutes. Agencies, projects, or other groups wishing to have more that one spokesperson present their views are asked to limit their oral comments to a total of no more than fifteen minutes. More extensive comments as well as comments from persons or groups not able to attend one of the meetings may be submitted in writting on or before February 28, 1981. These should be directed to: The Kocher, Senior Associate, National Institute of Education, Mailstop scratch 9, 1200 19th Street, N.W., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Contacts Mrs. Cora Corry, Program Assistant, National Institute of Education, Mailstop scratch 9, 1200 19th Street, N.W. Washington, D.C 20208, (202) 254-6271.

SUPPLEMENTARY INFORMATION: In April, 1981, NIE anticipates two open competitions for projects to conduct Follow Through research and development. One competition will be for pilot projects that will develop and test new Follow Through approaches. The other competition will be for supporting research which will help inform the development and evaluation of additional pilot projects in future years—it is anticipated that the next group of pilot projects will be funded in 1984 of 85.

Since 1967, the Follow Through program has been operated as a Federally supported "planned variation" demonstration designed to compare the relative effectiveness of alternative instructional models for early childhood education of disadvantaged children. It is authorized under the Economic Opportunity Act of 1964, as amended by Public Law 95-568 in 1978.

The program primarily serves children in kindergarten through third grade who were enrolled previously in Head Start or similar preschool programs. Local Follow Through projects are expected to provide educational services as well as health, social, and other support services to participating students. The parents of participating children must be involved actively in all project activities.

Under an agreement with the Office of Elementary and Secondary Education, which had responsibility for the operation of the Follow Through Program, a portion of the Follow Through funds allocated to knowledge production are being transferred to the National Institute of Education to support research and development related to new Follow Through approaches.

There are two main strands in the preliminary NIE research strategy. The first involves developing guidelines for funding of the first wave of new Follow Through approaches to be tested beginning in the 1981-82 school year. The second is a process for continually seeking out newer and, as yet, less developed conceptions of Follow Through which would lead to implementation of a second and succeeding waves of new Follow Through pilot projects at periodic intervals over a longer term of 5-10-20 years. As part of the second strand, funds will be set aside for supporting research on selected methodological and programmatic issues which are key to progress with the new approaches.

Briefly, Strand 1 is based on the premise that while no simple recipes for success have emerged for the enormous attention focused on programs to improve education for low-income children, they provide a rich body of suggestions about how to make Follow Through better. Consequently, rather than focusing the pilot projects on development of new curricular or learning theories, NIE will foucs on practical solutions to overcoming obstacles to effective practice in school improvement, specifically on the effective management of instruction—including that undertaken at home or in the community.

Illustrative themes around which pilot projects for the new Strand 1 approaches might be organized to use such knowledge include:

Means to increase instructional time in Follow Through classrooms through improved management of services;

New Patterns of staff development and selection of staff to gain better instructional management, including cooperative agreements between schools, teacher education institutions and teacher associations or unions;

New ways to systematically involve parent and community groups and planning and conducting Follow Through Programs, including the use of parents and families to provide instruction in the home or community;

New uses of information systems, including testing and evaluation results, to bring better diagnostic and prescriptive information to bear on Follow Through student learning needs;

New ways to facilitate support of school building and district administrators for substantial changes typically required by innovative Follow Through procedures.

Documentation and evaluation of the pilot projects will be of major importance. NIE expects to provide support to each pilot project to assist them in the design and execution of a documentation/evaluation system. The system should help the project identify weaknesses so that these may be corrected and provide information that external audiences interested in using all or part of the project can use to determine its effectiveness. Of particular interest in the documentation and evaluation system will be methods of determining how well the project is implemented.

Part of Strand 2 provides a more speculative, "high-risk" strategy for developing a second wave of approaches for eventual funding in five years. All avenues of promising thinking related to serving low income children through Follow Through will be explored. Such thinking will be outside strictly educational areas as well as within them. Some preliminary areas of inquiry for this activity are the effects of media and new technology on early childhood learning, broad societal and environmental influences on early childhood education and extrapolation of research from other fields to Follow Through. This thinking will eventually be channeled into practical vehicles for improving schooling and learning. The intent is to cast a broad net to capture ideas that will benefit children eligible for Follow Through, and then continually assess the feasibility of converting these ideas into working models. The ideas closest to being ready for more rigorous testing will be identified, and a subset selected for funding in Fiscal Year 1985 or 1986.

Part of Strand 2 to be funded in 1981 will be for supporting research on issues of enduring interest to Follow Through. This will include field-initiated research on more basic issues dealing with methodolgy and program topics related to Follow Through. In addition, NIE believes that opportunities for further analyis of existent Follow Through data should be afforded in this part. There are numerous areas for such analysis that can help inform the development of future approaches to Follow Through. Opportunities for funding such analyses have not been made systematically available in the past.

At any given time in this overall research strategy, the single biggest piece of funds would be targeted for the approaches then being tested in the field, with smaller amounts for developing conceptions of the successor wave(s) of approaches and supporting research.

Copies of the complete NIE preliminary plan for Follow Through research and Development may be

obtained by contacting Cora Corry at the address given at the beginning of this notice.

Dated: January 15, 1981.

Terry Saario,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 81-2230 Filed 1-21-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Compliance with the National Environmental Policy Act; Intent To Prepare an Environmental Impact Statement on Operation of PUREX and Uranium Oxide Plant Facilities at Hanford, Wash.

AGENCY: Department of Energy.

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS) pertaining to resuming operation of PUREX and Uranium Oxide Plant facilities at Hanford, Washington.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS in accordance with section 102(2)C of the National Environmental Policy Act (NEPA) to provide environmental input into the decision to resume operation of the PUREX and Uranium Oxide (UO_3) Plant facilities to recover plutonium and uranium for national defense and research and development activities.

The purpose of this NOI is to present pertinent background information regarding the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Interested agencies, organizations, and the general public desiring to submit comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so. No public scoping meeting is scheduled; however, should DOE determine after it reviews public comments in response to this notice of intent that a scoping meeting is appropriate, one will be scheduled. Upon completion of the draft EIS, the document will be made available to the public for review; comments received will be used in preparing the final EIS. Written comments or suggestions on the scope of the environmental impact statement may be submitted to: Mr. Roger K. Heusser, Director, Division of Materials Processing (DP-73), Mail Station A-362 GTN, U.S. Department of Energy, Washington, D.C. 20545.

For general information on DOE's EIS process contact: NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Attn: Richard P. Smith, EV-121, 1000 Independence Avenue, Washington, D.C. 20585.

DATE: Written comments postmarked within 30 days of the issuance of this NOI, will be considered in the preparation of the EIS. Comments postmarked after that date will be considered to the extent practicable.

Background Information

The PUREX and UO_3 plants were used from 1955 to 1972 to process irradiated fuels produced by nine plutonium production reactors located on the Hanford site. By the end of 1971, eight of the reactors were shut down by Presidential decision. The PUREX and UO_3 plants are of such large capacity that they could not economically be operated on a continuing basis after shutdown of the other reactor plants at Hanford. The PUREX/UO_3 facilities have been maintained in a standby condition awaiting resumption of operations at such time as processing could be justified based on defense requirements and research and development needs. DOE is considering resuming operation of the PUREX/UO_3 plants in April 1984.

Maintenance was performed in 1978 and 1979 on the PUREX process systems to maintain its standby condition. The maintenance included a cell-by-cell checkout and operability testing of all process equipment. Current maintenance and operability testing on supporting equipment indicates that PUREX can safely resume operations.

If the PUREX facility is not operated to process the fuel from the operating reactor, when the current storage capacity is fully utilized—estimated to be in late fiscal year 1984–, either new storage facilities would be required or operation of the reactor would be discontinued.

The EIS will describe the existing facilities, namely the PUREX/UO_3 plants, as well as mitigating actions to minimize environmental effects from their operation. Possible facility modifications will be evaluated with respect to further mitigation of the effects of effluents on the environment.

This EIS will analyze and evaluate the environmental impacts associated with the resuming operation of PUREX/UO_3 plants and the alternatives thereto. This EIS will not evaluate or analyze in detail issues concerning the waste management operation at Hanford, which have been previously addressed in ERDA-1538 and DOE/EIS-0063, but will update the information contained in those documents where appropriate.

Proposed Action

The proposed action under consideration is to resume operation of the PUREX and UO_3 plants. This action includes facility modifications undertaken or completed since 1972 when the facilities were placed in standby. These facility modifications contributed to maintaining the facility in a safe standby condition and maintaining operational viability. Any additional modifications which would further mitigate environmental effects of plant operation will be considered as a sub-alternative to this proposed action.

Identification of Environmental Issues

The following issues will be analyzed for the proposed action and alternatives during the preparation of the EIS. This list neither is intended to be all inclusive nor a predetermination of the impacts:

Effects on the general population from emissions of radiologic and nonradiologic releases caused by normal operations;

Effects of exposure of operating personnel to radiologic and nonradiologic releases during normal operations;

Effects resulting from potential accidents;

Effect on air and water quality and other environmental consequences during normal operations;

Effect on future decontamination and decommission decisions;

Cumulative effects of operations at the Hanford site;

Transportation impacts (offsite transport of irradiated fuel and/or product oxide and onsite transport of irradiated fuel);

Short-term versus long-term land use;

Irretrievable and irreversible commitment of resources;

Socioeconomic impacts to surrounding communities.

Alternatives to the Proposed Action

The alternatives to be analyzed are:

Ship Fuel Offsite for Processing. Ship the irradiated fuel offsite for processing and extraction of plutonium and uranium. Currently, the only other operational processing facility in the United States is located at the DOE Savannah River Plant, Aiken, South Carolina; it is being operated at high capacity and would require major modifications to process fuel generated at Hanford.

Construct New Processing Plant at Hanford. The costs and benefits of constructing a new processing plant will be analyzed.

No Action. Maintain PUREX/UO_3 facilities in the current standby mode and not process fuel. (Continue present action.)

Comments and Scoping

All interested parties are invited to submit written comments or suggestions to be considered by DOE in the preparation of this EIS. Written comments or suggestions on the scope of the EIS may be submitted ot Mr. Roger K. Heusser (address given above). Written comments postmarked within 30 days of the issuance of this Notice of Intent will be considered in the preparation of this EIS. Comments postmarked after that date will be considered to the extent practicable. Those who wish to receive a copy of the draft EIS for review and comment when it is issued should also notify Mr. Heusser. Those seeking further information on the proposal or the EIS process also may contact Mr. Richard Smith (address given above).

Copies of the documents currently planned to be used in the preparation of the EIS are available for inspection at:

Public Reading Room, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60639.
Chicago Operations and Regional Office, 175 West Jackson Boulevard, Chicago, Illinois 60604.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho 83401.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89114.
Albuquerque Operations Office, National Atomic Museum, Kirkland Air Force Base East, Albuquerque, New Mexico 87715.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee 37830.
Richland Operations Office, Federal Building, Richland, Washington 99352.
Energy Information Center, 215 Fremont Street, San Francisco, California 94105.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina 29801.
Regional Energy/Environmental Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado 80210.

Dated at Washington, D.C., this 16th of January 1981. For the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 81-2311 Filed 1-21-81; 8:45 am]
BILLING CODE 6450-01-M

Proposed Contract Award

AGENCY: Department of Energy.

ACTION: Notice of proposed contract award.

SUMMARY: In accordance with the Department of Energy (DOE) Procurement Regulations, DOE gives Public Notice that it intends to exercise an option to extend a contract, after taking into account the existence of potential organizational conflicts of interest, because the exercise of this option is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Brennan, Office of Naval Petroleum and Oil Shale Reserves, Room 6454, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–8667.

Determination and Findings

Upon the basis of the following findings and determination, the proposed option to extend the contract described below is being exercised, after taking into account the existence of potential organizational conflicts of interest, because this action is determined to be in the best interest of the United States, pursuant to the authority of Department of Energy Procurement Regulations 41 CFR 9–1.5409(a)(3).

Findings

(1) The Department of Energy (DOE), Office of Resource Applications has recently completed two years of a five year pre-development program for Naval Oil Shale Reserves (NOSR) Nos. 1 and 3 located in Garfield County, Colorado. This pre-development program is undertaken pursuant to the authority contained in 10 U.S.C. Chapter 641. 10 U.S.C. 7422 provides the Secretary of Energy with the authority to explore, prospect, conserve, develop, use and operate the Naval Oil Shale Reserves in his discretion, subject to other provisions of the law. As now constituted, the pre-development program provides for the preparation of all necessary environmental, preliminary engineering, and economic analysis required to support the leasing of NOSRs 1 and 3, should the Government determine that such action is desirable.

(2) In connection with the completion of the pre-development program, it is necessary for the Office of Resource Applications to retain skilled and experienced professionals to manage and analyze the information and data obtained regarding, among other things, a complete oil shale resource definition of NOSRs 1 and 3, a programmatic environmental impact statement, and assessment of various technologies which are applicable to the NOSRs. For the past two years, TRW Inc. (TRW) has served as a management support systems engineering contractor to the Office of Resource Applications for this pre-development program.

(3) In accordance with 41 CFR 9–1.5405, TRW provided a statement disclosing relevant information concerning its interests related to the work performed for DOE and bearing on whether it has possible organizational conflicts of interest (1) with respect to being able to render impartial, technically sound and objective assistance or advice, or (2) which may give it an unfair competitive advantage. Numerous questions were asked of TRW regarding the relationship of its clients and business activities to the scope of the work to be performed under the contract.

(4) Based on an evaluation of the facts contained in the disclosure statement, it has been determined that TRW has a potential organizational conflict of interest with regard to the work required by the Office of Resource Applications regarding the pre-development program of NOSRs 1 and 3.

(5) Due to the substantial work TRW has performed on this project since the date of its initial competitive contract award, only TRW has the capability and staff to perform the work for the Office of Resource Applications within the time constraints allowed. Accordingly, it is not feasible to disqualify this contractor pursuant to 41 CFR 9–1.5409(a)(1). Furthermore, it is not possible to avoid the potential organizational conflicts of interest by the inclusion of appropriate conditions in the resulting contract, in accordance with 41 CFR 9–1.5409(a)(2).

(6) The completion, in a timely manner, of the pre-development program for NOSRs 1 and 3 will have far reaching benefits in terms of the necessary data available for DOE to determine whether or not to proceed with development and production of the hydrocarbon resources of NOSRs 1 and 3 through the leasing mechanism. The work performed by TRW is critical to the timely completion of the pre-development program.

Mitigation

Mitigation, to the extent feasible, under 41 CFR 9–1.5409(a)(3) will be obtained by independent staff review by DOE Officials of contractor reports, as well as through administrative procedures through which the reception of public comment will allow mitigation

of potential conflicts in the data and analysis. Additionally, the Organizational Conflicts of Interest special clause entitled "Organizational Conflicts of Interest", 41 CFR 9-5403(2)(b), should be included in the contract, modified as necessary to meet the specific circumstances involved.

Determination

In light of the above Findings and Mitigation, and in accordance with 41 CFR 9-1.5409(a)(3), I hereby find that the extension of this contract would be in the best interest of the United States.

Dated: January 16, 1981.

Ruth M. Davis,

Assistant Secretary Resource Applications.

[FR Doc. 81-2247 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

[DOE/EIS-0073-D]

Solvent Refined Coal-I Demonstration Project (January 1981), Newman, Daviess County, Ky.; Public Hearing

The Department of Energy (DOE) filed a Draft Environmental Impact Statement (EIS), DOE/EIS-0073-D, Solvent Refined Coal—I (SRC-I) Demonstration Project, with the Environmental Protection Agency on January 9, 1981. The 45-day public review and comment period closes on March 2, 1981. Notice is hereby given that public hearing on the draft EIS will be held on February 23, 1981, at the Daviess County High School, Owensboro, Kentucky, 7:00 p.m. to 10:00 p.m.; Febuary 24, 1981, at the Henderson County High School, Henderson, Kentucky, 7:00 p.m. to 10:00 p.m.; and February 25, 1981, at the Stanley Elementary School, Stanley, Kentucky, 7:00 p.m. to 10:00 p.m.

The draft EIS was prepared in compliance with the National Environmental Policy Act of 1969 to assess the environmental impacts of, and alternatives to, a proposed DOE action to cost-share with the International Coal Refining Company, Inc., the design, construction and operation of a SRC-I Demonstration Plant with a 6,000 tons-of-coal per stream day capacity at a site in Newman, Daviess County, Kentucky. The facility is intended to demonstrate the technical operability, economic viability and environmental acceptability of the process for converting coal into SRC-I solid and liquid products. The environmental impacts assessed include the effects of the project on occupational and public health resulting from the production and use of SRC-I products, potential impacts on terrestrial and aquatic ecology including state and Federal threatened or endangered species; potential and expected impacts on land use, withdrawal and alteration of prime agricultural land; projected impacts on floodplains and wetland areas; potential impacts on surface and groundwater; effects on ambient air quality; potential changes in the cultural landscape, including presence of sites of archaeological significance, and changes to existing economic and social characteristics of the site area. Additionally, the statement presents an assessment of the potential impacts of future commercial expansion of the operation of the SRC-I Demonstration Plant and the cumulative impacts of the proposed action with other planned and proposed energy facilities in the region. Mothballing, conversion to another government use, and decommissioning also are considered. A construction and operational monitoring plan to assess the effectiveness of the planned mitigation measures during the demonstration phase is also presented.

The range of alternatives assessed in the draft EIS includes programmatic alternatives, as well as proceeding with the proposed project, modifying the action and subsequently continuing the project, and terminating with no further action. An evaluation of alternate plant designs and alternate plant sites also is included.

DOE will conduct the public hearings in connection with the draft EIS on February 23, 1981, as the Daviess County High School, Owensboro, Kentucky, 7:00 p.m. to 10:00 p.m.; February 24, 1981, at the Henderson County High School, Henderson, Kentucky, 7:00 p.m. to 10:00 p.m.; and February 25, 1981, at the Stanley Elementary School, Stanley, Kentucky, 7:00 p.m. to 10:00 p.m. The purpose of the public hearing is to receive additional public comments and to assure maximum public participation in the EIS process. The substantive comments received at the public hearing, as well as those received within the public comment period, will be addressed and revisions will be incorporated, where appropriate, in the final EIS.

The public hearings will be conducted by a Presiding Board selected by DOE. The Presiding Board will not attempt to undertake a resolution of issues or render judgments concerning the SRC-I Demonstration Project.

The public hearings will not be conducted as an evidentiary hearing and those who choose to make statements may not be questioned by anyone other than the members of the Presiding Board.

In order to facilitate arrangements for the public hearing, those wishing to participate are requested to contact: Mr. James A. Reafsnyder, SRC Project Officer, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, (615) 576-1055, by February 20, 1981.

Written comments or suggestions may also be submitted to Mr. Reafsnyder at the address noted above. Written and oral comments will be given equal weight. Speakers are requested to provide a telephone number and mailing location so that they can be contacted prior to the meeting regarding scheduling information. Those who desire a copy of the draft EIS for review prior to the public hearing may obtain a copy by contacting Mr. Reafsnyder.

Persons, organizations or Government agencies wishing to participate, but who have not submitted a request in advance, may register at the time of the hearing. DOE reserves the right to arrange the schedule of presentations and to establish procedures governing the conduct of the meeting. DOE desires to maximize the number of participants and to assure a broad spectrum of viewpoints. Efforts will be made to allow all interested persons in attendance to speak. However, the actual allocation of time for speakers will depend upon the number of persons requesting to be heard. Total time allocated for statements will be limited to the three 3-hour periods noted at the beginning of this notice. DOE may allow more time for representatives of organizations than for individuals.

Those persons wishing to speak on behalf of an organization should identify their organizational affiliation in their request. Should any speaker desire to provide further information for the record subsequent to the meeting, it may be submitted in writing no later than March 2, 1981.

Any further procedural rules needed for the proper conduct of the hearings will be announced at the start of the hearing.

A transcript of the public hearings will be made available for public inspection at:

Owensboro-Daviess County Public Library, 450 Griffith Avenue, Owensboro, Kentucky 42301

Evansville and Vanderburgh County Public Library, 22 SE 5th Street, Evansville, Indiana 47708

Commonwealth of Kentucky, Department of Library and Archives, P.O. Box 537, Berry Hill, Frankfort, Kentucky 40602

and also in DOE's Public Document Rooms located at:

U.S. DOE Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585
U.S. DOE Public Document Room, Room G–208, Federal Building, P.O. Box E, Oak Ridge, Tennessee 37830
U.S. DOE Technical Information Center, Customer Services Branch, P.O. Box 62, Oak Ridge, Tennessee 37830

Copies of the draft statement are available for inspection at the above locations. Upon completion of the final EIS, its availability will be announced in the **Federal Register.**

Issued in Washington, D.C. on January 15, 1981.

George Fumich, Jr.,

Assistant Secretary for Fossil Energy.

[FR Doc. 81-2146 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Hines Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: December 31, 1980. Comments by: February 23, 1981.

ADDRESS: Send comments to William D. Miller, Central District Manager of Enforcement Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (phone) 816–374–5932.

SUPPLEMENTARY INFORMATION: on December 31, 1980, the Office of Enforcement of the ERA executed a Consent Order with Hines Oil Company of Murphysboro, Illinois. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Hines Oil Company (Hines), with its home office located in Murphysboro, Ill., is a firm engaged in the marketing of motor gasoline to resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Hines, the Office of Enforcement, ERA, and Hines entered into a Consent Order.

The Consent Order encompasses Hines' sales of covered products during the period March 1, 1979, through July 31, 1979.

II. Disposition of Refunded Overcharges

In this Consent Order, Hines agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of seven thousand eight hundred ninety-seven dollars and sixty-nine cents. ($7,897.69) by December 31, 1982. Refunds of overcharges of $6,897.69 will be in the form of a price reduction in its sales of motor gasoline to end-users for a period of two (2) years after the effective date of the Consent Order.

Refunds of overcharges to resellers of $1,000.00 will be in the form of certified checks made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for enforcement, ERA. These refunds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required.

Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for the Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816–374–5932.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Hines Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 8th day of January 1980.

Concurrence:

David H. Jackson,

Chief, Enforcement Counsel.

Dated: January 8, 1981.

William D. Miller,

District Manager of Enforcement.

[FR Doc. 81-2147 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

A. Johnson & Co. Inc., Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order and for potential claims against refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Comments by: February 23, 1981.

ADDRESS: Send Comments to: Stanley S. Mills, Program Manager, for Entitlements, Room 5114, Office of Enforcement, U.S. Department of Energy, ERA, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Stanley S. Mills, (202) 653–3548

SUPPLEMENTARY INFORMATION: On November 25, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with A. Johnson & Co., Inc., of New York, New York. Under 10 CFR 205.199(b), a Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective no sooner than 30 days after DOE has provided an opportunity for comment with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order

A. Johnson & Co. Inc. (Johnson) with its home office located in New York, New York, is a refiner as defined in 10 CFR 211.62 and is therefore subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the ERA as a result of its audit of Johnson, the Office of Enforcement and Johnson entered into a proposed Consent Order, the significant terms of which are as follows:

1. The period of the audit was from January 1976 through July 1979 and included all Johnson's submissions of forms ERA–49 and its predecessor forms P–102–M.

2. The DOE alleges that Johnson committed errors in the application of 10 CFR 211.66(h) and 211.67 and as a consequence, received benefits from the Entitlements Program in the amount of $673,558.

3. Johnson voluntarily refunded $546,994 in January 1980 and agrees to refund the remaining $124,564 plus interest within 10 days of the effective date of this Consent Order.

4. The provisions of 10 CFR 205.199 J, including the publication of this Notice, are application to the Consent Order.

II. Disposition of Refunds

In this Consent Order, Johnson agrees to refund in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement ERA arising out of the transactions, the sum of $124,564 plus $91,112 interest within 10 days of the effective date of the Consent Order. Refunded amount will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement ERA. This amount will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunds requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that violation amounts have either been passed through as higher prices to subsequent purchasers or offset through the Entitlements Program. In fact, the adverse effects of the reporting errors may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believed that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, ERA, 2000 M Street, NW., Room 5114, Washington, D.C. 20461.

You should identify your comments or written notification of a claim on the documents you submit with the designation, "Comments on A. Johnson & Co. Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington DC on the 15 day of January 1981.

Robert D. Gerring,

Director, Program Operations Division, Office of Enforcement Economic Regulatory Administration.

[FR Doc. 81–2149 Filed 1–21–81; 8:45 am]

BILLING CODE 6450–01–M

Kocolene Oil Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Effective date: December 31, 1980. Comments by: February 23, 1981.

ADDRESS: Send comments to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (Phone) 816–374–5932.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Office of Enforcement of the ERA executed a Consent Order with Kocolene Oil Corporation of Seymour, Indiana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than

$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Kocolene Oil Corporation (Kocolene), with its home office located in Seymour, Indiana, is a firm engaged in the marketing of motor gasoline to resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Kocolene, the Office of Enforcement, ERA, and Kocolene entered into a Consent Order.

The Consent Order encompasses Kocolene's sales of covered products during the period January 1, 1977, through April 30, 1980.

II. Disposition of Refunded Overcharges

In this Consent Order, Kocolene agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of four hundred seventy-five thousand dollars ($475,000) within twelve (12) months after the effective date of the Consent Order. Refunds of overcharges will be in the form of price reductions in its sales of motor gasoline to unidentifiable end-users for a period of one year after the effective date of the Consent Order.

III. Submission of Written Comments

The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments to William D. Miller, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816-374-5932.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Kocolene Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 23, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 8th day of January 1980.

Dated: January 8, 1981.

Concurrence:

David H. Jackson,

Chief, Enforcement Counsel.

William D. Miller,

District Manager of Enforcement.

[FR Doc. 81-2148 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and time: February 9, 1981—8:00 a.m.–9:00 p.m.; February 10, 1981—8:00 a.m.–5:00 p.m.

Place: Department of Energy, Forrestal Building—Room 4A104, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Contact: Enloe Ritter, ER-23, Division of Nuclear Physics, M.S. G-256 GTN, U.S. Department of Energy, Washington, D.C. 20545, Telephone: 301-353-3613.

Purpose of Committee: To provide advice to the Department of Energy and the National Science Foundation on the management of and long range planning for basic nuclear research programs

Tentative Agenda:

- Discussion of NSF and DOE budget situations for FY 1981 and FY 1982
- NSF and DOE guidance to Nuclear Science Advisory Committee on prospects for new facility construction in FY 1983
- Presentation and discussion of proposals for new facility construction in FY 1983
- Selection of proposals to be referred to Facilities Subcommittee for further review
- Discussion of the status of CW electron accelerator proposals and projects
- Reports from Subcommittees on Heavy Ion Facilities, Manpower, Universities, and Computational Needs of Nuclear Theorists
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202-252-5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 5B180, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on January 15, 1981.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 81-2248 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3632-000]

Benton Falls Hydro, Inc.; Application for Preliminary Permit

January 13, 1981.

Take notice that Benton Falls Hydro, Inc. (Applicant) filed on October 30, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3632 to be known as the Benton Falls Project located on the Sebasticook River in Benton, Kennebec County, Maine. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mark Isaacson, Benton Falls Hydro, Inc., P.O. Box 465, Lisbon, Maine 04240. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would consist of: (1) a new concrete dam at the location of a timber crib dam breached in 1936; (2) existing headgates, forebay and canal, to be refurbished; (3) two new steel penstocks; (4) a new powerhouse containing two turbine generators with a total rated capacity of 2.8 MW; (5) a tailrace channel, and (6) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 12,000,000 kWh saving the equivalent of 20,000 barrels of oil or 5,600 tons of coal.

Purpose of Project.—Markets for the electric energy produced would be

determined during the term of the preliminary permit.

Proposed Scope and Cost of Studies under Permit.—The work proposed under this preliminary permit would include geotechnical investigations at the site of the proposed dam, engineering plans, and an environmental assessment. Geotechnical investigations would include a boring program in the vicinity of the axis of the breached dam and at the existing forebay, canal and new powerhoue. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $189,500.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to hae no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or befoe March 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Ayone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any comments, protest, or petition to intervene must be received on or before March 18, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3632. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2172 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-3-000 (PGA81-1)]

Chattanooga Gas Co.; Proposed PGA Rate Adjustment

January 13, 1981

Take notice that on January 6, 1981, Chattanooga Gas Company, a Division of Jupiter Industries, Inc., (Chattanooga) tendered for filing proposed changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on January 1, 1981, consisting of the following revised tariff sheet:

Thirty-Seventh Revised Tariff Sheet No. 6

The Thirty-Seventh Revised Tariff Sheet No. 6 reflects a current increase in the LNG rates of 67.4 cents per MMBtu and a cumulative increase of $3.007 per MMBtu.

Chattanooga states the sole purpose of this revised Tariff Sheet is to adjust Chattanooga's LNG rates pursuant to its PGA provision in Section 5 of the General Terms and Conditions of its Gas Tariff to reflect the cumulative effect of the underlying rate adjustments filed for by both of its suppliers since July 1, 1980. Chattanooga states that its semi-annual PGA filing dates are January 1 and July 1. The suppliers' rate adjustments being tracked by Chattanooga are those filed for by Southern Natural in Docket No. RP78-36 and RP80-49 with an effective date of August 1, 1980; in Docket No. RP80-102 with an effective date of November 1, 1980; in Docket No. RP 74-6 and RP72-74 with an effective date of December 1, 1980; in Docket No. TA81-1-7 with an effective date of January 1, 1981; and those filed for by East Tennessee in Docket No. TA81-1-2 with an effective date of January 1, 1981. Chattanooga requests the Thirty-Seventh Revised Tariff Sheet No. 6 become effective January 1, 1981, the proposed effective date of the latest rate changes by Southern Natural and East Tennessee.

As noted above, the proposed effective date of Chattanooga's rate change is January 1, 1981. Sections 22.1(c) and 24.8(d) require Chattanooga to file any proposed rate change pursuant to those Sections at least forty-five days prior to the Effective Date of Adjustment. However, because Southern Natural and East Tennessee only recently advised Chattanooga of their revised rates, Chattanooga, for good cause shown, respectfully requests that the Commission grant waiver of the forty-five day notice requirement in order that the proposed rate change will become effective January 1, 1981 as proposed.

Chattanooga states that copies of the filing have been mailed to all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1981. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2175 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3686-000]

City of Bakersfield and North Kern Delta Water District; Application for Preliminary Permit

January 13, 1981

Take notice that City of Bakersfield and North Kern Delta Water District (Applicant) filed on November 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3686 to be known as the Beardsley Powerplants Project located on the Kern River in Kern County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Harold Bergen, City Manager, City of Bakersfield, 1501 Truxtun Avenue, Bakersfield, California 93301. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would consist of two powerplants with a total rated capacity of 1,000 kW. One would consist of a 800-kW generating unit constructed as an integral part of the reconstructed Beardsley Diversion Structure and would use flows released into the Kern River. A second powerplant would consist of a 200-kW generating unit constructed as an integral part of the reconstructed Beardsley Canal Headworks Structure. The project would include a short transmission line.

The Applicant estimates that the average annual energy output would be 3,760 MWh.

Purpose of Project.—Project power would supplement existing electrical supplies in the project area.

Proposed Scope and Cost of Studies under Permit.—Applicant would prepare a feasibility study, secure water rights, complete environmental documentation, perform preliminary design and cost estimates for the project, prepare an application for license, and negotiate any necessary agreements for project construction and operation. Applicant estimates the cost of performing these studies at $44,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before February 26, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 27, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before February 26, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3686. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2173 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3449]

City of North Little Rock, Ark.; Application for Preliminary Permit

January 13, 1981.

Take notice that the City of North Little Rock, Arkansas (Applicant) filed on September 8, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3449 to be known as the Murray Power Project located on the Arkansas River in Pulaski County, Arkansas. Correspondence with the Applicant should be directed to: Mayor William F. Laman, City Hall, North Little Rock, Arkansas 72114.

Project Description.—The proposed project would utilize the Corps of Engineers' Murray Lock and Dam No. 7 and would consist of: (1) a 130 by 350 foot powerhouse on the northern bank and housing; (2) fifteen tube-type turbine/generator units with a total rating of 25.5 MW at a head of 16 feet; (3) a switchyard near the northern end of the powerhouse; (4) a 5.0-mile long

transmission line connecting the project to the Applicant's substation, and (5) appurtenant facilities. Applicant estimates annual power generation would average 146,500,000 KWH.

Purpose of Project.—All project power would be used in the Applicant's municipal system.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of preliminary permit for a period of three years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be between $75,000 and $100,000.

Purpose of Preliminary Permit.—a preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—This application was filed as a competing application to those filed by Arkansas Electric Cooperative Corporation on February 22, 1980, and Arkansas Power & Light Company on March 31, 1980, for Projects Nos. 3050 and 3122, respectively, under 18 CFR 4.33 (*as amended*, 44 FR 61328, Oct. 25, 1979), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a perition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 26, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION, "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3449. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copits required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426.

An Additional copy much be sent to: Fred E. Springer, Chief, Applicatons Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW, Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2174 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. RP78-20, et al.]

Columbia Gas Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

January 13, 1981.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before January 21, 1981. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
Dec. 16, 1980	Columbia Gas Transmission Corporation.	RP78-20	Report Supplement.
Dec. 18, 1980	Texas Eastern Transmission Corporation.	RP81-24-000	Plan and Petition.
Dec. 19, 1980	Columbia Gas Transmission Corporation.	RP78-20	Report Supplement.
Dec. 22, 1980	Alabama Tennessee Natural Gas Co.	RP73-77	Report.
Dec. 29, 1980	Southern Natural Gas Company.	RP72-91, *et al.*	Report.
Dec. 30, 1980	Natural Gas Pipeline Co. of America.	RP72-125-002	Report.
Jan. 2, 1981	Texas Eastern Transmission Corporation.	RP81-27-000	Plan and Petition.
Jan. 5, 1981	Consolidated Gas Supply Corporation.	RP72-157	Report.

[FR Doc. 81-2176 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-33 (PGA81-1, IPR81-1, AP81-1, LFUT81-1 and TT81-1)]

El Paso Natural Gas Co.; Data Filing

January 13, 1981.

Take notice that El Paso Natural Gas Company (El Paso) on November 14, 1980, filed certain information which the pipeline asserts demonstrates that the prices paid for company-owned production included in its Purchase Gas Cost Adjustment (PGA), filed August 29, 1980, meets the "affiliated entities test" of Section 601(b)(1)(E) of the Natural Gas Policy Act of 1978 (NGPA).

On September 30, 1980, the Commission accepted for filing and suspended certain tariff sheets in the above-listed docket. In addition, the Commission was unable to determine whether the proposed purchase prices assigned by the pipeline to its company-owned production satisfied the affiliated entitles limitation set forth in Section 601(b)(1)(E) of the NGPA. That Section provides that in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid shall be deemed just and reasonable if in addition to not exceeding the applicable maximum lawful price ceiling, such amount does not exceed the amount paid in comparable first sale transactions between persons not affiliated with such pipeline. Accordingly, the Commission's acceptance of the tariff sheets was conditioned upon El Paso's filing data responsive to certain data request. In essence, such data request sought information demonstrating that the value claimed for its own production meets the affiliated entities test.

Accordingly, El Paso asserts that the information provided in the November 14, 1980, filing demonstrates the pricing of such company-owned production meets the requirements of Section 601(b)(1)(E) of the NGPA. However, El Paso notes that such filing does not include certain information which the company believes is either irrelevant or confidential.

Therefore, El Paso requests that the Commission accept such November 14, 1980, filing as demonstrating the company's satisfaction of Section 601(b)(1)(E) of the NGPA and, accordingly, find El Paso's tariff sheets in the above-listed docket just and reasonable.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2177 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-105-000]

Indiana & Michigan Electric Co.; Order Granting Waiver of Filing Requirements, Denying Waiver of Notice, Accepting for Filing and Suspending Proposed Rates, Consolidating Dockets, Directing Summary Disposition, Granting Intervention, and Establishing Procedures

Issued January 9, 1981.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

On November 10, 1980, Indiana & Michigan Electric Company (IME) tendered for filing revised tariffs proposed to become effective November 1, 1980, which provide for an increase in jurisdictional revenue from its municipal wholesale customers of approximately $209,635 based on the twelve month period ending December 31, 1979.[1] IME proposes to increase its demand charge from $8.60/kW to $9.14/kW, to decrease its energy charge from 9.60 mills/kWh to 9.41 mills/kWh, and to decrease its monthly customer charge from $385.05 to $221.93. In addition, the base cost of fuel will be increased from 6.9109 mills/kWh to 7.5945 mills/kWh and the loss factor will be decreased from 3.54% to 2.975%. IME also proposes to eliminate the currently specified 60% billing demand ratchet.

Notice of the filing was issued on November 18, 1980, with responses due on or before December 5, 1980. Petitions to intervene were filed on December 5, 1980, by the Cities of Anderson and Auburn, Indiana (Anderson), and on December 5, 1980, as amended on December 19, 1980, by the Cities of Avilla, Bluffton, Columbia City, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, and Warren, Indiana, and the Cities of Niles, South Haven, and Sturgis, Michigan together with the Indiana and Michigan Municipal Distributors Association (IMMDA). On December 17, 1980, IME filed its response.

Anderson and IMMDA argue that the rate increase is, in actuality, substantially larger than IME suggests. Anderson urges that the filing be rejected. Anderson, in the alternative, and IMMDA seek a maximum five month suspension and an order instituting a hearing concerning the lawfulness of the proposed rate increase. In addition, Anderson and IMMDA raise a variety of cost of service issues.

Both Anderson and IMMDA also allege that the proposed rates will result in a price squeeze, and they request that the Commission institute price squeeze procedures.

Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Consequently, we shall grant the petitions to intervene.

In Order No. 91, Docket No. RM79-64, issued June 27, 1980, the Commission indicated that until revised filing requirements became effective, the Commission would waive the filing requirements of the then current section 35.13 for those utilities that seek to implement the revised cost of service format. Although IME has not specifically requested such waiver, our review of its filing indicates that IME tendered its revised rates in accordance with the filing requirements of section 35.13, as revised by Order No. 91, and we thus shall regard such a request as implicit in IME's filing. Accordingly, we find that waiver of the filing requirements of section 35.13 at the time of IME's filing is warranted and the motion to reject will be denied.

IME has requested waiver of the 60-day notice requirement of section 35.3 of the Commission's regulations in order to allow an effective date of November 1, 1980. IME states that the proposed rates represent a nominal increase, and constitute only a technical filing designed to create a locked-in period with respect to rates which have been in effect, subject to refund, since December 23, 1978. According to IME, the purpose for creating such a locked-in period is to limit IME's exposure to refunds which

[1] See Attachment for rate schedule designations.

might result if a recent initial decision [2] respecting the earlier rates is affirmed by the Commission. As indicated above, Anderson and IMMDA contend that the Commission should deny IME's request because the increase in rates is not minimal, but rather is substantial in comparison to rates which might be expected on the basis of the pending initial decision. Upon consideration, the Commission finds that IME's arguments do not constitute the requisite showing of good cause for waiver of the notice requirements, as required by section 35.11 of the Commission's regulations. The request will therefore be denied.

Considering the allegations raised by the intervenors, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[3] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that a variety of substantive contentions have been raised by the intervenors, but that our preliminary analysis indicates that the proposed rates may not yield excessive revenues. We therefore believe that a five month suspension is unnecessary and may be inequitable to IME. However, in order to ensure refund protection for the affected customers pending further review, we believe we should exercise our discretion to suspend the rates for only one day from sixty days after filing, permitting the rates to take effect subject to refund thereafter on January 11, 1981.

Both IME and Anderson request that the instant docket be consolidated with the proceedings in Docket Nos. ER81-46-000 *et al.* These dockets, involving revised rates filed on October 24, 1980, for three other wholesale customer classes, were suspended for one day from sixty days after filing to become effective on December 25, 1980, were set for hearing, and were consolidated for hearing and decision thereon.[4] Because the instant docket and these dockets present common questions of law and fact, we shall consolidater Docket No. ER81-105-000 with these dockets for purposes of hearing and decision.

Anderson and IMMDA correctly note that IME has reflected accumulated deferred investment tax credits (ADITC) in its capitalization at the company's claimed overall rate of return. The Commission has previously determined that summary disposition is appropriate under these circumstances,[5] and we shall so resolve the issue in this docket. However, the Commission notes that the revenue impact of this summary disposition is relatively small in relation to the proposed rate increase. Moreover, as noted above, our preliminary analysis has indicated that IME's proposed rates may not produce excessive revenues. As a result, we shall not require IME to refile its cost of service and rates at this time. Nonetheless, summary disposition of the ADITC issue shall be reflected in any rates finally approved by the Commission.

The Commission observes that IME's proposed rate schedules for Anderson and IMMDA contain a tax adjustment clause. We shall not reject the tax adjustment clause, but we note that implementation of the clause will constitute a change in rate necessitating a timely filing with the Commission pursuant to section 25.13 of the regulations.

The Commission further observes that IME's proposed rates incorporate by reference the curtailment provision at issue in Docket No. E-9548 and E-9549, currently awaiting Commission action. We note that the curtailment provision shall remain subject to the outcome of the proceedings in those dockets.

In accordance with the Commission's policy established in *Arkansas Power & Light Company*, Docket No. ER79-339, order issued August 6, 1979, we shall phase the price squeeze issue. As we have noted in previous orders, this procedure will allow a decision first to be reached on the cost of service, capitalization and rate of return issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

The Commission orders

(A) The requirement of § 35.13 of the Commission's regulations at the time of IME's filing that cost of service data, Period I, end no earlier than seven months prior to the date of the filing is hereby waived. The motion to reject is hereby denied.

(B) IME's request for waiver of the Commission's notice requirements is denied.

(C) IME's proposed rates tendered for filing on November 10, 1980, are accepted for filing and suspended for one day from sixty days after filing, to become effective on January 11, 1981, subject to refund pending hearing and decision thereon.

(D) The proceedings in Docket No. ER81-105-000 are hereby consolidated with the proceedings in Docket Nos. ER81-46-000 *et al.* for purposes of hearing and decision thereon.

(E) IME's inclusion of ADITC in its capitalization at the claimed overall rate of return is summarily rejected. This determination shall be reflected in any rates ultimately approved by the Commission in this docket.

(F) IME is hereby advised that implementation of its tax adjustment clause will require timely filing in accordance with the provisions of § 35.13 of the Commission's regulations.

(G) IME is hereby advised that the curtailment provision incorporated by reference in the instant filing is subject to the outcome of the proceedings in Docket Nos. E-9548 and E-9549.

(H) We hereby order initiation of price squeeze procedures in Docket No. ER81-105-000 and further order that the proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of the intervenors shall not be construed as recognition by the

[2] *Indiana & Michigan Electric Co.*, Docket Nos. ER78-379, *et al.*, Initial Decision, issued June 18, 1980.

[3] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980 (one day suspension).

[4] *Indiana and Michigan Electric Company*, Docket Nos. ER81-46-000 *et al.*, order issued December 18, 1980.

[5] *E.g., El Paso Electric Co.*, Docket No. ER 79-526, order issued September 24, 1979.

Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(J) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of IME's proposed rates.

(K) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(L) The Commission staff shall serve top sheets in this proceeding on or before January 9, 1981.

(M) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Indiana and Michigan Electric Company, Docket No. ER81-105-000

Filed: November 10, 1980.

Other Parties: (1) Cities of Anderson, Auburn, and Mishawaka; (2) Towns of Avilla, Frankton, New Carlisle, and Warren, and Cities of Bluffton, Columbia City, Garret, Gas City, Niles, South Haven, and Sturgis.

(1) First Revised Sheet No. 1B, Second Revised Sheet Nos. 1 and 6-1, Third Revised Sheet Nos. 5 and 6, and Fourth Revised Sheet No. 4 under Schedule WS under FPC Electric Tariff, Original Volume No. 2 (Supersede Original Sheet No. 1B, First Revised Sheet Nos. 1 and 6-1, Second Revised Sheet Nos. 5 and 6, and Third Revised Sheet No. 4 thereunder).

(2) First Revised Sheet No. 1C, Second Revised Sheet No. 8-2, Third Revised Sheet No. 1, Fourth Revised Sheet Nos. 8 and 8-1, and Fifth Revised Sheet No. 7 under Schedule MRS under FPC Electric Tariff, Original Volume No. 1 (Supersede Original Sheet No. 1C, First Revised Sheet No. 8-2, Second Revised Sheet No. 1, Third Revised Sheet Nos. 8 and 8-1, and Fourth Revised Sheet No. 7 thereunder).

[FR Doc. 81-2178 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-228]

Lone Star Gas Co., A Division of ENSERCH Corp.; Application

January 14, 1981.

Take notice that on February 4, 1980, Lone Star Gas Company, a Division of ENSEARCH Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP80-228 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of taps and regulators for the delivery of natural gas to five customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate taps, regulating and measuring facilities for delivery of natural gas to the following customers: (1) for Silo Public School in Bryan, Oklahoma, for the purpose of heating and air conditioning; (2) for Frank Martino in Denton, Texas, for the purpose of commercial development; (3) for Roy Stout in McCurtain, Oklahoma, for the purpose of commercial heating; (4) for Jerry McClure in McCurtain, Oklahoma, for the purpose of commercial heating; and (5) for Wayne Reese in McCurtain, Oklahoma, for the purpose of commercial heating.

Applicant states that the cost of the proposed facilities for the delivery of natural gas would be $54,876, which costs would be financed from Applicant's working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 30, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the pulbic convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-2179 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3668-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 13, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3668 to be known as Mississippi Lock and Dam No. 11 Hydroelectric Project located at the U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 11 on the Mississippi River in Dubuque County, Dubuque, Iowa. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116, telephone (617) 267-4394. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would utilize a U.S. Army Corps of Engineers' dam. Project No. 3668 would consist of: (1) a proposed powerhouse that would be operated as a run-of-the-river installation and located

at the non-overflow section of the dam having generation units with a total capacity of approximately 10 MW; (2) proposed transmission lines; and (3) appurtenant facilities. The proposed project would be located on Federal land.

The Applicant estimates that the average annual energy output would be 72,500,000 kWh.

Purpose of Project.—The Applicant proposes to sell the output of energy generated to the Iowa Power and Light Company or other local utilities.

Proposed Scope and Cost of Studies Under Permit.—The Applicant seeks issuance of a preliminary permit for a period of 36 months. Within the 36-month time frame, the Applicant proposes to conduct engineering, environmental and legal investigations. The Applicant estimates the cost of the proposed investigations to be $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before March 19, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 19, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3668. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2180 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3667-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 13, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3667 to be known as Allegheny Lock and Dam No. 2 Hydro Project located on the Allegheny River in Allegheny County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers' Allegheny Lock and Dam No. 2 and would consist of: (1) new penstocks near the right dam abutment; (2) a new powerhouse containing units having a total rated capacity of 10,600 kW; (3) a tailrace; (4) a new transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 55,700,000 kWh.

Purpose of Project.—Project energy would be sold to a local utility.

Purpose Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of two years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit

as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—This application was filed as a competing application to Noah Corporation's application for Project No. 3494 on September 23, 1980, under 18 CFR 4.33 (1980). Anyone desiring to file a competing application must submit to the Commission, on or before March 19, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 19, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3667. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2181 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3572-000]

North Stratford Equipment Corp.; Application for Preliminary Permit

January 13, 1981

Take notice that North Strafford Equipment Corporation (Applicant) filed on October 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3572 to be known as the Livermore Falls Project located on the Pemigewasset River in Grafton County, New Hampshire. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John M. A. Rolli, North Stratford Equipment Corporation, 126 Main Street, Littleton, New Hampshire 03561. Livermore Falls Dam is owned by the Applicant. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would be run-of-the-river and would consist of: (1) an existing dam, 80-feet long and 14-feet high, constructed of concrete and masonry, and a repaired wing wall, 240-feet long and 14-feet maximum height, constructed of rock-filled timber cribs; (2) an existing headgate; (3) intakes constructed of concrete and masonry; (4) an existing penstock; (5) a renovated powerhouse containing two turbines directly connected to two generators having a total rated capacity of 1,400 kW; (6) a tailrace; (7) one 2.4 kV primary line, 300-feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 10,900,000 kWh.

Purpose of Project.—Project energy would be sold to New Hampshire Cooperative Electric Corporation.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of one year, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $6,300.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before March 18, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 18, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate

action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 18, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3572. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2182 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 13, 1981.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 2, 1981, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Fifty-sixth Revised Sheet No. 14
Fifty-sixth Revised Sheet No. 14A
Fifty-sixth Revised Sheet No. 14B
Fifty-sixth Revised Sheet No. 14C
Fifty-sixth Revised Sheet No. 14D
Third Revised Sheet No. 14E

These sheets are being issued pursuant to provisions of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff contained in Section 12.4, Demand Charge Adjustment Commodity Surcharge; Section 23, Purchased Gas Cost Adjustment and Section 26, Louisiana First Use Tax Adjustment. These sheets are also being issued pursuant to Article VI, Rate Reductions for Repayments of Advance Payments, and Article IX, Transportation Tracker, of the Stipulation and Agreement in RP78-87 approved by Commission Order issued April 4, 1980.

The changes proposed consist of:

(1) Changes in the DCA Commodity Surcharges pursuant to Section 12.4, mentioned above;

(2) Increased PGA Adjustments by $.160/dth in the demand component of rates and 0.50¢/dth in the commodity component based on the net of increases in the projected cost of gas purchased from producer and pipeline suppliers and a decrease in the Account 191 balance as of October 31, 1980 pursuant to Section 23;

(3) Projected Incremental Pricing Surcharges for the period February, 1981 through July, 1981 pursuant to Section 23;

(4) An increase in the LAFUT Adjustment of 0.06¢/dth pursuant to Section 26;

(5) A reduction of 0.49¢/dth due to Repayment of Advance Payments pursuant to Article VI of the RP78-87 Stipulation and Agreement; and

(6) Reductions in the T&C by others Adjustments to reflect reduced projected transportation and compression costs and the estimated January 31, 1981 balance in the Deferred Transportation Cost Account pursuant to the provisions of Article IX of the RP78-87 Stipulation and Agreement.

The proposed effective date of the above tariff sheets is February 1, 1981.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-2183 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Cases Filed; Week of December 5 Through December 12, 1980

During the week of December 5 through December 12, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

January 13, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Dec. 5 through Dec. 12, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 5, 1980	Commonwealth Oil Refining Company, San Antonio, Texas.	DEN-1308	Interim Order. If granted: Commonwealth Oil Refining Company would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. BEE-1306).
Dec. 5, 1980	Edgington Oil Company, Washington, D.C	BEE-1555	Exception from the Entitlements Program. If granted: Edgington Oil Company would receive an exception from the provisions of 10 CFR, Section 211.67 which would modify its entitlements purchase obligations.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Dec. 5 through Dec. 12, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 5, 1980	Office of Enforcement, Washington, D.C.	BEF-0014	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the July 10, 1980 Consent Order (#940V00200) issued to Belridge Oil Company.
Dec. 5, 1980	Office of Enforcement, Washington, D.C.	BEF-0015	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with September 25, 1979 Consent Order (#960C00034) issued to Graner Oil Company.
Dec. 5, 1980	Office of Enforcement, Washington, D.C.	BEF-0016	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with June 25, 1979 Consent Order (#610C00398) issued to Hixon Development Company.
Dec. 5, 1980	Office of Enforcement, Washington D.C.	BEF-0017	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with July 19, 1979 Consent Order (#610C00430) issued to Newmont Oil Company.
Dec. 5, 1980	Office of Enforcement, Washington D.C.	BEF-0018	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with October 11, 1979 Consent Order (#670C00264) issued to Tipperary Oil and Gas Corporation.
Dec. 5, 1980	Stephen M. Shaw, La Jolla, California	BEF-0547	Appeal of an Information Request Denial. If granted: The November 24, 1980 Information Request Denial issued by the Division of FOI and Privacy Acts Activities would be rescinded and Stephen M. Shaw would receive access to certain DOE materials.
Dec. 8, 1980	Alliance Oil & Refining Company, Houston, Texas	BEG-0040	Petition for Special Redress. If granted: The Interim Remedial Order for Immediate Compliance issued by the Office of Enforcement on October 24, 1980 would be rescinded.
Dec. 8, 1980	Crude Oil Purchasing, Inc., Washington, D.C.	BFA-0548	Appeal of an Information Request Denial. If granted: The November 7, 1980 Information Request Denial issued by the Director of the Special Investigation Division of the Office of General Counsel would be rescinded and Crude Oil Purchasing, Inc. would receive access to DOE information pertaining to a Notice of Probable Violation (Case No. 6A0X00269) issued to the firm on June 2, 1980.
Dec. 8, 1980	Ernest A. Allerkamp, Denver, Colorado	BEG-0039	Petition for Special Redress. If granted: Mr. Ernest E. Allerkamp would receive a stay of the proceedings in connection with the September 21, 1979 Proposed Remedial Order pending a determination by the Department of Energy with respect to whether a criminal investigation is to go forward.
Dec. 8, 1980	Johnnie's Exxon, Dorchester, Massachusetts	BRX-0314	Supplemental Order. If granted: The Proposed Remedial Order (Case No. BRO-1168) issued to Johnnie's Exxon would be rescinded on the basis that a Consent Order has been issued.
Dec. 8, 1980	Office of Enforcement, Washington, D.C.	BEF-0019	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with the December 13, 1979 Consent Order (Case No. 641C00380) issued to Crystal Oil Company.
Dec. 8, 1980	Powerine Oil Company, Los Angeles, California	BEX-0136	Supplemental Order. If granted: The September 15, 1980 Decision and Order (Case No. BMR-0044) would be modified for clarification of the price which Powerine Oil Co. will be permitted to charge for unleaded gasoline sold to Thomas P. Reidy, Inc. pursuant to that Order.
Dec. 9, 1980	Amoco Oil/Energy Cooperative, Washington, D.C.	BEJ-0164	Motion for Protective Order. If granted: Amoco Oil would enter into a Protective Order with Energy Cooperative regarding the release of proprietary information to Amoco Oil in connection with Energy Cooperative's Applications for Exception (Case Nos. BEE-0508 and BEE-1298).
Dec. 9, 1980	Gulf Oil Corporation (Discorbis), Houston, Texas	BEE-1557	Price Exception. If granted: Gulf Oil Corporation would be permitted to sell at upper tier ceiling prices the crude oil produced from the Discorbis 15 Sand Unit C, located in Iberia Parish, Louisiana.
Dec. 9, 1980	Johnson Oil Company, Salt Lake City, Utah	BEJ, BED-0163	Motion for Discovery and Protective Order. If granted: Discovery would be granted to Johnson Oil in connection with the Statement of Objections submitted in response to the Proposed Decision and Order (Case No. BXE-1268) issued by Southwestern Refining Company, Inc. Johnson Oil Company would enter into a Protective Order with Southwestern Refining Company, Inc. regarding the release of proprietary information in connection with the above listed case.
Dec. 9, 1980	Kerr-McGee Corporation, Washington, D.C.	BEE-1561 and BEL-1561.	Exception and Temporary Exception from the Entitlements Program. If granted: Kerr-McGee Corporation would receive an exception and temporary exception from the provisions of 10 C.F.R., Section 211.67, which would modify its entitlements purchase obligations for December, 1980.
Dec. 9, 1980	Oil-Tex Petroleum, Inc., San Antonio, Texas	BEE-1559	Price Exception. If granted: Oil-Tex Petroleum, Inc. would receive an exception from the provisions of 10 C.F.R., Section 212.185, regarding the extension of the crude oil refund deadline from November 20, 1980 to December 31, 1980.
Dec. 9, 1980	Plateau, Inc., Washington, D.C.	BEX-0135	Supplemental Order. If granted: Plateau, Inc. would receive a stay of a portion of its entitlements purchase obligations.
Dec. 9, 1980	Refinery Associates, Inc., San Antonio, Texas	BEE-1560	Price Exception. If granted: Refinery Associates, Inc. would receive an exception from the provisions of 10 C.F.R., Section 212.85, regarding the extension of the crude oil refund deadline from November 20, 1980 to December 31, 1980.
Dec. 9, 1980	State of Minnesota (Ashley), St. Paul, Minnesota	BFA-0550	Appeal of an Information Request Denial. If granted: The State of Minnesota would receive access to certain DOE data.
Dec. 9, 1980	Texaco, Inc., White Plains, New York	BER-0079 and BEJ-0165.	Modification and Rescission and Motion for Protective Order. If granted: The August 22, 1980 Decision and Order issued to Texaco, Inc. (Case No. BEJ and BED-0120) by the Office of Hearings and Appeals would be modified. Texaco, Inc. would enter into a Protective Order with Little America Refining Co. regarding the release of proprietary information to Texaco, Inc. in connection with Little America Refining Co.'s Application for Exception (Case No. BEE-1064).
Dec. 9, 1980	Texaco, Inc., White Plains, New York	BEE-1556	Price Exception. If granted: Texaco, Inc. would receive an exception to the provisions of 10 C.F.R., Section 212.72, regarding the certification of property qualifying under the marginal well provision.
Dec. 9, 1980	Texas Gas Exploration Corporation, Houston, Texas.	BEE-1558	Price Exception. If granted: Texas Gas Exploration Corporation would receive an exception from the provisions of 10 C.F.R., Section 212.165, regarding the recovery of certain processing costs in the sale of Natural Gas Liquid.
Dec. 9, 1980	Whiting Brothers Oil Company, Phoenix, Arizona	BFA-0549	Appeal of an Information Request Denial. If granted: The October 31, 1980, Information Request Denial issued by the Office of Enforcement, Western District, would be rescinded, and Whiting Brothers Oil Company would receive access to certain DOE documents.
Dec. 10, 1980	Pester Derby Oil Company, Des Moines, Iowa	BRD-1329	Motion for Discovery. If granted: Discovery would be granted to Pester Derby Oil Company in connection with the Statement of Objection submitted in response to the Proposed Remedial (Case No. BRO-1329) issued to the firm.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Dec. 5 through Dec. 12, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 10, 1980	The Crude Company, et al, Washington, D.C	BEZ-0072 and 0074, BRZ-0073, 0075, 0076, and 0077.	Interlocutory Order. If granted: The relief accorded in the November 7, 1980 Decision and Order (Case Nos. BEZ-0058 and 0050, BRZ-0059, 0061 and 0062) would be extended.
Dec. 11, 1980	Hudson Refining Company, Inc., Washington, D.C	BEE-1562	Exception from the Entitlements Program. If granted: Hudson Refining Company, Inc., would receive an exception from the provisions of 10 C.F.R., Section 211.67, which would modify its entitlements purchase obligations.
Dec. 11, 1980	Office of Enforcement, Washington, D.C	BEF-0020	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, in connection with the December 19, 1979 Consent Order issued to Michaux Oil Company.
Dec. 12, 1980	Gary Energy Corporation, Denver, Colorado	BRS-0121	Request for Stay. If granted: Gary Energy Corporation would receive a stay of the enforcement proceedings relating to a May 19, 1980 Notice of Probable Violation pending the issuance of a Proposed Remedial Order.
Dec. 12, 1980	Martin Oil Service, Washington, D.C	BFA-0551	Appeal of an Information Request Denial. If granted: The November 5, 1980, Information Request Denial issued by the Central Enforcement District, ERA, would be rescinded and Martin Oil Service would receive access to documents regarding the September 24, 1980, Notice of Probable Violation issued to the firm.

Notices of Objection Received

[Week of Dec. 5, 1980 to Dec. 12, 1980]

Date	Name and location of applicant	Case No.
Dec. 9, 1980	Robert H. Hart & Sons, Inc., Dallas, Texas	BEE-0722
Dec. 9, 1980	Board of School Commissioners, Indianapolis, Indiana	DEE-7832
Dec. 9, 1980	Pride Refining, Inc., Abilene, Texas	BEE-0651
Dec. 11, 1980	J. A. Nere Co., Inc., Fredericksburg, Virginia	DEE-8091

[FR Doc. 81-2316 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order; Week of December 8 Through December 12, 1980

During the week of December 8 through December 12, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding that will be conducted by the Department of Energy concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before February 11, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 15, 1981.

Proposed Remedial Orders

Barkett Oil Co., Miami, Fla., BRO-1342, motor gasoline

On December 9, 1980, Barkett Oil Company, 7950 N.W. 58th Street, Miami, Florida 33166, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on November 7, 1980. In the PRO, the Southeast District found that during the period January 1, 1979, to March 31, 1979, Barkett Oil Company sold gasoline at prices in excess of the maximum lawful selling prices determined in accordance with the provisions of 10 CFR 212.93. According to the PRO, the Barkett Oil Company violation resulted in $204,425.42 of overcharges.

Cape Fair Boat Dock, Cape Fair, Mo., BRO-1343, motor gasoline

On December 11, 1980, Cape Fair Boat Dock, P.O. Box 6, Cape Fair, Missouri 65624, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on July 29, 1980. In the PRO, the Central District found that during the period April 4, 1980 to July 1, 1980, Cape Fair Boat Dock committed pricing violations with respect to sales of motor gasoline in the State of Missouri. According to the PRO, the Cape Fair Boat Dock violation resulted in $751.22 of overcharges. This Notice of Objection has been transferred to the Central Regional Center of the Office of Hearings and Appeals for analysis

[FR Doc. 81-2315 Filed 1-21-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL 1724-7]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held February 6, 1981, starting at 8:30 am in Room 3906, Mall at EPA Headquarters, 401 M Street, SW, Washington, D.C.

The agenda for the meeting will include a scientific review by CASAC of the health effects sections of the draft staff paper for nitrogen oxides entitled "Preliminary Assessment of Health and Welfare Effects Associated With Nitrogen Oxides for Standard-Setting Purposes."

Copies of the draft staff paper may be obtained by writing Mr. Michael Jones, Office of Air Quality Planning and Standards, (MD-12) EPA, Research Triangle Park, NC 27711. Copies of the draft staff paper will also be available at the CASAC meeting.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Terry F. Yosie, Staff Officer, Science

Advisory Board on (202) 755–0263 before close of business January 30, 1981.

Harry Torno,

Acting Director, Science Advisory Board.

January 14, 1981.

[FR Doc. 81–2246 Filed 1–21–81; 8:45 am]

BILLING CODE 6560–34–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senior Executive Service Performance Awards

The Equal Employment Opportunity Commission hereby gives notice that it has scheduled payment of Senior Executive Service performance awards for February 3, 1981, or as soon as thereafter as practicable. For further information contact Beverly A. Gary, Director of Personnel, at 634–7002.

Dated: January 15, 1981.

Eleanor Holmes Norton,

Chair.

[FR Doc. 81–2187 Filed 1–21–81; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80–772, 80–773; File Nos. BPH–10,930, BPH–780831AF]

Communications Properties, Inc. and Broadcasting Corp.; Hearing Designation Order

Adopted: December 22, 1980.

Released: January 16, 1981.

In re Applications of Communications Properties, Inc., Fargo, North Dakota, BC Docket No. 80–772, File No. BPH–10,930, Req: 101.9 MHz, Channel No. 270, 100 kW, 629' HAAT; Red River Broadcasting Corporation, Fargo, North Dakota, BC Docket No. 80–773, File No. BPH–780831AF, Req: 101.9 MHz, Channel No. 270, 100 kW, 1010' HAAT.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Communications Properties, Inc. (CPI) and Red River Broadcasting Corporation (Red River).

2. *CPI.* CPI has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). The applicant did not set forth the minority, racial or ethnic breakdown of the community, its governmental activities nor its public service organizations, as required by Question and Answer 9 of the *Primer*. Because of these defects it is not possible to determine which groups in Fargo are significant for purposes of ascertainment. Further, in most cases, CPI does not identify the leadership positions of the persons interviewed. Therefore, it is not known whether bona-fide leaders were in fact consulted. Question and Answer 11(a) of the *Primer* requires that principals or management level employees conduct all consultations with community leaders. Question and Answer 15 requires that applicants for new facilities conduct their leader and general public interviews within the six month period prior to the filing date of an application. CPI does not provide any information necessary to make these determinations required by the *Primer*. For the foregoing reasons, a general ascertainment issue will be specified.

3. Although CPI informed the Commission that it published a public notice pertaining to its amendment of November 24, 1978, Commission records do not indicate that a notice was published for the original application filed January 13, 1978. Further, the notice of the amendment does not contain all of the information required by § 73.3580 of the rules. To remedy these deficiencies, CPI will be required to republish local notice of its application if it has not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

4. At the time its application was tendered for filing, CPI was owned 83.3% by Diane K. Cardozo and Harold M. Gallman, co-executors of the Estate of Hart N. Cardozo, Jr., and 16.7% by KVZ, Inc. The officers, directors and stockholders of KVZ, Inc. were: Philip T. Kelly, President, Treasurer, director and 49.9% stockholder; Richard C. Voight, Vice President, director and 25.8% stockholder; and James L. Zimmerman, Vice-President, director and 24.3% stockholder.[1] On November 24, 1978, CPI amended its application to report that KVZ, Inc. acquired 100% control of CPI on September 15, 1978 pursuant to Commission authorization (File Nos. BTC–8743 and BAL–9391). The name of KVZ, Inc. was then changed to CPI upon dissolution of the former CPI entity. While the transfer application was filed on FCC Form 315 ("long form") and involved 50% or more of the stock in CPI, so that such an amendment would normally effect a major change under § 73.3573(b) of the Rules that would require a new file number, the circumstances herein are the result of the demise of the controlling stockholder, Hart N. Cardozo, Jr., and his executor's sale of his holdings to the remaining owners, officers and directors of CPI. Based upon the Commission's decision in *Rose Broadcasting Co.*, 68 FCC 2d 1242 (1978), an involuntary transfer of control has occurred which exempts CPI from the major change and new file number requirements of § 73.3573(b) of the rules.

5. Both CPI and Red River filed numerous amendments and informational findings pursuant to §§ 1.514 and 1.65 of the Rules after August 24, 1979, the date specified as the last date for filing amendments as a matter or right. Of these amendments, CPI opposed Red River's May 27, 1980 amendment to change transmitter site, and Red River opposed CPI's October 20, 1980 amendment reporting the resignation of a corporate director from positions as director of two other corporate applicants for broadcast facilities. Since Red River stipulated that no comparative advantage would be sought, and the move was due to circumstances beyond its control, good cause exists for grant of the petition for leave to amend and acceptance of Red River's May 27, 1980 amendment.[2] With respect to CPI's amendment, it contends that because the broadcast interests of its director were acquired and disposed of after the amendment deadline, no comparative consideration is warranted. Although an applicant is not permitted to improve its comparative posture after the amendment deadline, it does not follow that acquisition of interests that weigh against the applicant should not be considered. However, where as here the interests do not reflect ownership interests and involve only applications rather than authorizations for facilities at substantial distance from the community at issue in the instant proceeding, the comparative effect, if any, of such factors is of such minimal potential significance that good cause for amendment appears justified. Accordingly, CPI's October 20, 1980 petition for leave to amend will be granted and the amendment accepted.

6. Data on file indicate that there would be a significant difference in the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive service of 1 mV/m

[1] On October 29, 1979, control of CPI (formerly KVZ, Inc.) was transferred to Messrs. Kelly (65.9%) and Voight (34.1%) pursuant to Commission grant October 23, 1979 of FCC Form 316 (short-form) application (File No. BTC(H) 790823 F W/FX/FY/FZ/GA and GB).

[2] Accordingly, any comparative advantage resulting from Red River's transmitter site changes subsequent to August 24, 1979, the last day for minor amendments as a matter of right, will be disallowed.

or greater strength, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the efforts made by Communications Properties, Inc. to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

9. It is further ordered, That the petitions for leave to amend filed by Red River and CPI are granted and the accompanying amendments are accepted for filing.

10. It is further ordered, that Communications Properties, Inc. shall file a statement with the presiding Administrative Law Judge showing compliance with the public notice requirement of § 73.3580(f) of the Commission's rules.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issue specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the Commission of the publication of such notice as required by § 73.359(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division Broadcast Bureau.

[FR Doc. 81-2133 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-777, 80-778; File Nos. BPED-780828AD, BPED-781220AE]

School Board of Broward County FL and Boca Raton Christian School; Hearing Designation Order

Adopted: December 31, 1980.

Released: January 14, 1981.

In re applications of the School Board of Broward County, Florida, Sunrise, Florida, BC Docket No. 80-777, File No. BPED-780828AD, Req: 88.5 MHz, Channel #203, 3.0 kW (H&V), 100 feet; Boca Raton Christian School, Boca Raton, Florida, BC Docket No. 80-778, File No. BPED-781220AE, Req: 88.5 MHz, Channel #203, 3.0 kW (H&V), 281 feet; for construction permit for a New Educational FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Boca Raton Christian School (Boca Raton), and the School Board of Broward County, Florida (School Board).

2. *Boca Raton.* Analysis of the financial portion of Boca Raton's application reveals that it will require $68,085 to construct the proposed facility and operate for three months, itemized as follows:

Equipment	$61,835
Operating Expenses	6,250
Total	68,085

To meet this requirement, Boca Raton intends to rely on existing capital in the amount of $25,000, donations from several people totalling $38,000, and additional capital provided by Bibletown Community Church. Boca Raton did not furnish adequately information showing the availability of such funds as required by Paragraph 2(a), Section III of Form 340. Specifically, signed pledges and donor balance sheets were not submitted and the commitment letter of Bibletown Community Church did not mention the amount of funds to be supplied. Accordingly, a limited financial issue will be specified.

3. *School Board.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the rules. We have no evidence that the School Board published the required notice. To remedy this deficiency, the School Board will be required to publish local notice of its application, if they have not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

4. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service a contingent comparative issue will also be specified.

5. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

6. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Education Broadcasting, Inc.*, 43 FR 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered that, pursuant to Section 309(e) of the Communications Act of 1934, as

amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby.

2. To determine with respect to Boca Raton:

a. The source and availability of additional funds over and above the $25,000 indicated; and

b. In light of evidence adduced pursuant to (a) above, whether the applicant is financially qualified to construct and operate the proposed station.

3. To determine whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof.

4. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

9. It is further ordered, that the School Board of Broward County, Florida shall publish local notice of its application, if they have not already done so, and to file a statement of publication with the presiding Administrative Law Judge as described in § 73.3580(h) of the rules.

10. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division Broadcast Bureau.

[FR Doc. 81-2132 Filed 1-21-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 11, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-21-8.

Filing Party: Mr. Ronald L. Laumbach, Assistant General Counsel, Cargill, Incorporated Law Department, P.O. Box 9300, Minneapolis, Minnesota 55441.

Summary: Agreement No. T-21-8, between Sacramento-Yolo Port District (Port) and Cargill, Inc. (Cargill), modifies the basic agreement which provides for the lease to Cargill of a grain terminal facility at Sacramento, California. The purposes of the modification are to: (1) extend the basic lease for an additional 9 years; (2) increase the monthly rental and minimum tonnage beginning July 1, 1981, through June 30, 1985; (3) provide for improvements and additions to the leased facility by Port, with costs not to exceed $1,820,000; (4) provide for Port's reimbursement to Cargill for costs incurred in the installation of a truck scale; and (5) provide for a reduction in the monthly rental and minimum tonnage in the event that suitable bond financing is not obtained by July 1, 1981.

Agreement No.: T-2196-5.

Filing Party: Mr. H. H. Wittren, Assistant Director of Real Estate, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-2196-5, between Port of Seattle and Puget Sound Tug & Barge Co., Modifies the parties' basic agreement which provides for the lease of certain premises at Pier 17, Seattle, Washington, for the docking, repairing and provisioning of tug boats and barges. The purpose of the modification is to add 70,651 square feet of harbor area to the premises. This brings the total leased area to 365,531 sq. ft. and increases the monthly rental to $2,920.

Agreement No.: T-3806-2.

Filing Party: Mr. H. H. Wittren, Assistant Director of Real Estate, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3806-2, between the Port of Seattle and Matson Terminals, Inc. (Matson), modifies the parties; basic agreement which provides for the 3-year lease to Matson of approximately 15 acres of container terminal facilities at Terminal 18, Seattle, Washington. The purpose of the modification is to reduce the leased premises by 3½ acres, which was added by the previous amendment, with a corresponding reduction in rental.

Agreement No.: T-3939.

Filing Party: William E. Emick, Jr., Deputy City Attorney, Offices of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3939, between the City of Long Beach and Metropolitan Stevedore Company (Metropolitan) provides for the two year preferential assignment to Metropolitan of bulkloading facilities on Pier G in the Port of Long Beach, California. The agreement further provides for maintenance work on the bulkloading facility and the construction of a pedestrian bridge by Metropolitan, which will be reimbursed for the work by withholding $0.125 per metric ton of bulk cargo loaded until all costs have been recovered.

Agreement No.: T-3940.

Filing Party: Mr. Peter P. Wilson, Senior Counsel, Matson Navigation Company, 333 Market Street, San Francisco, California 94119.

Summary: Agreement No. T-3940 between Matson Terminals, Inc. (Matson) and Nippon

Yusen Kaisha (NYK), provides for Matson's performance of maintenance and repair services on NYK container and container handling equipment at Matson's Honolulu, Oakland and Los Angeles terminals. Both parties agree to an itemized schedule of rates on maintenance and repair services and to terms, provided in the agreement, for the review of rate changes. The parties further agree to various working procedures, conditions and terms provided for in the agreement. The agreement shall remain in effect for one year and continue on a year-to-year basis until terminated by either party.

Agreement No.: 10409

Filing Party: Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler Sparber & Bauman, 120 Broadway, New York, New York 10271.

Summary: Agreement No. 10409, among Korea Shipping Corporation (KSC), Neptune Orient Lines, Ltd. (NOL), and Orient Overseas Container Line, Inc. (OOCL), provides for a cooperative arrangement whereby the parties will cross charter space to each other. The scope of the agreement will include trade between ports in the United States (including the States of Hawaii and Alaska and all commonwealth, territories and possessions of the United States) and ports in the Republic of Korea, Republic of China, Hong Kong, Japan (including Okinawa), Thailand, Malaysia, Republic of Singapore, Indonesia and Republic of the Phillippines. The parties will operate two separate services: (a) between ports on the Pacific coast of the United States and ports in the Far East and Southeast Asia, and (b) between ports on the Atlantic coast of the United States and ports in the Far East and Southeast Asia. Under the agreement KSC will operate no more than 5 vessels, NOL will operate no more than 4½ vessels and OOCL will operate no more than 7½ vessels. Each such vessel will have a capacity from approximately 1,500 TEUs to approximately 2,000 TEUs. Each party agrees to charter on each voyage of each vessel space to the other parties in an amount which is determined by multiplying that fraction the numerator of which is the amount of space (TEUs) on all vessels operated by such other party and the denominator of which is the total amount of space (TEUs) on all vessels operated by the parties by the total carrying capacity of said vessel. No party will, directly or indirectly, conduct any container liner operations in the trade except pursuant to the agreement. No party will become a party to any conference or other rate making agreement in the trade unless at least two of the parties agree to become parties and upon such agreement by two of the parties, all of the parties will simultaneously become parties to such conference or other rate making agreement. Each party retains independence in regard to its vote as a conference member. Except as may be required by any conference or rate agreement, any party may charge such rates as it sees fit. The parties will cooperate with each other to rationalize each of the services in the trade and to arrange advertising and sailing schedules so as to avoid conflicting dates. The agreement provides for a termination on the fifth anniversary of the effective date or on any date thereafter by any party giving at least 60 days' written notice to the other parties and the FMC. Upon becoming effective, Agreement No. 10409 is intended to supersede Agreement No. 10186, as amended. Publication of the notice of the filing of Agreement No. 10409 was delayed pending an anticipated refiling of the agreement, however, the refiling was not accomplished. Consideration will be on the agreement as originally filed on December 24, 1980.

Agreement No.: 10408.

Filing Party: Thomas K. Roche, Esquire, R. D. Box 1782, Jericho-East Norwich Road, Syosset, New York 11791.

Summary: Agreement No. 10408, among Northern Pan America Line A/S, Nopal Star Line Limited, Nopal Venezuela Line Ltd., Rocargo, C.A., Lorentzen Shipping Agency, Inc. (LSA), Oivind Lorentzen A/S Sobral, and DFDS A/S, is an agency agreement whereby LSA agrees to serve as agent, manager and/or daily line administrator for each of the carrier parties, assessing costs in proportion to cargo handled and use of facilities, as well as coordinating certain charter operations. Additionally, LSA may in the interests of efficiency set up a leasing company to deal with equipment for the use of the carrier parties. LSA's compensation for such agency and management services will be determined on the basis of percentage of freight, per diem and/or minimum flat fees, and flat fee or commission with regard to containers.

By Order of the Federal Maritime Commission.

Dated: January 15, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-2128 Filed 1-21-81; 8:45 am]

BILLING CODE 6730-01-M

Gulf/United Kingdom Rate Agreement No. 10140; Agreement Termination

The Federal Maritime Commission gives notice that it shall terminate its approval of the Gulf/United Kingdom Rate Agreement No. 10140, as amended, effective October 8, 1980, the effective date of the withdrawal of Seatrain International S.A. from membership in the Agreement. Seatrain's withdrawal reduced the Agreement membership to only one party. Section 15 of the Shipping Act, 1916, only recognizes agreements between two or more persons subject to the Act.

Dated: January 15, 1981.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 2123 Filed 1-21-81; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3930]

The Port Authority of New York and New Jersey/Universal Maritime Service Corp.; 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 environmental issues relative to the referenced proceeding do 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 the agreement, please refer to 45 FR 73134 (November 4, 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 547.6(b).

The FONSI and related environmental assessment are available for inspection or 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. 81-2125 Filed 1-21-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their veiws on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation

would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should indentify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 15, 1981.

A. *Federal Reserve Bank of New York* (A Marshall Puckett, Vice-President) 33 Liberty Street, New York, New York 10045:

Manufacturers Hanover Corporation, New York, New York (second mortgage lending, serving, and insurance activities; Pennsylvania): to engage, through its *de novo* indirect subsidiaries Ritter Mortgage Company and Investors Mortgage Company, in arranging, making or acquiring for their own account or for the account of others, loans and other extensions of credit secured by second mortgages on residential real property such as would be made by a consumer finance company; servicing such loans and other extensions of credit for any person; acting as an agent or broker for the sale of single and joint credit life insurance which is directly related to such loans and extensions of credit and, through its subsidiaries Ritter Life Insurance Company and Tempco Life Insurance Company, reinsuring such credit insurance. These activities would be conducted from existing offices of Ritter Consumer Discount Company, Inc., of Pennsylvania, and Investors Consumer Discount Company of Pennsylvania, located in and servicing the following Pennsylvania counties or portions thereof: Beaver, Cumberland, Franklin, Westmoreland, Lawrence, Adams, York, Cambria, Blair, Montgomery, Centre, Columbia, Philadelphia, Clarion, Fayette, Bucks, Berks, Northumberland, Somerset, Dauphin, Delaware, North Hampton, Washington, Chester, Lycoming, Lebanon, Lancaster, Perry, Lehigh, Fulton, Bedford, Indiana, Carbon, Schuylkill, Montour, Snyder, Union, Clinton, Allegheny, Mercer, Butler, Juniata, Huntingdon, Monroe, Greene, Sullivan, Clearfield, Mifflin, Luzerne, Jefferson, Forest, Armstrong, and Venango. Comments on this application must be received by Febuary 13, 1981.

B. *Federal Reserve Bank of Richmond* (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Maryland National Corporation, Baltimore, Maryland (commerical financing activities; Alabama, Florida, Georgia, Mississippi, South Carolina and Tennessee): to engage through its subsidiary Maryland National Industrial Finance Corporation, in commerical lending operations, including but not limited to financing of accounts receivable, inventories, and other types of secured and unsecured loans to commerical enterprises; serving commerical loans for affiliated or non-affiliated individuals, partnerships, corporations, or other entities; and acting as agent or broker in commerical lending transportations. These activities would be conducted from an office in Marietta, Georgia serving the six states listed in the caption to this notice. Comments on this application must be received by Febuary 13, 1981.

C. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

K.L. AND D.M., INC., Polk, Nebraska (general insurance activities; Nebraska) to engage through Stewart Insurance Agency in a general insurance agency business in a town with a population not exceeding 5,000 persons. These activities would be conducted from an office in Polk, Nebraska and would serve Polk and the surrounding area.

D. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Bankamerica Corporation, San Francisco, California (financing and servicing; all fifty (50) states and the District of Columbia): to engage, through its direct subsidiary, Decimus Corporation, a California Corporation, in the activities of making or acquiring for its own account, secured and unsecured commerical loans and other commerical extensions of credit. Such activities will include, but not be limited to, the making of loans in connection with the financing of computer systems and computer related equipment, software and services. Such loans may be secured by tangible and intangible personal property, including, but not limited to, computer and computer related equipment, leases, software and licenses and other contracts related to the computer business. Decimus Corporation also proposes to engage in the additional activity of servicing loans and other extensions of credit for others in connection with extensions of credit made or acquired by Decimus Corporation. These activities will be conducted from an existing office located in San Francisco, California serving the fifty (50) states and the District of Columbia.

E. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 15, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2162 Filed 1-21-81; 8:45 am]

BILLING CODE 6210-01-M

Granby Bancshares, Inc.; Formation of Bank Holding Company

Granby Bancshares, Inc., Granby, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 96.4 per cent or more of the voting shares of The Citizens State Bank of Granby, Granby, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 13, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 14, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2163 Filed 1-21-81; 8:45 am]

BILLING CODE 6210-01-M

Marshall & Ilsley Corp.; Proposed Retention of Office of First National Leasing Co.

Marshall & Ilsley Corporation, Milwaukee, Wisconsin, has applied, pursuant to section 4(c)((8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of First National Leasing Corporation, Milwaukee, Wisconsin.

Applicant states that the subsidiary would continue to engage in the activities of leasing equipment on a full payout basis, purchasing conditional

sales contracts from equipment suppliers and manufacturers, and making chattel security loans on commercial and industrial equipment. These activities would be performed from offices of Applicant's subsidiary in Creve Coeur, Missouri, and the geographic areas to be served are the State of Missouri, and the geographic areas to be served are the State of Missouri and the southern one-half of the State of Illinois. Such activities have been specified by the Board in 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writen presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 14, 1981.

Board of Governors of the Federal Reserve System, January 15, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-2194 Filed 1-21-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the eighth meeting of the National Council on Health Care Technology (Council), which was established pursuant to the Health Research, Health Statistics, and Health Care Technology Act of 1978 (Pub. L. 95-623) and which advises the Secretary and the Director of the National Center for Health Care Technology (Center) on the activities of the Center, will convene on Friday, February 13, 1981 at 9:00 a.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. This meeting will be open to the public from 9:00 a.m. to 3:30 p.m. to discuss the business of the Council and the Center. Principal consideration and discussion will be devoted to reports of the Subcommittees, discussion of guidelines for use of health care technology and discussion of inter-relationships with other Councils.

This meeting will be closed to the public from 3:30 p.m. to adjournment in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On Wednesday, February 11, 1981, the Subcommittee on Grants and Contracts will convene at 7:00 p.m. at Lombardy Towers, 2019 Eye Street, NW, Washington, D.C. This meeting will also be closed to the public from 7:00 p.m. to adjournment in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or material, and personal information concerning individuals of which would constitute a clearly unwarranted invasion of personal privacy.

On Thursday, February 12, 1981, the Subcommittee on Criteria will convene at 9:30 a.m. in Room 303-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. Principal consideration will be given to further discussions regarding the processes for criteria development. The Subcommittee on Coverage will convene at 9:30 a.m. in Room 800 of the Hubert H. Humphrey Building. Principal consideration will be given to the economic assessment of health care technologies. The Subcommittee on Dissemination of Research Development will convene at 9:30 a.m. in Room 503-A of the Hubert H. Humphrey Building. Principal consideration will be given to public use tapes resulting from NCHCT sponsored research.

The Subcommittee on Criteria, the Subcommittee on Coverage and the Subcommittee on Dissemination of Research Development will be open to the public from 9:30 a.m. to adjournment.

Further information regarding the Council may be obtained by contacting Sharon Paino, Executive Secretary, National Council on Health Care Technology, Room 17A-29, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: December 31, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 81-2143 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-85-M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following National Institute for Occupational Safety and Health Committee meeting:

Name: Mine Health Research Advisory Committee.

Date: February 4-5, 1981.

Place: Conference Room G, Parklawn Building, 5600 Fishers Ln., Rockville, MD 20857.

Time: 8:30 a.m.-4:30 p.m.—February 4; 8:30 a.m.-12 noon—February 5.

Type of Meeting: Closed: 8:30 a.m. to 9:30 a.m. on February 4; Open: 9:30 a.m. on February 4 through adjournment on February 5.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, 5600 Fishers Lane, Room 8A-44, Rockville, Maryland 20857, Phone: (301) 443-4614.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services, on matters relating to all types of mine health research, including grants and contracts for such research.

Agenda: Beginning at 8:30 a.m. on February 4, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in Section 552(c)(6), Title 5 US Code and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items for the open portion of the meeting beginning at 9:30 a.m. on February 4, will include announcements,

consideration of minutes of previous meeting and future meeting dates, presentations and discussions on the respirator research program, surveillance program, pulmonary function test procedures, guidelines for research studies, energy research program, and future prospects for grants program and film of taconite mining.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: January 15, 1981.

William H. Foege, M.D.,

Director, Centers for Disease Control.

[FR Doc. 81-2206 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-87-M

Health Care Financing Administration

Medicare Program; Solicitation of Hospitals and Medical Centers to Participate in a Study of Heart Transplants

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

ACTION: Notice.

SUMMARY: This notice invites hospitals and medical centers to participate in a study of heart transplants to be conducted by HCFA. The purpose of the study is to examine, in general, all aspects of heart transplants, including the scientific, social, economic, and ethical issues, and, in particular, the impact of a possible Medicare decision to pay for heart transplants on the Medicare program, Medicare beneficiaries, and providers of health care. The study will be done in two related parts—the selection and participation of hospitals and medical centers, to which this notice is addressed, and an analysis of pertinent data and issues, to be conducted by an independent contractor.

Hospitals and medical centers selected to participate in this study, under this notice, may be reimbursed for a limited number of heart transplants performed for Medicare beneficiaries during the course of the study. In addition, these institutions will furnish data about heart transplants performed at their facilities and will be reimbursed for the costs of furnishing this information.

This notice contains information about the study, the availability of funds, and the procedures by which interested institutions can communicate their willingness to participate in the study. This notice also contains the criteria for the selection of hospitals and medical centers for heart transplant funding.

DATES: All applications must be received by 4:30 p.m., March 30, 1981.

ADDRESSES: Address applications to: Morris J. Levy, Director, Office of Coverage Policy, Room 401, East High Rise Building, Health Care Financing Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION CONTACT: Donald A. Young, M.D., Deputy Director, Office of Coverage Policy, (301) 594-9690.

SUPPLEMENTARY INFORMATION:

Background

In November 1979, HCFA authorized Medicare payments for heart transplantation procedures performed for Medicare beneficiaries at Stanford University Medical Center. This was an interim decision, based on preliminary findings by the Public Health Service (PHS) regarding the safety and efficacy of heart transplants performed at that center. HCFA anticipated, when reimbursement was tentatively authorized, that we soon would be able to reach a final decision not only about coverage at that center, but also on generally applicable, broadly based criteria for approving Medicare coverage of heart transplantations at other facilities.

As we proceeded to review Medicare coverage of heart transplants, we determined that the issues are much more complex than originally contemplated and that many of them cannot be resolved now because adequate data do not exist. There are questions, for example, concerning the patient selection process, the basis for assessing safety and efficacy, the long-term social and economic consequences of the procedure, broad ethical considerations, the cost effectiveness of the procedure, and the potential, if any, for substantial expansion in the availability of heart transplantation. We have concluded that we do not have sufficient information at this time to support the development of generally applicable coverage criteria. Consequently, the Secretary of HHS announced a decision to exclude heart transplants from Medicare coverage, with the exception of a very few patients previously selected for and awaiting transplantations. That decision was announced June 12, 1980 by the Secretary and published as a notice in the **Federal Register** on August 6, 1980 (45 FR 52296).

The decision to exclude heart transplants from Medicare coverage was accompanied by an announcement that HCFA, in close cooperation with the PHS National Center for Health Care Technology (NCHCT), will conduct a broad study of heart transplants. The study will address a broad range of issues pertaining to a potential Medicare coverage decision on heart transplants, including scientific, social, ethical, and economic issues. The study will also examine the impact of a potential coverage decision on beneficiaries, the Medicare program, and health care providers. When the results of the study have been analyzed, HCFA will publish a proposed decision as to Medicare coverage and give the public an opportunity to participate fully in the development of the final policy, with all pertinent facts being made available for analysis.

Implementing the Heart Transplant Study

Overview of the Study

The heart transplant study will be conducted over an eighteen-month period (beginning approximately in May, 1981) and will have two aspects: (1) Institutions participating in the study will furnish, or facilitate access to, a wide variety of data regarding heart transplants previously performed at their facilities over a period of years. (2) A contractor will gather, coordinate, evaluate, and report to HCFA on the data it collects from those institutions and other sources.

Hospitals and medical centers participating in the study will furnish information about the heart transplants performed during a period starting no later than January 1, 1975, and continuing through the period of this study. This will include data on the institution's facility and personnel resources, heart donor program, patient selection criteria, transplant and patient

care protocols, patient follow-up care, patient survival, costs of establishing and maintaining a heart transplant program, patient charge information, and other similar and related information.

The institution must agree to contact former heart transplant patients, or relatives of those patients, to invite their cooperation in the study, including their authorization for the institution to release information about their cases and to be interviewed in connection with the study.

In addition to this Notice, HCFA will publish a Request for Porposals to select a contractor, through a competitive process, to gather the data furnished by the institutions and reimburse the institutions for expenses incurred in producing that data.

Applications To Participate in the Study

Hospitals and medical centers that wish to participate in the heart transplant study are requested to send a letter to HCFA, at the address shown above, making known their desire to participate. Institutions may participate in either of two ways—by only furnishing data for the study or by furnishing data and receiving reimbursement for some agreed-upon number of transplantations. Institutions that do not seek reimbursement for heart transplants, but are interested in submitting data for the study, should indicate that to us.

HCFA will select the institutions to participate in the study, will negotiate an agreed number of transplants to be performed on Medicare beneficiaries, and will make arrangements for Medicare reimbursement. The contractor HCFA selects for this study will than contact those institutions, informing them in detail about the data that must be furnished and about procedures for reimbursing institutions for costs incurred in providing that data.

Procedures for Selecting Institutions To Be Reimbursed for Heart Transplants

As part of the study, HCFA will provide for payments to qualified hospitals and medical centers for a total of approximately 15 heart transplants performed for Medicare beneficiaries during the study period. Institutions participating in the study may apply for these funds by following the procedures detailed below in the "Applications for Payments for Heart Transplants" section. The institutions selected will receive payment, in accordance with Medicare regulations, for all inpatient and outpatient care and diagnostic and therapeutic services, including physicians' and other medical services, ordianarily furnished during the evaluation, transplantation and follow-up portions of the heart transplant program. Payments will be made by the Medicare Part A fiscal intermediaries presently serving the institutions and Part B carriers serving the geographic areas in which the institutions are located. The details of the procedures for billing and payment will be furnished to the institutions as soon as possible after the selections are made.

The selection of institutions will be based on a careful review of the materials they submit regarding their capability and procedures for performing heart transplants. In this regard, cardiac transplantation cannot be considered as simply a surgical procedure. Clinical effectiveness and usefulness are dependent upon careful and appropriate patient selection, expert surgery, postoperative care, immunosuppression, evaluation for incipient rejection of the donor heart, management of complications associated with immunosuppression, patient education, and liaison with the patient's permanent physician for subsequent lifelong care. Because of these unusual complexities and the need for achieving reasonable clincial results with cardiac transplantation, we will be setting forth guidance for the use of institutions in preparing applications and for use in selecting institutions. This guidance is derived from criteria developed by the National Heart, Lung and Blood Institute, with the advice of an advisory group of experts in cardiology, caridovascular surgery, organ transplantation and immunology. The criteria were furnished to HCFA by the NCHCT.

HCFA will select the institutions to receive payments for heart transplants and will base its selections on the recommendations of a panel, or panels, made up predominantly of experts in the fields of cardiology, cardiovascular surgery, organ transplantation, and immunology. The panel will examine written materials submitted by the applicant institutions and may seek additional relevant information as necessary, for example, through site visit to the applicant institutions and interviews with relevant persons. The panel of experts will compare the institution's submission against the criteria, specified below, in recommending institutions for heart transplant funding. Although each of the four major criteria listed below are required, the panel will not necessarily recommend only those institutions that adhere strictly to the sub-criteria identified. It will take into account all evidence set forth by the applicant institution, the facility's overall medical experience, and its experience in cardiac transplantation. These criteria do not necessarily represent our view as to what procedures are essential to assessing safety and efficacy in the performance of cardiac transplantation. However, in our view, they do give us guidance in conducting this study in a responsible manner. Alternate approaches in keeping with the major criteria may be approved if in the opinion of the panel of experts the institution's procedures seem to achieve comparable results and appear to merit study.

Criteria for Assessing and Selecting Institutions

1. The institution must have had experience with a clinical heart transplant program within the past five years.

2. The institution must have adequate patient selection criteria, evidenced by the following:

(a) Patient selection criteria are to be based upon both critical medical need for transplantation and maximum likelihood of successful clinical outcome.

(b) The institution selects patients that have a very poor prognosis (e.g. less than 10 to 25 percent likelihood of survival for six months) as a result of poor cardiac functional status.

(c) All other medical and surgical therapies have been considered or tried that might be expected to yield improvement and a one-year survival comparable to that of cardiac transplantation.

(d) Patient selection criteria give consideration to those factors that are recognized at the present time as exerting an adverse influence on the outcome after cardiac transplantation. Strongly adverse factors include—

(1) Advancing age—e.g., beyond the age (normally about 50) at which the individual begins to have a diminished capacity to withstand postoperative complications;

(2) Severe pulmonary hypertension as reflected, for example, by a pulmonary artery systolic pressure over 65–70 mm Hg and exceeding pulmonary artery wedge pressure by about 40 or more mm Hg, or a calculated pulmonary vascular resistance above approximately 6 Wood units (applicable to orthotopic cardiac transplantation because of the limited work capacity of a normal donor right ventricle);

(3) Irreversible and severe hepatic or renal dysfunction (because of the likelihood of exacerbation early postoperatively and because of

interference with immunosuppressive regimens);

(4) Active systemic infection (because of the likelihood of exacerbation with initiation of immunosuppression);

(5) Any other systemic disease considered likely to limit or preclude survival and rehabilitation after transplantation;

(6) A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day with serious consequences in the event of their interruption or excessive consumption);

(7) Recent and unresolved pulmonary infarction or pulmonary roentgenographic evidence of infection or of abnormalities of unclear etiology (because of the likelihood of pulmonary infection or its exacerbation with initiation of immunosuppression under such circumstances);

(8) Insulin-requiring diabetes mellitus (because of exacerbation by chronic corticosteroid therapy);

(9) Symptomatic or documented severe asymptomatic peripheral or cerebrovascular disease (because of observed accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment);

(10) Active peptic ulcer disease (because of the likelihood of early postoperative exacerbation);

(11) The absence of adequate external psychosocial supports for either short or long-term bases (because such support is generally necessary during the inevitable waxing and waning of the clinical status of the patient and for adherence to the lifelong medical regimen).

3. The institution must have adequate patient management plans and protocols that include the following:

(a) Detailed plans for the therapeutic and evaluative procedures for the acute and long term management of a patient, including commonly encountered complications.

(b) The basis for confidence in the proposed therapeutic and evaluative regimen.

(c) The logistics of the plans for patient management and evaluation during the waiting and immediate post-discharge, as well as in-hospital, phases of the program.

(d) The logistics of the plans for the long-term management and evaluation, including education of the patient and liaison with the patient's permanent physician.

(4) The institution must have made a sufficient commitment of resources and planning to the heart transplant program to carry through on its application. Indications of such commitment could include the following:

(a) Commitment of the institution to the heart transplant program is at all levels and broadly evident throughout the institution. (A cardiac transplantation program requires a major commitment of resources. These may intermittently include many other departments as well as the principal sponsoring departments.)

(b) There are both the expertise and the commitment for participation in the medical, surgical, and other relevant areas, particularly cardiology, cardiovascular surgery, anesthesiology, immunology, infectious diseases, nursing, neurology/neurosurgery, and social services. In most of these areas, individual persons need to be identified to achieve an identifiable and stable transplant team.

(c) The component teams are integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(d) The institution has an active clinical organ transplantation program involving immunosuppressive techniques and the results of that program. (In the absence of such an active clinical organ transplant program, the institution may have great difficulty in showing that the necessary expertise will be available and logistically feasible.)

(e) There is an active cardiovascular, medical, and surgical program. (General indicators of this would be a minimum of 500 cardiac catheterizations and coronary arteriograms annually, with the ability and willingness to do such procedures on an emergency basis, and a surgical group that has demonstrated low mortality rates in an active open heart surgical program involving at least 250 procedures a year.) The surgical team responsible for transplantation must be an identified, stable group.

(f) The anesthesia service is prepared to develop a team for transplantation that will also be available at all times.

(g) The infectious diseases service has both professional skills and the laboratory resources that are needed to discover, identify, and manage a whole range of organisms, many of which are uncommonly encountered in the usual infectious diseases laboratory.

(h) The nursing service is prepared to develop a team or teams trained not only in hemodynamic support of the patient, but also in the special problems of managing immunosuppressed patients.

(i) Pathology resources are available for studying and promptly reporting the pathological responses to transplantation.

(j) A neurology or neurosurgery group is available for the donor selection procedures for objective clinical decision on brain death.

(k) Adequate social service resources are available.

(l) There is a clearly assigned and knowledgeable legal officer familiar with transplantation laws and regulations.

(m) Adequate logistical plans exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

Application Procedure

1. A hospital or medical center that wishes to participate in the study must submit an application to HCFA that includes an express commitment to provide the date indicated above, including data on all heart transplants performed at the institution beginning no later than January 1, 1975, at the request of the contractor chosen by HCFA.

2. If the institution seeks reimbursement for heart transplantation during the study, an original and 20 copies of the application must be submitted on 8½ × 11 inch paper, signed by a person authorized to commit the institution. The following must be submitted:

(a) A complete written description of the institutions's heart transplant program. Information and data must be clearly stated, well organized, and appropriately indexed to aid in its review against the "Criteria for Assessing and Selecting Institutions";

(b) An estimate of the number of heart transplants it would anticipate performing on Medicare beneficiaries during the course of the study; and

(c) An express commitment to comply with the Department's regulations on human subjects (45 CFR Part 46) and a willingness to complete form HHS-596 (Rev. 1975), "Protection of Human Subjects", when requested.

We will publish in the Federal Register for the information of the public the names of the institutions selected, but we will notify the selected institutions as soon as selections are made.

(Sec. 1875 of the Social Security Act (42 U.S.C., 1395ll)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare Supplementary Medical Insurance Program)

Dated: January 16, 1981.

Howard N. Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 81-2190 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-35-M

Health Services Administration

Project Grants for General Family Planning Services Delivery Improvement Research; Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that under the authority of section 1004(a) of the Public Health Service Act (42 U.S.C. 300a-2(a)) grants will be available in fiscal year 1981 to public or nonprofit private entities for research projects in the field of program implementation related to the improved delivery of family planning services (Catalog of Federal Domestic Assistance Number 13.974). The amount available for these grants in fiscal year 1981 is $300,000, and it is expected that 2 to 4 awards will be made under this program during fiscal year 1981.

Application kits, including all necessary forms, instructions, and information, may be obtained by writing: Grants Management Branch, Bureau of Community Health Services, Room 6-49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301 443-1440.

Completed applications must be received by April 1, 1981, and should be submitted to the Grants Management Branch at the above address. Applications received after April 1, 1981, will not be considered.

Consultation and technical assistance regarding development of an application are available from Mr. William J. White, Bureau of Community Health Services, Office for Family Planning, 5600 Fishers Lane, Room 7-15, Rockville, Maryland 20857, telephone number 301 443-2430.

It is anticipated that the Secretary will issue regulations establishing procedures and criteria for the approval of applications for research in the field of program implementation related to the delivery of family planning services. Until such regulations are issued, all information and guidance provided reflect preliminary policies only; if those policies are changed by the regulations before grants are made, applications will have to be revised accordingly.

George I. Lythcott, M.D.

Assistant Surgeon General Administrator.

[FR Doc. 81-2245 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-84-M

Office of the Secretary

Grant Appeals Procedures; Public Meeting

AGENCY: Departmental Grant Appeals Board, OS, HHS.

ACTION: Notice of meeting.

SUMMARY: The HHS Departmental Grant Appeals Board (DGAB) announces a public meeting to receive comments on its proposed new procedures.

DATE: The meeting will be held at 10:00 a.m., Tuesday, February 17, 1981.

ADDRESS: The meeting will be held in the Ground Floor Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Judy Ballard, Room 2004, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, 202-472-4364.

SUPPLEMENTARY INFORMATION: The purpose of the meeting it to receive comments on proposed procedures for appeals before the DGAB, published at 46 FR 1644, January 6, 1981. If you wish to review the procedures before the meeting, you may refer to the **Federal Register**, or may request a copy from the information contact identified above.

If you wish to appear and comment at the meeting, you should notify the information contact, indicating the length of time you wish to speak, any preference at to time, and your phone number. You will be informed in advance of the time scheduled for your statement. Statements generally will be limited to ten minutes. Submission of a typed copy of any statement would be appreciated. Time will be reserved for unscheduled comments.

If you cannot attend the meeting, please note that written and telephone comments on the proposed procedures will be considered if they are received no later than March 9, 1981.

Dated: January 13, 1981.

Norval D. (John) Settle,

Chair, Departmental Grant Appeals Board.

[FR Doc. 81-2185 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-81-634]

Service Office Supervisor, Grand Rapids Multifamily Service Office; Designation and Delegation of Authority

Designation of Acting Service Office Supervisor—Each of the officials appointed to the following positions is designated to serve as Acting Service Office Supervisor during the absence of the Service Office Supervisor, with all powers, functions, and duties redelegated or assigned to the Service Office Supervisors: *Provided*, That no official is authorized to serve as Acting Service Office Supervisor unless all officials listed before him in this designation are unavailable to act by reason of absence or vacancy in the position:

1. The Deputy Supervisor for Management
2. The Deputy Supervisor for Development
3. Chief, Assisted Housing Management Branch
4. Chief, Loan Management Branch
5. Chief, Housing Programs Branch

Effective: July 28, 1980.

Brenda G. Head,

Acting Regional Administrator, Region V.

[FR Doc. 81-2188 Filed 1-21-81; 8:45 am]

BILLING CODE 4210-01-M

INTERAGENCY REGULATORY LIAISON GROUP

Testing Standards and Guidelines Work Group: Availability of Toxicity Testing Guidelines

AGENCY: Interagency Regulatory Liaison Group (IRLG) representing the Consumer Product Safety Commission (CPSC); the Environmental Protection Agency (EPA); the Food and Drug Administration, Department of Health and Human Services (FDA); the Food Safety and Quality Service, Department of Agriculture (FSQS); and the Occupational Safety and Health Administration, Department of Labor (OSHA).

ACTION: Notice of availability of toxicity testing guidelines.

SUMMARY: The following IRLG guidelines are now available for use: Acute Eye Irritation, Acute Oral Toxicity in Rodents, Acute Dermal Toxicity, and Teratogenicity. These guidelines were developed by the Testing Standards and Guidelines Work Group of the IRLG for use when testing chemicals for toxicity.

REQUESTS FOR GUIDELINES: Guidelines may be obtained by writing to: Associate Commissioner for Consumer Affairs, 5600 Fishers Lane, Room 15B32, Rochville, Md. 20857.

ADDRESS: Questions about the guidelines should be addressed to Dr. Victor Morgenroth, III, HFF–185, Food and Drug Administration, Bureau of Foods, Division of Toxicology, 200 "C" Street, SW., Washington, D.C. 20204.

SUPPLEMENTARY INFORMATION: .

Background

The IRLG was established for the purpose of improving public health through sharing of information, avoiding duplication of effort, and developing consistent regulatory policy. The testing of chemicals to determine their health effects is a fundamental step in many of the regulatory programs being implemented by the IRLG agencies. The agencies recognize that current toxicity testing requirements are not always uniform and that the differences exist primarily in details of methodology and not in fundamental toxicological principles.

The IRLG established the Testing Standards and Guidelines Work Group for the purpose of attempting to resolve these differences by preparing guidelines which would satisfy the toxicity testing needs of all the agencies. The Work Group reviewed tests and procedures already in use or under development, solicited comments from the private sector, and coordinated its work with the agencies and others who were also in the process of developing guidelines. Early drafts of the IRLG guidelines were circulated through each agency for review, and comments from that review are incorporated in them. In addition, drafts of the EPA Offices of Pesticides Programs (OPP) proposed guidelines (43 FR 37338, 22 August 1978) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and public comments to those guidelines were used extensively in an effort to assure compatibility and to benefit from the appreciable time and effort the OPP staff and respondents put in to their development. A second major source of information was *Principles and Procedures for Evaluating the Toxicity of Household Substances* (NAS Pub. No. 1138), prepared for CPSC by the National Academy of Sciences. Still others heavily relied on were the Pharmaceutical Manufacturers' Association *Guidelines for the Assessment of Drug and Medical Device Safety in Animals* (February 1977), the FDA, Bureau of Foods Direct Additive Cyclic Review Draft Guidelines; the *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics*, Association of Food and Drug Officials of the U.S.; and protocols submitted by several industrial organizations. The Work Group made the draft guidelines available to the public for comment (43 FR 49015, 15 August, 1979) and held a public meeting on October 30, 1979, to discuss them. Written comments and comments from the public meeting were considered in developing the final guidelines. The Work Group acknowledges the contributions from each of these information sources and takes this opportunity to express its appreciation to the scientists who developed them and made them available and to those who commented on the IRLG drafts.

For several years the IRLG Work Group and the Organization for Economic Cooperation and Development (OECD) have cooperated in the development of guidelines by exchanging drafts and through the direct participation of IRLG members on OECD work groups. As a result, guidelines for Acute Eye Irritation, Acute Oral Toxicity in Rodents, Acute Dermal Toxicity, and Teratogenicity have been completed by the IRLG Work Group and have requirements identical to those of OECD. Statements of how each agency will use the guidelines follow.

1. *Consumer Product Safety Commission.*—The Consumer Product Safety Commission (CPSC) considers the test methods developed by the IRLG and OECD to be suitable for obtaining information which would be acceptable to the Commission except in a few cases where the Commission has contradictory regulations or statutes by which toxicity or irritancy is defined for purposes of the Federal Hazardous Substances Act (FHSA). The Commission intends to consider amending its regulations to make them consistent with these guidelines. Unless and until final amendments are issued, however, where the FHSA requirements differ from the IRLG or OECD guidelines and substances are being evaluated for FHSA purposes, the FHSA requirements must be followed. These differences are explained below.

Eye irritation: The FHSA defines "irritant" at Section 2(j) of the act, and this definition is elaborated upon at 16 CFR 1500.3(a)(8) and 1500.3(c)(4). The FHSA test method for determining eye irritancy is at section 1500.42 and uses 6 rabbits instead of the initial 3 rabbits used in the IRLG or OECD test. However, the IRLG or OECD test could be used to screen substances for FHSA testing. (Although the IRLG and OECD tests expressly provide for an option to use an anethetic, the FHSA test does not expressly preclude this, and the CPSC supports the use of anethetics where the animal would otherwise be subjected to extreme pain and the anesthetic will not interfere with obtaining valid test results.)

The Commission's present regulations do not establish a test for the eye irritancy of aerosol substances, and the IRLG or OECD test for these substances is suitable for this determination.

Dermal toxicity: Dermal toxicity is defined in the FHSA at section 2(h)(1)(c) and in the CPSC regulations at 16 CFR 1500.3(c)(2)(iii). These provisions contain some requirements different than the IRLG test procedures. The IRLG procedure states that albino rabbits, weighing from 2 to 3 kg, are the preferred species but that other species can be used where justified. The CPSC regulations require the use of 2.3 to 3.0 kg rabbits only. Unlike the IRLG test, the CPSC test requires that half the specimens have partially abraded skin, and there are differences in the descriptions of the location and maount of hair that is clipped from the test animals' bodies. At the end of 24 hours, the CPSC procedures provide for cleaning the animal by wiping, while the IRLG guideline provides for washing.

Oral toxicity: The CPSC's present provisions for oral toxicity testing under the FHSA are contained in section 2(g) of the act and at 16 CFR 1500.3(c)(2)(i). Whereas the IRLG test permits the use of either rats (125–250 grams) or mice (20–30 grams), the CPSC requirements allow only rats (200–300 grams). Furthermore, the CPSC requires the administration of the test substance in a single dose, while the IRLG allows administration over a period of time in certain circumstances.

Teratogenicity: The Commission does not presently have regulations defining a test for teratogenicity, but CPSC considers that the IRLG or OECD test would produce data relevant to whether a substance could be classified as toxic on the basis that the substance was teratogenic.

2. *Environmental Protection Agency.*—The Environmental Protection Agency can require private firms to test the effects of their products or wastes under three authorities: Section 4 of the Toxic Substances Control Act (TSCA); Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and Sections 3001 and 3002 of the Resources, Conservation and Recovery Act (RCRA). Testing standards are being adopted by informal rulemaking under TSCA and FIFRA. While final

standards have not yet been adopted, it is expected that they will be consistent, to the extent feasible, with the IRLG and OECD guidelines.

For chemicals required to be tested under Section 4 of TSCA or Section 3 of FIFRA, the Agency will consider proposed protocols which are consistent with the IRLG and OECD guidelines. Under TSCA, requests to introduce variations into an approved protocol will be considered during the period between a proposed and final test rule requiring testing of specific chemicals or groups of chemicals. Under FIFRA, requests for variations would be submitted and considered at the time the Agency requests data pertaining to specific pesticides.

Under TSCA, the Agency will accept testing done on new chemicals (substances for which a premanufacturing notice has to be submitted under Section 5 of TSCA) if those tests are conducted in accordance with the IRLG or OECD guidelines.

The Agency is not at this time issuing health effects testing standards under RCRA and will accept the results of any tests performed according to the IRLG or OECD guidelines for the purposes of that Act.

3. *Food and Drug Administration.*— The Food and Drug Administration considers these IRLG guidelines to be appropriate for testing substances regulated under the Federal Food, Drug and Cosmetic Act and will implement their use throughout the Agency. The IRLG guidelines will be the Agency's standard procedures, but data derived using OECD guidelines for these tests will be acceptable. It is also recognized that special data requirements may dictate use of special tests.

4. *Food Safety and Quality Service.*— Although the Food Safety and Quality Service does not usually require private industry to conduct the type of tests included in the IRLG and OECD guidelines, it fully supports and will encourage their use, by laboratory contractees of the Agency and by those submitting data to the Agency for review.

5. *Occupational Safety and Health Administration.*— The Occupational Safety and Health Administration also supports the use of these IRLG and OECD guidelines. OSHA has not, in the past, issued permits for the use of specific substances. Rather, the best available evidence is used to determine whether a specific substance presents a hazard to the employees and then OSHA limits exposures accordingly.

Therefore, these guidelines will be used in conjunction with scientific judgment to assist OSHA in evaluating such tests.

Dated: January 15, 1981.

Susan King,

Chairman, Consumer Product Safety Commission.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Jere E. Goyan,

Commissioner, Food and Drug Administration.

Carol Tucker Foreman,

Assistant Secretary, Food and Consumer Service, Department of Agriculture.

Eula Bingham,

Assistant Secretary for Labor, Occupational Safety and Health Administration.

[FR Doc. 81-2169 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-25-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

PROPOSED SALES NOS. 72 AND 74

GULF OF MEXICO

CALL FOR NOMINATIONS OF AND COMMENTS ON AREAS FOR OIL AND GAS LEASING

PURPOSE OF CALL

Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resource development with the protection of the human, marine and coastal environments, as well as assuring States and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3313.1, nominations are hereby requested for areas on the Gulf of Mexico Outer Continental Shelf for possible oil and gas leasing under the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), as amended. The Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas. Nominations for two proposed sales are being solicited in one call.

DESCRIPTION OF AREAS

Nominations will be considered for any or all of the blocks seaward of the submerged lands of the adjacent States which are to be found on the Official Protraction Diagrams and Leasing Maps listed below.

These blocks may be found on Outer Continental Shelf Official Protraction Diagrams and Leasing Maps which may be purchased from the Manager, New Orleans OCS Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130, as follows:

	South Texas Set[1]	Latest Approval or Revision Date
1	South Padre Island Area	7/16/54
1A	South Padre Island Area, East Addition	5/06/65
2	North Padre Island Area	7/16/54
2A	North Padre Island Area, East Addition	5/06/65
3	Mustang Island Area	10/30/61
3A	Mustang Island Area, East Addition	1/23/67
4	Matagorda Island Area	7/16/54
	East Texas Set[2]	
5	Brazos Area	7/16/54
5B	Brazos Area, South Addition	9/24/59
6	Galveston Area	7/16/54
6A	Galvestion Area, South Addition	9/24/59
7	High Island Area	8/55
7A	High Island Area, East Addition	1/23/67
7B	High Island Area, South Addition	9/24/59
7C	High Island Area, East Addition, South Extension	9/24/59
8	Sabine Pass Area	3/07/77
	Louisiana Set[3]	
1	West Cameron Area	7/22/54
1A	West Cameron Area, West Addition	1/30/57
1B	West Cameron Area, South Addition	9/08/59
2	East Cameron Area	8/01/73
2A	East Cameron Area, South Addition	9/08/59
3	Vermilion Area	7/22/54
3A	South Marsh Island Area	8/07/59
3B	Vermilion Area, South Addition	9/08/59
3C	South Marsh Island Area, South Addition	9/08/59
3D	South Marsh Island Area, North Addition	1/18/72
4	Eugene Island Area	7/22/54
4A	Eugene Island Area, South Addition	9/08/59
5	Ship Shoal Area	6/08/54
5A	Ship Shoal Area, South Addition	9/08/59
6	South Timbalier, South Pelto, and Bay Marchand Areas	12/09/54
6A	South Timbalier Area, South Addition	7/22/68
7	Grand Isle Area	6/08/54
7A	Grand Isle Area, South Addition	3/07/61
8	West Delta Area	6/08/54
8A	West Delta Area, South Addition	11/24/61
9	South Pass Area	5/11/73
9A	South Pass Area, South and East Addition	9/08/59
10	Main Pass and Breton Sound Areas	7/22/54
10A	Main Pass Area, South and East Addition	9/08/59
11	Chandeleur Area	7/22/54
11A	Chandeleur Area, East Addition	9/08/59
12	Sabine Pass Area	3/07/77

[1]
[2] $5.00 this set
[3] $7.00 this set
$17.00 this set

OCS OFFICIAL PROTRACTION DIAGRAMS

Gulf of Mexico[4]

NG	14-3 Corpus Christi	1/27/76
NG	14-6 Port Isabel	1/27/76
NG	15-1 East Breaks	1/27/76
NG	15-2 Garden Banks	12/02/76
NG	15-3 Green Canyon	12/02/76
NG	15-4 Alaminos Canyon	3/26/76
NG	15-5 Keathley Canyon	12/02/76
NG	15-6 Walker Ridge	12/02/76
NG	16-1	12/02/76
NG	16-2	12/02/76
NG	16-3 The Elbow	12/02/76
NG	16-4	12/02/76
NG	16-5	12/02/76
NG	16-6	12/02/76
NG	16-9 Howell Hook	4/18/79
NG	17-1 St. Petersburg	12/02/76
NG	17-4 Charlotte Harbor	12/02/76
NG	17-7 Pulley Ridge	10/24/78
NH	15-12 Ewing Bank	12/02/76
NH	16-4 Mobile	12/21/77
NH	16-5 Pensacola	12/02/76
NH	16-7 Viosca Knoll	12/02/76
NH	16-8 Destin Dome	12/02/76
NH	16-9 Apalachicola	1/15/76
NH	16-10 Mississippi Canyon	12/02/76
NH	16-11 DeSoto Canyon	12/02/76
NH	16-12 Florida Middle Ground	12/02/76
NH	17-7 Gainesville	1/27/76
NH	17-10 Tarpon Springs	12/02/76

[4] $2.00 per map

INSTRUCTIONS ON CALL

Nominations must be described by referring to the Outer Continental Shelf Official Protraction Diagrams and Leasing Maps prepared by the Bureau of Land Management, Department of the Interior and referred to above. Only whole blocks may be nominated. Those nominating twelve blocks or more are requested to arrange their nominations into three groups according to the priority of their interest.

In addition to nominations, we are seeking comments about particular geological, environmental, biological, archaeological, and socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular blocks. Comments should be as specific as possible in identifying individual blocks or areas which should receive special concern and analysis.

Nominations and comments must be submitted not later than March 2, 1981, in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continental Shelf - Gulf of Mexico" or "Comments on Leasing in the Outer Continental Shelf - Gulf of Mexico," as appropriate. They must be submitted to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Copies should be sent to the Director, Attention 541, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240, and to the Conservation Manager, U.S. Geological Survey, Gulf of Mexico Area, P.O. Box 7944, Metairie, Louisiana 70010, and to the Director, U.S. Geological Survey, National Center, Mail Stop 101, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

USE OF INFORMATION FROM CALL

Nominations will be evaluated and used along with other geologic and geophysical information to determine what, if any, tracts should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographic scope of areas which can be successfully planned for a single sale, only a portion of the tracts nominated is selected for further environmental analysis and possible leasing. The nominations from this call will be used to develop two proposed sales in the Gulf of Mexico, OCS Sales 72 and 74.

Comments will be considered along with other relevant information available to the Secretary to determine what tracts should be designated for further environmental analysis and study. As a general rule, tracts which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those tracts to be developed in an environmentally safe manner.

In any event, selection of tracts for further environmental analysis does not insure that the tracts will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when that decision is made. In performing the additional environmental analyses leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of tracts for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any tracts finally selected for competitive bidding will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Nominations and comments are also specifically requested on the possible leasing of tracts larger than the standard maximum size of 5,760 acres. Under section 8(b)(1) of the OCS Lands Act (43 U.S.C. 1337) as amended, the Secretary may find "that a larger area is necessary to comprise a reasonable economic production unit." Nominations may be submitted for groupings of blocks into larger areas and should be clearly identified as groups to be considered for leasing as larger sized units. Such nominations of larger areas should refer to block numbers on applicable leasing diagrams and should be submitted at the same time as the single block nominations solicited by this notice and the envelope should be labeled "Group Nomination." Supporting rationale for such nominations is also requested as well as any general comments about the problems and opportunities of this leasing technique. This notice does not constitute a commitment by the Secretary to use this concept. In general, the Department is aware that exploration and development costs are significantly greater in deeper water. What may be an economical or efficient project may vary with these depths as well as other factors. Nominations and

comments should address this question only for areas in excess of 200 meters water depth. The public is reminded that the Secretary could tentatively select individual tracts for further study and yet delay making a decision about whether larger leasing areas would be offered until a later date.

Nominations and comments are also requested on the leasing of tracts with terms of longer than 5 years pursuant to section 8(b)(2) of the OCS Lands Act (43 U.S.C. 1337) as amended.

Ed Hastey
Director, Bureau of Land Management
Associate

Dated: JAN 15 1981

Approved

Deputy Assistant Secretary of the Interior

[FR Doc. 81-2144 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-84-C

Geological Survey

Best Available and Safest Technologies (BAST)

AGENCY: U.S. Geological Survey, Interior.

ACTION: Solicitation for information.

SUMMARY: Section 21(b) of the OCS Lands Act Amendments of 1978 provides that the Secretary of the Interior shall require on all new drilling and production operations, and wherever practicable on existing operations, the use of the best available and safest technologies. This requirement is equipment oriented and applies to equipment whose failure could adversely affect safety, health, or the environment. This requirement cannot address the problem of human error; but human engineering, personnel training, and operational procedures are considered an integral part of BAST. BAST requirements may, however, be specifically waived in instances where the incremental benefits resulting from the use of BAST do not exceed the incremental costs involved in such use.

Information on and details of new technologies which may assist in the safe and expeditious exploration and development of the leaseable minerals of the Outer Continental Shelf (OCS) are solicited.

DATES: Comments should be submitted as soon as possible. This solicitation will be repeated periodically.

ADDRESS: Information and deatils should be submitted to the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Richard J. Giangerelli, Chief, BAST Unit, (703) 860-6822.

SUPPLEMENARY INFORMATION: The BAST requirement has been included in the regulation in 30 CFR Part 250 and OCS Order No. 5. The program the Geological Survey is using to implement BAST is described in a document published by the Geological Survey in April 1980 entitled "The Use of Best Available and Safest Technologies (BAST) During Oil and Gas Drilling and Producing Operations on the Outer Continental Shelf." Copies of this document are available from the Deputy Division Chief, Offshore Minerals Regulation.

The Geological Survey has developed a number of programs over the past years to ensure that oil and gas operations on the OCS are conducted in a manner which takes into consideration safety, health, and environmental concerns. In line with this, OCS Orders establish minimum requirements in the form of performance standards and some specifications for technology, equipment, or procedures. These requirements are based on a determination that the technology, equipment, and procedures which meet these standards and specifications provide the level of protection necessary to assure safe operations. Therefore, any technology, equipment, or procedure which meets or exceeds the requirement shall qualify as best available and safest. The BAST program systematically incorporates the various program elements into an overall OCS regulatory scheme.

As this is an evolutionary program, changes will be made to the existing body of regulations, OCS Orders, and standards which govern operational practices when improvements, additions, and advances are made in safety concepts and technology.

Dated: January 13, 1981.

Robert L. Rioux,

Deputy Division Chief, Offshore Minerals Regulation, Conservation Division.

[FR Doc. 81-2087 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

Urban Park and Recreation Recovery Program

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice of grant rounds for UPARR program.

SUMMARY: This notice sets forth the intentions of the Urban Park and Recreation Recovery Program (UPARR) regarding the schedule and types of grant proposals to be submitted for the FY 81 second grant round and FY 82 first grant round.

FOR FURTHER INFORMATION CONTACT: Mr. Sam L. Hall, Division of Urban Programs, Heritage Conservation and Recreation Service, 440 G Street NW, Room 310, Washington, D.C. 20243 (202) 343-5971.

SUPPLEMENTARY INFORMATION: The next UPARR grant round is tentatively scheduled for announcement in July. About $15 million will be available for Rehabilitation and Innovation grants in this second competitive round of FY 1981. To increase the benefits of the limited funds available, it is the intention of the program that the July round give maximum emphasis to Innovation grants, for creative recreation service improvements with high nationwide demonstration value. This intention complies with UPARR legislation, Pub. L. 95-625, Sec. 1013 which states that "not more than 10 per centum [of the funds authorized in any fiscal year] may be used for innovation grants—." Funds for 1981 have been authorized at $150 million.

Therefore, up to 10 per centum, or $15 million, could be used for Innovation Grants. A small number of Rehabilitation proposals may also be funded. However, only those proposals demonstrating the most urgent rehabilitation needs, which cannot qualify for other sources of funding, are expected to receive consideration.

To complement this round, depending on FY 82 appropriations, the first round of FY 82 is tentatively scheduled for this fall as a Rehabilitation-oriented competition for about $50 million. This will provide incentive for the continued development of larger scale Rehabilitation proposals during the first six months of the year.

This Innovation emphasis for the July round will complement the efforts of applicants to implement their recently completed Recovery Action Programs, particularly through projects that promote public-private cooperation, increase citizen involvement, and improve management efficiency. Planning grants will continue to be available to support the development and improvement of Recovery Action Programs. Interested applicants should consult their HCRS regional offices for further information.

(Catalog of Federal Domestic Assistance 15.417)

(Title X, National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 2501-2514)

Dated: January 4, 1981.

Chris Therral Delaport,

Director, Heritage Conservation and Recreation Service.

[FR Doc. 81-2318 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Council of the National Park System Advisory Board; Committee Renewal

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A-63 (revised). Pursuant to the authority contained in section 14(a) of the Federal Advisory Committee Act (Pub. L. 92-463), the Secretary of the interior has determined that renewal of

the Council of the National Park System Advisory Board is necessary and in the public interest.

The purpose of the committee is to participate in activities of, and to further the purposes of, the National Park System Advisory Board in advising the Secretary of the Interior in regard to matters relating to the National Park System.

The General Services Administration concurred in the renewal of this committee on November 24, 1980.

Further information regarding this committee may be obtained from Shirley M. Luikens, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, DC 202-343-2012.

Dated: January 14, 1981.

Jean C. Henderer,

Chief, Office of Cooperative Activities, National Park Service.

[FR Doc. 81-2160 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Yosemite National Park

Pursuant to section 102(2)(c) of the National Environmental Policy Act, the Department of the Interior has prepared a general management plan for Yosemite National Park, California. Copies of the plan and record of decision are available at the following locations:

National Park Service, Department of the Interior, 18th and C Street, NW, Washington, D.C. 20240.

Yosemite National Park, Post Office Box 577, Yosemite, California 95389.

National Park Service, Western Region Office, 450 Golden Gate Avenue, San Francisco, California 94102.

National Park Service, Los Angeles Information Office, Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012.

The record of decision follows this notice.

Dated: January 12, 1981.

John S. Adams,

Acting Regional Director, National Park Service, Western Region.

Record of Decision—Yosemite National Park General Management Plan

I. The Decision

The National Park Service has decided to adopt the general management plan as presented in the Yosemite National Park Final Environmental Impact Statement (FES 80-46). This final plan was released to the public on October 31, 1980 after a six year planning process which included extensive public involvement.

The goals of this plan are to: (1) reclaim and restore outstanding natural areas that have been developed for uses such as staff housing, office space and warehousing; (2) reduce automobile congestion by restricting the use of private vehicles and increasing public transportation; (3) reduce crowding by bringing parking and accommodations into line with visitor use levels; (4) restore and perpetuate the natural processes of the park's ecosystems; and (5) promote visitor understanding and enjoyment by increasing the amount and kinds of information and interpretive programs available to visitors.

A. Land Acquisition and Wilderness

The National Park Service will continue to purchase lands within the boundaries of the park as they are offered for sale by willing sellers. No new development will be permitted at Foresta or Aspen Valley, but private owners may continue to use their lands in a manner compatible with park values without the National Park Service initiating acquisition action. Limited residential development of the Wawona community will be permiited. Owners of private land in Section 35 may construct housing on presently plotted tracts under zoning standards that will be developed to ensure that park and community objectives are met.

The National Park Service has recommended to Congress that 670,000 acres be classified as wilderness and 3,500 acres be classified as potential wilderness. All lands recommended for potential wilderness and actual wilderness will be protected from further development.

B. Visitor Services

Parking for day use visitors in Yosemite Valley will be reduced by about 50 percent to 1,271 spaces. Enforcement of this reduced carrying capacity will be accomplished through an information system at park entrance stations. Some additional day use parking opportunities will be provided by the development of outlying parking lot and shuttlebus transportation to El Portal, Crane Flat, and Wawona. Traffic within Mariposa Grove will also be restricted and the shuttlebus will be extended to provide service to this area.

Beyond the life of this plan, the National Park Service is committed to elimination of all private vehicles from Yosemite Valley. Various methods to provide additional bus service from gateway communities will be studied. Ultimately, all day and overnight visitors will be able to enjoy the valley without their cars. Each phase of the transportation system will be adequately planned to minimize environmental impact, solve operational problems and promote public acceptance.

Visitor information and orientation will be decentralized and relocated to where they can best serve visitor needs—through the public media, at urban and regional information/reservation centers, at park entrances, and developed areas.

A wide variety of traditional uses will be retained. Activities such as picnicking, hiking, and camping, which take advantage of the park's natural features rather than man-made facilities or mechanized equipment, are the most appropriate uses of the park. Downhill skiing will be allowed to continue.

The number of campsites will be increased by nine percent to 2,504 sites. Some sites will be relocated to zones more suitable for man's activities in order to protect sensitive resources and increase manageability.

Lodging will be reduced parkwide by about 10 percent to 3,552 units. However, in Yosemite Valley, lodging will be reduced by 17 percent to 1,538 units.

An Indian cultural center will be constructed at the former Indian village site west of Sunnyside Campground. The American Indian Council of Mariposa County will build and operate the center under a special use permit.

C. Park Operations

The park headquarters, along with the majority of the administrative and maintenance support facilities for government and concession operations will be moved from the valley to El Portal. Only those facilities essential to daily operations of the valley will remain, and these facilities will be redesigned and consolidated to minimize their physical intrusion.

Housing will be provided for employees whose jobs require them to live near their worksites. Housing for other employees will be provided only when there is no viable alternative for securing housing outside the park.

II. The Alternatives

1. Provide for resource related activities and a moderate amount of commercial services.

2. Emphasize backcountry experiences and provide only a minimal amount of commercial services.

3. Provide opportunities for a large range of recreational and social activities supported by a substantial amount of commercial services.

4. No action.

5. Provide for resource-related activities and reduce accommodations and commercial services.

6. Relocate operational facilities from the valley to Wawona and El Portal while leaving accommodations much as they are today.

7. Relocate operational facilities from the valley primarily to El Portal and reduce the level of accommodations and commercial services (September, 1980, Final Plan).

The cumulative environmental effects do not differ significantly between alternatives 1, 5, 6, and 7. Therefore, all four of these alternatives have been determined to be environmentally preferable.

III. Mitigating Measures

A. Natural Environment

As outlined in the natural resources managment plan, a monitoring program for evaluating the incidence and effects of *Fomes annosus* on conifers will continue. Among other things, this program will evaluate relationships between *F. annosus* infection and visitor use/development within the park. At some time in the future it may be necessary to alter visitor-use patterns, if it is determined that activity and development are significant contributors to *F. annosus* infection and that the extent of infection threatens the loss of natural vegetation types.

An ongoing program of monitoring water quality of major rivers will be expanded to include additional tributaries affected by development areas. The results of these studies will provide a basis for reliably assessing water quality impacts during future planning and construction projects. All public water systems will be upgraded as soon as possible.

A study of water use in the Wawona area will evaluate ways to mitigate potential adverse effects associated with future development of the area. Wherever possible, impacts associated with the use of facilities will be displaced to the more resilient ecosystems, avoiding fragile meadow and riverine environments. For example, construction of campground footpaths a distance from river and stream banks will channel foot traffic away from shoreline areas and promote revegetation of these areas.

In association with the increased commuting by National Park Service and concessioner employees, an increasingly larger fleet of buses will be utilized to decrease congestion energy use and levels of air pollution.

Facilities will be designed to minimize impacts on the natural environment. Removal of vegetation will be avoided wherever possible during construction activities, with particular attention to mature trees.

Natural surface and subsurface drainage patterns will be thoroughly evaluated and maintained to the extent possible. In restoration projects only endemic vegetation will be used. Natural backgrounds will be retained at development sites and facilities will be constructed with materials that blend with the natural background.

B. Cultural Environment

Cultural resource management will be carried out in accordance with cultural resource management section (plan) of the general management plan, which seeks to avoid effects to cultural resources, to minimize effects or to mitigate adverse effects. In accordance with the National Historic Preservation Act of 1966 (Public Law 89-665) and the procedures of the Advisory Council on Historic Preservation (36 CFR 800) a memorandum of agreement has been concluded between the state historic preservation officer, Advisory Council on Historic Preservation and the National Park Service on actions affecting cultural resources and the actions to be taken to avoid, minimize effects or mitigate adverse effects.

Yosemite contains Native American cultural resources and the National Park Service will consult with the American Indian Council of Mariposa County concerning archeological resources and Native American resources towards the goal of furthering their preservation for future generations.

On December 12, 1980, the President approved Public Law 96-515, the National Historic Preservation Act of 1980, a major revision and expansion of the National Historic Preservation Act of 1966. While copies of the final legislation are not yet available, drafts indicate that major new public policies are set forth in the act. When the new legislation is available, a review will be made of cultural resource management proposed actions and changes will be made where needed to conform to the new public policy set forth in the legislation. The state historic preservation officer will be consulted as indicated.

C. Socioeconomic Environment

Acquisition of private lands will cause a reduction in the county tax base and resultant loss in county revenues. Public Law 94-565 provides for two types of payments to reduce this impact on the local government. Entitlement payments are made for all federally owned lands within a county. These payments are at a fixed rate per acre and subject to reduction based on county population and other payments received by the county government. Entitlement payments on fiscal year 1977 were $183,032 for Madera County, $767,502 for Mariposa County and $570,791 for Tuolumne County.

In addition to entitlement payments, acquired payments will be made on all newly purchased lands. These payments are calculated at one percent of the fair market value and continue for five years following acquisition. Payments may not exceed the real property taxes levied in year preceding acquisition. Based on an estimated property value, acquired land payments are expected to be approximately $135,000 to $175,000 in Mariposa County and $4,400 to $6,500 in Tuolumne County.

IV. Rationale for the Decision

The proposal maximizes resource protection while providing for a wide variety of visitor experiences. In addition, through the relocation of accommodations, officers and employee housing this plan will achieve the greatest reduction of congestion in Yosemite Valley while minimizing the impact on the rest of the park. El Portal would be the park headquarters site and the main support community.

Dated: December 23, 1980.

Howard H. Chapman,

Regional Director, Western Region, National Park Service.

[FR Doc. 81-2317 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

[Federal Coal Leases W-0322255, W-0321780, B-031719]

Scoping Meeting to Consider Preparation of an Environmental Impact Statement and Availability for Public Review, Mining and Reclamation Plan, Proposed by Nerco for The Antelope Coal Mine, Converse County, Wyo.

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

ACTION: Availability for Public Review of a Coal Mining and Reclamation Plan and Notice of Scoping Meeting to Consider Preparation of an Environmental Impact Statement on a Proposed Surface Coal Mine.

SUMMARY: The Office of Surface Mining (OSM) has received an application from NERCO, Inc. for a mining and reclamation plan approval and permit

pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for the proposed Antelope Coal Mine. OSM has determined that approval or disapproval of this proposed mine may be a significant Federal action affecting the human environment which may require the preparation of an environmental impact statement (EIS).

A public meeting will be held on January 28, 1981 at 7:00 p.m. at the Converse County Library, 300 Walnut Street, Douglas, Wyoming. The purpose of the meeting is to solicit public comments on the proposed mine which would assist OSM in making a determination of the need for an EIS under the National Environmental Policy Act (NEPA). All interested persons or agencies are invited to participate at this meeting. This meeting will provide the basis for scoping the EIS determination. In addition, this notice is issued to inform the public of the availability of this mine plan for review pursuant to § 1500.2 of Title 40, Code of Federal Regulations.

Location of Lands To Be Affected

Applicant: NERCO, Inc.
Mine Name: Antelope Coal Mine
Type of Mine: Surface Coal Mine
State: Wyoming
County: Converse
Township, Range, Section: All or parts of T 41 N, R 71 W, Sec. 25, 26, 27, 34, 35, 36; T 41 N, R 70 W, Sec. 30, 31; T 40 N, R 71 W, Sec. 1, 2, 3, 10, 11, 12, 14, 15; T 40 N, R 70 W, Sec. 6.

Office of Surface Mining Reference No. WY-0052.

The proposed surface coal mine would be located approximately 65 miles south of Gillette, 55 miles north of Douglas, and 60 miles west of Newcastle, Wyoming. The mine would cover approximately 7,641 acres of state and private surface, and Federal surface within the Thunder Basin National Grasslands. The mine would be in operation for approximately 28 years, with a maximum annual production of 12 million tons of coal.

Prior to the Department taking action on this mine plan, the Office of Surface Mining and the State of Wyoming, Department of Environmental Quality (DEQ) will prepare a technical and environmental analysis (TEA), to determine whether the proposed plan meets the requirements of SMCRA. The Office of Surface Mining will also prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) which would evaluate the impacts of actions the Department of the Interior may take on the plan. The public participation meeting on the 28th of January will assist OSM in making a preliminary determination on the preparation of an EIS. During the analytical review, it is possible that additional information will be requested from the company. Any information obtained would also be available for public review.

Should the Office of Surface Mining, after the public meeting and consultation with the State and other agencies, determine an EIS is required, a Notice of Intent to prepare an EIS would be published in the **Federal Register** and local newspapers. If an Environmental Assessment (EA) is prepared, a Notice of Availability of the EA will also be published in the **Federal Register** and local newspapers.

The mining and reclamation plan submitted by NERCO, Inc., is available for public review during normal working hours at the Office of Surface Mining, Region V, second floor, Brooks Towers, 1020 15th Street, Denver, Colorado; the State of Wyoming Department of Environmental Quality, 401 West 19th Street, Cheyenne, Wyoming; and at the County Clerk's Office, Converse County, Douglas, Wyoming (307) 358-2244. Comments on the proposed plan may be submitted to the Regional Director, Office of Surface Mining, at the Denver address or to the Director, Wyoming Department of Environmental Quality, at the above Cheyenne address.

FOR FURTHER INFORMATION CONTACT: Jerome J. Cuzella or Florence Munter Schaller, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, Telephone (303) 837-3773.

Dated: January 13, 1981.

Donald A. Crane,

Regional Director.

[FR Doc. 81-2150 Filed 1-21-81; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 89F)]

Burlington Northern Inc.; Findings on Abandonment Between Binford and McHenry, ND

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 15, 1981, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permit the abandonment by the Burlington Northern Inc. of a line of railroad known as the Binford to McHenry line extending from railroad milepost 51.19 near Binford, ND, to railroad milepost 62.88, at the end of the line, near McHenry, ND, a distance of 11.69 miles in Foster and Griggs Counties, ND, subject (1) to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979); (2) that BN shall maintain all track, bridges, and structures on the Binford-McHenry line for a period of time not to exceed 180 days from the decided date of the certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way; (3) in the event BN plans to demolish the line or sell it for uses which would adversely affect its historic quality, BN must document the line in accordance with appropriate documentation procedures established by the State Historical Society of North Dakota; and (4) BN shall notify the State Historical Society of North Dakota of its plans for the line. If BN sells the line, it should include in the contract of sale a provision requiring the purschaser(s) to notify the State Historical Society of North Dakota of their plans for the line. This condition does not require approval of these plans. A certificate of public convenience and necessity permitting abandonment was issued to the Burlington Northern Inc. Since no investigation was instituted, the requirement of § 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 offerer 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 February 2, 1981. The offer, as filed, shall contain information required pursuant to § 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 form the service date of the certificate.

Agatha L. Mergenovich,

Secretary

[FR Doc. 81-2588 Filed 1-21-81; 9:52 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-19 (Sub-38)]

Bekins Van Lines Co., Petition for Relief From Household Goods Regulations and From Released Rates Order MC-505

AGENCY: Interstate Commerce Commission.

ACTION: Dismissal of petition for waiver of regulations.

SUMMARY: Bekins Van Lines Co. filed a petition for waiver of regulations concerning weighing of household goods shipments and from released rates order MC-505, for the purpose of offering the shipping public a guaranteed price for transportation and accessorial services. The Household Goods Transportation Act of 1980 contains provision for carriers to file binding estimate tariff provisions. Since the Act supercedes our rules to the extent that the rules are inconsistent with the Act, no grant of relief is warranted and the petition is dismissed.

EFFECTIVE DATE: February 23, 1981.

FOR FURTHER INFORMATION CONTACT: John H. O'Brien, (202) 275-7148 or Patricia M. Schulze, (202) 275-7475.

SUPPLEMENTARY INFORMATION: By petition filed under docket No. MC-52793, December 15, 1980, Bekins Van Lines, Co., requests a waiver of the following regulations and from released rates Order MC-505 for the purpose of offering the public binding estimates for transportation and accessorial services.

49 CFR-1056.6—Determination of Weights

49 CFR-1056.8—Estimates of Charges, Sub-Section (a) (b) and (d)

49 CFR-1056.9—Order for Service, Sub-Section (a), Item (5), (9), (10) and (11)

49 CFR-1056.10—Receipt or Bill of Lading, Sub-Section (a), Items (5), (7), (8), and (9)

49 CFR-1056.11—Driver's Weight Certificate

49 CFR-1056.12—Sub-Section (b) and 49 CFR-1056.3, Sub-Section (d) as they prohibit Space Reservation charges and estimates

49 CFR-1056.26—Collection of Freight Charges on Partially Lost or Destroyed Shipments.

For purposes of giving this decision wider notice, we have docketed it as Ex Parte No. MC-19 (Sub-No. 38).

Bekins states that its Guaranteed Price Program does not contemplate the weighing of shipments moved on the basis of a binding estimate since the estimated weight alone will be determinative of the guaranteed price. It therefore urges that those household goods rules which require or make reference to weighing are inimical to the institution of its binding estimate proposal.

Although not specifically referenced in its petition, Bekins apparently intends to offer its Guaranteed Price Program pursuant to section 4 of the Household Goods Transportation Act of 1980 which became law on October 15, 1980. That section allows household goods carriers to establish a tariff rate for household goods transportation based on the carrier's written binding estimate, provided that the rate be available to shippers on a nonpreferential basis and not result in predatory charges.

As Bekins points out, the Commission has instituted a rulemaking proceeding to implement the provisions of the Household Goods Transportation Act of 1980. We have not, however, suspended the household goods rules in effect prior to the passage of that Act, inasmuch as they still have application to shipments moved under currently effective tariffs containing weight based rates.

It is not necessary, however, to waive the rules utilizing standards based on requirements of weighing, as requested by Bekins, inasmuch as a regulation which is in conflict with or restrictive of the statute is, to the extent of the conflict or restriction, invalid. A regulation valid, when promulgated, becomes invalid to the extent it conflicts with a statute subsequently enacted. See *Scofield* v. *Lewis*, 251 F.2d 128 (1958).

If a household goods carrier submits a tariff encompassing a plan to provide transportation under binding estimates and that plan includes no provision to determine the actual weight of the shipment and/or does include space reservation and valuation plans different from those authorized in Released Rate Order MC-505 as significant features, the proper time and place for challenges to the plan is in connection with that tariff filing. Once such a tariff responsive to changes in the law becomes effective, the applicability of prior existing general regulations is narrowed as to transportation under that tariff to the extent it is inconsistent with the plan established by that tariff.

We find:

The Household Goods Transportation Act of 1980 does not require specific waiver of regulations found in 49 CFR 1056 or released rates order MC-505 for approval of tariffs providing for shipments to move under effective binding estimate provisions.

It is ordered:

That the petition of Bekins Van Lines Co. be dismissed.

Decided: January 12, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2158 Filed 1-21-81; 8:45 am]

BILLING CODE 7035-01-M

Long and Short-Haul Applications for Relief (Formerly Fourth Section Applications); Washington

January 16, 1981.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. by February 6, 1981.

No. 43893, Southwestern Freight Bureau, Agent, No. B-110, increased rates on common salt, in carloads, from origins in Kansas and Southwestern Territory to destinations in Illinois, Northern, Southwestern, and Western Territories, in Supplement 97 to its Tariff ICC SWFB 2006-K, effective January 19, 1981. Grounds for relief—need for additional revenue.

No. 43894, Southwestern Freight Bureau, Agent, No. B-112, reduced rates on diphenyl oxide disulfonates, in carloads, between stations in Louisiana and Texas, on the one hand, and Bay City and Midland, MI and Sarnia, ON, Canada, on the other, in supplement 82 to its Tariff ICC SWFB 4616, effective February 11, 1981. Grounds for relief—rate relationship and addition of new commodity.

No. 43895, Southwestern Freight Bureau, Agent, No. B-106, increased rates on crushed stone and related articles, in carloads, from, to, and between stations in Western Territory, in Supplements 436 and 130 to its Tariffs ICC SWFB 3270-F and 4319, respectively, effective February 14, 1981. Grounds for relief—need for additional revenue.

No. 43896, Southwestern Freight Bureau, Agent, No. B-111, reduced rates on petroleum and petroleum products, in carloads, from Etter, TX to stations in Illinois, Kentucky, Michigan, and Western Territory, in Supplement 70 to its Tariff ICC SWFB 4682, effective February 17, 1981. Grounds for relief—market competition.

By the Commission

Agatha L. Mergenovich

Secretary.

[FR Doc. 81-2159 Filed 1-21-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to

consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49* U.S.C. 11344 and 11349. These rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it apear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an appliant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 14, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. (In MC–F–14529F Board Member Taylor votes to publish with an impediment as to the duplications between the rights to be acquired and those held by Johnson).

MC–F–14532F, filed December 22, 1980. BLACKBURN TRUCK LINES, INC. (Blackburn) (4998 Branyon Avenue, South Gate, CA 90280)—purchase—FAIRCHILD GENERAL FREIGHT, INC. (Fairchild) (19 West Washington, Yakima, WA 98903). Representatives: Warren N. Grossman, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, and George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. Blackburn seeks authority to purchase the interstate operating rights and property of Fairchild. Richard A. Ramey, Bobby Burns, and Robert Sparks control Blackburn through ownership of a majority of stock. As a condition to approval of this transaction, they will be required to join in the application. Blackburn seeks authority to purchase the operating rights of Fairchild, as set forth in MC 33919 and subs thereof, which authorize the transportation of: (1) *General commodities* (with usual exceptions) between points within 3 miles of Yakima, WA; (2) *livestock,* between points in WA on and east of a line extending north and south of Roslyn, WA, and points in OR and ID; (3) *wool,* from points in WA on and east of a line extending north and south from Roslyn, WA, to Portland, OR; (4) *paper* and *paper articles,* as defined in Appendix XI of *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209, 289–91, between Longview and Yakima, WA, on the one hand, and, on the other, points in ID; (5) *fiberboard, paper,* and *pulpboard boxes* and *partitions,* from Longview and Yakima, WA, to the Dalles and Hood River, OR; (6) *fiberboard containers* and *partitions* and *paper products,* between the plant site and warehouse distribution facilities of Container Corporation of America at Portland, OR, on the one hand, and, on the other, Renton and Seattle, WA; (7) *fiberboard containers* and *packing forms,* from the plant site and warehouse distribution facilities of Container Corporation of America at Portland, OR, to points in ID and points in that part of WA east of the line formed by the western boundaries of Okanogan, Chelan, Kittitas, Yakima, and Klickitat Counties, WA; (8) *glass containers* and *closures* therefor, from the plant site and distribution facilities of Owens-Illinois, Inc., at Portland, OR, to points in ID, MT and WA; (9) *glass containers* and *closures* therefor, from the plant site and warehouse distribution facilities of Owens-Illinois, Inc., at Portland, OR, to Ogden, UT; (10) *paper and paper products,* from Yakima, WA, to those ports of entry on the U.S.-Canada Boundary Line at or near Oroville, WA; (11) *canned goods,* in containers or in trailers, from the facilities of Del Monte Corporation at Toppenish and Yakima, WA, to Portland, OR; (12) *empty containers, used trailers,* and *used trailer chassis,* from Portland, OR, to the facilities of Del Monte Corporation at Toppenish and Yakima, WA; (13) *glass containers,* from the ports of entry on the U.S.-Canada Boundary Line, located at or near Osoyoos, WA, to Anaheim, CA; (14) *materials and supplies,* used in the manufacture of glass containers, corrugated fiber containers and corrugated fiber roll stock, from points in CA, ID, MT, NV, OR, UT, WA, and WY, to the facilities of Owens-Illinois, Glass Container Division, at or near Oakland, Tracy, Los Angeles and San Jose, CA, and at or near Portland, OR; (15) *empty pallets,* from the destinations to the origins named in (14) above; (16) *glass containers* and *plastic containers,* and *caps, tops and closures,* from the aforementioned facilities of Owens-Illinois, Glass Container Division, at Oakland, Tracy, Los Angeles, and San Jose, CA, and at or near Portland, OR, to points in CA, ID, MT, NV, OR, WA, and WY; (17) *empty pallets,* from the destinations to the origins named in (16) above; (18) *glass containers and closures, glass manufacturing molds,* and *empty pallets,* between the facilities of Owens-Illinois, Glass Container Division, at Oakland, Tracy, Los Angeles, and San Jose, CA, and at or

near Portland, OR; and (19) *paper and paper products*, from the facilities of Container Corporation of America, at Portland, OR, to those points in WA in and west of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania Counties. Blackburn holds motor common carrier authority pursuant to MC 134387, and subs thereof. *Condition:* Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of an affidavit signed by Richard A. Ramey, Bobby Burns, and Robert Sparks, stating that they control Blackburn Truck Lines, Inc., through majority stock ownership and that they join in this application as persons in control.

Note.—Application for temporary authority has been filed.

MC-F-14496F, filed December 16, 1980. MERIDIAN EXPRESS COMPANY, INC. [Meridian], (4835 LBJ Freeway, Dallas, TX 75234)—CONTROL—DELTA CALIFORNIA INDUSTRIES [DCI], DELTA LINES, INC. [Delta Lines], and THUNDERBIRD FREIGHT LINES, INC. [Thunderbird] (all of 333 Hegenberger Road, Oakland, CA 94621). Representatives: Jack R. Turney, Jr., 2001 Massachusetts Avenue, N.W., Washington, DC 20036; James M. Harbison, Jr., 402 Pierce Avenue, P.O. Box 391, Houston TX 77001; and Andrew J. Skaff, 333 Hegenberger Road, Oakland, CA 94621. Meridian, a non-carrier, seeks authority to acquire control of DCI, a non-carrier holding company, and thereby of the carrier operating rights and properties of DCI's carrier subsidiaries, Delta Lines and Thunderbird. Nevada-California Express Co., a freight forwarder operating pursuant to FF-130, is also a subsidiary of DCI. In the proposed plan of acquisition, Delta Acquisition Subsidiary [DAS] (of 4835 LBJ Freeway, Dallas, TX 75234), a non-carrier subsidiary of Meridian formed for the transaction, would be merged into DCI, and all outstanding shares of the capital stock of DCI would be converted into the right to receive $13 per share in cash, to be paid by Meridian California Industries [MCI] (of 4835 LBJ Freeway, Dallas, TX 75234), a non-carrier subsidiary of Meridian formed for the transaction, and the corporate parent of DAS. To replace said converted shares, 100 shares of substitute no-par common stock would be issued by DCI, the surviving corporation, to MCI. DCI would thereafter be merged into MCI, along with Delta Terminals, Inc. [Terminals], (of 333 Hegenberger Road, Oakland, CA 94621), a non-carrier subsidiary of DCI. The name of MCI, the surviving corporation, would then be changed to Delta California Industries. The operating rights of Delta Lines to be controlled are contained in certificates issued to Delta Lines in Docket No. MC-56640 and Subs thereunder, together with orders authorizing acquisitions of authorities in Docket Nos. MC-F-12875, MC-F-13016, MC-F-13906, and MC-F-14181F (certificates not yet issued). These authorities authorize the transportation of general commodities, with the usual exceptions, over a network of regular and irregular routes in the states of CA, AZ, OR, NV, NM, TX, and WA. The operating rights of Thunderbird to be controlled are contained in certificates issued to Thunderbird in Docket No. MC-69512 and Subs thereunder, authorizing the transportation of general commodities, with various exceptions, over a network of regular routes which extend between Los Angeles, CA, and Phoenix, AZ, Tucson, AZ, and various points in the White Mountain Area of AZ. Meridian does not hold authority from this Commission. However, through non-carrier subsidies (Merchants, Inc. and Meridian Lines, Inc. (both of East Highway 80, Abilene, TX 79604), Meridian controls (a) Merchants Fast Motor Lines, Inc. (of the same address), holder of certificates in Docket No. MC 2228 and Subs thereunder, authorizing the transportation of general commodities, with the usual exceptions, over a network of regular and irregular routes in the states of TX, NM, and AZ; (b) Oil Transport Company (of the same address), holder of certificates in Docket No. MC-111740 and Subs thereunder, authorizing the transportation of petroleum, various petroleum compound products, and sulphur, in bulk, in tank vehicles, over irregular routes in the states of TX, OK, AR, CO, KS, MO, NM, AZ; and (c) Gypsum Transport, Inc. (of the same address), holder of certificates in Docket No. MC-126421 and Subs thereunder, authorizing the transportation, over irregular routes, of building materials (other than lumber), gypsum, gypsum products and materials and supplies used in the manufacture, installation and distribution thereof (except commodities in bulk), between a plantsite at Sweetwater, TX and points in AL, AZ, AR, CO, FL, GA, IA, KS, LA, MS, MO, NM, OK, NE, and TN, and adhesives, building material, paint, and paint products (except liquids in bulk) and materials and supplies used in the manufacture, installation and distribution thereof, between a plantsite in Dallas, TX and points in AR, CO, KS, LA, MS, MO, NM, OK, TN, and TX. MCI, DAS and DCI join in the application as the directly participating non-carrier applicants. Non-carrier private investment entities WEDGE Transportation, Inc. (of 4835 LBJ Freeway, Dallas, TX 75234); WEDGE International Holdings B.V. (of Uilenstede 473, 1180 AE Amstelveen, The Netherlands); Issam Investments N.V. (of Willemstad, Curacao, Dutch Antilles); Faydra International Holdings B.V. (of Amsterdam, The Netherlands); Faydra Investments N.V. (of Willsemstad, Curacao, Dutch Antilles); Najdia Holdings N.V. (of Willemstad, Curacao, Dutch Antilles); and The Minefa Trust (of Athens, Greece); as well as Issam M. Fares (a non-carrier individual, of 2-4 Messogion Avenue, Athens (610) Greece), seek authority to control Delta Lines and Thunderbird through the acquisition of control by Meridian. (2) Two directly related applications under 49 U.S.C. §§ 11301 and 11302 have been filed. In F.D. *29545, Delta California Industries—Stock*, DCI seeks authority to issue to MCI, as part of the first non-carrier merger, 100 shares of no-par common stock, to serve as DCI's only outstanding capital stock during the interim between the conversion of DCI's presently outstanding shares into rights to receive $13 per share, and the merger of DCI into MCI (when the 100 shares would be cancelled). (3) In the other directly related application under 49 U.S.C. 11301 and 11302, F.D. 29544, *Meridian California Industries—Assumption of Debt Securities*, MCI seeks authority, as an essential incident of the proposed merger of DCI and Terminals in a total principal amount not exceeding $14,850,000:

(4) By decision of December 30, 1980, Meridian's petition seeking waiver of certain of the Commission's procedural regulations at 49 CFR 1100.240 was granted. *Impediment:* This application presents serious questions as to the financial arrangements; the necessity for subjecting certain non-carriers, such as WEDGE Transportation, Meridian Express Co., Meridian California Industries, and Delta Acquisition to the Act; the issuance of securities and the assumption of obligations by certain carriers who are pledging equipment and have not filed applications therefore; and the accounting for the transactions relative to the recording of the purchase price and the write up of the book value of tangible property when considered under the Commission's accounting rules. Therefore, this proceeding will be held open for disposition under the modified procedure. The applications in Finance Docket Nos. 29545 and 29544 will be

consolidated with the application in MC–F–14496F for disposition under the modified procedure.

Note.—(1) This notice does not purport to be a complete description of the operating rights of the carriers involved.

MC–F–14529F, filed December 23, 1980. NEBRASKA CARRIERS, INC. (Nebraska) (Rural Route 2, Box 123–C, Grand Island, NE 68801)—PURCHASE (PORTION)—WILLIAMS TRANSFER, INC. (Williams) (P.O. Box 488, Grand Island, NE 68801). Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Nebraska seeks authority to purchase a portion of the interstate operating rights of Williams. Robert Wenzl and Marvin Johnson are equal stockholders of Nebraska. Robert Wenzl seeks authority to acquire control of said rights through the transaction. As a condition to the approval and authorization of this transaction, Marvin Johnson will also be required to join in this application as a person in control. Nebraska is purchasing the interstate operating rights contained in Williams' certificates in MC–120427 (Sub.-Nos. 9 and 21), which authorize the transportation, as a motor common carrier, of (1) *grain storage and grain drying equipment, grain augers and conveyors, and knocked down buildings (iron or steel),* between Crawfordsville, IN and Webster City, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI), *restricted* to the transportation of traffic originating at or destined to the facilities of Modern Farm Systems, Inc., at or near Crawfordsville, IN and Webster City, IA, and (2) *grain storage and grain drying equipment; grain augers and conveyors, aeration pipe and irrigation systems; (iron, steel and aluminum articles); items used in the manufacture of grain storage and grain drying equipment, grain augers and conveyors, and irrigation systems;* and *knocked down buildings (iron or steel),* between points in NE (except Omaha, Seward, Beatrice, Norfolk, Valley, York, Columbus, Fremont, Lindsey and Gering, and points in their commercial zones), on the one hand, and, on the other, points in the U.S. (except AK and HI), *restricted* to the transportation of traffic originating at or destined to points in the State of NE. (3)(a) *Grain storage, grain drying and grain handling equipment,* and (b) *materials and equipment* used in the manufacture of the commodities in (a) above, from the facilities of Blackhawk Systems, Inc., at or near Chicago and Assumption, IL, to points in the U.S. (except AK and HI), *restricted* to the transportation of traffic originating at the named origins. Nebraska presently holds no authority from the Commission. However, Robert Wenzl controls T.F.S., Inc., a motor common carrier pursuant to MC–145743 and a motor contract carrier pursuant to MC–141575. Marvin Johnson controls Johnson Truck Line, Inc., a motor common carrier pursuant to MC–105774. Condition: Approval and authorization of this transaction is conditioned upon the prior receipt by the Commission of an affidavit signed by Marvin Johnson stating that as a person in control of Nebraska Carriers, Inc., he joins in this application.

Note.—Application for TA has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–2156 Filed 1–21–81; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP5–01]

Motor Carriers; Permanent Authority Decisions

Decided: January 5, 1981.

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. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

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.g., 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 interest in the form of verified statements filed on or before March 9, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 50069 (Sub-564F), filed December 18, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Ave., Oregon, OH 43616. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *petroleum oil,* in bulk, in tank vehicles, from points in Fairfield County, CT to points in Cuyahoga County, OH.

MC 52979 (Sub-25F), filed December 18, 1980. Applicant: HUNT TRUCK LINES, INC., West High St., Rockwell City, IA 50579. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *clay products* and *materials and supplies* used in the manufacture and distribution of clay products, between points in Webster County, IA, on the one hand, and, on the other, points in IL and WI.

MC 80428 (Sub-97F), filed December 18, 1980. Applicant: McBRIDE TRANSPORTATION, INC., P.O. Box 430, Goshen, NY 10924. Representative: S. Michael Richards, P.O. Box 225,

Webster, NY 14580. Transporting *alcohol* (in bulk, in tank vehicles, except alcoholic liquors), from Newark and Carteret, NJ to Peekskill, NY.

MC 116858 (Sub-21F), filed December 4, 1980. Applicant: J & M CARRIERS CORP., 43-06 54th Rd., Maspeth, NY 11378. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *such merchandise* as is distributed by premium stamp redemption centers, and *materials, equipment, and supplies* used in the conduct of such business, between points in the U.S., under continuing contract(s) with Sperry and Hutchison Co., of New York.

MC 119988 (Sub-270F), filed December 19, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in the U.S.

MC 124839 (Sub-55F), filed December 18, 1980. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 500, Camden, SC 29020. Representative: William P. Sullivan, 818 Connecticut Ave., NW., Washington, DC 20006. 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 Lowe's Companies, Inc. of North Wilkesboro, NC.

MC 136709 (Sub-3F), filed December 18, 1980. Applicant: WALLACE TRUCKING COMPANY, a corporation, Route 4, Box A-71, Laurinburg, NC 28352. Representative: F. Kent Burns, P.O. Box 2479, Raleigh, NC 27602. Transporting *such commodities* as are dealt in or used by a manufacturer of medical supplies and health care products, between Laurinburg, NC on the one hand, and, on the other, points in VA, MD, RI, DE, DC, NJ, PA, NY, CT, MA, NH, VT, ME, WV, TN, KY, IN, IL, OH, MI, WI, CA, NV, AZ, UT, CO, WY, NE, MO, IA, NM, TX, AR, MS, AL, LA, KS and OK.

MC 138469 (Sub-260F), filed December 17, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of International Paper Company.

MC 143498 (Sub-2F), filed December 18, 1980. Applicant: THOMAS PRODUCE COMPANY OF MT. AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Morrone, 1150 17th St. NW., Suite 1000, Washington, DC 20036. Transporting *tobacco products* and *materials and supplies* used in the processing, manufacture, and distribution of tobacco and tobacco products, between points in the U.S., under continuing contract(s) with Lorillard, a Division of Loews Theaters, Inc. of Greensboro, NC.

MC 143498 (Sub-3F), filed December 17, 1980. Applicant: THOMAS PRODUCE COMPANY OF MOUNT AIRY, INC., P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Marrone, 1150 17th St. NW., Suite 1000, Washington, DC 20036. Transporting *such commodities* as are dealt in or used by a manufacturer of textile products and floor coverings, between points in the U.S., under continuing contract(s) with Dan River, Incorporated of Danville, Va.

MC 146078 (Sub-37F), filed December 16, 1980. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting *household cleaning, washing, and scouring compounds*, from the facilities of the Purex Corporation at (a) Dallas, TX, (b) Jefferson, LA, and (c) St. Louis, MO, to points in AR, OK, LA, TX, MS, and TN.

MC 146079 (Sub-13F), filed December 17, 1980. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1, Box 410-A, Clayton, IN 46118. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *heating and air conditioning equipment, stoves, and ranges*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of commodities in (1), between points in Marion County, IN, on the one hand, and, on the other, points in the U.S.

MC 152288 (Sub-1F), filed December 17, 1980. Applicant: NEAL TRANSPORT, INC., 4481 Pineview Drive, P.O. Box 21, Powder Springs, GA 30073. Representative: Philip L. Martin, 2220 Parklake Drive NE, Suite 427, Atlanta, GA 30345. Transporting *copper wire, copper rods, wire processing machinery*, and *empty reels*, between points in the U.S., under continuing contract(s) with Larcon Wire Corporation and Laribee Wire Insulated Products, both of Atlanta, GA.

[FR Doc. 81-2155 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 4]

Motor Carrier Permanent Authority Decisions; Restriction Removals

Decided: January 16, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminary, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,
Secretary.

MC 119422 (Sub-73X), filed January 12, 1981. Applicant: Ee-JAY MOTOR TRANSPORTS, INC., 15th & Lincoln Streets, P.O. Box 1037, East St. Louis, IL 62204. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. Applicant seeks removal of restrictions in its Sub-Nos. 17 and 70 certificates to (1) expand the commodity descriptions from dry, granulated sugar, liquid and liquid blends of sugar (except corn sugar or any syrup, blend or moisture containing corn syrup) in Sub-No. 17; and sweetners and materials and supplies used in their production and

distribution, in bulk, in tank vehicles in Sub-No. 70, to authorize "food and related products, in bulk," (2) remove the in tank vehicle restrictions, (3) remove the plantsite restriction in Sub-No. 70 which limits transportation to traffic originating at and destined to a named shipper at or near St. Louis, MO, and (4) change the territorial description from one-way to radial service between St. Louis, MO and Missouri points in the St. Louis, MO commercial zone, and, points in MO, IA, IL and IN in Sub-No. 17; and between St. Louis, MO, and, points in AR, KS, KY, MS, OH and TN in Sub-No. 70.

MC 134453 (Sub-21X), filed January 14, 1981. Applicant: STERNLITE TRANSPORTATION COMPANY, Winsted, MN 55395. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks to remove restrictions in Permit No. MC-134453, Sub-Nos. 3, 5, 6, 9, 13, and 14 by broadening the commodity description from poles, and parts and accessories for poles, steel radio broadcasting masts, steel piling, platforms and pallets, to *"metal and concrete products"* and to broaden the territorial description from named points to between points in the United States, under contract(s) with a named shipper.

MC 138741 (Sub-121X), filed January 7, 1981. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL 60435. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Applicant seeks to remove restrictions from its Sub-No. 79F certificate which authorizes the radial transportation of specific commodities, between Mobile, AL, Denver, CO, Savannah, GA, Joliet, IL, Mt. Vernon, IN, Minneapolis, MN, Annapolis, Kansas City, and St. Louis, MO, Erie, PA, Dallas, TX and Kremlin and Pembine, WI, and points in AL, AR, CO, GA, IL, IN, IA, KS, KY, CA, MI, MN, MS, MO, NE, OH, OK, PA, TN, TX, and WI, restricted to the transportation of traffic originating at or destined to the facilities and suppliers of the GAF Corporation, in order to expand the base territory from the above-named cites to the counties and commercial zones of Mobile County, AL, Denver, CO, Chatham County, GA, Will County, IL, Posey County, IN, Minneapolis, MN, Iron County, MO, Kansas City and St. Louis, MO, Erie County, PA, Dallas, TX, and Marinette County, WI.

MC 144122 (Sub-79X), filed January 13, 1981. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076. Applicant seeks to remove restrictions in its Sub-No. 50 certificate in order to (1) remove all exceptions in its general commodity authority except "classes A and B explosives", (2) replace the facilities restriction with authority to service the Chicago, IL commercial zone, and (3) broaden the one-way authority to radial authority between Chicago, IL, on the one hand and, on the other, points in CA, CT, DE, MA, NJ, NY, OR, PA, RI, TX, and WA.

MC 149301 (Sub-3X), filed January 13, 1981. Applicant: FRANKLIN J. DAVIS, Dba Davis Truck Lines, Stanhope, IA 50246. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Applicant seeks to remove restrictions in its Sub-No. 2F certificate to (1) broaden the construction materials commodity description by eliminating the "except commodities in bulk" restriction, and (2) by expanding the territory from plantsite facilities to counties and commercial zones between Wabash County, IN, Chicago, IL, Will, Coles, and Adams Counties, IL, and Dubuque and Webster Counties, IA, on the one hand, and, on the other, points in IA, IL, IN, MN, MO, NE, ND, SD, and WI.

MC 149388 (Sub-4X), filed January 12, 1981. Applicant: FEPCO TRUCKING, INC., 3458 Moreland Ave., Conley, GA 30027. Representative: Archie B. Culbreth, P.C., Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Applicant seeks to remove restrictions in its Permit Nos. MC-144828 and Sub-No. 2 by (1) broadening the commodity descriptions from "fibreboard, paperboard or pulpboard containers (except corrugated)" to "pulp, paper and related products", and (2) broadening the territorial descriptions to between points in the United States under continuing contract(s) with a named shipper.

MC 149388 (Sub-5X), filed January 13, 1981. Applicant: FEPCO TRUCKING, INC., 3458 Moreland Avenue, Conley, GA 30027. Representatives: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Applicant seeks to remove restrictions in its Permit No. MC-144828 (Sub-No. 5) in order to (1) expand the commodity description from foodstuffs and pet foods to "such commodities as are dealt in or used by food manufacturers, processors or distributors" and, (2) to expand the territorial description to "between points in the U.S., under continuing contract(s) with Nabisco, Inc. of Hanover, NJ."

[FR Doc. 81-2157 Filed 1-21-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier; Temporary Authority Application

Important Notice

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-88

The Following Applications Were Filed in Region I

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 59666 (Sub-1-6TA), filed January 7, 1981. Applicant: TRAFIK SERVICES INC., 25 Esten Avenue, Pawtucket, RI. Representative: A. Joseph Mega, Trafik Services Inc., 25 Esten Avenue, Pawtucket, RI. *Commodities classified as hazardous waste other than movements in bulk* from 11 points in RI to the facilities of Cecos International, Inc. at or near Williamsburg, OH.

Supporting shipper: Ciba-Geigy Corporation, 180 Mill Street, Cranston, RI.

MC 153450 (Sub-1–1TA), filed January 7, 1981. Applicant: BRUCE C. WARD d.b.a. AMERICAN DREAM ADVENTURE TOURS, 237 Haverhill Street, North Reading, MA 01864. Representative: Bruce C. Ward, 237 Haverhill Street, North Reading, MA 01864. *Passengers and their baggage in special operations,* from Boston, MA, on the one hand and points in NY, OH, PA, IN, IL, WI, MN, SD, WY, UT, NV, CA, AZ, NM, TX, LA, MS, AL, GA, SC, NC, VA, and MD on the other hand. Supporting Shippers: Pamela J. Kearins, 23 Harding Road, Melrose, MA 02176; Pamela J. Sampson, 81 Kenmere Road, Medford, MA; Christopher Ford, 25 Keniston Road, Melrose, MA 02176; Kevin F. Greelish, 93 Stratford Road, Melrose, MA 02176; William J. Kearins III, 16 Essex Street, Melrose, MA 02176.

MC 153324 (Sub-1–1TA), filed December 29, 1980. Applicant: NORTH JERSEY TANK LINES, INC., P.O. Box 119, Wyckoff, NJ 07481. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. *Contract Carrier:* irregular routes: *Dry and liquid sugar, in bulk, in tank vehicle* from Frazier, PA, to Port Chester, NY. Supporting shipper: LifeSaver, Inc., 1 Church St., Canajoharie, NY 13317.

MC 98542 (Sub-1–3TA), filed December 30, 1980. Applicant: COLLINS & SIMMONS, INC., Commerce Drive, Box 128, Dansville, NY 14437. Representative: Raymond A. Richards, 35 Curtice Pk., Webster, NY 14580. *Electrical Appliances, Radios, Citizen CB's, Tape Recorders, and materials, equipment and supplies used in the manufacture, sale and and distribution of the above commodities* between all points in the U.S., restricted to traffic originating at or destined to the facilities of General Electric Co. (Houseware and Audio Business Division). Supporting shipper: General Electric Co., 1285 Boston Ave., Bridgeport, CT 06602.

MC 151639 (Sub-1–9TA), filed December 29, 1980. Applicant: COMMAND TRANSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Alcoholic and non-alcoholic beverages and advertising materials,* from Schenley, PA; Lawrenceburg, IN; Tullahoma, TN; Frankfort, Lawrenceburg, Towne and Owensboro, KY; New York, Long Island City, Brooklyn and Hammondsport, NY; and Dayton, Scobeyville, Jersey City, Linden, Lawrenceville and Edison, NJ to Auburn, Medford, and New Bedford, MA. Supporting shipper: Charles Gilman & Sons, Inc., 60 Hall Street, Medford, MA 02155.

MC 145679 (Sub-1–4TA), filed December 29, 1980. Applicant: A & A TRANSPORT, P.O. Box 569, Palmer, MA 01069. Representative: Charles W. Madison, P.O. Box 569, Palmer, MA 01069. *Building metal work racks, and pallets, materials, equipment and supplies used in the manufacture, sale, and distribution of metal building work racks, and pallets* between points in New Hampshire on the one hand, and, on the other, points in the U.S. Supporting shipper: Kingston-Warren Corp., Rt. 85, Newfields, NH 03856.

MC 136366 (Sub-1–1TA), filed December 31, 1980. Applicant: BEE LINE, INC., 17 Commerce Road, Fairfield, NJ 07006. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Plastic articles; and (2) materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above,* between points in CT, DE, MD, MA, NJ, NY, OH, PA, RI, VA, and DC, restricted to traffic originating at or destined to the facilities used or utilized by Mitsubishi International Corp. and Mitsubishi Corp. Supporting shippers: Mitsubishi International Corp./Mitsubishi Corp., 277 Park Ave., New York, NY 10017.

MC 2860 (Sub-1–24TA), filed January 2, 1981. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *Paper and paper products, and equipment and supplies used in the manufacture and distribution of paper and paper products,* between points in Alabany and Saratoga Counties, NY, on the one hand, and, on the other, points in KY, IL, OH, and TN. Supporting shipper: Tagsons Paper, Inc., P.O. Box 1989, Albany, NY 12201.

MC 142603 (Sub-1–15TA), filed January 2, 1981. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier: irregular routes: Rubber Scrap in bags, flammable solid, NOS (item #171800) and Scrap Rubber used in the manufacture thereof* between all points in the U.S. under continuing contract(s) with Baker Rubber, Inc., Supporting shipper: Baker Rubber, Inc., P.O. Box 2551, South Bend, IN 46680.

MC 147621 (Sub-1–1TA), filed January 2, 1981. Applicant: BEE-JAY TRANSPORTATION, INC., 1576 Hart St. Rahway, NJ 07065. Representative: Benjamin Jordan, 1576, Hart St., Rahway, NJ 07065. *Contract carrier: regular routes: Products for industrial cleaning, metal treatment and raw materials in the manufacture thereof,* from NJ to Birmingham, AL; Los Angeles, CA; Denver, CO; Tampa, FL; Atlanta, GA; Chicago, IL; Wichita, KS; New Orleans, LA; Romulus, MI; Kansas City, MO; Memphis, TN; and Houston, TX. Supporting shipper: Oakite Products, Inc., 50 Valley Rd, Berkeley Heights, NJ 07922.

MC 140986 (Sub-1–3TA); filed January 5, 1981. Applicant: GREAT NORTHERN TRUCK LINES, INC., Bank Street, Netcong, NJ 07857. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Contract carrier: irregular routes: *Drugs or medicine, toilet preparations, chewing gums, confectionery, rubbing alcohol compounds, compounds and dental plate cleaning powder, candy and cough drops, razor blades, shaving cream, electrical appliances, such commodities which are sold in grocery, department and drug stores,* and *products used in the manufacture and distribution of the aforementioned products except in bulk,* between points in the US on shipments originating at or destined to the facilities of Warner-Lambert Company. Supporting shipper: Warner-Lambert Company, 201 Tabor Road, Morris Plains, NJ 07950.

MC 99398 (Sub-1–1TA), filed January 5, 1981. Applicant: CARRANO EXPRESS, INC., Middletown Ave., Northford, CT 06472. Representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street NW., Washington, DC 20006. *Such merchandise as is dealt in by retail or wholesale grocery houses or merchants,* between points in CT and NJ, on the one hand, and, on the other, points in NH, ME, VT, and NY. Supporting shipper: Hunt-Wesson Foods, Inc., P.O. Box 127, Rossford, OH 43460.

MC 148871 (Sub-1–1TA), filed January 5, 1981. Applicant: PORT TERMINAL REFRIGERATED WAREHOUSE, Foot of Algiers St., Port Newark, NJ 07114. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., Atlanta, GA 30326. *Bananas* between the ports of Albany, NY; Newark, NJ; and Baltimore, MD, on the one hand, and, on the other, points in PA, OH, MI, IN, NY, CT, NJ, IL, WI, RI, MA, NH, VT, and ME. Supporting shipper: Chiquita Brands, inc., 15 Mercedes Drives, Montvale, NJ 07654.

MC 153425 (Sub-1–1TA), filed January 5, 1981. Applicant: PAUL F. DEVENEY, d.b.a. WATERFORD FAST FREIGHT,

138 Wilder St., Brockton, MA 02403. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403. *Household and electrical applicances,* between Allston and Worcester, MA, on the one hand, and, on the other, the facilities utilized by Key Cooperative of Boston, Inc, at Franklin, MA. Restricted to traffic having a prior or subsequent movement by rail. Supporting shipper: Key Cooperative of Boston, Inc., 140 Grove St., Franklin, MA 02038.

MC 67227 (Sub-1–1TA), filed January 2, 1981. Applicant: B & H TRUCKING CO., INC., 1441 Ferry Ave., Camden, NJ 08104. Representative: James Rutherford, 1441 Ferry Ave., Camden, NY 08104. Alloys, non-ferrous matals, iron or steel products, foodstuffs and kindred commodities, chemicals, including chemicals in bulk in tank or dump vehicles, crude rubber, building materials, plastic materials or products, between points in US east of KS, ND, NE, OK, SD, TX. Department store merchandise and supplies and equipment, between the facilities of Lionel Leisure, Inc., and points in US. *Skylights and materials used in the manufacture of skylights,* between West Conshohocken, PA and points in US. *Alloys, building materials, cement, cinders, coal, coke and kindred commodities commonly transported in dump type vehicles,* between Camden, NJ and Philadelphia, PA on the one hand, and, on the other, points in CT, DE, DC, MA, MD, NC, NH, NJ, NY, OH, PA, RI, SC, VA, WV. Supporting shipper(s): There are seven statements in support of this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 153204 (Sub-1–1TA), filed January 5, 1981. Applicant: MANCHESTER SECURITY SERVICES, INC., P.O. Box 4916, 600 Harvey Rd., Manchester, NH 03108. Representative: Cleveland, Waters, and Bass, Attn: David W. Rayment, 16 Centre St., Concord, NH 03301. *Banking commodities, including currency, coin, gold, silver, negotiable and non-negotiable instruments, safety deposit boxes, diamonds, and other valuables, and bank documents and memoranda* between points in NH, ME, and MA, on the one hand, and, on the other hand, points in MA, ME, and NH. Supporting shipper's: Merchants National Bank, 488 Central Ave., Dover, NH; Amoskeag National Bank & Trust Co., 875 Elm St., Manchester, NH 03105; Hampton National Bank, Hampton, NH 03842; Indian Head Banks, 3 Pleasant St., Portsmouth, NH 03801; Bank of NH, 300 Franklin St., Manchester, NH 03101.

MC 146083 (Sub-1–3TA), filed January 2, 1981. Applicant: AIRFREIGHT TRANSPORTATION CORP. OF NEW JERSEY, 333 North Henry St., Brooklyn, NY 11222. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *General commodities (except household goods and classes A and B explosives),* between points in the US (except AK and HI), under continuing contract(s) with LeeWards Creative Crafts, Inc., Supporting shipper: LeeWards Creative Crafts, Inc., 1200 St. Charles St., Elgin, IL 60120.

MC 146596 (Sub-1–2TA), filed January 5, 1981. Applicant: FRED McCALL TRUCKING, INC., 2079 Railroad Ave., Ontario, NY 14519. Representative: James E. Brown, 36 Brunswick Rd., Depew, NY 14043. *Calcium nitrate in bags or in bulk, in dump trailers,* from Toledo, OH and Norfolk, VA to points in NY; *returned, refused or rejected material of the same description* in the reverse direction. Supporting shipper's: Ag-Chem Sevice Corp, Buerman Rd., Sodus, NY 14551; Herrmans Farm & Home Inc., 2066 Railraod Ave., Ontario, NY 14519.

MC 151078 (Sub-1–3TA), filed January 5, 1981. Applicant: COASTAL FAST FREIGHT, INC., P.O. Box 445, Jersey City, NJ 07305. Representative: Owen B. Katzman, 1828 L St. NW., Suite 1111, Washington, DC 20036. *Contract Carrier:* irregular routes: *General commodities (except household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, articles of unusual value, and those requiring special equipment),* between points in the US (except AK and HI), under a continuing contract with Acme Fast Freight, Inc. Supporting shipper: Acme Fast Freight, Inc., 2110 Alhambra, Los Angeles, CA 90031.

MC 151408 (Sub-1–13TA), filed January 2, 1981. APPLICANT: CARGO TRANSPORT, INC., P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington, MA 02173. *Contract carrier:* irregular routes: *General commodities (except classes A & B explosives and household goods as defined by the Commission,* (1) between points in WI on the one hand, and, on the other, points in MI, MN and IL; and (2) between New York, NY; Newark, NJ; Baltimore, MD; Houston, Tx; on the one hand, and, on the other, points in WI, MI, MN and IL. Supporting shipper: Eka Chemical, Inc., 1001 International Blvd., Suite 1090, Atlanta International Center, Atlanta, GA 30061.

MC 148299 (Sub-1–2TA), filed December 30, 1980. Applicant: CHAMY TRANSPORT, LTD., 3080 Bernard Pilon Street, St. Mathieu de Beloeil, Quebec J3G 4S5 Canada. Representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY 12801. *General commodities (except classes A and B explosives and household goods as defined by the Commission) in containers,* between ports of entry on the U.S.-Canadian boundary line in ME, MI, NH, NY, and VT, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA and DC, restricted to traffic having a prior or subsequent movement by water. Supporting shipper: T.C.I., Inc., 8 Belcourt Road, Dollard des Ormeaux, Quebec H9A, 1X7, Canada.

MC 153322 (Sub-1–1TA), filed December 29, 1980. Applicant: A–Z WASTE SERVICE, INC., 60 Harmon Avenue, Falconer, NY 14733. Representative: Ronald W. Malin, Bankers Trust Bldg., Jamestown, NY 14701. *Hazardous waste, toxic waste and waste materials for disposal and/or recycling and reuse,* between points in PA, NY and OH. Supporting shipper(s): GTE Products Corporation, 825 Lexington Avenue, Warren, PA 16365; Ingersoll Rand Company—Proto Tool Division, 583 Allen Street, Jamestown, NY 14701; Blackstone Corporation, 1111 Allen Street, Jamestown, NY 14701; Weber-Knapp Company, 441 Chandler Street, Jamestown, NY 14701.

MC 112417 (Sub-1–1TA), filed December 31, 1980. Applicant: JOHN KOBLAN AND MICHAEL KOBLAN a.b.a. CLIFF TRUCKING CO., 178 Middlesex Ave., Englewood Cliffs, NJ 07632. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Decorated glassware, plastic bottles, caps and cover; and (2) materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above,* between Hackensack, NJ, on the one hand, and, on the other, points in CT, DE, MD, MA, NY, PA, RI, and DC. Supporting shipper(s): Ethyl Products Co., a subsidiary of Ethyl Corporation, 171 Newman Street, Hackensack, NJ 07601.

MC 149114 (Sub-1–1TA), filed December 31, 1980. Applicant: NATIONAL TRANSPORT SERVICES, 100 Industrial Avenue, Edison, NJ 08817. Representative: Barbara R. Klein, 1101 Connecticut Avenue, NW., Washington, DC 20036. *Contract carrier:* irregular routes. *Plastic film and commodities used to manufacture and distribute plastic film* between all points in the US under continuing contract with the Goodyear Tire and Rubber Company. Supporting shipper: The Goodyear Tire and Rubber Company, 1144 East Market Street, Akron, OH 44316.

MC 99421 (Sub-1–1TA), filed December 2, 1980. Applicant: J & H TRUCKING CO., INC., 37 Cypress Street, Warwick, RI 02888. Representative: David F. Sweeney, Esquire, 10 Jefferson Blvd., Warwick, RI 02888. *General commodities (except explosives, commodities in bulk in tank vehicles, radioactive, and waste materials)* from points in RI to points in MA. Applicant intends to tack this authority to that now held and proposes to interline at Warwick, RI. Supporting shipper's: Bradford Dyeing Assoc., Rt. 91, Bradford, RI; Peacedale Processing, Peacedale, RI; American Luggage Corp., Main Street, Warren, RI; Kenyon Piece Dye Works, Rt. 2, Kenyon, RI 02836.

MC 148793 (Sub-1–5TA), filed January 2, 1981. Applicant: M & L MESSENGER SERVICE, INC., Jewel Lane, New Fairfield, CT 06810. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. (1) *Paper work, art work, forms and computer parts,* between Georgetown, CT and New York City, NY and MA, restricted to packages not exceeding 100 pounds per package originating at or destined to the facilities of Murren Associates, Inc., Georgetown, CT and (2) *Machinery parts and paper products,* between Danbury, CT and points in NJ, MA and NY, restricted to packages not exceeding 100 pounds per package, originating at or destined to the facilities of Technipower/A. Penril Co., Danbury, CT 06810. Supporting shippers: Murren Associates, Inc., Old Mill Road, Georgetown, CT 06829 and Technipower/A. Penril Co., Commerce Drive, Danbury, CT 06810.

MC 152818 (Sub-1–1TA), filed January 2, 1981. Applicant: R & H TRUCKING CO., INC., 184 Doremus Avenue, Newark, NJ 07105. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Gasoline, in bulk,* from facilities of Getty Refining & Marketing Co., in Newark, NJ to points in Dutchess County, NY. Supporting shipper(s): Getty Refining & Marketing Co., Doremus Avenue, Newark, NJ 07105.

MC 153001 (Sub-1–1TA), (Republication), filed December 5, 1980. Applicant: HISKO TRUCKING CO., INC., 100 Lister Avenue, Newark, NJ 07105. Representative: Lawrence Hisko, 100 Lister Aveune, Newark, NJ 07107. Contract carrier: irregular routes: *Chemical waste material* between points in the U.S. except AK and HI. Supporting shipper: SCA Chemical Services Co., 107 Albert Street, Newark, NJ 07105.

MC 6252 (Sub-1–2TA), (Republication), filed December 1, 1980. Applicant: TEAL'S EXPRESS, INC., 36 Laura Street, Lyons Falls, NY 13368. Representative: Roy D. Pinsky, Esq., Suite 1020—State Tower Building, Syracuse, NY 13202. *General commodities, (except Classes A and B explosives and household goods as defined by the Commission)* between all points in the NY counties of Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga and Oswego on the one hand, and, on the other, all points in the NY Counties of Albany, Columbia, Fulton, Greene, Montgomery, Rennselaer, Saratoga, Schenectady and Schoharie. Supporting shipper(s): Branch Motor Express Company, 114 Fifth Avenue, New York, NY 10011; Springmeier Shipping Co., Inc., 225 Johnson Street, East Syracuse, NY 13057; Georgia-Pacific Corporation, Center Street, Lyons Falls, NY 13368; AMF Incorporated, Bowling Pin Division, Utica Boulevard, Lowville, NY 13367. Purpose of republication is to show that applicant intends to interline with another carrier at Utica, Syracuse, Watertown and Albany, NY. Previously in **Federal Register** of December 15, 1980, on Page 82370.

MC 153363 (Sub-1–1TA), (Republication), filed November 28, 1980. Applicant: AMERICAN MESSENGER SERVICE INC., 160 Lake Avenue, Manchester, NH 03105. Representative: Susan M. Vercillo, Esq., Devine, Millimet, Stahl & Branch, Professional Association, 1850 Elm Street, Manchester, NH 03105. *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 NH, ME and MA. Supporting shipper(s): There are 143 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA. The purpose of this republication is to show that applicant amended his application to common, irregular. Previously published in **Federal Register** of December 15, 1980 on Page 82372.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 31675 (Sub-3–35TA), filed January 9, 1981. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Jay R. Hanson (same as above). *Plastic pipe, plastic pipe fittings, and equipment, materials and supplies used in the manufacture, installation and transportation of plastic pipe and plastic pipe fittings* between Pineville, NC, and points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Elson Thermoplastics, Inc., Rodney Blvd., Pineville, NC 28134.

MC 112520 (Sub-3–12TA), filed January 12, 1981. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Waste Solvent,* from Calvert City, KY to Pace, FL. Supporting shipper: Air Products & Chemicals, P.O. Box 538, Allentown, PA 180105.

MC 134105 (Sub-3–10TA), filed January 12, 1981. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossville Avenue, Chattanooga, TN 37408. Representative: James E. Elgin (same address as applicant). *Margarine, Shortening and Peanut Butter* from the plantsites and storage facilities of Sunnyland Refining Company at or near Jefferson County, AL to all points in CT, DE, DC, GA, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA and WV. Supporting shipper: Sunnyland Refining Company, 3330 10th Avenue North, Birmingham, Alabama 35234.

MC 127264 (Sub-3–1TA), filed January 9, 1981. Applicant: AMERICAN PARCEL SERVICE, INC., 212 Hermitage Road, Greensboro, NC 27403. Representative: Guy H. Postell, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. *Contract,* irregular, *Merchandise, equipment and supplies sold, used or distributed by a manufacturer of cosmetics,* under a continuing contract, or contracts, with Avon Products, Inc., New York, NY, (1) from Charlotte, NC, to points in Montgomery County, NC; (2) from Greensboro, NC, to points in Carroll and Patrick Counties, VA; and, (3) from Fayetteville, NC, to points in the following NC counties: Cumberland, Bladen, Columbus, Brunswick, New Hanover, Pender, Duplin, Sampson, Harnette, Lee, Moore, Richmond, Montgomery, Anson, Scotland, Robeson, Hoke, Greene, Onslow, Carteret, Jones, Lenior, Beaufort, Pamlico, Pitt, and Chatham. Supporting shipper: Avon Products, Inc., 2200 Cotillion Drive, Chamblee, GA 30302.

MC 147911 (Sub-3–5TA), filed January 9, 1981. Applicant: TILFORD TRUCKING, INC., P.O. Box 34, Readyville, TN 37149. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *Limestone, limestone products and building materials (except commodities in bulk),* between the facilities of Franklin Industries at or near Crab Orchard and Nashville, TN, on the one hand, and, on the other,

points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Franklin Industries, Inc., 612 Tenth Ave., North, Nashville, TN 37203.

MC 146646 (Sub-3–39TA), filed January 9, 1981. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355–A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Pressure-sensitive paper, label stock, self-adhesive paper labels and reinforcements, gum paper, printing and wrapping paper, label machines, plastics and cellulose film, aluminum foil, textile labels and tags, reflective sheeting and materials used in manufacturing thereof.* Between points in the U.S. (except AK and HI) and the facilities of Avery International. Supporting shipper: Avery International, 250 Chester Street, Painesville, OH 44077.

MC 144337 (Sub-3–2TA), filed January 9, 1981. Applicant: KENNETH HENDERSON TRUCKING CO., INC., Route 66, Cullowhee, NC 28723. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW., Washington, DC 20005. *Contract carrier;* irregular: *(1) molded plastic products, and (2) machinery, machinery parts, and materials and supplies used in the manufacture and distribution of (1) above,* between Charlotte and Cashiers, NC, and points in their commercial zones, and Phoenix, AZ, and points in its commercial zone, on the one hand, and, on the other, points in the US, under continuing contract(s) with Cashiers Plastic—Division of Consolidated Metco, Inc. Supporting shipper: Cashiers Plastic—Division of Consolidated Metco, Inc., Box 37, Cashiers, NC 28717.

MC 153509 (Sub-3–2TA), filed January 9, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, KY 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson St., Lousiville, KY 40202. *Contract;* irregular: *commercial laundry drying equipment and materials, equipment and supplies used in the manufacture of this type equipment,* between Louisville, KY on the one hand, and, on the other, points in the U.S. under continuing contract with W. M. Cissell Mfg. Co. Supporting shipper: W.M. Cissell Mfg. Co., 831 South First Street, Louisville, KY.

MC 153509 (Sub-3–3TA), filed January 9, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, Kentucky 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson Street, Louisville, Kentucky 40202. *Contract;* irregular: *paper and plastic articles; materials, equipment and supplies used in the manufacture of these commodities* between Lexington, KY on the one hand, and on the other, points in the United States under continuing contract with American Can Company. Supporting shipper: American Can Company, Harbison Road, Lexington, Kentucky 40505.

MC 153509 (Sub-3–4TA), filed January 8, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, Kentucky 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson Street, Louisville, Kentucky 40202. *Contract;* irregular: *adhesives; plastic bottles, and materials, equipment and supplies used in the manufacture of these commodities* between Lexington, KY, on the one hand, and on the other, points in the United States under continuing contract with Franklin Chemical Inds., Inc. & Subsidiaries. Supporting shipper: Franklin Chemical Inds., Inc. & Subsidiaries, 2020 Bruck Street, Columbus, Ohio 43207.

MC 146496 (Sub-3–5TA), filed January 9, 1981. Applicant: JOSEPH MOVING & STORAGE CO., INC., d.b.a. ST. JOSEPH MOTOR LINES, 5724 New Peachtree Rd., Chamblee, GA 30341. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Contract carrier:* Irregular routes: (1) *Automotive tires and tubes* and (2) *materials, equipment and supplies used in the installation and sale of the commodities in (1) above,* from Birmingham, AL, Philadelphia, PA, Columbus, OH and Dallas, TX, to points in the US in and east of WI, IL, MO, OK and TX, under continuing contract(s) with Gulf Oil Company-US. Supporting shipper: Gulf Oil Company-US, P.O. Box 3706, Houston, TX 77001.

MC 150193 (Sub-3–2TA), filed January 9, 1981. Applicant: DARICA TRUCKING CO., 338 S. Oliver Street, Elberton, GA 30635. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Granite* from the facilities of Coggins Granite Company at or near Elberton, GA to points in NY and NJ. Supporting shipper: Coggins Granite Company, P.O. Box 250, Elberton, GA 30635.

MC 75840 (Sub-3–46TA), filed January 9, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *General commodities (except Classes A and B explosives, household goods, and commodities in bulk),* between Atlanta, GA, and its commercial zone, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA and DC. Supporting shipper: Greater Atlanta Shippers Association, 6188 Boatrock Boulevard, SW, Atlanta, GA 30336.

MC 121815 (Sub-3–2TA), filed January 5, 1981. Applicant: ALL SOUTH MOTOR FREIGHT, INC., 1220 Fadur Court, Nashville, TN 37219. Representative: Robert L. Baker, Sixth Floor, United American Bank, Nashville, TN 37219. *Common* Carrier: Regular: *General Commodities (except classes A and B explosives, household goods, commodities in bulk and those requiring special equipment)* between Nashville, TN, and Birmingham, AL; from Nashville over I–65 and/or U.S. Hwy 31 to Birmingham, AL, and return over the same route serving all intermediate points on I–65 and U.S. Hwy 31 between AL–TN state lines and Birmingham, except Ardmore, AL. Applicant proposes to interline at Nashville, TN, and Birmingham, AL. Supporting shippers: There are 30 statements of support attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

MC 153493 (Sub-3–1TA), filed January 7, 1981. Applicant: NOBLES SLUDGE PUMPING, Route 4, Box 150, Carrollton, GA 30117. Representative: E. Carl Prince, Esquire, Post Office Box 662, Carrollton, GA 30117. *Sludge and other industrial waste,* from Carroll County, GA, to Sumter County, AL. Supporting shipper: Trent Tube Division, Colt Industries, Inc., 114 Hammonds Street, Carrollton, GA 30117.

MC 129326 (Sub-3–1TA), filed January 8, 1981. Applicant: CHEMICAL TANK LINES, INC., P.O. Box 432, Mulberry, FL 33860. Representative: Keith Alexander (same address as applicant). *Contract* carrier: Irregular: *a moble liquid fertilizer plant and equipment, finished manufactured liquid fertilizer and raw materials necessary for the manufacture of finished fertilizers, and associated equipment for cleaning of storage tanks* between points in the U.S. under contract with USAMEX Fertilizers, Inc. Supporting shipper: USAMEX Fertilizers, Inc., 410 Ware Blvd., Suite 314, Tampa, FL 33619.

MC 134105 (Sub-3–9TA), filed January 6, 1981. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossville Avenue, Chattanooga, TN 37408. Representive: James E. Elgin (same address as applicant). *Such merchandise as is dealt in by food business houses and materials,*

ingredients and supplies used in their manufacture and distribution. Between points in the states of OH and SC on the one hand, and on the other, points in the states of: AL, CT, DC, DE, FL, GA, KY, LA, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT and WV. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139.

MC 144503 (Sub-3–6TA), filed January 8, 1981. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Charles L. Redel, 212 Hoeschler Exchange Building, La Crosse, WI 54601. *General commodities (except classes A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment)* between points in Wayne County, MI, Lucas County, OH, and Crawford County, AR, on the one hand, and, on the other, points in the Continental U.S. Restricted to traffic originating at or destined to the facilities of Canton Lubricants Company and Snyder Machine and Tool Company, Div. of G & L, Wayne County, MI, and Therma-Tru, Div. of LST Corp., Lucas County, OH, and Crawford County, AR. Supporting shippers: Canton Lubricants Company, Detroit, MI, Snyder Machine and Tool Company, Div. of G & L, Detroit, MI, and Therma-Tru, Div. of LST Corp., Toledo, OH.

MC 107515 (Sub-3–90TA), filed January 8, 1981. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor—Lenox Towers South, Atlanta, GA 30326. *Bakery Products (except in bulk)* from Valdosta, GA to facilities of Winn-Dixie Stores, Inc. at or near Montgomery, AL; Jacksonville, Orlando, Miami, Tampa and Pompano Beach, FL; Louisville, KY; New Orleans, LA; Charlotte and Raleigh, NC; Greenville, SC; and Ft. Worth, TX. Supporting shipper: Winn-Dixie Stores, Inc., Box "B", Jacksonville, FL 32203.

MC 143753 (Sub-3–2TA), filed January 8, 1981. Applicant: BOLES & FRANKLIN, INCORPORATED, Route 2, Box 169, Weaverville, NC 28787. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. *Coal, in bulk, in dump vehicles,* from points in Lee and Rockcastle Counties, KY, to points in IN, and OH. Supporting shipper: Tenkiller Mining Services, Inc., P.O. Box 209, Livingston, KY 40445.

MC 150505 (Sub-3–2TA), filed January 8, 1981. Applicant: VERMAD TRUCKING, INC., 6306 Vergos Drive North, Eight Mile, Alabama 36613. Representative: James David Mills, Attorney at Law, Post Office Box 2664, Mobile, Alabama 36652. *Contract Carrier:* Irregular: *Building Materials* between AL, MS, GA, FL, LA, TX, AR, MI, NM, SC, NC, KY, TN, OH, NJ and all points in the United States except HI, restricted to the facilities and job sites of Gulf Atlantic Corporation, Coastal Insulation of Pensacola, Inc., Coastal Specialties, Inc., Thompson Insulation, Inc., West Florida Sash & Door, Inc., West Cash & Carry, Inc., Fiberglass Insulators, Inc., Insulation Contractors, Inc. and William Henry Contracting, Inc. There are nine supporting shippers attached to this application which may be examined at the Interstate Commerce Commission, Atlanta, Georgia.

MC 153301 (Sub-3–1TA), filed January 8, 1981. Applicant: COMPLETE REFUSE REMOVAL, INC., 782 Smyrna Hill Dr., Smyrna, GA 30081. Representative: Raymond E. Fowler (same address as applicant). *Paint and Sludge Waste* from Atlanta, GA. to Emelle, AL. Supporting shipper: GM Assembly Division, General Motors Corp., Lakewood Plant, P. O. Box 16505, Atlanta, GA 30321.

MC 153179 (Sub-3–1TA), filed January 7, 1981. Applicant: WHITE TRUCKING, INC., Huff, KY 42250. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Coal,* between points in KY, on the one hand, and, points in IN, IL and TN, on the other. Supporting shipper: Tri-Coal Engergies, Inc., Cromwell, KY 42333; Mac Coal Sales, Box 26, Beaver Dam, KY 42320.

MC 109026 (Sub-3–7TA), filed January 8, 1981. Applicant: MANNING MOTOR EXPRESS, INC., P.O. Box 685, Glasgow, KY 42141. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *General Commodities (except classes A and B explosives),* serving all points in Barren and Monroe County, KY as off route points in connection with applicant's presently authorized routes. Supporting shippers: There are seven certificates of support submitted with this application and they may be examined at the Commission's regional authority center in Atlanta, GA.

Note.—Applicant intends to tack with docket number MC 109026 at Glasgow, KY and to interline with existing carriers at Louisville, KY and Nashville, TN.

MC 75840 (Sub-3–49TA), filed January 12, 1981. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, Alabama 35202. Representative: Raymond Hamilton, Malone Freight Lines, Inc., 3400 Third Avenue South, Birmingham, Alabama 35222. *Auto Parts and Accessories, Aluminum Castings and Fittings,* from MS, TN and NC to MI; from points in NC to OH. Supporting shipper: Ford Motor Company One Parklane Blvd., 200 Parklane Towers East, Dearborn, MI 48126.

MC 75840 (Sub-3–50TA), filed January 13, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *General commodities (except Classes A and B explosives and household goods),* between points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. There are 35 shipper statements attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

MC 145956 (Sub-3–2TA), filed January 12, 1981. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rocks Road, Belleair, FL 33516. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. (1) *Blood, derivatives of blood, and plasma; (2) medical and dental products, and (3) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) and (2) above:* Between all points and places in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Beckman Instruments, Inc. Supporting shipper: Beckman Instruments, Inc. 2500 Harbor Blvd., Fullerton, CA 92634.

MC 85578 (Sub-3–1TA), filed January 12, 1981. Applicant: W. M. BURNETT TRUCK LINE, INC., P.O. Box 206, Haleyville, AL 35565. Representative: Johnny Bennett (same address as applicant). Common carrier, regular routes: *General commodities (except explosives and commodities requiring special equipment)* between Haleyville, AL, on the one hand, and, on the other, Florence, AL serving all points in Marion County, AL and all points within 15 miles of Florence, AL including Listerhill, AL as off-route points: (1) from Haleyville, AL over AL Hwy 5 to the junction of US Hwy 43; thence over US Hwy 43 to Florence, AL and return over the same route serving all intermediate points; (2) from Haleyville, AL over AL Hwy 129 and 13 to respective junctions with US Hwy 278, thence over US Hwy 278 to junction US Hwy 43, thence over US Hwy 43 to Florence, AL and return over the same route serving all intermediate points; and serving all points in Marion County, AL and all points within 15 miles of Florence, AL including Listerhill, AL as off-route points in connection with applicant's authorized service. There are

27 supporting shipper statements which may be examined in the ICC Regional Office in Atlanta, GA. Applicant intends to interline at Birmingham and Florence, Sheffield, Tuscumbia and Muscle Shoals; and will tack the authority sought with existing authority at Haleyville, AL.

MC 136176 (Sub-3–1TA), filed January 13, 1981. Applicant: RENTZ FARM SUPPLY, INC., Route 1, Brinson, GA 31725. Representative: Guy H. Postell, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326. *Liquefied petroleum gas, in bulk, in tank vehicles,* between Albany, GA, on the one hand, and, on the other, Chiefland, Bronson, New Smyrna Beach, Melbourne and Cocoa, FL. Supporting shipper: Tru-Gas of Florida, Inc., Suite 350, 2700 Cumberland Parkway, Atlanta, GA 30339.

MC 115831 (Sub-3–2TA), filed January 13, 1981. Applicant: TIDEWATER TRANSIT CO., INC., P.O. Box 189, Kinston, NC 28501. Representative: Ralph McDonald, Attorney at Law, P.O. Box 2246, Raleigh, NC 27602. *Liquid fertilizer and liquid fertilizer materials* from points in New Hanover, Robeson and Wayne Counties, NC to points in SC. Supporting shipper(s): Texas Gulf Sulphur, Mt. Olive, NC 28365; and W. R. Grace & Co., P.O. Box 368, Wilmington, NC 28401.

MC 142835 (Sub-3–6TA), filed January 12, 1981. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Lakeland, FL 33823. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. *General commodities (except Classes A and B explosives),* from the facilities of Purex Corp. at or near Auburndale, FL to points in AL and GA. Supporting shipper: Purex Corp., 909 Magnolia, Auburndale, FL 33823.

MC 139934 (Sub-3–1TA), filed January 12, 1981. Applicant: ALL SOUTHERN TRUCKING, INC., Post Office Box 2698, Tampa, FL 33601. Representative: Robert R. Solomon (same as applicant). *General commodities (except commodities of unusual value, class A and B explosives, household goods, and commodities requiring special equipment) in containers or trailers and empty containers and trailers having immediately prior or subsequent movement by water or rail.* Between Jacksonville, FL and Charleston, SC. Supporting shipper: United States Lines, Inc., Post Office Box 26009, Jacksonville, FL 32118.

MC 153566 (Sub-3–1TA), filed January 12, 1981. Applicant: BELCHER TRUCKING CO., INC., P.O. Box 160, Brent, AL 35034. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209. *Lumber or Wood Products* between Chilton and Bibb Counties in AL on the one hand, and, on the other, points in GA, OH, TN, KY, IN, IL, WI, MI, VA, WA, PA, and IA. Supporting shippers: Hammermill Paper Company, Southern Forest Products Division, P.O. Box 768, Selma, AL 36701; Olon Belcher Lumber Co., Inc., P.O. Box 160, Brent, AL 35034; Freeman Lumber Company, Inc., P.O. Box 68, Centreville, AL 35042.

MC 124835 (Sub-3–5TA), filed January 12, 1981. Applicant: PRODUCER TRANSPORT CO., P.O. Box 4022, Chattanooga, TN 37405. Representative: David K. Fox (same address as applicant). *Cement, in bulk, and in packages,* from Gray, TN to all points in AL, GA, KY, NC, SC, VA, WV and TN. Supporting shipper: Ideal Basic Industries, Inc., P.O. Box 8789, Denver, CO 80201.

MC 149132 (Sub-3–1TA), filed January 13, 1981. Applicant: T & T HAULING, INC., 231 Bayou Sara Avenue, Saraland, AL 36571. Representative: Terry Simison (same address as applicant). *Hazardous and non-hazardous waste liquids and sludges* in vacuum tankers from points in AL, MS, FL, LA and TX to EPA approved disposal sites in AL, MS, FL, LA, and TX. Supporting shippers: Dowell Div. of Dow Chemical Co., P.O. Box 11493, Chickasaw, AL 36611, Shell Oil Company, P.O. Box 2099, Houston, TX 77001.

MC 75840 (Sub-3–47TA), filed January 12, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in by a processor or manufacturer of marble and stone products (except in bulk),* from the facilities of Georgia Marble Company, at or near Tate, GA, and Sylacauga, AL, to points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Georgia Marble Company, 2575 Cumberland Parkway NW, Atlanta, GA 30339.

MC 138308 (Sub-3–19TA), filed January 12, 1981. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Such commodities as are dealt in or used by construction and home improvement businesses (except commodities in bulk)* (1) from the facilities of Therma-Tru, Division of LST Corporation at or near Van Buren, AR; Colorado Springs, CO; and Toledo, OH, to points in the U.S. (except AK and HI); and, (2) from points in CA to the facilities of Therma-Tru, Division of LST Corporation at or near Van Buren, AR; Colorado Springs, CO; and Toledo, OH. Supporting shipper: Therma-Tru, Division of LST Corporation, 2806 N. Reynolds Road, Toledo, OH 43615.

MC 153565 (Sub-3–1TA), filed January 12, 1981. Applicant: M. L. TRANSPORT DIVISION OF M. L. ENTERPRISES, INC., Route #1, Box 282 GA, Pell City, AL 35215. Representative: George M. Boles, Carlton, Boles, Clark, Vann, Stichweh & Caddis, 727 Frank Nelson Bldg., Birmingham, AL 35203. *Contract carrier:* irregular: *Iron and steel, iron and steel articles and building materials,* between facilities of Engineered Components, Inc., at Houston, TX, and Jemison, AL, and Culp Metals, Inc., Gadsden, AL, on the one hand, and, on the other, points in the U.S. Supporting shipper: Engineered Components, Inc., Jemison, AL, and Culp Metals, Inc., East Gadsden, AL.

MC 150388 (Sub-3–3TA), filed January 12, 1981. BOSS TRANSPORTATION CO., INC., P.O. Box 40977, Memphis, TN 38104. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Plastic articles (except in bulk),* between Leominster, MA, Arlington, TX and Kingman, AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Tucker Housewares, 345 Central Street, Leominster, MA 01453.

MC 149112 (Sub-3–1TA), filed January 13, 1981. Applicant: FLORIDA-NEW ORLEANS EXPRESS, INC., 625 North Wabash Street, Lakeland, FL 33801. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Citrus fruits, fruit juices, and beverages, in containers, glass cartons and cans,* from the facilities of Tropicana Products Co., in Manatee County, FL, to New Orleans, LA; St. Louis, MO; Indianapolis, IN; Minneapolis, Saint Paul and Hopkins, MN. Supporting shipper: National Tea Company, 1807 Richmond Rd., Lakeland, FL 33803.

MC 2934 (Sub-3–27TA), filed January 12, 1981. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *New furniture, partitions, store and office fixtures,* from York County, PA to: AR, IA, KS, KY, LA, MI, MN, MS, NE, OH, OK, TN, TX, VA, WI and WV. Supporting shipper: Thonet, 491 East Princess Street, York, PA 17405 and Zell Brothers, Church Lane, Red Lion, PA 17356.

MC 151173 (Sub-3–5TA), filed January 12, 1981. Applicant: HAR-BET, INC., 7209 Tara Blvd., Jonesboro, GA 30236.

Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Contract* carrier: Irregular Routes: *General commodities, except in bulk,* from the facilities of The Gillette Company at or near Andover, MA and St. Paul, MN, to Morrow, GA, under continuing contract(s) with The Gillette Company. Supporting Shipper: The Gillette Company, P.O. Box 29, The Prudential Bldg., Boston, MA 02199.

MC 153557 (Sub-3–1TA), filed January 12, 1981. Applicant: MOTOR INDUSTRIES INCORPORATED, 1203 Audubon Parkway, Louisville, KY 40213. Representative: George W. Mercker, 1017 Kentucky Home Life Bldg., Louisville, KY 40202. *Such commodities as are dealt in by wholesale and retail chain groceries, drug and food business houses and any products required in production of same, including plastic containers and other packaging material,* between Clark and Floyd counties, IN, on the one hand, and, on the other, points in KY and OH. Supporting shipper: Colgate Palmolive Co., P.O. Box 9, Jeffersonville, IN 47130.

Note.—Applicant intends to interline with other carriers at Louisville, Lexington, and Bowling Green, KY; and Cincinnati, Toledo, Columbus, and Cleveland, OH.

MC 142585 (Sub-3–1TA), filed January 12, 1981. Applicant: TRIAD LIMOUSINE SERVICE, INC., P.O. Box 8475, Greensboro, NC 27410. Representative: Henry E. Frye, Attorney, P.O. Box 21401, Greensboro, NC 27420. *Contract carrier,* irregular routes: *Computer, financial and payroll data,* between Western Electric Company locations at Winston-Salem, NC, and Radford, VA. Supporting shipper: Western Electric Company, 3300 Lexington Road, S.E., Winston-Salem, NC 27102.

MC 75840 (Sub-3–48TA), filed January 12, 1981. Applicant: MALONE FREIGHT LINES, INC., Post Office Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in, used or distributed by a manufacturer of metal roof decks and floor decks, (except in bulk),* between the facilities of Epic Metals Corporation, located at or near Braddock, PA, on the one hand, and, on the other, points in TX, AR, LA, MS, TN, GA, FL, AL, KY, NC, SC, VA, DE, MD, WV, OH, PA, NY, NJ, RI, CT, MA, and DC. Supporting shipper: Epic Metals Corporation, 11 Talbot Avenue, Braddock, PA 15104.

MC 146226 (Sub-3–5TA), filed January 13, 1981. 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. *Textiles and textile products,* between the facilities of Coutraulds North America, Inc., at LeMoyne, AL, on the one hand, and, on the other, points in NC and SC. Supporting shipper: Courtaulds North America, Inc., P.O. Box 2648, Mobile, AL 36601.

MC 153509 (Sub-3–1TA), filed January 9, 1981. Applicant: KENTUCKY DISPATCH, INC., 3303 Camp Ground Road, Louisville, KY 40216. Representative: James B. Murphy, Suite 102, Interchange Bldg., 835 West Jefferson Street, Louisville, KY 40202. *Contract;* irregular; *bags, envelopes, packets, pouches, and materials, equipment and supplies used in the manufacture of these commodities,* between Louisville, KY on the one hand, and on the other, points in the United States under continuing contract with American Cellophane & Plastics. Supporting shipper: American Cellophane & Plastics, 7641 National Turnpike Road, Louisville, KY 40214.

MC 146782 (Sub-3–10TA), filed January 9, 1981. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 First Avenue South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Building, Nashville, TN 37201. *Steel pipe and tubing* between Mecklenburg County, NC, on the one hand, and, on the other, Cook County, IL. Supporting shipper: Marmon Keystone Corporation, P.O. Box 7447, Charlotte, NC.

MC 143059 (Sub-3–30TA), filed January 8, 1981. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, Kentucky 40232. Representative: Kenneth W. Kilgore, (same as applicant). *(1) Machinery, (2) Oil Well Drilling Equipment,* from Oklahoma County, Ok to points in AR, LA, TX, WY, NE, and TN. Supporting shipper: Sasnett Machine & Manufacturing, Inc., 1420 East Reno, Oklahoma City, OH 73117.

The following applications were filed in Region 5. Send Protests To: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 2960 (Sub-5–4TA), filed January 8, 1981. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, INC., 2301 McKinney Street, Houston, TX 77023. Applicant's Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. *Chemicals (not in bulk) in cargo containers* from the facilities of the Celanese Corporation located at or near Bishop, TX, to Houston, TX. Restricted to traffic having a subsequent movement by water. Supporting shipper(s): Gulf Coast Shipping, Inc., 1949 Stemmons Freeway, Dallas, TX 75207.

MC 5227 (Sub-5–14TA), filed January 8, 1981. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. *Chemicals, drilling mud compounds and additives* (except in bulk), (1) from points in Natrona, Weston and Crook Counties, WY; and Salt Lake City, UT and Houston, TX and points in their commercial zones to NM; and (2) from Rothchild, WI; Springfield, MO; and Atchison, KS and points in their commercial zones and points in Eddy County, NM; Williams and Bowman Counties, ND, Uintah County, UT; and Nye County, NV to points in LA, TX, WY, OK, CO, KS and NM. Supporting shipper: Eisenman Chemical Company, P.O. Box 1280, Greeley, CO 80632.

MC 68100 (Sub-5–3TA), filed January 9, 1981. Applicant: D. P. BONHAM TRANSFER, INC., P.O. Drawer G, Bartlesville, OK 74003. Representative: Larry E. Gregg, P.O. Box 1979, Topeka, KS 66601. *(1) Rough Iron Castings and (2) Materials, Equipment and Supplies (except in bulk) used in the distribution of (1) above,* Between the facilities of Jencast, Inc., at or near South Coffeyville, OK, on the one hand, and, on the other, points in AR, KS, MO, NE, PA, TN, TX and VA. Supporting shipper: Jencast, Inc. P.O. Box 298, South Coffeyville, OK 74072.

MC 106195 (Sub-5–1TA), filed January 9, 1981. Applicant: CLARK BROS. TRANSFER, INC., 900 North First, Norfolk, NE 68701. Representative: Arlyn L. Western, Westergren & Hauptman, P.C., Suite 201, 9202 West Dodge Road, Omaha, NE 68114. *Rubber products and rubber compound* from Norfolk, NE to Mt. Pleasant, IA. Supporting shipper: The Goodyear Tire & Rubber Company, 1144 East Market Street, Akron, OH 44316.

MC 11131 (Sub-5–19TA), filed January 9, 1981. Applcant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: James H. Berry (same address as applicant). *(1) Concrete additives, air entraining agents, concrete plasticizer compound, building mortar, concrete mix, cement compound, iron borings, surface curing compounds, grout and paint compounds. (2) Cement, sand, pea gravel, iron borings, various chemicals and shipping containers and other materials, equipment and supplies used in the manufacture, sale and*

distribution (1) above between Erie County, NY; Green County, MO and San Bernardino County CA on the one hand, and, on the other points in the U.S. except AK and HI. Supporting shipper: Master Builders Division Martin Marietta Crop., Cleveland, OH.

MC 119741 (Sub-5–29TA), filed January 9,, 1981. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant) *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to The Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Farmland Foods, Inc. at (a) Crete and Omaha, NE and (b) Carroll, Denison, Des Moines, Iowa Falls, and Sioux City, IA to points in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, KY, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, AND WY: (c) Lincoln, NE and (d) Fort Dodge, IA to points in AL, AZ, AR, CA, CT, DE, DC, FL, GA, ID, KY, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, and WY. Supporting shipper: Farmland Foods, Inc., P.O. Box 403, Denison, IA 51442.

MC 135797 (Sub-5–94TA), filed January 9, 1981. Applicant: J. B. HUNT TRANSPORT, INC., Post Office Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire (same as above). *Such commodities as are dealt in or used by wholesale, retail discount, variety and department stores.* Between Pulaski County, AR on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Sterling Stores, Co. Inc., 6500 Forbing Road, Little Rock, AR 72203 and Target Stores, Inc., 600 Carnahan Drive, Maumelle, AR 72118.

MC 138069 (Sub-5–3TA), filed January 8, 1981. Applicant: LUCIUS, INC., 2512 South 163rd Street, Omaha, NE 68130. Representative: Max Vance, 2512 South 163rd Street, Omaha, NE 68130. *Meat and packinghouse products* from Sunflower Beef Packers at York, NE to pts in LA, TX, MS, MO, AL, GA, CO, OH, IL, IN, IA, KY, WI, MN, TN, NY, NJ, MA, PA, RI, MD, FL, NC and SC. Supporting shipper: Sunflower Beef Packers, 14th Street and Division Ave., York, NE 68467.

MC 138750 (Sub-5–2TA), filed January 8, 1981. Applicant: W. F. BARTHELME, d.b.a. W. F. BARTHELME DIST. CO., 1602 North Broadway, Pittsburg, KS 66762. Representative: Laurel D. McClellan, 401 North Sixth, P.O. Box 478, Fredonia, KS 66736. Contract irregular: *Clay tile and related products* from Bessemer, AL, Bradenton, FL, Lehigh, IA, Pittsburg, KS, Kansas City, MO, Saspamco and Texarkana, TX, and Meridian, MS, to points in the U.S. (except AK and HI). Supporting shipper: W.S. Dickey Manufacturing Co., Pittsburg, KS 66762. Hearing site: Wichita, KS; Springfield, MO.

MC 141865 (Sub-5–16TA), filed January 8, 1981. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, TX 75051. Representative: A. William Brackett, 1108 Continental Life Building, Forth Worth, TX 76102. Contract: Irregular. *Such commodities as dealt in by Home Products Distributors,* from the facilities of Amway Corporation at Des Moines, IA, to points in NM, MN, and WI. Supporting shipper: Amway Corporation, 4161 McDonald, Des Moines, IA 50313.

MC 144622 (Sub-5–67TA), filed January 8, 1981. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Such commodities as are dealt in by wholesale, retail, and discount stores* from Bainbridge, NY to Carrollton, TX. Supporting shipper: Borden Chemical, 180 East Broad Street, Columbus, OH 43215.

MC 145317 (Sub-5–4TA), filed January 8, 1981. Applicant: QUALITY SERVICE TANK LINES, INC., 9022 Perrin Beitel Road, San Antonio, TX 78217. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. *Drilling mud, in bulk,* between points in TX and LA. Supporting shipper: Dresser Industries, Inc., P.O. Box 6504—DCOB 1, Suite 186, Houston, TX 77005.

MC 146765 (Sub-5–5TA), filed January 9, 1981. Applicant: DAYTON ENTERPRISES, INC. 110 First Avenue., Clarence, IA 52216. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016. *Iron and Steel Articles,* from the facilities of Jones and Laughlin Steel Corp. at or near Hennepin, IL, to pts in AL, AR, GA, MS, OK, TN, and that part of KS east of U.S. Highway 77.

MC 147536 (Sub-5–9TA), filed January 9, 1981. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton P.O. Box 1567, Joplin, MO 64801.*Paper, paper products, materials, equipment, and supplies used in the manufacture and distribution of paper and paper products,* between Muskogee County, OK, on the one hand, and, on the other, Points in AL, AR, FL, KS, LA, MO, TX, and UT. Supporting shipper: Container Corporation of America, P.O. Box 1441, Fort Worth, TX 76101.

MC 150093 (Sub-5–2TA), filed January 9, 1981. Applicant: THE TOM DAVIS CORP., d.b.a. Davis Truck Lines, 5335 N.W. 111th Drive, Grimes, IA 50111. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Steel forms and molds for concrete construction and materials, supplies, and parts used in the manufacture and distribution of steel forms and molds,* between pts in Polk County, IA, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Construction Products, Inc., Economy Forms Corporation, 4301 NE 14th Street, Des Moines, IA 50316.

MC 153476 (Sub-5–1TA), filed January 8, 1981. Applicant: BREWER TRANSPORTATION, INC., Route 2, box 58–A, Konawa, OK 74849. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Drilling Mud Additives (except in tank vehicles),* from Upton and Green River, WY and Gascoyne, ND to points in OK. Supporting shippers: Dan-Maur Mud Service, Inc., 10th and Okla., Shawnee, OK 74801; Eagleston's Wholesale Mud & Chemical, 1010 E. Reno, Okla. City, OK 73117.

MC 153484 (Sub-5–1TA), filed January 8, 1981. Applicant: JACK C. GRANT d.b.a. VEHICLE DELIVERY SERVICE, 1752 Brown Trail, Hurst, TX 76053. Representative: Jack C. Grant (same as above). *Damaged and repossessed motor vehicles (in drive away or tow away condition),* between points in TX, AR, LA, OK, and NM, on the one hand, and on the other, points in the U.S. Supporting shippers: General Motors Acceptance Corporation, 740 California Parkway, Ft. Worth, TX 76113; General Motors Acceptance Corporation, 1001 W. Euless Blvd., Euless, TX 76039.

MC 153504 (Sub-5–1TA), filed January 9, 1981. Applicant: CHRISTENSEN TRANSPORTATION, INC., 416 South Second Street, Pierce, NE 68767. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Contract, irregular: (1) *Oil pump units, parts and accessories,* from Pierce, NE to pts in the US (except AK, HI and NE), and (2) *Materials, supplies and equipment utilized in the manufacture, sale and distribution of the commodities in (1) above,* from pts in the US (except AK, HI and NE) to Pierce, NE, under a continuing contract with Pierce Manufacturing, Inc. Supporting shipper: Pierce Manufacturing, Inc., P.O. Box 375, Pierce, NE 68767.

MC 153510 (Sub-5–1TA), filed January 9, 1981. Applicant: FRY TRUCKING CO., INC., R.R. #2, Granby, MO 64844. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Contract: irregular: *Beef quarters, suspended, and packing house products,* (1) from Kansas City, KS to all points in MO, OK, IL, CA, CO, TN, GA, TX, NE, and AZ and (2) from Joplin, MO to all points in KS, OK, IL, CA, CO, TN, GA, TX, NE, and AZ. Supporting shippers: Jack Polen Beef Co., Inc., 28 N. 2nd, Kansas City, KS 66118 and Polen & Maughmer, Inc., P.O. Box 2325, Joplin, MO 64801.

MC 200 (Sub-5–78TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives),* between points in the U.S., restricted to traffic originating at or destined to facilities used by Sunbeam Appliance Company, its affiliates, suppliers, or vendors. Supporting shipper: Sunbeam Appliance Co., 5400 W. Roosevelt Road, Chicago, IL 60650.

MC 200 (Sub-5–79TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives),* between points in the U.S., Restricted to traffic originating at or destined to facilities used by Rhone-Poulenc, Inc., its affiliates, suppliers, or vendors. Supporting shipper: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.

MC 200 (Sub-5–80TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives),* between points in Henderson County, KY, on the one hand, and, on the other, points in CA, CO, CT, DC, DE, IA, IL, IN, KS, KY, MA, MD, MI, MO, NE, NJ, NY, OH, OK, PA, RI, TX, VA, and WV, restricted to traffic originating at or destined to facilities used by Anaconda Aluminum Co., its affiliates, suppliers, or vendors. Supporting shipper: Anaconda Aluminum Co., 2700 First National Tower, P.O. Box 32860, Louisville, KY 40232.

MC 200 (Sub-5–81TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Non exempt food or kindred products (STCC code 20),* between points in the U.S., restricted to traffic originating at or destined to facilities used by PVO International, Inc., its affiliates, suppliers, or vendors. Supporting shipper: PVO International, Inc., 3400 N. Wharf St., St. Louis, MO 63147.

MC 200 (Sub-5–82TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A and B explosives),* between points in the U.S., restricted to traffic originating at or destined to facilities used by Purex Corp., its affiliates, suppliers, or vendors. Supporting shipper: Purex Corporation, 24600 S. Main St., P.O. Box 6200, Carson, CA 90749.

MC 200 (Sub-5–83TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A and B explosives),* between points in the U.S., restricted to traffic originating at or destined to facilities used by Shaklee Corp., its affiliates, suppliers, or vendors. Supporting shipper: Shaklee Corporation, 1900 Powell St., Emeryville, CA 94608.

MC 200 (Sub-5–84TA), filed January 12, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Hides,* between Ft. Wayne, IN, on the one hand, and, on the other, Laredo, TX. Restricted to traffic originating at or destined to facilities used by A. J. Hollander & Co., Inc., its affiliates, suppliers, or vendors. Supporting shipper: A. J. Hollander & Co., Inc., 5 Hanover Square, NYC, NY 10004.

MC 5623 (Sub-5–2TA), filed January 12, 1981. Applicant: ARROW TRUCKING CO., P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. (1) *Machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products,* (2) *machinery, materials, equipment, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof (except in connection with main or trunk pipelines),* (3) *earth drilling machinery and equipment,* and (4) *machinery, equipment, materials, supplies, and pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment,* (b) *the completion of holes or wells drilled,* (c) *the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells,* between points in AZ, CA, NV, OR, and WA, on the one hand, and, on the other, points in CO, KS, LA, MT, NM, ND, OK, TX, and WY. Supporting shippers: There are 15 supporting shippers.

MC 30844 (Sub-5–42TA), filed January 12, 1981. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 4616 East 67th Street, Tulsa, OK 74121. Representative: Robert Kroblin, P.O. Box 21222, Tulsa, OK 74121. *Direct fastening, drilling and anchoring, pneumatic fastening systems.* Between points in the U.S. Supporting shipper: Hilti Industries, Inc., P.O. Box 21148, Tulsa, OK 74121.

MC 52460 (Sub-5–25TA), filed January 12, 1981. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga, 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. *(1) Adhesives, Cements, Tires, Tread Rubber, Tubes, and Supplies used in the tire recapping industry. (2) Synthetic Rubber.* (1) Between the facilities of Bandag, Inc. located at or near Chino, CA Griffin, GA, Muscatine, IA, Oxford, NC, and Abilene, TX (2) From Baton Rouge, LA, and Port Neches, TX, to the facilities of Bandag, Inc. located at or near Chino, CA, Griffin, GA, Muscatine, IA, Oxford, NC, and Abilene, TX Supporting shipper: Bandag, Inc., Bandag World Headquarters, Muscatine, IA 52761.

MC 52460 (Sub-5–26TA), filed January 12, 1981. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga, 1420 W. 35th St., P.O. Box 9637, Tulsa, OK

74107. *Paper, Paper Products, and Dry Ink, except in bulk.* Between Lawton, OK and points in CO, FL, GA, and MO. Supporting shipper: Ansley Paper Co., 2 "C" Ave., Lawton, OK 73501.

MC 52589 (Sub-5–1TA), filed January 12, 1981. Applicant: BLUE BIRD TRANSFER & STORAGE CO., P.O. Box 854, Clinton, IA 52732. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *(1) ventilators and plastic articles, and (2) aluminum plate or sheet, fiberboard or paperboard boxes, and plastic articles,* (1) from Clinton, IA, to points in IL, IN, KY, MI, MN, MO, OH, and WI; and (2) from IL, IN, KY, MI, MN, MO, OH, and WI, to Clinton, IA. Supporting shipper: Air Vent, Inc., 1710 South 21st Street, Clinton, IA 52732.

MC 99427 (Sub-5–8TA), filed January 12, 1981. Applicant: ARIZONA TANK LINES, INC., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Liquid feed ingredients,* from Los Angeles, CA to points in AZ. Supporting shipper: Cargill, Inc., P.O. Box 9300/Dept 29, Minneapolis, MN 55440.

MC 107496 (Sub-5–52TA), filed January 12, 1981. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Agriculture chemicals, in bulk,* from St. Rose, LA to Fremont, NE. Supporting shipper: Ciba-Geigy Corporation, 444 Saw Mill River Road, Ardsley, NY 10502.

MC 112713 (Sub-5–26TA), filed January 12, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. Common: Regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving Holdrege, NE, as an off-route point in connection with carrier's otherwise authorized operations. Applicant intends to tack and interline. Supporting shippers: Walco International, W Highway 6 and 34, Holdrege, NE 68949; Allmand Brothers, Inc., W Highway 23, Holdrege, NE 68949.

MC 112713 (Sub-5–27TA), filed January 12, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. *Cast iron pipe, pipe fittings and related articles; plastic pipe, pipe fittings and related articles,* from Charlotte and Bakers, NC, to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Charlotte Pipe & Foundry Co., P.O. Box 4430, Charlotte, NC 28204.

MC 112713 (Sub-5–28TA), filed January 12, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. Common: Regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving Palestine, TX, as an off-route point in connection with carrier's otherwise authorized operations. Applicant intends to tack and interline. Supporting shipper: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712.

MC 117119 (Sub-5–48TA), filed January 12, 1981. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the Report in Descriptions on Motor Carrier Certificates, 61 M.C.C. 209 & 766 (except hides and commodities in bulk)* from the facilities of Iowa Beef Processors, Inc., at or near Wallula, WA to points in the States of CA, NV, and AZ. Supporting shipper(s): Iowa Beef Processors, Inc., P.O. Box 515, Dakota City, NE 68731.

MC 117119 (Sub-5–49TA), filed January 12, 1981. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Caulking compound* from (a) St. Louis, MO to La Mirada, CA and from (b) St. Louis, MO to Trenton, NJ. Supporting shipper(s): Thiokol Corporation/Specialty Chemicals Division, P.O. Box 8296, Trenton, NJ 08650.

MC 119345 (Sub-5–1TA); filed January 12, 1981. Applicant: CARRY TRUCKING, INC., Box 265, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main, Osborne, KS 674373. *Meat and packing house products,* from Downs, KS, points and places in the state of CA. Supporting shipper: Pork Packers International, Inc., Box 158, Downs, KS 67437.

MC 121658 (Sub-5–9TA), filed January 12, 1981. Applicant: STEVE D. THOMPSON TRUCKING, INC., 710 Prairie St., Winnsboro, LA 71295. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Common regular general commodities (except household goods as defined by the Commission and classes A and B explosives)* serving points in Ascension, Assumption, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St., Bernard, St. Charles, St. Helena, St. James, St., John the Baptist , St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana Parishes, LA as off-route points in connection with applicant's authorized regular route operations. Supporting shippers: There are 109 supporting shippers.

Note.—Applicant intends to interline and tack.

MC 125535 (Sub-5–5TA), filed January 12, 1981. Applicant: NATIONAL SERVICE LINES INC. OF NEW JERSEY, 2275 Schuetz Road, Greve Couer, MO 63141. Representative: (same as applicant). Contract; Irregular. *(1) Paper and paper products and (2) materials, equipment and supplies used in the manufacture and distribution of commodities in (1) above (except commodities in bulk in tank vehicles),* between Albany, NY on the one hand: and on the other points in the U.S. in and east of ND, SD, NE, KS, OK, TX; between Carthage, Glens Falls and Syracuse, NY on the one hand and on the other points in AR, FL, GA, IA, KS, LA, ME, MN, MS, OK, SD, TX, and VT. Supporting shipper: Crown Zellerbach Corporation, 1 River Street, Glens Falls, NY 12801.

MC 126822 (Sub-5–43 TA) filed January 12, 1981. Applicant WESTPORT TRUCKING CO., 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Metals and metal products* between points in the U.S., restricted to shipment from, to or between the facilities of S–G Metals Industries, Inc. Supporting shipper: S–G Metals Industries, Inc., 2nd and Riverside, Kansas City, KS.

MC 126822 (Sub-5–44TA), filed January 12, 1981. Applicant: WESTPORT TRUCKING CO., 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *General commodities (except household goods as defined by the Commission and Class A and B explosives)* between points in the U.S., restricted to shipments from, to, or between the facilities of Western Publishing Company, Inc., Supporting

shipper: Western Publishing Company, Inc., 1220 Mound Avenue, Racine, WI 53404.

MC 126822 (Sub-5–45TA), filed January 12, 1981. Applicant: WESTPORT TRUCKING CO., 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Iron and steel angles and channels, particle board, and shelving, and equipment, materials and supplies used in the installation and assembly thereof (except commodities in bulk in tank vehicles)* from Hannibal, MO, Weirton, WV, and Monrovia, CA, on the one hand, and points in ths U.S., on the other, restricted to traffic originating at or destined to the facilities of New Idria Distribution, a subsidiary of Ft. Steuben Material Products. Supporting shipper: New Idria Distribution, Subsidiary of Ft. Steuben Material Products, No. 3 Industrial Loop Drive, Hannibal, MO 63401.

MC 128988 (Sub-5–9TA), filed January 12, 1981. Applicant: JO/KEL, INC., 15580 South 169 Highway, Oalthe, KS 66061. Representative: John T. Pruitt (same as applicant). Contract: Irregular. *Primary metal products and fabricated metal products—STCC 33 and 34* between points in the U.S., restricted to the transportation of shipments from, to, or between the facilities of the Earle M. Jorgensen Company. Supporting shipper: Earle M. Jorgensen Company, P.O. Box 24026, Seattle, WA 98124.

MC 134134 (Sub-5–10TA), filed January 12, 1981. Applicant: MAINLINER MOTOR EXPRESS, 4204 Dahlman Road, P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Alcoholic beverages (except in bulk),* from Brooklyn and Hammondsport, NY; Jersey City, NJ; Relay and Dundalk, MD and points in their respective commercial zones to the facilities of Federated Distributors, Inc., at or near Chicago, IL. Supporting shipper: Federated Distributors, Inc., 4130 South Morgan, Chicago, IL 60609.

MC 134282 (Sub-5–3TA), filed January 12, 1981. Applicant: ENNIS TRANSPORTATION CO., INC., a Texas Corporation, P.O. Drawer 776, Ennis, Texas 75119. Representative: William D. White, Jr., 4200 Republic National Bank Tower, Dallas, Texas 75201, 214/742–1021. *Flat glass;* between Navarro County, TX, on the one hand, and, on the other, points in AR, CO, KS, LA, MS, MO, NM, OK and TN. Supporting shipper: Guardian Industries, Corp., P.O. Box 10001, Corsicana, TX 75110.

MC 134405 (Sub-5–15TA), filed January 12, 1981. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Fuel oil,* from Ardmore, OK to points in Harris County, TX. Supporting shipper(s): National Petroleum Sales, Inc., Suite 509, 3105 East Shelly Drive, Tulsa, OK 74105.

MC 143594 (Sub-5–8TA), filed January 12, 1981. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Commodities as are dealt in or used by manufacturers or distributors of dispersing agents* between points in the U.S. Supporting shipper: Armak Pioneer Chemical Division, Route #73, Box 237, Maple Shade, NJ 08052.

MC 145441 (Sub-5–39TA), filed January 12, 1981. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Non-exempt foods or kindred products, (except in bulk),* between the facilities utilized by Lamb-Weston on the one hand, and, on the other, all customer destinations located at points in the U.S. Supporting shipper: Lamb-Weston, Inc., 6600 S. W. Hampton Street, P.O. Box 23517, Portland, OR 97223.

MC 145441 (Sub-R–5–40TA), filed January 12, 1981. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Foodstuffs, Dry and Frozen, (except commodities in bulk).* From the plant sites and storage facilities utilized by Stilwell Foods in OK to points in the US in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Stilwell Foods, P.O. Box 432, Stilwell, OK 74960.

MC 147196 (Sub-5–18TA), filed January 12, 1981. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Donald A. Larousse, P.O. Box 50262, New Orleans, LA 70150. Contract: Irregular. *Commercial Laundry Tumblers, Machines and equipment and parts thereof, Ironers, Irons and related articles* between Jefferson County, KY on the one hand, and, on the other, the 48 states under a continuing contract or contracts with W. M. Cissell Manufacturing Company, Louisville, KY. Supporting shipper: W. M. Cissell Manufacturing Company, 631 South First Street, Louisville, KY.

MC 148107 (Sub-5–2TA), filed January 12, 1981. Applicant: JESSE J. MESA d./b./a. J. J. MESA TRUCKING CO., 1500 S. Zarzamora St., San Antonio, TX 78207. Representative: Ronald Mercier (same address). (1) *Tile* between TX and AZ, CA, CO, NM, OK, UT, OR, ID and WA also in reverse direction; (2) *Materials, equipment and supplies used in the manufacture, sale, or distribution of tile (except in bulk).* Supporting shipper: Aztec Ceramics Crop., 4735 Emil Road, San Antonio, TX 78219

MC 149026 (Sub-5–20TA), filed January 12, 1981. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Glass, glassware, glass articles, equipment, materials and supplies used in the manufacture, distribution and assembly of the above named articles,* between Laredo, TX, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Riekes Crisa Corporation; 1600 Justo Penn; P.O. Box 2489, Laredo, TX 78041. Licensed Custom House Broker; P.O. Box 1434; Laredo, TX 78040.

MC 149026 (Sub-5–21TA), filed January 12, 1981. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Store, hotel and restaurant equipment, fixtures, merchandise and supplies,* between the facilities of Air System Equipment, Inc., at or near Fort Smith, AR, on the one hand, and, on the other, points in the United States (except AK & HI). Supporting shipper: Air Systems Equipment, Inc., 501 Wheeler Ave., Fort Smith, AR 72902.

MC 150425 (Sub-5–12TA), filed January 12, 1981. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Chemicals, toilet preparations, shampoo, soap, and such commodities as are dealt in by department, grocery and hardware stores (except foodstuffs, meats and commodities in bulk) and materials and supplies used in the manufacture of the commodities above (except commodities in bulk)* between the facilities of American Cyanamid Co., at or near Pearl, MS on the one hand, and, on the other, points in CT, GA, IL, KS, MA, MI, MO, NJ, OH, PA, TN and TX. Supporting shipper: American Cyanamid Co., Wayne, NJ 07470.

MC 153548 (Sub-5–1TA), filed January 12, 1981. Applicant: CECIL GODDARD, 515 Golf Road, Webb City, MO 64870. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. *Contract* irregular *industrial scales and items used in the manufacture* between Jasper County, MO on the one hand and

points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI on the other hand. Supporting shipper: Cardinal Scale Manufacturing Co., 203 E. Daugherty, Webb City, MO 64870.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-2161 Filed 1-21-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-69]

Certain Airtight Cast-Iron Stoves; Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to 21 respondents and issuance of consent orders.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has approved and issued consent orders in the above-referenced investigation, thereby terminating the investigation as to 21 respondents: Abundant Life Farm; White Mountain, Inc.; Dutchwest India, Inc.; International Foundries, Inc.; Lou Ehrlich, Inc.; Worldwide Distributors, Inc.; Himark Enterprises, Inc.; Prebilt Corporation; Futura Energy Products, Inc. (formerly Blaze of California, Inc.); Mr. Bar-B-Q, Inc.; Basco, Inc.; Lechmere Tire and Sales Co.; Sutherland Lumber Co.; Hearth Craft, Inc.; Harbor Sales Co.; Homestead Products; Pay 'N Pak Stores, Inc.; Central Hardware; Belknap, Inc.; Omni Trading Co.; and Ranch-Rite, Inc.

SUPPLEMENTARY INFORMATION: In connection with a complaint filed on May 23, 1979, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) of alleged unfair acts and methods of competition in the importation into or sale in the United States of certain airtight cast-iron stoves, the complainants, the Commission investigative attorney, and 21 respondents entered into consent order agreements. Complainants were Aksjelskapet Jotul, a Norwegian company, and Kristia Associates, a Maine corporation. In a notice of investigation published in the **Federal Register** on July 12, 1979 (44 FR 40732), the Commission stated that the investigation was being undertaken to determine whether respondents' stoves were infringing Jotul's common law trademarks, infringing Jotul's registered U.S. trademarks, being passed off as Jotul products, or being deceptively advertised and marketed.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, U.S. International Trade Commission, 701 E St. NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley Esq., Office of the General Counsel, U.S. International Trade Commisssion, telephone 202-523-0359.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 12, 1981.

[FR Doc. 81-2254 Filed 1-21-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-69]

Certain Airtight Cast-Iron Stoves; Issuance of Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order and cease and desist orders.

SUMMARY: On January 12, 1981, the Commission issued its Action and Order, and Opinion in the above-captioned investigation. The Commission ordered that airtight cast-iron wood-burning stoves which are visually similar to stoves made by Jotul of Norway be excluded from entry into the United States and that respondents Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co. cease and desist from violating section 337 in ways specified in the orders.

SUPPLEMENTARY INFORMATION: This investigation, under section 337 of the Tariff Act of 1930, was instituted by notice published in the **Federal Register** on July 12, 1979 (44 FR 40732) following receipt of a complaint by Jotul of Norway and Kristia Associates of Portland, Maine. In that notice, the Commission ordered that an investigation be instituted under section 337 to determine whether unfair methods of competition and unfair act exist in the importation or sale in the United States of certain airtight cast-iron wood- and coal-burning stoves. The notice stated that the investigation was being undertaken to determine whether respondents' stoves were infringing Jotul's common law trademarks, being passed off as Jotul's products, infringing Jotul's registered U.S. trademarks, or being deceptively advertised and marketed. The complaint alleged that the effect of these acts was to injure an industry, Kristia Associates (now Jotul USA, Inc.) and the Jotul stove dealers, efficiently and economically operated in the United States, or to restrain trade and commerce in the United States.

Fourteen foreign and eleven domestic firms were named respondents in the original notice of investigation. On October 5, 1979, twenty-six additional firms were added as respondents. On October 16, 1979, one additional foreign firm was added as a respondent. During the course of the investigation, four firms were terminated as respondents upon proof that they had ceased all involvement in the stove business. The investigation has been terminated as to twenty-five other respondents that have executed consent order agreements or settlement agreements. The remaining respondents failed to appear and were found by the administrative law judge to be in default. The Commission's Action and Order, and Opinion issued on January 12, 1981, is concerned with those defaulting respondents.

The Commission's Action and Order, and the Commission Opinion in support thereof is available in the office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0359.

By order of the Commission.

Issued: January 13, 1981.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-2252 Filed 1-21-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-89]

Certain Apparatus for the Continuous Production of Copper Rod; Denial of Motions Requesting Changes in Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Denial of request for issuance of temporary cease and desist order and denial of request for entry of goods without bond.

SUPPLEMENTARY INFORMATION: On December 2, 1980, Southwire Company, complainant in the above-captioned investigation, filed a petition for additional preliminary relief (motion 89–23) with the Commission. Southwire requested that the Commission issue a temporary cease and desist order prohibiting the Krupp and Phelps Dodge respondents from constructing and starting up the rolling mill in the Phleps Dodge facility in Norwich, Connecticut. On December 12, 1980, Krupp filed an answer to Southwire's motion and also asked for a modification of the existing temporary exclusion order based upon a redesign of the rolling mill (motion 89–24). The Phelps Dodge respondents supported the petition of Krupp on the two motions. The Commission investigative attorney supported the position of Southwire on the two motions. On January 9, 1980, the Commission vote to deny both motions.

Copies of the Commission's Action and Order and other public documents are available in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR INFORMATION CONTACT: Jeffrey Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0359.

By order of the Commission.

Issued: January 12, 1981.

Kenneth R. Mason,

Secretary

[FR Doc. 81–2255 Filed 1–21–81; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–88]

Certain Spring Assemblies and Components Thereof, and Methods of Their Manufacture

Notice

Notice is hereby given that a prehearing conference previously scheduled for January 16, 1981 (45 FR 81688, December 11, 1980) will be held at 9 a.m. on February 2, 1981, immediately prior to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: January 9, 1981.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 81–2256 Filed 1–21–81; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–82]

Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof; Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of oral arguments and briefing for investigation No. 337–TA–82, Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation into the United States and sale of the headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof, which are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

COMMISSION HEARING: The Commission will hold a public hearing on February 24, 1981, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period, in the event that the Commission determines that there is a violation of section 337. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties. The procedure for each portion of the hearing follows.

ORAL ARGUMENTS: Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. Such arguments will be limited to 30 minutes. Each party or interested agency may reserve 10 minutes of its allotted time for rebuttal. The oral arguments will be held in the following order: complainant, respondents, interested agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, interested agencies, and the Commission investigative attorney.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States or (2) an order which could result in the respondents being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

If the Commission concludes that a violation of section 337 has occurred and orders some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

Following the oral arguments on the presiding officer's recommendation, parties to the investigation, interested agencies, public-interest groups, or any interested members of the public may make oral presentations on the issues of

relief, bonding, and the public interest. Such presentations will be limited to 15 minutes. Participants will be given an additional 5 minutes for closing arguments after all presentations have been concluded. The Commission investigative attorney will be allotted the full time available to a party. Oral presentations on relief, bonding, and the public interest will be heard in the same order as oral arguments on the recommended determination.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation, interested agencies, and the Commission investigative attorney are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. Such briefs must be filed not later than the close of business on February 17, 1981. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by Feburary 17, 1981.

ADDITIONAL INFORMATION: The original copy and 19 true copies of all briefs and written comments must be filed with the Office of the Secretary not later than February 17, 1981. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidantial written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** of April 8, 1980 (45 FR 23832).

FOR FURTHER INFORMATION CONTACT: Phyllis N. Smithey, Esq., Office of the General Counsel, Room 224, U.S. International Trade Commission, telephone 202-523-0321.

By order of the Commission.

Issued: January 12, 1981.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-2251 Filed 1-21-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-95]

Certain Surface Grinding Machines and Literature for the Promotion Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Brown and Sharpe Mfg. Co., Precision Park, North Kingstown, R.I. 02852. The complaint alleges unfair methods of competition and unfair acts in the importation of certain surface grinding machines and literature for the promotion thereof into United States, or in their sale, by reason of copyright and trademark infringement, palming off, reverse palming off, false designation of origin, trade libel, and misappropriation of trade dress and trade name, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, during the investigation, a temporary exclusion of the imports in question be ordered and that, after a full investigation, a permanent exclusion order and cease and desist order be issued by the Commission.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on January 14, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain surface grinding machines and literature for the promotion thereof into the United States, or in their sale, by reason of copyright and trademark infringement, palming off, reverse palming off, false designation of origin, trade dress and trade name, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is

Brown & Sharpe Mfg. Co., Precision Park, North Kingstown, R.I. 02852.

(b) The respondents are the following companies allegedly engaged in the unlawful importation of such articles into the United States, or in their sale, and are parties upon which the complaint is to be served:

Lian Feng Machine Co., 93 Chung Shan Road, Fengyuan/Taiwan, 420 R.O.C.
Jet Equipment and Tool, 1901 Jefferson Avenue, Tacoma, WA. 98402.
Ramco Machinery Sales, 16128 Ledwell Street, Van Nuys, CA. 91406.
Jones and Henry Tool Co., 2910 South Santa Fe Avenue, Los Angeles, CA. 90058.
Langford Machinery, 1516 South Grand Avenue, Santa Ana, California 92705.
Performance Machine Tool, 101 Timberline Court, Danville, CA. 94526.
Cactus State Machinery, 2737 West McDowell, Phoenix, AZ. 85009.
Sigma Machinery Inc., 8230 Haskell Avenue, Van Nuys, CA. 91406.
Select Machine Tool and Supply Co., 7606 South Ramis Street, Bellgarden, CA. 90202.
Cassiere Machinery Company, 145 Crary Street, Providence, R.I. 02903.
KBC Machinery, 6300 Eighteen Mile Road, Sterling Heights, MI. 48077.
Ralmike's Tool-A-Rama, 4405 South Clinton Avenue, South Plainfield, N.J. 07080.
Bob's Machinery Sales, 1221 East 9 Mile Road, Ferndale, MI. 48220.

Although listed as a proposed respondent in the complaint, H. Leach Machinery Company has not been named a party respondent in this investigation because that firm has entered into a settlement agreement with the complainant which provides that Leach will cease and desist from the importation and sale of surface grinding machines manufactured by Lian Feng.

(c) For the purpose of the investigation so instituted, Louis S. Mastriani, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigation attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative

Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION:

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT:

Louis S. Mastriani, Commission investigative attorney, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0489.

Issued: January 16, 1981.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81–2250 Filed 1–21–81; 8:45 am]

BILLING CODE 7020–02–M

[332–123]

Probable Economic Effect on Domestic Industries of the Designation of the Peoples Republic of China as a Beneficiary Developing Country for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the President as transmitted through the U.S. Trade Representative (USTR) for the purpose of providing the USTR with advice as to the probable economic effect on domestic industries producing articles like or directly competitive with GSP eligible articles, and on consumers, or designating the Peoples Republic of China (PRC) as a beneficiary developing country for purposes of the GSP.

EFFECTIVE DATE: January 12, 1981.

FOR FURTHER INFORMATION CONTACT:

Agricultural and forest products, Mr. Edward Furlow, 202–724–0068.
Textiles and apparel, Mr. Reuben Schwartz, 202–523–0114.
Chemicals, Dr. Aimison Jonnard, 202–523–0423.
Minerals and metals, Mr. Larry Brookhart, 202–523–0275
Machinery and equipment, Mr. Aaron Chesser, 202–523–0353.
General manufactures, Mr. Walter Trezevant, 202–724–1719.

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 205–523–0487.

SUPPLEMENTAL INFORMATION:

Background

In the Agreement on Trade Relations between the United States of America and the Peoples Republic of China (PRC) signed on July 7, 1979, the United States recognized the PRC as a developing country. The PRC has indicated its desire to be designated as a beneficiary developing country under the U.S. Generalized System of Preferences (GSP) as soon as it fulfills the special conditions applicable to communist countries which are specified in section 502(b)(1) of the Trade Act of 1974 (19 U.S.C. 2462(b)(1)). The PRC has, the USTR has advised, already fulfilled part of those conditions.

The USTR, in his letter received December 22, 1980, requesting the investigation, asked that the Commission's advice specifically identify each GSP eligible article in the Tariff Schedules of the United States for which GSP duty-free imports from the PRC would, in the Commission's judgment, seriously adversely affect a domestic industry, the USTR asked that the Commission's advice be provided not later than July 1, 1981.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t., on April 21, 1981, and continued on April 22 and 23, 1981, as required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, April 16, 1981.

Written submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked 'Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than May 15, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: January 13, 1981.
By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 81–2253 Filed 1–21–81; 8:45 am]

BILLING CODE 7020–02–M

[332–122]

Study of the Economic Impact on the Domestic Jewelry Industry of the Subdivision of Item 740.10 of the Tariff Schedules of the United States for Purposes of the Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: At the request of the Committee on Finance, United States Senate, the Commission has instituted investigation No. 332–122 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of studying the economic

impact on the domestic jewelry industry of the subdivision of item 740.10 of the Tariff Schedules of the United States (TSUS) for purposes of the Generalized System of Preferences. The scheduled subdivision consists of five new TSUS items comparable to the existing 7-digit statistical breaks under TSUS item 740.10.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Bodde, General Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436 (Telephone 202–724–1730).

SUPPLEMENTAL INFORMATION:

Public Hearing

A public hearing in connection with the investigation will be held in the conference room of the Biltmore Hotel, Kennedy Plaza, Providence, RI on February 19, 1981 beginning at 10:00 a.m. All persons shall have the right to appear by counsel or in person, to present information, and to be heard.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 24, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: January 9, 1981.
By order of the Commission:

Kenneth R. Mason,
Secretary.

[FR Doc. 81–2296 Filed 1–21–81; 8:45 am]
BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 926–81]

Designating Stephen J. Wilkinson as the Representative From the Department of Justice on the Administrative Commitee of the Federal Register

By virtue of the authority vested in me by 44 U.S.C. 1506, I hereby designate Stephen J. Wilkinson of the Office of Legal Counsel as the representative of the Department of Justice on the Administrative Committee of the Federal Register.

Order No. 828–79, of April 16, 1979, is revoked.

This order is effective on January 27, 1981.

Dated: January 13, 1981.

Benjamin R. Civiletti,
Attorney General.

[FR Doc. 81–2128 Filed 1–21–81; 8:45 am]
BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to 21 U.S.C. 958(a) and § 1311.42(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 30, 1980, Arenol Chemical Corporation, 40–33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the basic class of controlled substances phenylacetone (drug code 8501).

Any such person registered as a bulk manufacturer of such substances or who has made application therefor may file written comments on or objections to the issuance of the proposed registration, and may file a written request for a hearing on the application in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW, Washington, D.C. 20537, Attention: Federal Register Representative (Room 1203), and must be filed no later than February 23, 1981.

Dated: January 15, 1981.

Peter B. Bensinger,
Administrator.

[FR Doc. 81–2275 Filed 1–21–81; 8:45 am]
BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Publication of Final OJJDP Continuation Funding Policy

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Publication of final OJJDP continuation funding policy.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, proposes to publish in final form, the Continuation Policy for all grants awarded under the authority of the Juvenile Justice and Delinquency Prevention Act.

This announcement does not address OMB Circular A–95 Clearance requirements which are addressed in the specific OJJDP program announcements.

The Federal Catalogue of Domestic Assistance number for Special Emphasis and Technical Assistance is 16.541; the Federal Catalogue of Domestic Assistance number for Allocation to States is 16.540.

For additional information, please contact Mr. Vermont R. McKinney, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, D.C. 20531. Telephone: 202/724–7755. The proposed text is as follows:

RESPONSES TO COMMENTS RECEIVED REGARDING PROPOSED CONTINUATION POLICY

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) received fourteen letters in response to the proposed Continuation Policy for OJJDP Grants. An analysis of comments indicates that almost all responses were supportive of the proposed policy. Responses were received from a variety of public and private non-profit youth serving agencies and many useful suggestions and recommendations were made.

A. Responsiveness to Section 228(a)

Comment

Two comments were received questioning the responsiveness of the proposed policy to Section 228(a) of the Juvenile Justice and Delinquency Prevention Act.

Response

Subsequent to publication of the draft policy the Juvenile Justice Amendments of 1980 were enacted on December 8, 1980 (Pub. L. 96–509). These amendments deleted Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended through 1977. Thus, the Act no longer establishes a continuation funding policy.

Congress never intended that Juvenile Justice Act categorical programs be considered entitlement programs. However, OJJDP believes that Congress did intend, and has not removed the Office's ability to promulgate, a policy permitting long term funding under criteria established by OJJDP.

B. Formula Grants

Comment

One commentator suggested that the following be added to the second sentence under *Formula Grants Program* * * * "the applicant continues to meet identified needs." This commentator also suggested that the last sentence in this Section be deleted as it is inconsistent with first sentence of the same paragraph.

Response

No addition has been made to the second sentence as such wording is superfluous. The last sentence has not been deleted but rather incorporated into the second paragraph. OJJDP does not consider it to be inconsistent to not mandate states to adopt a categorical funding policy but at the same time encourage them to formulate policies that are consistent with that policy. It now reads as follows:

"However, State Councils, with the assistance and advice of the State Advisory Group, are strongly encouraged to formulate specific policy to govern the continuation of carefully chosen and successful action programs and projects funded with formula grant funds, beyond the minimum period of funding established in the state plan that is consistent with the policy established herein as applicable to categorical programs and projects awarded by OJJDP."

C. Institutionalization

Comment

One commentator strongly supports the principle of institutionalization, suggesting that the principle of institutionalization should be emphasized as part of the continuation criteria.

Response

OJJDP supports the principle of institutionalization. Under the *General Continuation Criteria* Section in the policy statement, Criterion No. 4 addresses the principle of institutionalization and reads as follows:

"Where action to obtain funding from other sources for project activities is required by a program announcement or by terms of the grant award, OJJDP will consider the extent to which the grantee has documented efforts to obtain funding from other governmental or private sources and submitted an acceptable plan to continue such efforts over the period of continuation funding."

D. Assumption-of-Cost

Comment

Two respondents support a strong assumption-of-cost policy for JJ programs and suggest that efforts to obtain local funding be emphasized as part of continuation criteria.

Response

The concept of assumption-of-cost implies a limit on the length of Federal funding. Because juvenile justice program and project grantees have traditionally had difficulty in achieving continuity of funding, particularly in obtaining state or local government support when private or Federal government fund sources have ceased to be available, OJJDP does not believe it is desirable to set fund length limitations that apply to all programs and projects.

E. Specificity of Continuation Criteria Language

Comment

Several comments were received suggesting that the Continuation Criteria should be more specific and points should be more clearly enumerated.

Response

Measures of satisfactory performance, evidence of attempts to secure funding, program innovation and other specific criteria will be established in program announcements and cannot be elicited on a generic basis as these matters vary with different program areas.

F. Continuation Criteria and Satisfactory Performance

Comment

One commenter stated that Criterion #5 is beyond the intent of the JJDP Act's general continuation policy in that a criteria that measures "* * * efforts to obtain funding * * *" is not directly related to program evaluation, and if that criterion #5 is retained in the final policy guideline, what is meant by "* * * efforts to obtain funding * * *" should be clearly specified.

Response

The General Continuation Criteria have been separated from elements that will be considered in determining whether a project has met satisfactory performance requirements.

GRANT CONTINUATION POLICY OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP)

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) published for public comment on August 8, 1980) 45 FR 52947) a proposed continuation policy. The proposed policy implemented section 228(a) of the Juvenile Justice and Delinquency Prevention Act, as amended through 1977. Congressional action (the Juvenile Justice amendments of 1980, Pub. L. 96–509, December 8, 1980) has subsequently resulted in the deletion of Section 228(a) in order to clarify that Congressional policy neither establishes a right nor an entitlement to funding of OJJDP categorical fund recipients. The deletion, however, does not preclude OJJDP's adoption of a continuation policy. Therefore, OJJDP, under the general authority to promulgate regulations to implement the Act, Section 201(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is publishing this policy in final form.

The Office of Juvenile Justice and Delinquency Prevention recognizes the historic difficulty juvenile justice program and project grantees have had in achieving continuity of funding, particularly in obtaining state or local government support when private or Federal government fund sources have ceased to be available. OJJDP is interested in addressing the problem by assiting in the institutionalization of carefully chosen and successful programs and projects, in particular, action programs and projects operated by public agencies and private non-profit organizations that result in an improvement of or the direct delivery of services to juveniles.

OJJDP categorical grants are currently awarded under a Project Period System of support in accordance with Instruction I 4040.2, September 14, 1979. Under the Project Period System of funding grants, projects which are intended to receive financial support for more than one year may be programmatically approved for multiple annual budget periods. Support for future budget periods within the project period is subject to specific conditions set forth in the Instruction and the Grant Award Agreement, such as, availability of Congressional appropriations,

compliance with the terms and conditions of the grant award, and the continued best interest of the government. The funding of noncompeting continuation grants (i.e., grants in support of a budget period after the first budget period, but within the approved project period) remains subject to I 4040.2 and the terms of the project period award document.

The policy set forth below applies only to an OJJDP grantee's eligibility for project period extensions (or refunding of single budget period awards) beyond the initial project (or single budget) period, through a competing project extension application. A competing project extension application is the equivalent of an application for continuation funding. Submission dates, contemplated project periods, levels of support, and other detail related to the submission of competing project period extension applications will be announced by OJJDP for each program.

Policy

It is the policy of OJJDP that, subject to the limitations and exclusions noted below, action programs and projects funded through grants awarded under the Juvenile Justice Act will be eligible for continuation funding beyond their initial project period based on the general continuation criteria specified below and any additional criteria for, or limitations on, continuation specified in initial or continuation program announcements issued by the Office of Juvenile Justice and Delinquency Prevention and published in the Federal Register.

Continuation funding eligibility is also conditioned upon any limitations specified in grant award agreements in force at the time the grant expires. Eligible applicants meeting the general continuation criteria will be considered for refunding provided that they have received a satisfactory evaluation as determined under the satisfactory evaluation principles stated herein and in accordance with specific performance measures indicated in an applicable program announcement or the terms and conditions of the grant award.

Projects that are continued will be funded at a level necessary to sustain essential project activities whether below, at, or above prior funding levels as OJJDP determines to be appropriate and necessary to successful continuation.

OJJDP will announce annually in the Federal Register the eligible continuation program areas, the level of funds that will be available, application submission deadlines, and any additional criteria which applicants must meet in order to qualify to receive continuation funding. Subsequent to Fiscal Year 1981 this announcement shall be made during the first quarter of each Fiscal Year. Where fund limitations and program priorities do not permit the funding of all eligible projects within a continuation program, a competitive continuation program will be announced and all eligible applicants will be rated and ranked in accordance with both the general criteria and any additional criteria that have been established for the particular program. Only those applicants receiving the highest scores up to the level of funds available for continuation of the particular program would then receive continuation funding.

This policy does not apply to OJJDP contractors or recipients of funds under cooperative agreements because of the nature of activities carried out under those funding instruments. It also does not apply to sub-recipients (sub-grantees or contractors) of OJJDP grantees, except that where a state criminal justice council or local government is serving as the grantee of categorical grant funds, for administrative purposes, the sub-grantee will be eligible for continuation in accordance with the policies herein.

Program Coverage and Exclusions

The Office of Juvenile Justice and Delinquency Prevention administers five programs under the authority of the Juvenile Justice Act:

1. Special Emphasis Prevention and Treatment
2. National Institute for Juvenile Justice and Delinquency Prevention
3. Concentration of Federal Effort
4. Technical Assistance
5. Formula Grant

Special Emphasis Prevention and Treatment

Under the Special Emphasis Prevention and Treatment Program established in Part B, Subpart II of the Act, Sections 224–225, funds are to be used for the promotion of programs designed to address twelve specific statutory program objectives. Most Special Emphasis programs are action programs intended to result in an improvement of or the direct delivery of services to juveniles. Action programs are those programs designed to employ specific methods and strategies to achieve identified objectives within a specified time frame.

Occasionally, OJJDP will use Special Emphasis funds to support research and development programs in conjunction with the National Institute for Juvenile Justice and Delinquency Prevention. Such programs are designed to test methodology and strategy and refine program approaches for replication if the program is effective. Projects funded under programs designated in advance as research and development programs are not eligible for continuation based on the criteria established under this policy. They will be funded only for the specific period of time needed to demonstrate the efficacy of a particular program approach, i.e., the project period plus any extensions or refunding necessary to complete the project.

National Institute for Juvenile Justice and Delinquency Prevention

The National Institute for Juvenile Justice and Delinquency Prevention, established under Part C of the Act has statutory authority to perform the following functions:

(1) Information collection and dissemination

(2) Research

(3) Program evaluation

(4) Demonstration of innovative techniques and methods for the prevention and treatment of delinquency

(5) Training

(6) Development of standards for juvenile justice and model state legislation.

The functions designated under (1), (2), (3), and (6) above represent discrete or time-limited activities to which the rationale for continuation funding is inapplicable. Where funds for such activities are awarded by the Institute, funding length shall be in accordance with the applicable program announcement and award document. The length of funding for projects funded under programs designated as demonstrations (4) similarly shall be determined by the program announcement and award document and excluded from the continuation policy. Demonstration programs serve a limited purpose and are intended, by the nature of their design, to be funded only for the period of time needed to demonstrate the efficacy of particular innovative techniques and methods which have been identified as having a potential to contribute to the prevention and treatment of delinquency.

Training program and project grants (5) that are funded by the Institute shall be subject to the general continuation policy and criteria set forth herein, where the objective of the training program or project is to provide ongoing training that will result in an improvement of the juvenile justice system or the direct delivery of services to youth.

Concentration of Federal Effort

Funds under this program are used primarily for the support of the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

These funds may also be used to assist operating agencies, to support evaluations and studies of Federal programs and activities, to implement coordinated Federal juvenile delinquency programs, to develop reports, to provide technical assistance at the Federal level, and to enter into joint funding agreements with other Federal agencies.

Because of the administrative nature of most of these activities and the demonstration purpose of coordinated or jointly funded action programs and projects which OJJDP might fund under Concentration of Federal Effort authority, these funds shall not be subject to the continuation policy and criteria specified herein unless specifically stated in a program announcement issued by OJJDP.

Technical Assistance

The purpose of the OJJDP Technical Assistance Program is to assist state and local governments, juvenile courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs. By its nature, technical assistance is a discrete activity performed by a technical assistance provider for identified target recipients over a specific period of time. Therefore, all OJJDP technical assistance grants will be funded only for the period of time specified in the applicable program announcement or award document plus any extensions or refunding necessary to complete the technical assistance activity.

Formula Grant Program

Under the Formula Grant Program established in Part B, Subpart I of the Act, Sections 221–223, LEAA regulations (28 CFR 31.703(1)) require that the State Council establish a minimum project period for each juvenile justice and delinquency prevention program described in the state plan. Projects funded under the program are then entitled to funding for the established project period unless there is a substantial decrease in formula grant funding to the state, the applicant fails to comply with the terms and conditions of the grant award, or fails to receive a satisfactory annual evaluation.

The criteria established herein for continuation funding are not applicable to the formula grant program. However, State Councils, with the assistance and advice of the State Advisory Group, are strongly encouraged to formulate a specific policy to govern the continuation of carefully chosen and successful action programs and projects funded with formula grant funds, beyond the minimum period of funding established in the state plan, that is consistent with the policy established herein as applicable to categorical programs and projects awarded by OJJDP.

Continuation Funding Eligibility Criteria and Standards

Eligible applicants meeting the general continuation criteria will be considered for refunding provided that they have received a satisfactory evaluation as determined under the satisfactory evaluation standards. The general continuation criteria and satisfactory evaluation standards are as follows:

A. *General Continuation Criteria*

The following general criteria will be utilized by OJJDP in making continuation funding determinations for projects initially funded under programs that qualify for continuation consideration under the above OJJDP policy:

(1) The project has proven to be cost effective in meeting the objectives of the program and has significantly contributed to meeting the goals and objectives of the Act and the program priorities established by OJJDP;

(2) The grantee has documented the need for continuation of project activities in order to achieve project goals, outcomes, and objectives;

(3) All outstanding audit exceptions have been cleared;

(4) Where action to obtain funding from other sources for project activities is required by a program announcement or by the terms of the grant award, OJJDP will consider the extent to which the grantee has documented efforts to obtain funding from other governmental or private sources and submitted an acceptable plan to continue such efforts over the period of the continuation funding;

(5) Allocated funds are available for the OJJDP program under which the program and project were funded;

(6) Circumstances indicate that continued funding would be in the best interests of the government;

(7) Where a competitive continuation program is announced by OJJDP, to merit an award of funds, the project's rating is sufficiently high in the established rank order to merit an award from available funds.

B. *Satisfactory Evaluation.*

The following evaluation standards will be used by the OJJDP Administrator to determine whether a program or project has met requirements for a satisfactory evaluation:

(1) Program or project performance has been satisfactory as established by:

(a) Project level monitoring and/or audit of fiscal and program performance which demonstrate that the project has conformed with the time/task plans set forth in the application, with OJJDP reporting requirements, evaluation requirements, and with sound financial procedures, and

(b) Monitoring assessment which demonstrates that the project has conformed with the goals, objectives and procedures set forth in the grant document with the intended degree of implementation as indicated by the coverage of target sites, audiences or clients, with sound program design requirements and program strategies as determined by available research or evaluation data, with program change requirements as determined by management information system and/or evaluation data, and with project outcome (impact) requirements as determined by a management information system and/or evaluation (if intermediate or final project results are expected to materialize by the time of the continuation decision, in accordance with the program design).

It is an OJJDP requirement, that for each project, specific performance measures be set forth in the grant document consistent with the project's goals, objectives and program design;

(2) The project has substantially complied with Federal statutory and guideline requirements and the terms and conditions of the grant award.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 81-2199 Filed 1-21-81; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 81-4]

Reports, Recommendations and Responses; Availability

Pipeline Accident Reports

Brief Format, Issue No. 1, 1980 (NTSB-PAB-80-1).—This publication, released by the National Transportation

Safety Board on January 12, contains briefs of 42 selected pipeline accidents, occurring during the calendar years 1976, 1977, 1978, and 1979. The brief format presents baisc facts, conditions, and probable cause(s) in each instance. Copies of this document may be purchased from the National Technical Information Service, U. S. Department of Commerce, Springfield, Va. 22161.

Aviation Safety Recommendation Letters

After encountering severe thunderstorms while at an altitude of less than 6,000 ft and experiencing a simultaneous loss of power to both engines because of massive water ingestion, last June 12 an Air Wisconsin, Inc., Swearingen SA–226 Metro crashed near Valley, Nebr., killing 13 persons and seriously injuring two others. Following investigation, the Safety Board on January 5 recommended that:

Federal Aviation Administration—

Amend 14 CFR 23.785(f) to require dynamic testing of seats to insure more realistic protection of occupants from serious injury in a minor crash. (Class III, Longer Term Action) (A–75–51) (Reiterated)

Expedite the development and implementation of an aviation weather subsystem for both en route and terminal area environments, which is capable of providing a real-time display of either precipitation or turbulence, or both, and which includes a multiple-intensity classification scheme. Transmit this information to pilots either via the controller as a safety advisory or via an electronic data link. (Class II, Priority Action) (A–77–63) (Reiterated)

Formulate rules and procedures for the timely dissemination by air traffic controllers of all available severe weather information to inbound and outbound flightcrews in the terminal area. (Class II, Priority Action) (A–77–68) (Reiterated)

Initiate research to determine the attenuating effects of various levels of precipitation and icing on airborne radomes of both X- and C-band radar, and disseminate to the aviation community any data derived concerning the limitations of airborne radar in precipitation. (Class II, Priority Action) (A–78–1) (Reiterated)

Undertake an experimental program to analyze and evaluate the technical and operational feasibility of requiring that air traffic control provide separation between aircraft and severe meteorological conditions when the nature and location of the meteorological conditions can be determined. (Class III, Longer Term Action) (A–80–132)

Review the realtionship and duties of ARTCC team supervisors to flow controllers/weather coordinators to insure that the nature of each job function is understood and accomplished. (Class III, Longer Term Action) (A–80–133)

Require that the subject accident report be reviewed by air traffic control specialists and supervisors. (Class III, Longer Term Action) (A–80–134)

Require that flow controllers and supervisory personnel assess the potential effects of hazardous weather on low-altitude en route traffic and use the evaluation to adjust air traffic flow as necessary. (Class II, Priority Action) (A–80–135)

Require that the effect of precipitation-induced attenuation on X-band airborne weather radar be incorporated into airline training programs and that airborne weather radar manufactureres include attenuation data in radar operators handbooks. (Class II, Priority Action) (A–80–136)

Amend 14 CFR 23.807, Eergency Exits, to require all emergency exits on Part 23 air taxi and commuter aircraft with a capacity of 10 or more passenger seats manufactured after a specified date to be installed so that each could be opened from outside the aircraft. (Class III, Longer Term Action) (A–80–137)

Evaluate procedures which govern the transmission of SIGMET's on navaids to determine what additional steps are necessary to provide timely dissemenation, and take necessary corrective measures to insure that they are issued according to the procedures. (Class II, Priority Action) (A–80–138)

National Weather Service

Develop specific criteria for Center Weather Service Units which would govern the issuance of center weather advisories to update or supplement convective SIGMET's. (Class II, Priority Action) (A–80–139)

Require that all severe weather warnings and significant weather radar observations issued by a National Weather Service office expected to affect the airspace of an air traffic control approach control facility be transmitted by that office to the facility by the most expeditious means available. (Class II, Priority Action) (A–80–140)

On the basis of a recent in-flight failure of a main landing gear inboard wheel flange involving a Lockheed L–1011–200 aircraft operated by a foreign carrier, the Safety Board on January 6 recommended that the Federal Aviation Administration:

Issue an immediate Airworthiness Directive to require that operators of L–1011 aircraft at the next tire change or within 20 cycles, whichever is sooner, measure the flange thickness on all P/N 3–1365 wheels with serial number up to 1404 which have been used on aircraft with a gross takeoff weight of 430,000 pounds or more, and include in the Airworthiness Directive a requirement to remove all wheels with outer flange thicknesses of less than 0.490 inch and installed on aircraft operating at gross takeoff weights of 430,000 pounds or more. Further requirements should include at each wheel disassembly of all P/N 3–1365 and P/N 3–133 wheels, an inspection in accordance with procedures which have been evaluated by the FAA and demonstrated by industry experience to be effective in detecting in-service cracking prior to failure. (Class I, Urgent Action) (A–81–1)

Initiate an immediate survey of B.F. Goodrich manufacturing facilities by a Quality Assurance Systems Analysis Review Team or equivalent to assure the manufacturer's compliance with current regulatory requirements governing production certification and specifically the issuance and approval of service bulletins, investigation and reporting of service difficulties, maintenance of appropriate production and inspection records, and coordination of service difficulties with primary airframe manufacturers. (Class I, Urgent Action) (A–81–2)

Require tire, wheel, and airframe manufacturers to publish and disseminate to all operators all engineering data necessary to determine the effect on fatigue life of aircraft wheels by increasing or decreasing tire inflation pressures. (Class I, Urgent Action) (A–81–3)

Establish a program with air carriers, wheel, and airframe manufacturers to determine effective nondestructive inspection techniques for the variety of aircraft and wheel combinations in air carrier service and require operators to implement effective inspection programs. (Class II, Priority Action) (A–81–4)

Expeditiously disseminate any required wheel inspection and service programs to all foreign civil aviation authorities with regulatory responsibilities over operators of U.S.-manufactured aircraft and equipment. (Class I, Urgent Action) (A–81–5)

Responses to Safety Recommendations

Aviation

A–79–62 through –65, from the Federal Aviation Administration, December 30, 1980.—Response is to a Safety Board inquiry of July 9 as to status of implementation of these recommendations, issued as a result of investigation of the December 28, 1978, United Airlines DC–8 accident at Portland, Ore. The Safety Board on January 4 acknowledged FAA's earlier response of last November 23 (44 FR 70243, December 6, 1979).

Regarding recommendation A–79–62, FAA reported that as an alternative to issuance of an Air Carrier Maintenance Bulletin, it had directed a letter on September 11, 1980, to all Regional Flight Standards Division Chiefs clarifying the content of the regulations regarding the conspicuity of passenger emergency exit signs when exits are open and the requirement for exit signs to be relocated in aircraft which have signs affixed on the exit closure.

With respect to recommendation A–79–63, FAA concurs in expediting research on a means to most effectively restrain infants and small children during inflight upsets and survivable crash landings, and reports issuance on October 7, 1980, of a technical standard order prescribing the minimum performance standard that child restraint systems must meet.

FAA reports with reference to A–79–64 that issuance of the notice of

proposed rulemaking regarding a power source for public address systems independent of the main aircraft power supply in passenger-carrying aircraft is expected during December 1980.

Regarding A–79–65, FAA concurs and reports that a final rule requiring domestic and flag air carriers to maintain passenger lists with the proviso that both ticketed and nonticketed passengers' names be provided was published June 19, 1980.

A companion recommendation, No. A–79–66 concerning special training in flight resource management, was designated "Closed—Acceptable Action" by the Board's letter of January 4 after advice by FAA of issuance of Operations Bulletin No. 8–79–3.

Marine

M–80–99, from the U.S. Coast Guard, January 8, 1981.—Response is to a recommendation issued November 5 following investigation of the collision of tankship M/V PINA and towboat M/V MR. PETE and its tow on the Mississippi River, December 19, 1979. (See 45 FR 75028, November 13, 1980.)

USCG concurs with the recommendation and reports that shortly after the collision the Captain of the Port of New Orleans instituted a program of night-time boardings of towboats and barges. USCG personnel were instructed to check warning lights and operating procedures. Numerous citations of violations have resulted. When USCG discovers a towboat without a licensed operator, that operation is terminated until a licensed operator is brought aboard.

Railroad

R–79–4, from the Federal Railroad Administration, December 24, 1980.—Letter is in response to the Safety Board's comments of November 3 concerning FRA's previous response of last June 12 (45 FR 48002, July 17, 1980). The Board advised that it considered unacceptable FRA's action in response to its recommendation to prohibit the use of narcotics and intoxicants by employees for a specified period prior to their reporting for duty and while they are on duty. The Board requested FRA's reconsideration.

In response, FRA reiterates its earlier opinion that a Federal regulation prohibiting the use of alcohol and drugs would be costly, cumbersome, and ineffective. FRA also indicates that its efforts to enlist management and union support to voluntarily resolve the alcohol problem are extending to issues raised by the Board in its November 3 letter (e.g., the ineffectiveness of Rule G and the threat to safety from the nonproblem drinker).

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

January 16, 1981.

[FR Doc. 81-2322 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-58-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

January 14, 1981.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;
Whether small businesses or organizations are affected;
A description of the Federal budget functional category that covers the information collection;
An estimate of the number of responses;
An estimate of the total number of hours needed to fill out the form;
An estimate of the cost to the Federal Government;
The number of forms in the request for approval;
The name and telephone number of the person or office responsible for OMB review; and
An abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—202–447–6201

Extensions (Burden Change)

Economics and Statistics Service
Maple Syrup Inquiries
Semiannually
Farms
Maple Syrup Producers
Small Businesses or Organizations
Agricultural Research and Services; 2,600 responses, 442 hours, $22,600 Federal Cost, 1 form
Off. of Federal Statistical Policy & Standard, 202–673–7974
Provides data to estimate maple syrup production and disposition in 9 States. Estimates used by maple processor and blenders plus related businesses for price determinations, labor requirements and other production and marketing decisions.

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—703–697–1195

Extensions (No Change)

Department of the Air Force
Industrial Construction Progress Reports
113–2506
Monthly
Businesses or Other Institutions
Defense Contractors That Have Government-Owned Plants
Department of Defense—Military, 156 Responses, 530 hours, 1 form
Edward C. Springer, 202–395–4614
Information reported is required to apprise AF civil (industrial) engineers as to the current progress on industrial construction projects. Initial report provides data pertinent to pending construction projects with monthly progress reports indicating changes, problems general progress or lack of progress.

Department of the Air Force
Industrial Facilities Program (Applications by Contractors or Use)
AFP116
Annually
Businesses or Other Institutions
Defense Contractors Who Use Government-Owned Facilities Small Businesses or Organizations
Department of Defense-Military, 180 responses, 3,600 hours; 0 form
Edward C. Springer, 202–395–4814
Prepared by Air Force contractors when requesting government-furnished industrial facilities to fulfill their current or proposed contractual facility source capable of performing requirements under their sponsorship. Contractor provides information on type of proposed facilities, project, identification of program being supported, types of facilities proposed and cost.

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—202–426–5030

New

Office of Special Education and Rehabilitative Services
Annual Vocational Rehabilitation Program/Cost Report
RSA–2
Annually
State or Local Governments
State VA Agencies
SIC: 425
Elementary, Secondary, and Vocational Education, 84 responses, 2,142 hours; $10,000 Federal Cost, 1 form
Laverne V. Collins, 202–395–6880
Data reported will be used to set rehabilitation goals for States, to determine the average cost of a large number of services, to determine budget needs, to provide base to analyze and respond to HEW and GAC audits, and to provide base for planning the distribution of Federal funds for training and manpower development.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montie—202–633–9464

New

Energy Information Administration
Crude Oil and Petroleum Product Ownership Report
EIA–456B
Monthly
Businesses or Other Institutions
Petroleum Refineries & Independent Bulk Terminal Operators
SIC: 291 517
Energy Information, Policy, and Regulation, 768 responses, 20,400 hours; $38,000 Federal Cost, 1 form
Jefferson B. Hill, 202–395–7340
The information will be used by the Department of Energy monitoring the operations and supply obligations of refiners and bulk terminals.

Revisions

Energy Information Administration
Natural Gas Liquids Operations Report
EIA–64
Monthly
Businesses or Other Institutions
Natural Gas Processing Plants, Fractionators & Natural Gas
SIC: 492
Unassigned, 10,200 responses, 20,400 hours; $150,000 Federal Cost, 1 form
Jefferson B. Hill, 202–395–7340
Data are requested pursuant to the Federal Energy Administration Act of 1974 (P.L. 93–275). Information will be used to establish a data bank on the production, receipts, deliveries and stocks of natural gas liquids in the U.S.

• Energy Information Administration
International Energy Agency Emergency Supply Report
EIA–142
Monthly
Businesses or other institutions
Imptr of crude petro, natu gas liq, feedstks, & petroleum
SIC: 517
Energy information, policy, and regulation, 648 responses, 1,944 hours, $1,675 Federal cost, 1 form
Jefferson B. Hill, 202–395–7340
The form will be used to collect information on imports and stocks at sea of crude petroleum, natural gas liquids, feedstocks, and petroleum products for meeting reporting requirements to the international energy agency.
Extensions (no change).

• Economic Regulatory Administration
Certification of Requirements for Use Under Allocation Level not Subject to an Allocation Fraction
ERA–100
Annually
Businesses or other institutions
Wholesale purchaser-resellers of petroleum products
Energy information, policy, and regulation, 20,000 responses, 20,000 hours, $1,000 Federal cost, 1 form
Jefferson B. Hill, 202–395–7340
To certify requirements; end users, wholesale-consumer, recertify intermediate supplier requirement, revised certification, not to allocation fraction, 211. 210 mandatory petroleum allocation regs.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—202–389–2146

New

• Asset Information Collection Nonrecurring
Individuals or households
Vet. appli. who are nonserv.-conn., under the age 65, etc.
Hosptial and medical care for veterans, 0 responses, 0 hours, $10,000 Federal cost, 1 form
Robert Neal, 395–6880
Information is needed to develop policy and procedures for the implementation of section 401, P.L. 96–330 pertaining to an individual's inability to defray the expenses of necessary medical treatment. It is estimated that a savings of approximately $109 million may be realized in FY 1981 by instituting a

program to look behind an applicant's statement of inability to pay.

NATIONAL SCIENCE FOUNDATION

Agency Clearance Officer—Herman Fleming—202–357–7811

Revisions

• 1981 Survey of Doctorate Recipients
Biennially
Individuals or households
Individual doctoral scientists, engineers & humanists
General science and basic research, 49,000 responses, 12,250 hours, $840,000 Federal cost, 1 form
Marsha D. Traynham, 202–395–7340

The NSF Act of 1950, as amended, authorizes and directs NSF to collect, interpret and analyze data on the availability and current need of scientific and technical personnel resources in the U.S. and to provide a source of information for the formulation of science policy.

TENNESSEE VALLEY AUTHORITY

Agency Clearance Officer—Eugene E. Mynatt—615–857–2596

New

• Commercial and Industrial (Energy) Survey 1981: Customers of Local and Electric Utilit Distributing TVA Power
Nonrecurring
Businesses or other institutions
Class. (known SIC code) & unclas. (SIC co. unkn.) bus. & ind
SIC: Multiple
Small businesses or organizations
Energy supply, 4,680 responses, 2,903 hours, $595,726 Federal cost, 2 forms
Charles A. Ellett, 202–395–7340

To forecast future power requirements, the TVA needs information on current and projected energy consumption and conservation in the valley for commercial and industrial firms. This information will also be used for TVA program planning and is scheduled for collection between March 15, 1981, and June 15, 1981.

Revisions

• Home Insulation Program Participant Survey
TVA–8254J
On occasion
Individuals or households
Hsdhlds serviced by the 160 TVA distributors
Multiple functions, 47,004 responses, 7,834 hours, $52,000 Federal cost, 1 form
Charles A. Ellett, 202–395–7340

The information collected on this form will be aggregated and used to determine the characteristics of TVA program participants for both internal and external purposes. In-house analysis will aid in progress reporting and development of promotional strategies. Externally, DOJ's title VI (28 CFR 42.406) regulations will be fulfilled with race/ethnic, sex, and age data gathered.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81–2058 Filed 1–19–81; 8:45 am]
BILLING CODE 3110–01–M

Agency Forms Under Review

Background

January 14, 1981.

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The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;
Whether small businesses or organizations are affected;
A description of the Federal budget functional category that covers the information collection;
An estimate of the number of responses;
An estimate of the total number of hours needed to fill out the form;
An estimate of the cost to the Federal Government;
The number of forms in the request for approval;
The name and telephone number of the person or office responsible for OMB review; and
An abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF EDUCATION

(Agency Clearance Officer—William A. Wooten—202–426–5030)

New

Office of Special Education and Rehabilitative Services
RSA discretionary program application instructions
RSA–424
Annually

State of local governments/businesses or other institutions
Resp. are prim. St. Vr Agen., Col. & Uni. & Oth Nonprof Org.
SIC: All
Small businesses or organizations
Social services, 1,170 responses, 46,800 hours, $10,000 Federal cost, 1 form
Laverne V. Collins, 202–395–6880
Instructions are required so that all applications will be completed in accordance with specific and unique requirements of various RSA programs. Program staff and/or outside reviewers use the application information to evaluate program progress, project viability, soundness of approach and reasonableness of proposed cost of new and continuation projects.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montie—202–633–9464

New

Conservation and Solar Energy
Solar installers/dealers survey
CS–701
Annually
Businesses or other institutions
SIC: 507
Small businesses or organizations
Energy supply; 3,000 responses; 750 hours; $126,000 Federal cost; 1 form
Jefferson B. Hill, 202–395–7340
This survey will assess potential market response to the use of solar energy for providing space and water heating for residential, industrial and commercial buildings. The data will also provide a data base that can be used to evaluate trends in types of systems being sold, areas, cost construction features.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strmad—202–245–7488

New

Social Security Administration
Study of domiciliary care facilities
SSA–4266
Nonrecurring
State or local governments
State and local government officials and employees
SIC: 805
Small businesses or organizations
General retirement and disability insurance; 612 responses; 459 hours; $223,321 Federal cost; 1 form
Barbara F. Young, 202–395–6880
The purpose is to collect systematic information on domiciliary care facilities under both Federal and State administered optional supplementation programs for those States which make special provisions for such care.

DEPARTMENT OF THE INTERIOR

Agency Clearance Officer—Vivian A. Keado—202–343–6191

New

Heritage Conservation and Recreation Service
South Bronx, land and water conservation fund evaluation study
Nonrecurring
Individuals or households
Resid. of So. Br. Adjac. to open space, comm. leaders, etc.
Recreational resources; 150 responses, 150 hours, $49,653 Federal cost, 6 forms Erika Jones, 202–395–7340
The need to evaluate the effectiveness of the South Bronx neighborhood open space. Development project in meeting recreation needs at a reasonable cost.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—202–523–6341

New

Employment and Training Administration
TJTC quality control review schedule, co-operative
Education review supplement
ETA–RC38
Nonrecurring
Individuals or households/State or local governments
Parti. in the TJTC prog. cert. for tax cred., Admin. of St.
SIC: 944
Training and Employment; 577 responses, 591 hours, $339,104 Federal cost, 2 forms
Arnold Strasser 202–395–6880
For a random sample of TJTC participants, certain identifying, demographic, and eligibility characteristics will be transcribed from existing Government files and subjected to review and verification, results, including determination of eligibility, will be reported to Congress pursuant to Pub. L. 95–600, Sec. 554.

Revisions

Employment and Training administration
Validation handbook
ETA–361
Quarterly; other—see SF83
State of local governments
State employment security agencies
SIC: 944
Small business or organizations
Training and employment; 468 responses; 10,400 hours, $91,902 Federal cost, 3 forms
Arnold Strasser, 202–395–6880
To provide sufficiently credible information upon which management can make policy decisions, the ETA program management information systems must provide data that are reliable. The basic goal of the validation programs is to insure accuracy and comparability of reporting in order to aid in the equitable allocation of funds, since fund allocation involves the use of data from these mis's.

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Winsor, Acting—202–426–1887

New

Office of the Secretary
Various requirements in 49 CFR, Part 23, minority business enterprise regulation
Nonrecurring, quarterly, annually
State or local governments/businesses or other institutions
State or loc. gov't receiving DOT finan. assist.
SIC: Multiple
Small business or organizations
Other transportation; 1 response, 0 hours $0 Federal cost; 1 form
Corrinne Hayward, 202–395–7340
The requirements in this request are various details of the MBE affirmative action programs called for by the regulations.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81–2059 Filed 1–19–81; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21882 (70–6543)]

Georgia Power Co.; Proposal To Issue and Sell First Mortgage Bonds at Competitive Bidding

January 14, 1981.

Notice is hereby given that Georgia Power Company ("Georgia"), 270 Peachtree Street, N.W., Atlanta, Georgia 30303, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12(c) of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized

below, for a complete statement of the proposed transaction.

Georgia proposes to issue and sell up to $125,000,000 aggregate prinicipal amount of its first mortgage bonds ("new Bonds"). The issuance of such new Bonds is to be in addition to the issuance of $50,000,000 principal amount of first mortgage bonds currently authorized for issuance by the Commssion's order of October 1, 1980 (HCAR No. 21737). It is proposed that a portion of the new Bonds ("initial series") will be issued in March, 1981 concurrently, and as part of a series of bonds, with such previously authorized $50,000,000 principal amount of first mortgage bonds, and the remainder ("additional bonds") will be issued not later than June 30, 1981. It is proposed that each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price obtainable but for a price to Georgia of not less than 98 percent nor more than 101¾ percent of the principal amount thereof, plus accrued interest. The new Bonds will be issued under the Indenture dated as of March 1, 1941, between Georgia and Chemical Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by Supplemental Indentures to be dated as of the first day of the month during which each series of new Bonds is issued. Georgia will decide on the term of each series of the new Bonds after the date of the respective public invitation for proposals and then in each case notify prospective bidders of its decision by telephone, confirmed in writing, not less than 72 hours prior to the time of each bidding. For such reasons, it is also proposed that in each such notice Georgia may designate a lesser aggregate principal amount of the new Bonds of the particular series to be issued and sold than that previously specified in the respective public invitation for proposals, and that Georgia reserve the right in its discretion to designate a principal amount or term for the new Bonds of a particular series different from that theretofore specified by notice to prospective bidders not less than 24 hours prior to the time of each bidding.

None of the new Bonds will be redeemable for up to a five-year period commencing with the first day of the month of issuance, respectively, at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such new Bonds through the use, directly or indirectly, of funds borrowed by Georgia at an effective interest cost to Georgia of less than the effective interest cost to Georgia of the respective series of new Bonds. Such limitation will not apply to redemptions at a special redemption price by operation of the sinking or improvement fund or the maintenance and replacement provisions of the above-mentioned Indenture or by the use or proceeds of released property. Georgia also will convenant that it will not redeem any of the new Bonds of a particular series, in any year prior to the fifth year after the issuance of such series, through the operation of the sinking or improvement fund provisions in a prinicipal amount which would exceed the sinking or improvement fund requirement attributable to such series (i.e., 1 percent of the aggregate prinicipal amount of such series). In addition, Georgia may make provision for a mandatory cash sinking fund for the benefit of the new Bonds of a particular series. Such mandatory sinking fund would retire up to 5 percent annually of the initial aggregate principal amount of the new Bonds of such series, commencing five years or later after the sale thereof. Georgia also may have the non-cumulative option in any year, commencing five years or later after the sale, of making an optional sinking fund payment in an amount not exceeding such mandatory sinking fund payment.

Georgia may request by amendment hereto that such sale be excepted for the competitive bidding requirements of Rule 50. Georgia proposes to use the proceeds from each sale of the new Bonds principally to finance its business as an electric utility company, including the repayment of outstanding short-term indebtedness, if any, and the payment of costs incurred in its on-going construction program.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. The proposed transaction has been authorized by the Georgia Public Service Commission. It is stated that no other state of 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 February 7, 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-declarant at the above-stated address, and proof of service (by affidavit or, in case an an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2138 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

Merrimack Farmers' Exchange, Inc.; Application and Opportunity for Hearing

[File No. 81-644]

January 15, 1981.

Notice is hereby given that Merrimack Farmers' Exchange, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order of partial exemption from the periodic reporting requirements under Sections 13 and 15(d) of the 1934 Act.

The Application states:

(1) On August 12, 1980, the Applicant sold substantially all of its assets pursuant to a Proposed Sale and Plan of Liquidation which had been adopted by shareholders at a special meeting on July 8, 1980, proxies for which were solicited in accordance with the requirements of Regulation 14A under the 1934 Act;

(2) By the terms of the sale, proceeds of the sale will be received in three annual installments commencing August 12, 1980;

(3) The Applicant will file a Form 10-K for the period ending September 30, 1980; and

(4) The Applicant undertakes to make reports of income of disbursements on Form 10-K.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capital Street NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than February 9, 1981 may submit to the Commission in writing views or any substantial facts bearing on this application or the desireability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interests of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2135 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17454; (SR-NASD-80-25)]

The National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

January 15, 1981.

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 15, 1980, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission copies of a proposed rule change which amends Article IV, Section 3(h) of its By-Laws to increase from three to seven the number of Governors-at-Large elected by the Board of Governors. The proposed rule change would also amend Article IV, Section 2(a) of the NASD's By-Laws to provide that the Board of Governors shall consist of thirty-one members instead of twenty-seven members and to amend certain references in the provisions of Section 3 of the NASD By-Laws related to these changes in the composition of the Board of Governors. The NASD has requested that this rule filing receive accelerated approval pursuant to Section 19(b)(2) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change on or before February 12, 1981. 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-NASD-80-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and 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, NW, 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 the NASD, and in particular, the requirements of Section 15A of the Act and the rules and regulations 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. Such accelerated approval will allow the Board of Governors to commence the nomination and selection process for new Governors-at-Large at their January 19, 1981, meeting and avoid the lapse of time between the comment period and a subsequent meeting of the Board of Governors. The Commission also finds that accelerated approval satisfies the requirement of Section 15A(b)(4) that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

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.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2136 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 17452; SR-NASD-80-26]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

January 15, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on December 30, 1980, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW, Washington, D.C. 20006, filed with the Commission copies of a proposed rule change to amend Sections 3 and 4 to Appendix E of Section 33 of Article III of its Rule of Fair Practice, respectively, to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call options on the same side of the market on the same underlying security, and to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within a period of five consecutive business days.

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-NASD-80-26.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and 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, NW, 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 registered securities association, and in particular, the requirements of Section 15A and the rules and regulations 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. The proposed changes in position and exercise limit levels will conform the NASD's rules to those of the options

exchanges, as recently approved by the Commission.[1] In approving the NASD's proposed rule change, the Commission is relying on the same basis articulated in its order approving the prior proposals of the options exchanges. No public comments, adverse or otherwise, were received by the Commission either during the pendency of the options exchange proposals or subsequent to the Commission's order approving those changes.

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.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-2139 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17450; File No. SR-SCCP 80-8]

Stock Clearing Corporation of Philadelphia; Proposed Rule Change; Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 5, 1981, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes an amendment to Rule 23, Compensation, which deals with charges for services rendered. The change involves SCCP's stock loan program and is in two parts: lending participants will be charged a varying percentage of the broker call rate, depending on the number of trades cleared monthly through SCCP's CNS system; and SCCP will begin apportioning rebates of its stock loan revenues to holders of short positions in margin accounts.

Basis and Purpose of Proposed Rule Change

The purpose of the proposed change is to retain a competitive stock loan interest rate to the lender, while at the same time giving credit to margin account holders on their short positions which can be borrowed by SCCP, since these accounts generate the stock loan business.

The proposed rule change provides equitable allocation of reasonable dues, fees and other charges among participating members in accordance with the standards set forth in Section 17A(b)(3)(D) of the Act.

No formal comments have been solicited or received regarding the proposed rule change.

No burden on competition will be imposed by the proposed rule change. The proposed rate schedule does not discriminate between marketplaces nor does it inhibit clearing interfaces.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof, with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before February 12, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 14, 1981.

[FR Doc. 81-2137 Filed 1-21-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

ITT Small Business Finance Corp.; Filing of Application for Eligibility Determination as a Small Business Lending Company

An application for Eligibility Determination as a Small Business Lending Company has been filed by ITT Small Business Finance Corporation (Applicant), 300 South County Road 18, Minneapolis, Minnesota 55426, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b)(1980)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations; and, it will be subject to supervision and examination by the SBA.

The Applicant is incorporated under the laws of the State of Delaware. It intends to conduct its operations on a nationwide basis and to sell, in the Secondary Market, the SBA's guaranteed portions of loans made to small business concerns.

The Officers and Directors of the Applicant are:

Name and Title

Thomas E. Wilshire, 17913 Brigham Trail, Wayzata, MN 55391, President.
Clarence E. Polzin, 4011 Pebblebrook Drive, Bloomington, MN 55437, Director and Vice President.
Roger L. Shipp, 53 Hamiltonian Drive, Red Bank, NJ 07701, Director, Vice President, Controller and Treasurer.
John E. Thomas, 6326 Smithtown Road, Excelsior, MN 55331, Director, Vice President, General Counsel and Secretary.
Joseph F. McCarthy, 4967 Kensington Gate, Shorewood, MN 55331.
James F. Dougherty, Route 1, Box 303, Holcombe, WI 54745, Assistant Vice President.
Thomas E. Dwyer, 2210 Walnut Grove Ln., Plymouth, MN 55391, Assistant Vice President.
Michael J. Kelley, 5509 Chantrey Road, Edina, MN 55436, Assistant Vice President.
Bonnie J. Stubbs, 3435 175th Lane, NW, Anoka, MN 55303, Assistant Secretary.

The parent of the Applicant is ITT Financial Corporation of 12555 Manchester Road, St. Louis, Missouri, 53131. The parent, a Delaware Corporation, is a holding company all of whose common stock is owned by ITT Consumer Services Corporation, a Delaware corporation, all of whose common stock is owned by International Telephone and Telegraph Corporation (ITT), a Delaware Corporation.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

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[1] Securities Exchange Act Release No. 17237, October 22, 1980, 45 FR 71454, October 28, 1980.

Notice is hereby given that all interested parties may, on or before February 6, 1981, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S. Foren, Director, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Minneapolis, Minnesota, as well as in the four (4) regional editions of the *Wall Street Journal.*

(Catalog of Federal Domestic Assistance Program No. 59.012 Small Business Loans)

Dated: January 9, 1981.

A. Vernon Weaver,

Administrator.

[FR Doc. 81-2307 Filed 1-21-81; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Queens County, N.Y.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Queens County, New York.

FOR FURTHER INFORMATION CONTACT: John A. Marino, Assistant Commissioner, New York State Department of Transportation, Office of New York City Affairs, 2 World Trade Center, Room 5454, New York, New York 10047, Telephone: (212) 488-6613; or Victor E. Taylor, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, Ninth Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 472-3616.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), is preparing an environmental impact statement (EIS) for a proposal to improve the Long Island Expressway between Maurice Avenue and the Grand Central Parkway for a distance of 3.5 miles in Queens County, New York. The proposed improvement would involve reconstruction work on the existing highway to improve operating efficiency and safety.

Alternatives under consideration include (1) no build; (2) safety upgrading, extension of existing service roads, interchange improvements, and pedestrian structure improvements; (2A) the elements of Alternative 2 with additional service road continuity; (2B) the elements of Alternative 2 with additional interchange improvements; (2.1) the elements of Alternative 2 with the addition of an auxiliary lane on part of the eastbound roadway; (2.2) the elements of Alternative 2 with the addition of auxiliary lanes on a portion of the roadways.

The scope of this proposed project has been developed through an extensive process. In addition to the procedures of NYSDOT's Environmental Action Plan, a special task Group of City, Regional and State organizations was formed in July 1974 to consider the means for moving people and goods through Queens efficiently and safely. Following the Task Group's guidance, a Preliminary Study of Transportation Alternatives was made. The results of this study were circulated to Government agencies, private and Community groups through Project Reports I & II, dated May 1976. Based on the comments received, the report was revised and recirculated as Project Report III, dated January 1978. Copies of these documents are available for review and copying at the Long Island Expressway Project Information Office, 91-31 Queens Boulevard—Room 110, Elmhurst, New York 11373, and at the addresses provided above. Upon completion of the Draft EIS, a Notice of Public Hearing will be given. The Draft EIS will be available for review and comments from interested public officials, agencies, organizations, and individuals will be received. No formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Issued on: January 6, 1981.

Victor E. Taylor,

Division Administrator, Albany, New York.

[FR Doc. 81-2212 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Morton County, N. Dak.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mandan, North Dakota.

FOR FURTHER INFORMATION CONTACT: Marvin Espeland, Division Administrator, Federal Highway Administration, P.O. Box 1755, Bismarck, ND 58502. Telephone Number is (701) 255-4011. (FTS 783-4204).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota State Highway Department and the city of Mandan, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Mandan Avenue, the Old Red Trail, and the Sunset Drive Interchange in Mandan, North Dakota. The proposed improvement would involve the reconstruction of Mandan Avenue and the Old Red Trail from the Mandan Avenue Interchange westerly to 56th Avenue NW and revisions to the Sunset Drive Interchange. The improvements are intended to provide for improved traffic flow and safety.

Alternates under consideration for Mandan Avenue and the Old Red Trail consists of either an urban (curb and gutter) or rural sections for various segments of those streets. Two alternate plans for the revision of the interchange are under consideration. The "No Action Alternate" is under consideration.

Letters soliciting views and comments on the proposed project were sent to various federal, state and local agencies. The project has been discussed at local meetings in Mandan. The Draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scoping meeting will be held.

Issued on January 14, 1981.

Marvin Espeland,

Division Administrator, Bismarck, North Dakota.

[FR Doc. 81-2210 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

American Trucking Associations; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the

American Trucking Associations (ATA) requesting that Standard NO. 121, *Air Brake Systems*, be amended to remove the requirement that tractor and trailer brakes be actuated by a single control knob. The agency is denying this petition because the ATA recommendation does not appear to be necessary at this time, and implementation of the recommendation might adversely affect the safety of heavy truck brakes.

FOR FURTHER INFORMATION CONTACT: Mr. John Machey, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2715).

SUPPLEMENTARY INFORMATION: The ATA petitioned the agency on April 28, 1980, to amend Standard No. 121, *Air Brake Systems*, to delete the last sentence of S5.6.4. That sentence states that: "[t]he parking brake control shall control the parking brakes of the vehicle and of any air braked vehicle that it is designed to tow." In effect, this provision requires a single control knob to actuate both tractor and trailer parking brakes.

ATA requested that the single knob requirement be changed to permit the use of more than one control knob in controlling heavy vehicle parking brake systems. The ATA petition suggested that such a change would eliminate existing confusion resulting from a lack of standardized brake control knobs. Further, the ATA suggested that this change would return to vehicle brake systems in effect before Standard No. 121 went into effect which required less plumbing and were less expensive. In addition, the ATA argued that requiring tractor and trailer brakes both to be applied with a single knob results in trailer brakes freezing in cold weather. A final argument presented by ATA to support its petition is that the separation of emergency and parking brake functions in the standard means that a single control knob for parking brakes is no longer necessary.

The single control knob requirement was mandated in the standard, because vehicles cannot be held on some hills by using just the tractor or trailer brakes. Runaway heavy vehicles present a safety problem. This problem is significantly reduced at very little expense by the use of a common brake control knob that applies all parking brakes simultaneously.

The ATA recommends deletion of this requirement because existing control knobs are confusing. The agency agrees that the existing tractor/trailor control knobs are somewhat confusing. This is caused by the failure of many truck manufacturers to comply with the recommended practices of the Society of Automotive Engineers that recommend uniform control knob systems. NHTSA is considering issuing a proposal to require a uniform system of parking brake controls to avoid the confusion to which the ATA refers. The agency does not believe the ATA recommendation would reduce the existing confusion in the brake control area.

A second argument put forward by the ATA for allowing more than one knob to control both the tractor and trailer brake systems is that trailer brakes freeze if applied in cold weather. Therefore, according to ATA it should be possible to apply only the tractor brakes if the trailer brakes are not necesary to hold the vehicle on an incline.

Currently, the standard requires only that both trailer and tractor brakes be applied initially by the same control device. However, the standard permits other control knobs that can be used to release either the tractor or trailer brakes. Accordingly, if a driver fears that his or her trailer brakes might freeze if applied in cold weather, he or she can make the conscious decision to release the trailer parking brakes after determining that they are not necessary to hold the vehicle as parked. Many vehicles are constructed in a manner that allows such a release. However, it is required that both sets of brakes apply by the use of a single control device until the decision is made to release one set of brakes. Since trailer brakes can now be released when not needed to hold a trailer on a hill, the freezing brake problem should not be significant. ATA suggested that applying all parking brakes and then subsequently releasing the trailer brakes is too time consuming. NHTSA disagrees. This brake actuation and release is a simple procedure and does not involve a large use of time.

The ATA argued that recent changes in the standard with respect to emergency brake control through the treadle valve support an amendment in the parking brake requiements to permit the type of brake controls that it requested. It contends that since parking brakes are no longer used as emergency brakes there is no need to have them applied by a single knob. The agency disagrees.

The use of a treadle valve to control emergency brakes has no relationship to the need for a single control to apply the parking brakes. The treadle valve serves a function in stopping a vehicle in emergency braking situations. The parking brake, on the other hand, is for the purpose of providing sufficient holding power when a vehicle is stopped and left unattended. The emergency and parking brake functions are, therefore, entirely unrelated, although their systems frequently employ the same components. The agency still considers the application of parking brakes by one knob to be important. This means of brake actuation provides sufficient parking brakes to hold a vehicle on most surfaces.

Since the ATA petition requests an amendment that would in the judgment of this agency reduce the safety of vehicle systems, the agency is not persuaded to grant their request without a showing of need for the amendment. The ATA reasons for suggesting the petition have been detailed and discussed in the foregoing. None of the reasons put forth by the ATA are substantial enough to warrant reducing the safety of existing brake systems. For this reason, the agency denies the ATA petition.

The principal authors of this notice are Mr. John Machey of the Crash Avoidance Division and Mr. Roger Tilton of the Office of Chief Counsel.

(Secs. 103 and 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegation of authority at 49 CFR 1.50)

Issued on January 15, 1981.

Joan Claybrook,

Administrator.

[FR Doc. 81–2191 Filed 1–21–81; 8:45 am]

BILLING CODE 4910–59–M

Interagency Coordinating Committee on Automotive Inspection, Maintenance and Repair

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Establishment of mailing list.

SUMMARY: This notice requests that organizations and individuals interested in receiving information on and/or participating in activities or the Interagency Coordinating Committee on Automotive Inspection, Maintenance and Repair send their names, address and telephone numbers to the NHTSA.

DATES: Closing date February 10, 1981. However, names can be added to the initial list at any time following this date.

ADDRESS: Information should be submitted to: Ann Mitchell, Consumer Participation Division, NOA–42, Office of Public Affairs and Consumer Participation, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ann Mitchell (202–426–0670) or Tom Crews (202–426–9294).

SUPPLEMENTARY INFORMATION: On September 6, 1979, Secretary of Transportation Neil Goldschmidt signed a charter establishing the Automotive Inspection, Maintenance, and Repair Interagency Coordinating Committee (IMR–ICC). The Committee was created in order to mobilize a government-wide concerted effort aimed at dealing with the serious problems of auto repair. It is recognized, however, that constructive and effective solutions cannot be identified or achieved without full participation by the public in this interagency activity.

The Committee is sponsored by the NHTSA and has had active participation by other Federal agencies including: The Department of Transportation's Office of Consumer Affairs, the General Services Administration, and the Department of Labor. We anticipate future participation by these and other interested Federal agencies. The Committee is co-chaired by NHTSA staff members in order to reflect representation from both the consumer and technical perspectives, each critical to the success of this effort.

The goal of the IMR–ICC is to explore the problems involved in auto repair and to determine possible solutions for those problems. It is anticipated the improvement of the auto repair process will result in improved motor vehicle safety and fuel economy, reduced emissions and noise, and lower consumer costs and costs of regulation, repair and maintenance. Participation of all interested members of the public and industry will be requested at various stages of committee activity to ensure full review of all the issues and the identification of workable solutions.

Activities of the Committee thus far have included the identification of problems or issues in the inspection, maintenance and repair fields and the development of project plans to address them during the upcoming year. These subject areas include:

Consumer dispute resolution mechanisms.
Generalized ratings of repair quality mechanics and shops.
Consumer education and information.
Federal, State and local auto repair law enforcement efforts.
Improving in-service diagnostic and repair procedures.
Training for the professional mechanic.
Development of ratings on how costly it is to inspect, diagnose, maintain, and repair.
Designing for inexpensive inspection, diagnosis, maintenance, and repair.

In order to receive announcements of actions and initiatives contemplated or undertaken by the Committee, it is important that you be placed on the IMR–ICC mailing list. Those on the list will also receive advance notices of meetings and other activities in which they will have an opportunity to participate. Significant Committee activity will be reported on a routine basis to those on the list. Requests to be placed on the mailing list should be directed to Ann Mitchell.

January 16, 1981.

Charles F. Livingston,

Associate Administrator, Traffic Administrator, Traffic Safety Programs.

[FR Doc. 81–2192 Filed 1–21–81; 8:45 am]

BILLING CODE 4910–59–M

International Harmonization of Safety Standards; Calendar of Meetings

A goal of the Trade Agreement Act of 1979 and a policy of the National Highway Traffic Safety Administration (NHTSA) is the harmonization of U.S. and foreign safety standards to promote and facilitate broader competition, avoid unnecessary waste and assure equal access to manufacturers on a world basis. Carrying out this policy is being achieved by NHTSA's participation in the Group of Experts on the Construction of Vehicles (WP29) under the Inland Transport Committee of the United Nations' Economic Commission for Europe (ECE) and the eight groups of Rapporteurs of the WP29. The NHTSA participates in all of these meetings except those on Noise and Pollution which are represented by members of the Environmental Protection Agency (EPA).

This calendar consists of those meetings in which the NHTSA and the EPA will provide representation and in which the public interest is expected. It is published for information and planning purposes and the meeting dates and places are subject to change. For further information contact: Mr. John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–2720.

Inquiries or comments relating to a specific meeting should be made at least 2 weeks preceding the meeting.

January 19–21, 1981.—Group of Rapporteurs on Crashworthiness (GRCS) Eighth Session—Geneva, Switzerland.
February 24–27, 1981.—Group of Rapporteurs on Protective Devices (GRDP) Ninth Session—London, England.
March 5–6, 1981.—Ad Hoc Meeting on the Program of Work of the WP29 Fifteenth Session—Geneva, Switzerland.
March 9–13, 1981.—Group of Experts on the Construction of Vehicles Sixty-third Session—Geneva, Switzerland.
April 7–10, 1981.—Group of Rapporteurs on Lighting and Light Signalling (GRE) Eighth Session—Lippstadt, Germany.
May 5–8, 1981.—Group of Rapporteurs on Safety Provisions (GRSG) Thirty-seventh Session—Rome, Italy.
May 19–22, 1981.—Group of Rapporteurs on Brakes and Running Gear (GRRF) Ninth Session—Geneva, Switzerland.
June 1–4, 1981.—Group of Rapporteurs on Safety Provisions for Motor Coaches and Buses (GRSA). Twenty-fifth Session—Frankfurt, Germany.
June 18–19, 1981.—Ad Hoc Meeting on the Program of Work of the WP29 Sixteenth Session—Geneva, Switzerland.
June 22–26, 1981.—Group of Experts on the Construction of Vehicle Sixty-fourth Session—Geneva, Switzerland.
July 20–23, 1981.—Group of Rapporteurs on Protective Devices (GRDP) Tenth Session—Geneva, Switzerland.
August 24–26, 1981.—Group of Rapporteurs on Crashworthiness (GRCS) Ninth Session—Geneva, Switzerland.
September 7–10, 1981.—Group of Rapporteurs on Pollution and Energy (GRPE) Fourth Session—Geneva, Switzerland.
September 15–18, 1981.—Group of Rapporteurs on Lighting and Light Signalling (GRE) Ninth Session—Leipzig, Germany.
September 29—October 2, 1981.—Group of Rapporteurs on Noise (GRB) Tenth Session—Washington, D.C.
October 22–23, 1981.—Ad Hoc Meeting on the Program of Work of the WP29 Seventeenth Session—Geneva, Switzerland.
October 26–30, 1981.—Group of Experts on the Construction of Vehicles Sixty-fifth Session—Geneva, Switzerland.
November 10–13, 1981.—Group of Rapporteurs on Safety Provisions for Motor Coaches and Buses (GRSA). Twenty-sixth Session—Edinburgh, Scotland.
November 30–December 3, 1981.—Group of Rapporteurs on General Safety Provisions (GRSG) Thirty-eighth Session—Geneva, Switzerland.
December 8–11, 1981.—Group of Rapporteurs on Brakes and Running Gear (GRRF) Tenth Session—Geneva, Switzerland.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

January 16, 1981.

[FR Doc. 81–2194 Filed 1–21–81; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. IP80–2; Notice 2]

Ford Motor Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants a petition by Ford Motor Co. of Dearborn, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.120,

Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 20, 1980 (45 FR 18224) and an opportunity afforded for comment.

Petitioner is a truck manufacturer, dependent upon an outside supplier (the Budd Company) for its wheels. Paragraph S5.2 of Standard No. 120 requires each rim of a truck wheel to be marked with five discrete items of information. Ford learned that certain 16x6K single piece wheels provided by Budd were not marked in accordance with S5.2. There were two types of nonconformities. In the first, the 16x6K was mistakenly labelled "16x16K". In the second, no information was applied to the rims. The trucks potentially affected are the F-250 (all 1979 models, and all 1980 models built before August 28, 1979).

The precise number of noncomplying vehicles is not known, though 38,164 trucks were manufactured with the wheels at issue. Ford's own examination of 8,300 wheels led it to conclude that 2.2% of all wheels supplied by Budd during the manufacturing period in question may have contained one or the other nonconformity. As 183,014 wheels were supplied, this means that slightly over 4,000 wheels may have failed to comply, according to Ford's calculation.

Petitioner argued that the incorrect rim size designation has an inconsequential relationship to safety because no tire is available for installation on a 16 inch wide rim, and in the unlikely event one were obtained, it could not be successfully mounted or inflated on a 6 inch rim. Both noncompliances were also said to be unimportant because the rim information would be contained on the vehicles' other rims (assuming that not all were noncompliant), "certification label," and operator's manual. The other missing information (source of rims published nominal dimensions, DOT symbol, rim manufacturer's designation, manufacture date) in Ford's opinion, "is to facilitate NHTSA enforcement" and to provide a means of certification and not intended to provide information relating to rim and size matching.

The Budd Company supported Ford's petition. No other comments were received.

The NHTSA concurs with Ford's argument that the labelling of rims as "16x16K" is an inconsequential noncompliance. No tire is available for installation on a 16-inch wide rim, and if one were available, it would not fit on the narrow rim in question. In all likelihood the truck owner will choose to replace the original equipment tire with one identical in size. If he wishes to change size or load range, he has the option of consulting the operator's manual or vehicle certification label.

With respect to the lack of information on the rim, the agency does not accept Ford's position that the tire inflation placard provides an alternative source of information; S5.3.1 and S5.3.2 of Standard No. 120 permit listing of appropriate tires and rims but not necessarily those that are actually on the vehicle. Nor does the agency agree that the purpose of the information requirement is to facilitate compliance testing. The NHTSA believes, however, that a vehicle operator is more likely to refer to the sidewall of the tire being replaced, rather than the rim, for replacement information. Further, in the event of a recall, both Ford and Budd have assured the agency that each rim bears a distinctive Budd part number that could serve as an identifier. Finally, the assurances of Ford and Budd that the rims otherwise comply with Standard No. 120 together with the relatively small number of rims involved have convinced the agency that this noncompliance also is inconsequential as it relates to motor vehicle safety. Accordingly, petitioner has met its burden of persuasion and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 13, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-2119 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-59-M

General Motors Corp.; Intermediate Station Wagons Equipped With Electro-Clear Rear Window Defoggers; Public Proceeding Regarding Safety Defect Investigation

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Pub. L. 93-492, 88 Stat. 1470; October 27, 1974), 15 U.S.C. 1412, the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, has made an initial determination that a safety-related defect exists in General Motors Corporation intermediate-size station wagons equipped with Electro-Clear rear window defoggers, and manufactured during the period from January, 1979 through December 31, 1979.

A public proceeding will be held at 10:00 a.m. on February 12, 1981, in Room 2230 of the Department of Transportation Headquarters, 400 Seventh Street, SW, Washington, D.C. 20590, at which time General Motors Corporation will be afforded an opportunity to present data, views and arguments to establish that the alleged defect in these vehicles does not exist or is not safety-related.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Joyce Tannahill, Office of Defects Investigation, National Highway Traffic Safety Administration, Room 5326, Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590 (telephone 202-426-2850) before close of business on February 5, 1981.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on January 14, 1981.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 81-2048 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Hazardous Materials; Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is herby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes February 23, 1981.

ADDRESS: COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8542-N	EVA, Eisenbahn-Verkehrsmittel, AG, Dusseldorf, West Germany.	49CFR 173.118a, 173.119, 173.125, 173.126, 173.131, 173.137, 173.144, 173.245(a)(30), 173.346, 173.630.	To authorize shipment of various flammable, corrosive, combustible, poison B liquids and ORM-A materials in non-DOT specification IMCO Type 1 portable tanks. (Modes 1, 2, 3).
8543-N	Waggonvermietung, AG, Brunnen, Switzerland.	49 CFR 173.123	To authorize shipment of ethyl chloride, classed as a flammable liquid in non-DOT specification IMCO Type 5 portable tanks. (Modes 1, 2, 3).
8544-N	Hugonnet, S.A., Paris, France	49 CFR 173.118a, 173.119, 173.125, 173.245, 173.346, 173.510.	To authorize shipment of various flammable, corrosive, combustible, poison B liquids and ORM-A materials in non-DOT specification IMCO Type 1 portable tanks. (Modes 1, 2, 3).
8545-N	Hercules Incorporated, Cumberland, MD	49 CFR 173.62(a)(1)	To authorize shipment of high explosive liquid in a DOT Specification 15A with an inside DOT Specification 37A containing approximately 3 pounds of solution in a polyethylene bottle secured with sawdust in lieu of copper containers and rubber boots. (Mode 1).
8546-N	Global International Airways Corporation Kansas City, MO.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix B.	To authorize carriage of class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4).
8547-N	NATICO, Incorporated, Chicago, IL	49 CFR 178.116, Part 173 Subpart D, Subpart E, Subpart F, Subpart H.	To manufacture, mark and sell a non-DOT specification 55 gallon steel tight head drum incorporating a mold plastic top head with molded closures, in lieu of a stell top head, for shipment of those commodities presently authorized in DOT 17E drum. (Mode 2).
8548-N	Solvent Service Company, San Jose, CA	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC 312 except for bottom outlet valve variations for the transport of flammable or corrosive waste liquids or semi-solids. (Mode 1).
8549-N	Peters Manufacturing Company, South El Monte, CA.	49 CFR173.119(a)(17), 173.245(a)(30)(31), 173.346-(a)(12), 178.340-7, 178.342-5 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC 312 except for bottom outlet valve variations for the transport of flammable, poison or corrosive waste liquids or semi-solids. (Mode 1).
8550-N	Environmental Sciences, Associates, Incorporated, Bedford, MA.	49 CFR 173.119(m)6, 175.30	To authorize shipment of a hydrochloric acid/propanol mixture, classed as a flammable liquid in non-DOT specification 1 pint polyethylene bottles not to exceed 6 bottles to one outside DOT Specification 12B fiberboard box. (Mode 1, 2, 3, 4, 5).
8551-N	Huber Manufacturing, Incorporated, Gulfport, MS.	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 173.346-(a)(12), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations and certain other features for transportation of flammable, corrosive or poisonous waste liquids or semi-solids. (Mode 1).
8552-N	Brenner Tank, Incorporated, Fond du Lac, WI.	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 178.340-8, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1).
8553-N	Woodward, Incorporated, Albuquerque, NM.	49 CFR 172.101, 172.300, 172.304, 172.400, 172.411(c)(d), 173.114(a).	To authorize shipment of a limited of a limited number of packages of nitrocarbonitrate, after December 31, 1980, bearing the oxidizer label. (Mode 1).
8554-N	E. I. duPont de Nemours and Company Wilmington, DE.	49 CFR 173.114a, 173.93	To convert (BA-611) to exemption for the transportation of explosive liquids and solids class B; propellant explosives and blasting agents in non-DOT specification tank motor vehicles. (Mode 1).
8555-N	Thiokol Corporation, Brigham City, UT	49 CFR 173.92	To authorize shipment of rocket motors, class B explosive, in a configuration other than what is prescribed in the regulations. (Modes 1, 2).

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on January 9, 1981.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-1746 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-60-M

Technical Hazardous-Liquid Pipeline Safety Standards Committee; Advisory Committee Charter

This notice announces the establishment of the Technical Hazardous-Liquid Pipeline Safety Standards Committee as required by section 204(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (Title II of Pub. L. 96-129). It also sets forth the charter of the Committee prepared in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

The purpose of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is to review proposed hazardous liquid pipeline safety standards and report to the Associate Director for Pipeline Safety Regulation on the technical feasibility, reasonableness, and practicability of each such proposal. The Committee may propose safety standards to the Associate Director for his consideration for hazardous liquid pipeline facilities.

It has been determined that establishment of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is in the public interest in connection with the

performance of duties imposed by law on the Department under section 204(a) of the Hazardous Liquid Pipeline Safety Act of 1979.

The charter of the Committee is set forth below.

Charter—Technical Hazardous-Liquid Pipeline Safety Standards Committee

1. *Purpose.* This charter of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is prepared in accordance with the Federal Advisory Committee Act enacted October 6, 1972.

2. *Background.* Section 204 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) authorizes the establishment and prescribes the duties of the Technical Hazardous-Liquid Pipeline Safety Standards Committee. The Committee was established on January 16, 1981, by the appointment of 15 members.

3. *Sponsor.* The Office of Pipeline Safety Regulation is the Committee sponsor. The Associate Director for Pipeline Safety Regulation of the Materials Transportation Bureau is designated the Executive Director of the Committee and shall be the Department of Transportation (DOT) official authorized to call or adjourn meetings, approve the agenda, and otherwise monitor the Committee's meetings and progress.

4. *Committee Objectives and Duties.* The Associate Director for Pipeline Safety Regulation shall submit to the Committee for its consideration any notice of proposed hazardous liquid pipeline safety standards published in the **Federal Register** (including both new standards and amendments to existing standards). Within 90 days after receipt by the Committee of any such proposal, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposal. Each report by the Committee, including any minority views, shall, if timely made, be published and form a part of the proceedings for the promulgation of standards. The Director, Materials Transportation Bureau, may prescribe a final standard at any time after the 90th day after a proposal's submission to the Committee, whether or not the Committee has reported on such proposal. The Committee may propose safety standards to the Associate Director for his consideration for hazardous liquid pipeline facilities. The Associate Director shall not be bound by conclusions of the Committee, but in the event that the conclusions of the majority of the current members of the Committee are rejected, the reasons for rejection shall be incorporated in the preamble published with the final rule (HLPSA, Section 204, and 49 CFR 1.53). The Committee may also review and report on other matters related to the Department's hazardous liquid pipeline safety rulemaking function as are presented by the Associate Director.

5. *Membership.*

a. The Committee shall be composed of 15 members, each of whom shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of hazardous liquids or the operation of pipeline facilities. Members shall be appointed on the basis of their experience in the safety regulation of the transportation of hazardous liquids and of pipeline facilities, or their training, experience, or knowledge in one or more fields of engineering applied in the transportation of hazardous liquids or the operation of pipeline facilities to evaluate hazardous liquid pipeline safety standards, as follows:

(1) Five members shall be selected from Federal, State, or local governmental agencies, and two of the five shall be State commissioners selected after consultation with representatives of the national organization of State commissions;

(2) For members shall be selected from the hazardous liquids industry, after consultation with industry representatives, and not less than three of the four shall be currently engaged in the active operation of pipeline facilities; and

(3) Six members shall be selected from the general public.

b. The membership shall be fairly balanced in terms of the points of view represented, and the advice and recommendations of the Committee shall be the result of its independent judgment (FACA, section 5(b)(2) and (3)).

c. Members are appointed for a term of 3 years except that a member may serve until his successor is appointed, but for not more than a total of 6 years.

6. *Appointment of Officers.* At the first meeting of each calendar year, the Associate Director shall appoint a Chairman and Vice-Chairman, and the Committee shall, by majority vote of the members present, elect a Secretary. These three officers, who will serve until their successors are appointed, shall constitute an executive committee.

7. *Meetings and Procedures.*

a. *Calling meetings.* The Associate Director for Pipeline Safety Regulation shall approve in advance the scheduling and agenda of each Committee meeting (FACA, section 10(f)). The Committee may recommend agenda items to the Associate Director. A designated officer or employee of the Federal government shall attend each Committee meeting, and is authorized to adjourn the meeting whenever he determines it to be in the public interest (FACA, section 10(e)).

b. *Presiding at meetings.* The Chairman shall preside at all meetings of the Committee and of the Executive Committee, except that the Associate Director or his delegate may preside whenever the Committee is, at the request of an official of the Department of Transportation, advising the Department on matters other than notices of proposed rulemaking. The Vice-Chairman shall assume and perform the duties of the Chairman in the event of his absence. A majority of the current members of the Committee must be present at a meeting to perform the Committee's statutory duties.

c. *Duties of Secretary.* The Committee Secretary shall, as directed by the Chairman, monitor records, summarize activities, prepare and process letter ballots, and prepare reports for submission to the Associate Director. In the absence of the Secretary, the Chairman appoints a member of the Committee to perform the duties of the Secretary.

d. *Notice of meetings.* Notice of each Committee meeting shall be published in the **Federal Register** at least 15 days in advance of the meeting, except in emergency situations. Other forms of notice are to be used to the extent practicable (FACA, section 10(a)(2)).

e. *Frequency of Committee meetings.* The Committee meets at least once every 6 months. In addition, Committee members may be polled or asked for comments on notices of proposed rulemaking or other matters at any time without formally assembling at one place.

f. *Public participation.* Each Committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file written statements with the Committee, subject to the limitations contained in the exceptions to the Freedom of Information Act (5 U.S.C. 552(b)), and also subject to reasonable rules prescribed concerning availability of space, time, etc. (FACA, section 10(a)(1) and (3)).

g. *Minutes.* Detailed minutes of each Committee meeting shall be kept and certified to by the Committee Chairman. The minutes shall contain a record of the persons participating, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or

approved by the Committee (FACA, section 10(c)).

h. *Availabilty of records.* The records, reports, transcripts, minutes, and other documents of the Committee shall be available for public inspection and copying at the Office of Pipeline Safety Regulation, 400 Seventh Street, SW., Washington, D.C. 20590, subject to the limitations contained in the exceptions to the Freedom of Information Act, 5 U.S.C. 552(b) (FACA, section 10(b)).

8. *Compensation.* Members of the Committee other than Federal employees shall be compensated at the rate of $150 per day (including travel time) when engaged in the actual duties of the Committee. All members, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence.

9. *Duration of the Committee.* Under the provisions of the Hazardous Liquid Pipeline Safety Act, the Committee's purposes are continuing in nature; therefore, the Committee has an indefinite duration. The Committee itself must be renewed at successive 2-year intervals by the appropriate action of the Secretary (FACA, section 14(c)).

10. *Administrative Support.* The Associate Director for Pipeline Safety Regulation is responsible for providing office space, equipment, supplies, clerical help, and other administrative and financial support for the Committee.

11. *Annual Operating Cost.* Estimated annual operating cost is approximately $40,000 for salaries, travel, and recording the proceedings, plus about one-eighth person-year of staff support.

12. *Public Interest.* The formation and use of the Technical Hazardous-Liquid Pipeline Safety Standards Committee is determined to be in the public interest in connection with the performance of duties imposed on the Department by law. In fact, the Hazardous Liquid Pipeline Safety Act of 1979 specifically requires the DOT to submit all proposed hazardous liquid pipeline safety standards to the Committee as part of the proceedings for the promulgation of such standards.

13. *Filing Date. January 16, 1981*—This is the effective date of the charter which will expire 2 years from that date unless sooner terminated.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 81-2129 Filed 1-21-81; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Central Office Education and Training Review Panel; Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Central Office Education and Training Review Panel has been renewed by the Administrator of Veterans Affairs for a two year period beginning December 31, 1980 through December 31, 1982.

Dated: January 13, 1981.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 81-2165 Filed 1-21-81; 8:45 am]

BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice pursuant to Public Law 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Miami Springs Villas, Miami Springs, Florida, on February 9 and 10, 1981. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, including involvement of human subjects.The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 8:30 a.m., on February 9 and 10, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator of the Committee, Veterans Administration Central Office, Washington, DC (202-389-3702) prior to January 23.

The meeting will be closed from 8:30 a.m. to 4:15 p.m., on February 9, and from 8:30 a.m. to 10:30 a.m. on February 10, for consideration of specific proposals in accordance with provisions set forth in Subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussion and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 13, 1981.

By direction of the Administrator:

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 81-2166 Filed 1-21-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 14
Thursday, January 22, 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).

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1

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: 8 a.m., January 19, 1981.

PLACE: Room 4426, Main Treasury Building, 15th Street and Pennsylvania Avenue NW., 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 request for additional guarantees. On Wednesday, January 14, the Board approved a summary of the terms on which it expected to be able to grant formal approval later in the week. The January 19 meeting will be a continuation of the Board's meeting of Friday, January 16, which was recessed until January 19. At the January 19 meeting the Board expects to take formal action on Chrysler's application for up to 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 it is not subject to the Government in the Sunshine Act.

Dated: January 17, 1981.

Bruce D. Bolander,

Secretary of the Board.

[S-103-81 Filed 1-19-81; 9:04 am]

BILLING CODE 4810-27-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, January 30, 1981.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-104-81 Filed 1-19-81; 11:24 am]

BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 26, 1981, to consider the following matters:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of Puget Sound National Bank, Tacoma, Washington, and The Peninsula State Bank, Gig Harbor, Washington.

Memorandum and Resolution re: Exemption from periodic reporting requirements of the Securities Exchange Act of 1934—Banco Central y Economias, San Juan, Puerto Rico.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Francis, Doval, Munoz, Acevedo, Otero & Trias, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,633–SR—Franklin Bank, Houston, Texas

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Controller on the termination of the liquidation of The First State Bank of Jennings, Jennings, Kansas.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: January 19, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-100-81 Filed 1-19-81; 12:17 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 26, 1981, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Application for Federal deposit insurance:

Stewardship Bank of Oregon, a proposed new bank, to be located at 1918 N.E. 181st Avenue, Multnomah County (P.O. Portland), Oregon.

Application for consent to merge and establish branches:

Bay Springs Bank, Bay Springs, Mississippi, for consent to merge, under its charter and with the title Commonwealth Bank, with First Citizens Bank and Trust Company, Poplarville, Mississippi, and for consent to establish the two offices of First Citizens Bank and Trust Company as branches of the resultant bank.

Application for consent to purchase assets and assume liabilities and establish branches:

People's Savings Bank-Bridgeport, Bridgeport, Connecticut, for consent to purchase the assets of and assume the liability to pay

deposits made in First Stamford Bank and Trust Company, Stamford, Connecticut, and for consent to establish the five existing offices and one approved but unopened office of First Stamford Bank and Trust Company as branches of People's Savings Bank-Bridgeport.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agency of those assets:

Case No. 44,598-L—The Mission State Bank and Trust Company, Mission, Kansas
Case No. 44,602-L—American Bank & Trust, Orangeburg, South Carolina
Case No. 44,610-L—American Bank & Trust, Orangeburg, South Carolina
Case No. 44,625-NR—United States National Bank, San Diego, California

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Reports of committees and officers:

Reports of the Director, Division of Liquidation:
Memorandum re: Reports Required Under Delegated Authority Releases of Collateral for Fair Market Value
Memorandum re: Reports Required Under Delegated Authority Compromise Settlements
Report of the Director, Office of Corporate Audits:
Audit Report re: Audit of Selected Relocation Expenses, dated October 17, 1980

Recommendation of the Controller re: Audit of Selected Relocation Expenses.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 500 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 19, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-107-81 Filed 1-19-81; 12:17 pm]

BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

January 19, 1981.

TIME AND DATE: 1 p.m., January 26, 1981.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Staff Briefing on Preliminary Permit Processing.

CONTACT PERSON FOR MORE INFORMATION:
Lois D. Cashell, Acting Secretary; telephone (202) 357-8400.

[S-105-81 Filed 1-19-81; 11:45 am]

BILLING CODE 6450-35-M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., January 28, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreements Nos. T-3909 and T-3909-A: Non-exclusive preferential assignments of wharf and berthing areas and cranes from the City of Long Beach, California to Orient Overseas Container Line.
2. Agreement No. T-3904: Lease of terminal facilities by the Port of Tacoma Washington to Totem Ocean Trailer Express.

Portion closed to the public:

1. Docket No. 80-63: W.I.N.A.C. Tariff No. FMC-3, Rule 26—Consideration of request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION:
Francis C. Hurney, Secretary (202) 523-5725.

[S-111-81 Filed 1-19-81; 3:49 pm]

BILLING CODE: 6730-01-M

7

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, January 26, 1981.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 16, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-102-81 Filed 1-19-81; 9:03 am]

BILLING CODE 6210-01-M

8

BOARD FOR INTERNATIONAL BROADCASTING.

TIME AND DATE: 9:30 a.m., January 30, 1981.

PLACE: Board for International Broadcasting Conference Room, Suite 430, 1030 15th Street NW., Washington, D.C. 20005.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, Feb. 16, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION:
Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, Suite 430, 15th Street NW., Washington, D.C. 20005, 202-254-8040.

Arthur D. Levin,

Budget and Administrative Officer.

[S-109-8 Filed 1-19-81; 3:48 pm]

BILLING CODE 6155-01-M

9

[OPO401]

PAROLE COMMISSION.

TIME AND DATE: Tuesday, February 3, 1981, 2:30-5:30 p.m., and Wednesday, February 4, 1981, 9-5:30 p.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: On January 16, 1981 the Commission determined that the following matters be added to the agenda as previously published and posted.

16. Cuban Detainees
17. Supervision Guidelines

The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:
Barbara Meierhoefer, Acting Director of Research (202) 724–3095.

[S-106-8 Filed 1-19-81; 2:17 pm]
BILLING CODE 4410-01-M

10

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 29, 1981.

PLACE: Board Room, Room 2–500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the Public (9 a.m.)

1. Consideration of internal personnel matters.
2. Litigation report.
3. Comments on Report.
4. Status Report on Conrail Study.
5. Review of Conrail proprietary and financial information for monitoring and investment purposes.
6. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.

Portions open to the public (10:00 a.m.)

7. Approval of minutes of the January 8, 1981 Board of Directors meeting.
8. Consideration of Conrail drawdown request for February.
9. Consideration of Delaware and Hudson loan request.
10. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION:
Alex Bilanow (202) 426–4250.

[S-110-81 Filed 1-19-81; 3:48 pm]
BILLING CODE 8240-01-M

federal register

Thursday
January 22, 1981

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Fisheries Development

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Financial Assistance for Fisheries Development

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Saltonstall-Kennedy Funds Amended Notice of availability/ Instruction to the public.

SUMMARY: On December 17, 1980 the National Marine Fisheries Service (NMFS) announced, by publication in the Federal Register the availability of and instructions for Saltonstall-Kennedy funds for the fiscal year 1981. On December 22, 1980, the President signed the American Fisheries Promotion Act (the "AFPA" Title II of Pub. L. 96–561). The AFPA effects several modifications to the Saltonstall-Kennedy Act that were effective upon enactment and require implemention in the current solicitation.

Amendments made to implement the provisions of the AFPA include: inclusion of a statement of the broad range of projects which may be assisted; inclusion of a requirement that 50% of available Saltonstall-Kennedy funds be used to assist such projects; inclusion of the statutory requirements for eligibility, to specifically include all those previously eligible with the exception of foreign citizens, nationals, or non-citizen entities (except fishery development foundations or other private non-profit corporations located in Alaska); modification of the cost sharing formulae to conform to the statutory requirement that the amount of any grant be at least 50% of the total cost of the project; revision of dates for submission of applications, the review and comment period, and the final date for approval or disapproval of applications; modification of criteria for technical review of applications; and inclusion of additional record-keeping and reporting requirements. In addition, two amendments have been made in the priorities section: under Section III C, deletion of priority status for projects to develop, establish and operate a voluntary system to sample, inspect grade the quality of whole fish landed at U.S. ports; and under Section IV E, deletion of priority status for proposals which focus on personal use of recreationally caught species in Alaska.

Accordingly, the NMFS is publishing this amended notice; in the interest of clarity, all portions of the notice, whether or not amended, are provided.

For fiscal year 1981, funds will be available to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infrastructures. Proposals will be funded through grants and cooperative agreements. Any individual who is a citizen or national of the United States, or a citizen of the Northern Mariana Islands (NMI), any fishery development foundation or other private non-profit corporation located in Alaska, or any corporation, partnership, association or other entity, non-profit or otherwise, if a citizen of the United States (as defined by Section 2 of the Shipping Act of 1916 (46 U.S.C. 802), is eligible to apply for funding under this solicitation. The NMFS, NMFS employees and their immediate relatives are not eligible to apply hereunder.

This notice sets forth conditions under which proposals will be evaluated to determine appropriateness for funding. Applicants are required to comply with Office of Management and Budget Circular A–95 regarding State and Area-wide Planning and Development Clearinghouse review. The Catalogue of Federal Domestic Assistance number and title for this program are 11–427, "Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements." This amended notice of availability of Financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*.

FOR FURTHER INFORMATION CONTACT: Mr. Preston Smith, Office of Utilization and Development, National Marine Fisheries Service, Washington, D.C. 20235, Phone: 202–634–7252.

I. Introduction

The Saltonstall-Kennedy Act (15 U.S.C. 713c–2–713c–3) makes thirty percent of the gross receipts collected under the customs laws from duties on fishery products available to the Secretary of Commerce. The AFPA provides that at least 50% of these funds are to be used by the Secretary to make grants to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing and associated infrastructures. "United States fishery" is defined in the AFPA to mean any fishery, including a tuna fishery, that is or may be engaged in by U.S. citizens or nationals or citizens of the NMI. For fiscal year 1981, about $10,000,000 of Saltonstall-Kennedy monies may be made available to fund fisheries research and develop projects which promote the goals and priorities of the NMFS fisheries development program.

II. NMFS Fisheries Development and Utilization Program

A. Fisheries development and utilization goals

In 1979, the Department of Commerce announced a broad based fisheries development policy designed to strengthen the U.S. fishing industry and increase the supply of domestically produced wholesome and nutritious fish and fish products. These goals would be met by identifying and resolving economic and technological impediments to the development and strengthening of the U.S. fishing industry. More specifically, the aim of the NMFS fisheries development policy is to:

(1) Encourage development and growth of the domestic fishing industry in order to provide increased employment opportunities, improve the economic well-being of fisheries-dependent communities, and increase the supply of economically priced fish and fish products to U.S. consumers.

(2) Increase productivity and promote efficiency in the harvesting, processing, distributing, and marketing of fish and fish products.

(3) Lower the foreign trade deficit in fishery products through increased exports of U.S. fish and fish products and displacement of imports.

(4) Provide consumers with a good quality and wide variety of wholesome, nutritious fish and fish products.

(5) Encourage the development of non-traditional fish resources, strengthen the long-term viability of the industry, and reduce reliance on traditional fish resources already harvested at optimum yield.

(6) Improve domestic and foreign market efficiency, through the transfer of information and the elimination of any market practices that restrict competition.

B. Saltonstall-Kennedy Activities

The Saltonstall-Kennedy program constitutes an important part of the NMFS fisheries development program; Saltonstall-Kennedy program monies will be used to fund proposed projects which are directed to the attainment of the stated goals of the NMFS development program. NMFS will consider funding proposals which relate to the development of one specific fishery, proposals which relate to more than one fishery, or proposals

which are national in scope.[1] However, all proposals should be comprehensive in dealing with the impediments to development. Thus, proposals which relate to one specific fishery should discuss all phases of the development of that fishery, from harvesting to processing, distribution, and marketing. Proposals addressed to the needs of a particular region in one or more fisheries should show how the proposal relates to existing regional plans. All proposals which address regional needs will be considered even though the may not be part of existing regional fisheries plans, but will be considered more favorably if they complement regional plans where such plans exist. For example, a project to plan facilities for a specific port or port district, or a project to demonstrate a squid cleaning machine, or a project to demonstrate advanced technology for artificial reefs would be considered to be comprehensive only if the individual projects are identified as part of a comprehensive plan or program to develop fisheries within that region. Projects which address national concerns should be responsive to the goals and priorities of the NMFS fisheries utilization and development program.

III. Areas for Grants and Cooperative Agreements

For fiscal year 1981, NMFS seeks to fund fisheries research and development projects which relate to regional and national concerns originally identified in 1979 by the Department of Commerce Fisheries Development Task Force, which have since been reviewed and updated in consultation with members of the fishing industry. The final report of this Task Force is available from the office listed at the front of this notice. Project priorities are described below, but other projects within the areas of concern will also be considered. Applicants having knowledge in any of these areas are encouraged to develop complete proposals; however, there is no guarantee that sufficient funds will be available to make awards for all approved proposals.

Fisheries research and development and utilization proposals should relate to all or some of the 5 areas of concern identified by the Task Force. These are:

A. Application of Technology to Fishing Operations and Processes

The National Marine Fisheries Service intends to fund projects that demonstrate the feasibility and use of new or existing technologies in fisheries that have not had the opportunity to examine or test such state-of-the-art technologies. Low priority will generally be given to the funding of any proposal involving extensive design or development of new technology.

Projects of particular interest include, in order of priority: (1) projects to demonstrate the feasibility and use of new or existing technologies to improve fuel efficiency or otherwise reduce energy needs in harvesting or processing; (2) projects to provide direct technical assistance to members of the fishing industry to apply new or existing technology to reduce the energy needs in harvesting or processing; (3) projects to analyze the feasibility of transfer of available technology from one fishery to another by study an demonstration of foreign and domestic methods of harvesting and processing specific fish; (4) projects to analyze the costs and benefits of transfer of technology from one fishery to another to increase the productivity of harvesting or processing; (5) projects to improve storage techniques, processing or preservation methods, or otherwise reduce processing costs, to increase the ability of the industry to utilize available fish resources and provide an increased variety of safe, wholesome, and nutritious fish and fish products to consumers; or (6) projects to examine fishing vessel safety, to improve the safety of vessel operations, to teach vessel safety, or to disseminate information on increasing vessel safety.

B. Improvement of Access to Domestic and Foreign Markets

Projects should be designed to enhance the opportunities for the marketing of U.S. fish and fish products, at home and abroad. NMFS is soliciting, in order of priority, projects to (1) increase the use of domestically harvested fish, especially non-traditional species and shellfish, in U.S. institutions; (2) identify present or potential export markets for U.S. fishery products, inform the U.S. industry of export markets (e.g., Denmark, Norway, Finland, Venezuela, Columbia, Argentina, Brazil, Canada, and Mexico), and provide instruction on penetration of these markets (e.g., export seminars in Boston, Tampa, Los Angeles and Seattle); (3) increase awareness of foreign consumers of American fisheries products; (4) determine, compile, and publish safety, quality and labeling standards and inspection and other import requirements of foreign governments for fish and fish products; or (5) measure the impact of foreign tariff and nontariff barriers on the U.S. fishing industry (i.e., subsidies and reference price in the EEC, subsidies in Canada, and Brazilian fish trade restrictions).

C. Safety, Quality, Labeling, and Nutritional Value of Fish and Fish Products

NMFS is soliciting, in order of priority, proposals to (1) continue studies to determine the levels and public health significance of hazardous materials in fish and fish products; (2) continue studies to identify and measure natural toxins in fish, and to prevent toxic fish from reaching the market place; (3) conduct a comprehensive, objective assessment of the quality of seafood produced by U.S. processors for domestic and foreign consumption; (4) study the nutrient composition, and nutritional qualities of commercial and recreational species and nutrient/nutrient interactions; (5) develop modern, effective product standards specifications for underutilized species to accelerate consumer acceptance; (6) study the effects of processing, storage, additives, and methods of cooking on the nutritive quality and shelf life of fish and fish products; or (7) identify and eliminate specific safety, quality, and labeling problems which impede the utilization of nontraditional or underutilized fish resources.

D. Support Facilities

NMFS is soliciting proposals for regional studies, coordinated with the work on the Economic Development Administration, Maritime Administration, Minority Business Development Agency, or the U.S. Army Corps of Engineers, to address impediments to fisheries development due to inadequacy of ports, harbors, and other support facilities.

The NMFS has found that the most serious impediment to the orderly development of support facilities is the lack of regional planning. In evaluating proposals for planning support facilities, the NMFS will afford highest priority to proposals which consider total needs of a region, and provide for development of the underutilized or unused fish resources within the region. Where a regional plan exists, the highest priority will be given for studies which plan the placement, characteristics, and priorities of specific support facilities within the

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Alaskan groundfish, Pacific Whiting, New England Whiting, Gulf of Mexico groundfish, etc. The term "United States fishery" is defined by the AFPA as any fishery, including any tuna fishery, which is or may be engaged in by citizens or nationals of the United States or citizens of the NMI.

region or at a site identified in the regional plan. High priority would also be given to cost/benefit studies for such facilities. NMFS will consider requests for funds for construction or purchase of support facilities only if all other qualified proposals have been funded and funds remain unallocated.

E. Consumer Education/Consumer Awareness

The NMFS is soliciting proposals for projects designed to increase per capita consumption of seafood, consistent with dietary goals established by the U.S. Senate Select Committee on Nutrition and Human Needs, through consumer education and awareness. Projects could include, in order of priority: (1) projects to provide the most effective type of educational materials about fish and fish products, and the best methods of disseminating these materials; (2) projects to provide consumers with information on the safety, quality, identity (nomenclature), economy, and nutritional value of fish and fish products; or (3) projects to educate consumers on the preparation of fish and fish products.

IV. Regional Priorities

The NMFS is seeking to encourage a regional approach to developing or strengthening fisheries. "Region" refers to a geographic area corresponding to the area in which fishing for a species or group of species would likely take place. A region generally corresponds to the range over which the species of fish can be harvested and/or the area encompassed by the NMFS regions. Regional priorities have been identified and established by the NMFS in conjunction with groups, organizations and local governmental units having an interest in the development of fisheries in the region. NMFS is specifically soliciting proposals which provide a regional approach to (1) development or expansion of a specific fishery or group of fisheries capable of supporting further development; (2) removal of impediments to the development or expansion of such fisheries; or (3) further involvement of small and minority business in those fisheries.

Specific fish resources within each region which have the greatest potential for development have been identified. These fish resources, and the major impediments to their development are:

A. Northeast Region

The Northwest Region is seeking development of those fisheries resources which are known to be abundant and available for additional exploitation, including squids (Illex and Loligo), hakes (several species), butterfish, scup (porgy), monkfish, rock and jonah crabs, dogfish, skates, rays and mackerel.

Impediments to development include use of out-dated fishing methods, inadequate and locally oriented marketing/distribution systems, lack of industry-related information, and imbalance among the producing, processing and marketing segments of the industry.

Priority will be given projects that:

(1) introduce new and/or modified technology for the harvesting, handling, processing or marketing of these species;

(2) are directed to more comprehensive use of developed resources, such as use of groundfish frames or scallop gonads as marketable products, and increased consumption of recreationally caught species not historically used for food, such as sharks and ocean pout.

(3) demonstrate the economic viability of manufactured products, such as pickled or marinated herring and shellfish and/or shelf stable products such as canned mackerel or whiting; or

(4) extend current industry or state marketing activities through better coordination, or adoption of innovative approaches for domestic and export marketing.

Preference will be granted to those projects which are likely to provide industry-wide benefits, and those which are endorsed by industry as part of a comprehensive regional program for fisheries development. A lower priority will be afforded those projects that involve specific port development, aquaculture, marine extension, or are environmentally oriented. Only those proposals that have potential for significant economic impact and/or those that will benefit a broad segment of the domestic industry should be submitted.

B. Southeast Region

Resources which have the greatest potential for development in the Southeast Region are sardines, herring and similary small pelagic species, Gulf groundfish, Jack Crevales, bonitos, blackfin and yellowfin tuna and coastal pelagics, and South Atlantic groundfish. Projects directed to other species or species groups will be considered individually in terms of overall merit.

Major impediments to the development of the fishing industry in the Southeast Region are as follows:

(1) Insufficient knowledge about the abundance, location, seasonality and other characteristics of the resources, in economically applicable terms.

(2) Lack of adequate onboard handling and storage facilities or sorting methods for recreational and large volume, low value commercial species.

(3) Insufficient knowledge of market potentials in Africa, South America and Western Asia for many of the underutilized southeastern species.

(4) Inadequate information on characteristics of several underutilized species for food processing purposes.

(5) Lack of knowledge regarding the adaptability of harvesting techniques which are new or commonly employed elsewhere in the U.S. or abroad.

(6) Lack of economic evaluation and investment opportunity information regarding undeveloped or partially developed fisheries.

Priority will be given to any project directed to energy conservation or shrimp bycatch utilization.

C. Southwest Region

The Southwest Region places high priority on projects that address the fishing industry's ability to adjust to fluctuations and imbalances in the supply and demand of seafoood products landed in California, Hawaii, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of Northern Marianas.

On the U.S. west coast, underutilized species include, but are not limited to, rockfish (Seabastes sp), Pacific whiting (hake), squid, mackerel, sablefish and shark. The major impediment to the development of the west coast fishing industry is the current inability of processing and marketing sectors to handle the increased domestic fleet catch. Competitions for foreign fishermen and imported products also contstrain development. Recreational fisheries would benefit from the application of advanced technology in artificial reef development.

In the western and central Pacific, projects that assist in the expansion of the skipjack and albacore fisheries, and/or development of local fisheries that provide regional benefits will receive high priority. Projects must be coordinated with ongoing regional planning efforts.

Fisheries development efforts in the Pacific Islands must consider the varied social and cultural mores of island people. Impediments to fisheries development in the central and western Pacific are rooted in the low level of industry development that characterizes island economies. Development of fisheries is impeded by the inadequacy of infrastructure, market distribitution systems, support facilities, and by the absence of coordinated fisheries development planning. Within the tuna

fishery the baitboat fisherman are impeded by the scarcity and frailty of naturally occuring baitfish; recreational and commerical fishermen are impeded by the absence of techniques to harvest western Pacific tuna, which have unique schooling characteristics.

D. Northwest Region

In the Northwest Region, Pacific whiting is the only species off Washington, Oregon and California with a directed foreign fishery and, therefore, the development of this fishery by the U.S. is a high priority. Other species with potential for increased domestic harvest include widow and shortbelly rockfish and species of shark.

A major impediment to the development of the West Coast fishing industry is inadequate marketing capability. Priority will be afforded those projects that increase the consumption of Pacific Coast fishery products and those projects that improve the competitive position of fishermen and processors. Market acceptance of fishery products is impeded by inadequacy of quality control, consumer education, and information on product availability, product form and labeling, and consumer trends. High fuel costs and the inability to dispose of processing waste products efficiently, also impede resource development.

E. Alaska Region

Non-traditional fishery resources available for harvest within the U.S. 200 miles fishery zone off Alaska exceed 1.9 million metric tons. This available tonnage, currently harvested largely by foreign nations, does not include traditional high value species currently harvested by U.S. fishermen, such as salmon, halibut, shrimp, and crab. Domestic capability for catching, processing and marketing substantial portions of these non-traditional fishery resources is very limited. The need for development of all aspects of Alaska fisheries is substantial; however, funding priority will be given to those proposals which focus on: (1) marketing of underutilized species; (2) quality control at all levels of product handling; (3) fuel efficiency; and (4) technological innovation for improving efficiency in catching and processing.

Multiyear projects approved in FY 80 directed to improving gear technology, quality control extension services, processing technology, and marketing methods will receive priority for additional financial support in FY 81.

V. Applications

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects can be made, in accordance with the procedures set forth in this notice, by:

(1) any individual who is a citizen or national of the United States;

(2) any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

(3) any fishery development foundation or other private non-profit corporation located in Alaska;

(4) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private non-profit corporation not located in Alaska), non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

The NMFS encourages minority individuals and groups, and women, to submit proposals. NMFS employees (or their immediate families, including full, part-time, and intermittent personnel) and NMFS offices or centers are not eligible to submit a proposal under this solicitation, or aid in the preparation of a proposal, except to provide general information or guidance about the fisheries development program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For fiscal year 1981, NMFS expects to have about $10,000,000 available to fund the fishery research and development projects solicited herein. Grants or cooperative agreements will be awarded for a period of 1 year. Proposals will be considered for projects which extend for up to 3 years; however, continuing projects will have to resubmit proposals each year, and continued funding will be contingent upon the availability of funds, the extent to which project objectives are met during the prior year, and the continued priority of the project as established in subsequent years. Any proposal submitted for multiyear funding shall completely describe activities to be undertaken in the first year for which funding is requested, and shall outline planned activities and expected costs for each succeeding year. Publication of this announcement shall not obligate NMFS to award any specific grant or to obligate the entire amount of funds available or any part thereof.

C. Cost Sharing Requirements

In accordance with the AFPA, the amount of a grant will be at least 50% of the estimated cost of the project. Thus, up to 50% of the total cost of each project may be required to be provided by the applicant from non-Federal sources. The non-Federal share may include funds received from private sources or from State or local governments, or the value of in-kind contributions. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided by the applicant from non-Federal sources, not to exceed 50% of the cost of the project, will be an important factor in the selection of projects to be funded. Applicants who receive all or nearly all of their funding from Federal sources may be exempted from non-Federal cost sharing requirements. Complete exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit public interest

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and, in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens, and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. 75 percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) the title to 75% of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75% of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25% of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States or a citizen of the NMI.

organizations which demonstrate no financial ability to meet cost-sharing requirements. The total project costs and the percentage of cost sharing required will be determined as described below.

(1) *Determining Total Project Cost*

The total costs of a project consist of all costs incurred by the applicant in the performance of project tasks, including the value of the in-kind contributions, which are necessary to accomplish the objectives of the project during the period in which the project is conducted. A project begins on the date that a formal grant or other agreement between the applicant and an authorized representative of the United States takes effect, and ends when a final report is submitted and accepted by such authorized representative. Accordingly, the time expended and costs incurred in either development of a project or the financial assistance application, or in any subsequent discussions or negotiations up to the point of formal award, are neither reimbursable nor recognizable as part of the recipient's cost share.

NMFS will determine the appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." In general the value of in-kind services or property used to fulfill the cost sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Cost sharing to be provided by the applicant may include:

(a) Expenses incurred by the grantee as project costs. (Not all charges require cash outlays by the grantee during the project period; examples are depreciation and use charges for building and equipment.)

(b) Project costs paid for with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, or private organizations or individuals.

(c) The value of in-kind contributions.

(2) *Determining the Level of Cost Sharing Required.*

As previously stated, the amount of a grant must be at least 50% of the estimated cost of the project. The percentage of the total costs required to be provided by the applicant from non-Federal sources will be as follows:

(a) *20 percent.* For projects in which direct industry participation may be limited, the non-Federal cost share shall be no less than 20 percent of the total project cost. Projects in this category benefit many interest groups and, therefore, offer no unique advantage to those conducting the project. Projects in this category might relate to: planning the placement of support facilities, fishing vessel safety, economic or food technology research, seafood product safety, or consumer attitudes toward seafoods. Because of their nature, these projects, would ordinarily be conducted by or for State or local government entities or by non-profit organizations.

(b) *30 percent.* For projects in which direct industry participation can be significant, the non-Federal cost share shall be no less than 30 percent of the total project cost. These projects contain significant or indeterminate risks which prevent an individual or group from undertaking them without assistance. Projects in this category would ordinarily deal with the non-traditional species, demonstration of new harvesting gear or processing methods, the development of new fish product concepts or forms, or the enhanced use of domestically harvested fish in institutional markets or for personal consumption.

(c) *40 percent.* For projects which involve significant industry participation, entail a limited risk, and in which the prospects for immediate future gain from the project are significant, the non-Federal cost share shall be no less than 40 percent of the total project cost. These projects would involve established fisheries or markets as, for example, expanding the markets for fish or parts of fish normally discarded during harvesting or processing. Such projects require significant participation by individuals or groups within the industry to ensure their success.

In determining the category of cost sharing in which the project belongs, NMFS will consider:

(a) The project's direct benefits to the general public, or to the fishing and seafood industry;

(b) The financial risk assumed by the applicant in undertaking the project;

(c) The potential of the project to generate revenues that would allow the applicant to recover costs incurred through participation in the project; and

(d) The compatibility of the project with national fisheries development policy and its potential for national economic benefit.

A project which will benefit the general public, such as a research project dealing with the safety of fish and fish products or demonstrating advanced technologies to benefit recreational fisheries, will have a lower cost-sharing requirement than one which directly benefits only a specific segment of the industry or an identifiable number of firms. Similarly, industry demonstration projects in high-risk ventures, as those which involve the harvesting, processing, or marketing of non-traditional U.S. species, will be expected to provide lesser amounts of cost sharing than would industry projects related to species for which strong domestic or foreign markets already exist. Projects which have a high potential for fulfilling national fisheries development policy or making significant contributions to the national economy might also have a lower cost-sharing requirement than projects with a lessor potential for doing so.

D. Format

Applications for funds must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant. Project proposals should give a clear presentation of the proposed project, the methods for carrying out the project, and its relevance to developing and strengthening the U.S. fishing industry. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the proposal. The applicant is advised to contact the appropriate regional office for guidance in preparing proposals. Such consultations with NMFS staff will not result in more favorable consideration of any proposal. Proposals shall be submitted in the following format:

1. *Cover sheet.*

A Federal Government Standard form 424 shall be used as the cover sheet. Standard form 424 may be obtained from the NMFS Regional Offices or the NMFS Washington Office listed at the end of this notice.

2. *Project summary.*

A summary of not more than one page shall be provided for each proposed project within the proposal containing the following information:

(a) Project title.

(b) Principal investigator.

(c) Purpose or objective of project.

(d) Summary of work to be undertaken.

(e) Beneficiaries of project results.

(f) Geographic impact of project (local, state-wide, regional, national).

(g) Project duration.

(h) Total project costs.

(i) Project costs to be provided by applicant, stated in actual amount and as a percentage of total project costs.

(j) Total Federal funds requested, stated in actual amount and as a percentage of total project costs.

(k) Principal uses for Federal funds and amounts requested for each use (salaries, travel, vessel charter, sub-contracts, equipment rental, etc.).

3. *Project description.*

Each proposal shall provide a complete and accurate description of each proposed project. For each project within a proposal the description may not exceed fifteen pages. The applicant should describe conditions affecting the fishing industry and the significance of the problem(s) being addressed by the project. This information should be brief, specific, and provide the basis for the evaluation of the project in terms of the need for the proposed work, the effectiveness of methods to be used, and the likelihood of success in solving the problems addressed. All portions of the submitted proposals will be made available to the public and members of the fishing industry for review and comment; therefore, the NMFS will *not* guarantee the confidentiality of any information submitted as part of any proposal. Each project shall be described as follows:

(a) *Identification of Problem(s).* Describe existing conditions which prevent or impede the U.S. fishing industry in development of the fishery or utilization of the existing fisheries. Specifically describe (i) the species of fish involved, (ii) the specific impediment(s) that the fishing industry has encountered, (iii) the sectors of the fishing industry that are affected, (iv) the fishing industry reaction to the impediment(s), and (v) the extent of the impact of impediment(s) at the local, the regional, and national level.

(b) *Project Goals and Objectives.* Clearly state the extent to which the project would eliminate or reduce the impediment(s) described above. Describe the anticipated effect of the project on one or more of the stated national fisheries development and utilization goals. To the greatest extent possible, goals and objectives should be quantified, in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measureable factor.

(c) *Appropriateness and Need for Government Financial Assistance.* Clearly describe the circumstances which have prevented the applicant from obtaining funds from other public or private sources. Factors which inhibit private industry from undertaking the project are of particular importance. The proposal should list all alternative sources of assistance which have been pursued.

(d) *Participation by Persons or Groups Other Than the Applicant.* Indicate (i) the level of participation by NMFS, Sea Grant, or other government and non-government entities required to ensure the success of the projects; (ii) the form of such participation; and (iii) if such participation is voluntary, describe the procedures required for participation in the project. In addition identify all persons or groups consulted during the preparation of the proposal.

(e) *Federal, State, and Local Government Activities.* List any existing federal, state, or local government plans or activities, including State Coastal Zone Management Plans, which would be affected by this project, and describe the relationship between the proposed project and these plans or activities.

(f) *Project Outline.* Set out all tasks to be performed, and the key events in the task schedule; where applicable, indicate any task(s) which might be adversely affected by factors beyond the control of the applicant.

(g) *Project Management.* Describe how the project will be organized and managed. List all persons or groups who will be involved in the project, their qualifications, and their level of involvement in the project. Provide copies of any agreements between the participants and the applicant.

(h) *Monitoring of Project Performance.* Describe how the progress of the project would be monitored and who would participate in the monitoring. Specify what actions would be taken in the event specific project tasks become unattainable. This is particularly important in demonstration projects where the project can be affected by factors beyond the control of the applicant.

(i) *Evaluation of Project Results.* Describe the methods or procedures to be used upon the completion of the project to evaluate the success of the project in overcoming the impediment(s) that was addressed in the project, and the extent to which the project results promote the national fisheries development and utilization goals.

(j) *Project Benefits.* Identify the sectors of the fishing industry which will benefit, either directly or indirectly, from the project. These benefits should be described in quantitative terms to the extent possible and practical.

(k) *Dissemination of Project Results.* Describe (i) how the project results will be conveyed to the members of the fishing industry or consumers who would directly benefit from the project and (ii) any special conditions or requirements that might have to be met before project results could be used.

(l) *Project Costs.* Provide a detailed schedule of project costs, identifying in particular: (i) sub-contracts, (ii) salaries, (iii) travel cost, and (iv) all other administrative and technical costs of the project. Funds will ordinarily not be granted for the purchase of capital equipment. Fee or profit will not be paid by NMFS under any funding award.

(m) *Cost Sharing for the Project.* Specify all activities which will be undertaken directly or indirectly by the applicant or by other project participants which will be funded from non-Federal sources, including in-kind contributions. State the total amount of non-Federal funds, including in-kind contributions, to be committed to the project, and specify the time at which such contributions will be available.

4. *Supporting documentation.*

This section shall include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project(s) proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the impediments addressed, or the efficacy of methods used to calculate the costs and benefits of the projects. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project.

E. Application Submission and Deadline

(1) *Deadline.*

Applications for funding under this program shall be accepted between December 17, 1980 and March 2, 1981. An application will be considered to be timely filed if (a) the application is in any of the offices listed at the end of this notice on or before March 2, 1981, or (b) the application is postmarked 5 days prior to March 2, 1981.

(2) *Submission of Applications to NMFS.*

One signed original and two (2) copies of all completed applications must be submitted to the appropriate reviewing official.

(a) Proposals for projects relating to a specific fishery or a particular region should be submitted to the appropriate Regional office of the NMFS as specified below:.

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New

Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota: Regional Director, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, MA 01930, Phone: (617) 281–3600.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands): Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Phone (813) 893–3142

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands): Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Phone (213) 548–2575

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota): Regional Director, National Marine Fisheries Service, 1700 Westlake Ave., North, Seattle, WA 98109, Phone (206) 442–7575

Alaska Region (Alaska): Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, Phone (907) 586–7221

(b) Proposals that do not directly address the development of a particular fishery or region of the country but do address broad national concerns, such as impediments to increased use of fish and fish products, industry productivity or efficiency, or consumer welfare should be sent to: Director, Office of Utilization and Development, National Marine Fisheries Service, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

If an applicant is unsure who should review the proposal, it should be sent to the above address.

VI. Review Process and Criteria

A. Initial Screening

Upon receipt by the appropriate regional or national office, all proposals will be subject to an initial screening to determine whether such proposal provides all required information specified in Section V D (Format) of this amended solicitation, and that the required A–95 notice has been submitted to State and areawide clearinghouses. If it is determined that a proposal is incomplete, applicants will be so notified, and will be given additional time as determined appropriate by NMFS to complete such proposal; the proposal will not be considered further unless modifications are made to complete the proposal within the time allowed by NMFS.

B. Initial Review

All proposals which have been determined to be complete will then be subject to an initial review by the receiving office, to determine whether the applicant has the requisite technical and financial capability to carry out the project, and to determine whether the proposal meets the minimum requirements specified below. Proposals will be evaluated as a whole; if a proposal includes 2 or more projects, such projects will not be considered separately at this stage of review. To meet minimum requirements, proposals must:

(1) address an identified impediment to the development or strengthening of the fishing industry; meet the needs of the fishing industry and/or consumers; be consistent with regional and/or national priorities; contribute to established fisheries development and utilization goals;

(2) meet the minimum level of cost sharing; and

(3) include a procedure for evaluating the success of the proposal in overcoming the impediment(s) specified and in furthering national fisheries development and utilization goals.

The decisions of the regional and Washington offices as to whether proposals meet these minimum requirements will be final.

C. Formal Evaluation and Ranking of Proposed Projects

Proposals which satisfy the minimum requirements will then be evaluated by the NMFS office where the application is filed, in consultation with representatives from other Federal government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and consumer groups, on the basis of technical merit. The regional and Washington offices of the NMFS will make proposals available for review as follows:

(1) Public review and comment. Regional proposals may be inspected at the office to which they are submitted. All proposals will be available for inspection at the NMFS Washington office from March 9, 1981 to April 1, 1981. Written comments will be accepted at the regional or Washington offices until April 1, 1981.

(2) Consultation with members of the fishing industry. NMFS shall, in its discretion, request comment from members of the fishing industry who have knowledge in the area of a proposal or who would be affected by a proposal.

(3) Consultation with other government agencies. Proposals will be reviewed in consultation with the NMFS Research Centers and Utilization Laboratories, Regional Fisheries Management Councils, and the appropriate NOAA Grants/Contracts Offices. The appropriate Regional Fisheries Management Council may be asked to review proposals and advise of any real or potential conflicts with Council activities.

Receiving offices will formally rank each of the proposals which meet minimum requirements. If a proposal contains 2 or more projects, the projects will be evaluated and ranked separately. All comments submitted to NMFS will be taken in consideration in the evaluation of proposals. Proposed projects will be given point scores based on the following criteria:

(a) Significance of the impediment addressed in the proposal (20 points).

(b) Minimization of duplication with other fisheries research and development projects (15 points).

(c) Feasibility of research/development/demonstration and possibilities of securing productive results (15 points).

(d) Soundness of design/technical approach (15 points).

(e) Organization and management of the project, including qualifications and previous related experience of the management team and the personnel involved (15 points).

(f) Effectiveness of proposed methods for monitoring and evaluating the sucess or failure of the project (10 points).

(g) Appropriateness of the budget in terms of the work to be performed (10 points).

A panel of NMFS, fishing industry and consumer representatives will then be convened in Washingon, D.C., to review the ranking of the proposals, and to develop a composite ranking. The panel may make recommendations on the level of funding to be awarded for each project.

D. Funding Awards

After projects have been ranked, and the ranking reviewed, final funding of awards will be determined. The NMFS Office of Utilization and Development will make final recommendations for project funding based on the technical review score, the amount of cost sharing to be provided by the applicant, and the overall benefits to be derived from the project. The recommendations will be

submitted to the Assistant Administrator for Fisheries, who will make the final determination as to which projects will be funded. The NMFS expects that proposals will be funded in the order determined by the technical scores. However, if two or more proposals receive similar technical scores, and address similar problems or problems of equal significance or seriousness, funding will be awarded first to the proposal in which the applicant provides the larger percentage of cost sharing, or to the proposal which has the greatest potential for regional or national benefit. Remaining proposals will be funded only if sufficient funds remain.

The exact amount of funds to be awarded for a project will be determined by preaward discussions between the applicant and the NOAA/NMFS Program and Grants representatives. The form of the financial assistance agreement and the award will be determined by NOAA Grants Officers. In accordance with the requirements of the AFPA, all applications will be approved or disapproved before June 30, 1981.

VII. Administrative Requirements

A. *Obligations of the Applicant.* An applicant shall:

(1) meet all application requirements and provide all information necessary for the evaluation of the proposal.

(2) Prior to the submission of a formal proposal to NMFS, comply with the notice provisions of OMB Circular A–95. These provisions require that an applicant notify state and area-wide planning and development clearinghouses in the jurisdiction in which a project will be undertaken of the intention to apply for funds. The notification shall consist of a standard form SF–424 and a summary description of the proposed project. Copies of such notification should be provided simultaneously to NMFS and to State and area-wide clearinghouses, the addresses of which are available from regional offices listed below. The summary description, attached to form SF–424, shall contain the following:

(a) Identity of the applicant.

(b) Description of the geographic area in which the project will be performed.

(c) A brief description of the project, its purpose, size or scale, estimated cost and other particulars sufficient to enable clearinghouses to identify local or State agencies with plans, programs or projects that might be affected by the proposed project.

(d) Approximate date of anticipated filing of formal NMFS application.

When referring to this program, the applicant shall use the Catalogue of Federal Domestic Assistance number and title as follows: "11–427–Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements."

Applicants shall provide the NMFS office where the application is filed with a copy of all comments and recommendations made by or through clearinghouses, whenever such comments and recommendations are received by such applicant.

(3) Be available, in person or by designated representatives, to respond to questions during the review and evaluation of the proposal.

(4) If a proposal is funded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by NMFS.

(5) If a proposal is funded, keeps records sufficient to disclose the use made of grants funds, and allows access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

(6) If a proposal is funded, submit quarterly project status reports to NMFS within thirty days after the end of each calendar quarter, on the use of funds and progress of the project. These reports shall specify, for each project funded:

(a) whether goals or objectives are being achieved within projected time periods;

(b) where necessary, state reasons why goals or objectives are not being met;

(c) any changes in plans or redirection of resources or activities and the reasons therefor;

(d) such report shall be submitted within the time and to the individual specified in the funding agreement.

(7) If a proposal is funded, submit a final report within 90 days after the end of each project. This report shall describe the project, the work performed and the results and benefits of the work in sufficient detail to enable the NMFS to assess the completed project for its annual report to Congress as specified in subsection B(6) of this section. Results should be described in relation to the project objectives of resolving specific impediments, and should be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to the effective utilization of project results should be identified.

(8) Submit such additional reports as may be required by NMFS.

B. *Obligations of the National Marine Fisheries Service*

The NMFS shall:

(1) provide all forms and explanatory information necessary for the proper submission of proposals for fisheries development and utilization projects;

(2) provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of the NMFS fisheries development policies and goals;

(3) when proposals submitted to regional offices are approved for funding, the NMFS Regional Director of such regional office shall inform the applicant of all requirements and conditions for the use of such funds;

(4) monitor all projects to ascertain their effectiveness in achieving project objectives and a producing measurable results. Actual accomplishments of a project will be compared with intended or anticipated accomplishments. Conclusions drawn by NMFS in monitoring projects will be used to support funding decisions on multiyear projects and on succeeding or similar projects;

(5) make project results and reports available upon request to Congress, public agencies or the public.

(6) include in the annual report to Congress, as required by the AFPA, a description of all funded projects, a list of applications approved and disapproved, the total amount of grants made during the current fiscal year and the extent to which available funds were not obligated or expended for such fiscal year. The report shall also include an assessment of each funded project that was completed in the preceding year in terms of the extent to which project objectives were attained, contributed to fishery development.

C. Legal Requirements

The applicant shall be required to satisfy the requirements of applicable local, state and Federal laws.

Signed at Washington, D.C. this 16th day of January 1981.

Jerry Leitzell

Assistant Administrator for National Marine Fisheries Service.

[FR Doc. 81-2131 Filed 1-21-81; 8:45 am]

BILLING CODE 3510-22-M

federal register

Thursday
January 22, 1981

Part III

Administrative Committee of the Federal Register

Identification of Subjects in Agency Regulations; Final Rule

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 18

Identification of Subjects in Agency Regulations

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Final rule.

SUMMARY: This regulation requires agencies to identify major topics and categories of persons affected in their regulations by using standard terms established in the Federal Register Thesaurus of Indexing Terms. Increased public need for information on regulations has led to interest in more comprehensive indexes and information services for the **Federal Register** (FR) and Code of Federal Regulations (CFR). Requiring agencies to identify the subjects in their regulations in standard terms from the Thesaurus will help readers to locate all the regulations that affect or are of interest to them. It will also help the Office of the Federal Register (OFR) expand its information services to the public directly and through published finding aids.

DATES: *Effective date:* February 23, 1981.

Implementation dates:

By December 31, 1981: Agencies must prepare a list of index terms for existing CFR Parts and send the list to the Director of the Federal Register.

Beginning April 1, 1982: Agencies must include a list of index terms for each CFR Part affected in documents submitted for publication in the Rules and Regulations and Proposed Rules sections of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Mahoney, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, Telephone (202) 523-5266.

SUPPLEMENTARY INFORMATION:

Background

The public's right to know about and participate in their Government and its day-to-day activites is protected by the Federal Register Act, the Administrative Procedure Act, and the Freedom of Information, Privacy and Government in the Sunshine Acts. These laws and and other specific legislation require that public notice of agency regulations, proposed regulations, meetings, record systems, and administrative procedures be printed in the **Federal Register**. Agency compliance with these laws requiring publication produced 78,000 pages of **Federal Register** material in fiscal year 1980 and 98,000 pages in the Code of Federal Regulations. The Code of Federal Regulations is an annually revised compilation of the general and permanent regulations published in the **Federal Register**. The **Federal Register** and Code of Federal Regulations' purpose is to be a communication link between Federal agencies and the public. Viewed as an information system for the public, these publications have many of the problems common to large information systems: An increasing volume of material; complex information on a variety of subjects; specialized technical language; and a diverse group of users increasingly demanding easy access to the system.

This regulation begins to address these problems in several ways.

First, this regulation sets up a specific requirement that agencies be responsible for identifying the major topics and persons affected in their regulations.

The increasing volume and complexity of material in the FR/CFR system has led us to the conclusion that the originators of the regulations, the agencies, are best able to analyze their regulations and provide the most relevant information for indexing and retrieval purposes.

Second, this regulation requires that agencies use standard terms, specifically the Federal Register Thesaurus of Indexing Terms, to indentify subject areas and persons affected in their regulations.

Federal Register users frequently find the same or similar material described in different terms by different Government agencies. The same material may be indexed or referenced in other terms in the FR/CFR system. The use of a controlled vocabulary, a thesaurus, is intended to improve research and provide a framework for information retrieval in the **Federal Register** system by standardizing the language used to identify and search major areas subject to Federal regulation. The identifying terms provided by the agencies with their regulations will be used at the OFR to expand the existing indexes to both the **Federal Register** and the Code of Federal Regulations. Through the use of automated technology the identifying terms will also be incorporated with the CFR text in a computerized data base for eventual automated information retrieval.

Third, this regulation will be implemented in stages.

By December 31, 1981, each agency shall prepare and submit to the Director of the Federal Register a list of index terms for its existing CFR Parts. Beginning April 1, 1982, each agency that submits a document for publication in the Rules and Regulations or Proposed Rules sections of the **Federal Register** shall include a list of index terms for each CFR Part affected by the document.

Proposed Rule and Comments

We published four previous documents on this subject: an advance notice of proposed rulemaking (ANPRM) and an extension of the comment period on the ANPRM (45 FR 2998; January 15, 1980, and 45 FR 13715; February 29, 1980), a proposed rule (45 FR 46328; July 9, 1980), and a change to the proposed rule (45 FR 49085; July 23, 1980). Comments on the ANPRM and our response were detailed in the proposed rule document of July 9, 1980. We received 26 written comments on the proposed rule as well as a number of telephone calls. The majority of these comments were from Federal agencies. In the following paragraphs we discuss the comments received.

Implementation plan

Generally, agencies viewed the proposed rule as more workable than the ANPRM. The ANPRM would have required each agency to prepare a list of subjects for each new part as it was added to the agency's regulation and eventually to compile subject lists for all existing CFR parts. The proposed rule reversed the implementation schedule to require that each agency first prepare a list of subjects for existing regulations. We received the following comment from one department: "Several agencies commented that the revised schedule would be helpful to their efforts. They anticipate that the information gathered from the Office of the Federal Register comments on their list of terms for existing regulations will assist in the selection of appropriate terms for future documents."

Implementation Dates

In this final rule, as in the proposed rule, December 31, 1981, is the date by which agencies must prepare a list of index terms for their existing regulations and send the list to the Director of the Federal Register. We are extending the date for including lists of index terms in **Federal Register** documents, however, from January 1, 1982, the date in the proposed rule, to April 1, 1982. This will provide a 3-month period between the date the initial lists are compiled and submitted to the Director of the Federal Register and the date when agencies must start including terms with their **Federal Register** documents. During this

period the Office of the Federal Register will review the lists, consult with agencies, and update and publish a revised edition of the Thesaurus for future agency use in preparing lists of terms for their **Federal Register** documents. We encourage agencies to prepare and submit their list of index terms for existing CFR parts at any time prior to the December 31, 1981, deadline. Once the lists of terms for existing CFR parts are reviewed at the Office of the Federal Register, agencies may also begin publishing lists of terms with **Federal Register** documents before the April 1, 1982, deadline.

Format

In our proposed rule we requested comments on format and placement for the subject lists to be included in **Federal Register** documents beginning April 1, 1982. We received no comments on format. This regulation specifies that the subject list be the last item in the "Supplementary Information" section of the preamble for **Federal Register** documents. This will place the subject list close to the regulatory text in each document.

Need for the Regulation

Several comments questioned the need for the regulation in light of already existing requirements for preambles and descriptive headings in agency documents.

While some agencies' documents have useful preambles and descriptive headings which help to explain and define the regulations, there is no consistency or standard language throughout the FR/CFR system. In order to thoroughly or effectively research a subject in the massive FR/CFR system there must be a consistently used term to identify that subject. This term, selected from the Thesaurus and used in information and index systems, will allow the public to pinpoint more easily all pertinent regulations on a particular subject.

Identifying Terms as Finding Aids

Comments on the effectiveness of the regulation centered on the concern that the identifying terms provided by agencies could be misleading, could cause a misunderstanding or misinterpretation of the regulation, and that failure to include all pertinent terms might lead to the regulations being overlooked.

One comment on the proposed rule expressed our position on this clearly. "We view this indexing requirement solely as a finding aid for those using the **Federal Register** and Code of Federal Regulations as a research tool * * * Clearly, the scope and application of a regulation must be determined by the wording of the regulation itself and not by the terms under which a regulation is indexed." In addition, 1 CFR 5.1(c) of the ACFR's regulations states:

> (c) In prescribing regulations governing headings, preambles, effective dates, authority citations, and similar matters of form, the Administrative Committee does not intend to affect the validity of any document that is filed and published under law.

Federal Register Thesaurus

There was concern expressed in comments on the proposed rule that the terms in the Federal Register Thesaurus are too general and that the Thesaurus is not complete enough to help researchers or adequately describe agency programs.

We continue to stress that the existing Thesaurus is the beginning of a vocabulary for identifying major areas subject to Federal regulation, and that it will not only expand but also improve through use and with the suggestion of terms by agencies and **Federal Register** users. In addition, agencies may include terms in their lists of subjects that are not contained in the Thesaurus as long as the appropriate Thesaurus terms are also used.

Standard Industrial Classification

In developing this regulation, we considered requiring agencies to use the Standard Industrial Classification Manual (SIC), where possible, in addition to the Federal Register Thesaurus to identify major topics and persons affected in their regulations. We continue to recommend that when agencies include industry names in their list of subjects that they use the terminology in the SIC Manual. Some agencies already use SIC codes and terminology in the text of their regulations. The U.S. Regulatory Council recommends use of the SIC, where applicable, for entries in the Calendar of Federal Regulations. Agency use of SIC terminology in their subject lists would further the purpose of this regulation by providing FR/CFR researchers with additional standard terms for research. The requirement for using the SIC Manual has been dropped from the final rule since agency comments were not favorable; and no supporting comments were received from the public sector.

Thesaurus Publication

The Federal Register Thesaurus of Indexing Terms to be used by agencies in implementing this regulation will be printed in the **Federal Register** of Tuesday, February 17, 1981 as Part II. Agencies wishing to order copies from the Government Printing Office may do so by submitting a completed Standard Form 1 (SF–1) by noon Friday, February 13, 1981, to: Planning Service Division, Government Printing Office.

Copies of the Thesaurus will also be available from the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

Training

Training and consultation to help agencies comply with this new requirement will be provided by the Office of the Federal Register. Training will include information on how to use the Thesaurus and how to analyze and apply the terms to specific agency regulations. We encourage agencies to decide who in the agency needs training and to make arrangements and schedule training well in advance of the December 31, 1981 deadline to allow OFR sufficient time to respond to all training requests.

To arrange for training, agencies should call: Carol Mahoney, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, Telephone (202) 523–5266.

Rulemaking Authority

The Administrative Committee of the Federal Register is issuing this regulation under the Committee's authority in Title 44 of the United States Code, section 1506, to prescribe regulations for carrying out the Federal Register Act including "* * * the manner and form in which the **Federal Register** shall be printed, reprinted, and compiled, indexed, bound, and distributed; * * *"

List of Subjects in 1 CFR Part 18

Administrative practice and procedure, **Federal Register**, Indexing.

PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

1 CFR Part 18 is amended as follows:

1. The authority citation for Part 18 reads as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp. p. 189.

2. Add a new § 18.20 to read as follows:

§ 18.20 Identification of subjects in agency regulations.

(a) *Existing regulations.* Each agency shall—

(1) Prepare a list of index terms for each of its existing Code of Federal Regulations Parts; and

(2) Send the list to the Director of the Federal Register on or before December 31, 1981.

(b) *Federal Register documents.* Beginning April 1, 1982, each agency that submits a document that is published in the Rules and Regulations section or the Proposed Rules section of the **Federal Register** shall—

(1) Include a list of index terms for each Code of Federal Regulations Part affected by the document; and

(2) Place the list of index terms as the last item in the Supplementary Information portion of the preamble for the document.

(c) *Federal Register Thesaurus.* To prepare its list of index terms, each agency shall use terms contained in the Federal Register Thesaurus of Indexing Terms. Agencies may include additional terms not contained in the Thesaurus as long as the appropriate Thesaurus terms are also used. Copies of the Federal Register Thesaurus of Indexing Terms are available from the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

Robert M. Warner,
Chairman.
Samuel L. Saylor,
Member.
Leon Ulman,
Member.

Approved:
Benjamin R. Civiletti,
Attorney General.
Ray Kline,
Acting Administrator of General Services.

[FR Doc. 81-2145 Filed 1-21-81; 8:45 am]
BILLING CODE 1505-02-M

federal register

Thursday
January 22, 1981

Part IV

Health and Human Services Department

Public Health Service

Governing Body Requirements for Health Systems Agencies

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 122

Governing Body Requirements for Health Systems Agencies

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These regulations set forth proposed amendments to the regulations governing the selection, composition and responsibility of health systems agency (HSA) governing bodies. They are intended to implement section 1512(b)(3) of the Public Health Service Act, as amended. The proposed regulations have been developed because some of the statutory provisions concerning body composition and selection require elaboration and regulation to ensure that they will be interpreted consistently with Congressional intent.

DATE: Comments must be received by March 23, 1981.

ADDRESS: Interested persons may submit written comments and recommendations on the proposed regulations to: Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, 3700 East-West Highway, Room 6–22, Hyattsville, Maryland 20782. All comments received in timely response to this document will be considered in the development of final regulations. All materials received in response to this Notice will be available for public inspection at the above address between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: June Horner, Chief, Agency Management Branch, Division of Planning Assistance and Assessment, 3700 East-West Highway, Room 6–27, Hyattsville, Maryland 20782, (301) 436–6720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, proposes to revise §§ 122.1 and 122.109 of Title 42 CFR, to implement recent amendments to Title XV of the Public Health Service Act ("The Act") relating to the selection composition, and responsibilities of governing bodies of health systems agencies ("HSAs"). In implementing these statutory amendments, the proposed regulations differ in some respects from and are more extensive than those proposed in an earlier Notice of Proposed Rulemaking pertaining to the same subject matter published on May 26, 1978 (43 FR 22858). Final publication of those earlier proposed regulations was postponed because Congressional hearings on amendments to the Act were scheduled to begin not long after the close of the comment period provided by that Notice. The legislative process thus begun culminated in the enactment, on October 4, 1979, of the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). As anticipated, Pub. L. 96–79 contained significant amendments to those portions of the Act relating to the composition, method of selection, and responsibilities of HSA governing bodies.

In developing the proposed rules set forth below, the Secretary considered, insofar as they remain pertient in light of the statutory amendments, comments received in response to the May 26, 1978, NPRM. In addition, the Secretary has considered comments and suggestions offered at a series of public meetings sponsored by the Health Resources Administration from representatives of State and local health planning agencies, national consumer and provider organizations, and business, labor, and governmental groups, as well as interested individuals. The Secretary has also considered written comments and suggestions from these groups and individuals.

Following is a discussion of significant changes in the regulations which would be made by the proposed amendments set out below.

§ 122.1(o) Definition of "provider".

The statutory definition of "provider" (section 1531(3) of the Act) was amended by Pub. L. 96–79 in several respects:

(1) "Ancillary personnel employed under the supervision of a physician" has been added to the definition.

(2) "Alcohol and drug treatment facilities" has been substituted for "substance abuse treatment facilities" in connection with the inclusion in the definition of individuals engaged in the administration of health care facililities.

(3) The term "indirect provider of health care" has been deleted from the definition, although the coverage previously embodied in that term has not been changed except as described in paragraphs (4) and (6) below.

(4) Excluded from the definition are individuals who have fiduciary positions with or interests in entities described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) which do not have as their primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles for use in research or instruction in the provision of health care.

(5) The amount which an individual must receive (directly or through his or her spouse) from a provider entity before falling within the definition has been increased from one-tenth to one-fifth of gross annual income.

(6) The following language was added to section 1531(3):

> An individual shall not be considered a provider of health care solely because the individual is the [sic] member of the governing board of an entity [engaged in providing health care, research or struction in health care, or producing drugs or other articles for use in health care].

Perhaps the most controversial change in the definition of "provider" is the amendment quoted in paragraph (6) above. The quoted provision has the clear effect of excluding from the definition an individual whose "provider" status prior to the amendment derived exclusively from the fiduciary obligation created by membership on the governing board of a hospital or other health care-related entity. Thus, effective one year from the date of enactment of Pub. L. 96–79 (Oct. 4, 1980; see sec. 129, 93 Stat. 629), persons who sit on such governing boards and who do not otherwise fall within the definition of "provider" must be considered consumers of health care for purposes of the Act, including membership on HSA governing bodies. The revision of § 122.1(o) set out below reflects this change, as well as the other amendments to section 1531(3) of the Act.

§ 122.1(v) Definition of "health maintenance organization".

A definition of HMO has been added, in accordance with section 1531(8) of the Act as amended.

§ 122.109(b)(1) Consumer composition requirement.

Regulations governing the composition of the consumer majorities of HSA governing bodies are set forth at 42 CFR 122.109(b)(1). The current regulations essentially repeat the applicable statute (section 1512(b)(3)(C)(i) of the Act) as it appeared prior to its amendment by Pub. L. 96–79, without elaboration. The **Federal Register** Preamble to those regulations, however, stated that while the provision that the consumer majority must be "broadly representative" of the population groups of the health service area did not require that each group be represented in proportion to its percentage of the population in the area, the consumer majority should "roughly approximate, in its representational

aspects, the whole population of the health service area" (41 FR 12830). Experience demonstrated that HSAs interpreted the representation requirements in different ways, producing considerable uncertainty. In addition, a number of lawsuits were filed, challenging the legality of the composition of certain governing bodies on the grounds that various population groups (including low income persons, women, and the handicapped) were underrepresented.

In light of the difficulties in applying this interpretation, Congress amended section 1512(b)(3)(C)(i) to require that the "broadly representative" consumer majority of the governing body "include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas" of the health service area. In so doing the Conference Committee explicitly stated that

> * * * it was not the intent of Congress in enacting this provision to mandate a quota system requiring the selection of representatives of a particular category strictly proportionate to its representation in the population of the area * * * S. Rep. No. 96-309, 96th Cong., 1st Sess. (August 9, 1979), at p. 64.

Accordingly, the proposed regulations set out below provide that while the consumer majority must be "broadly representative" in the sense that it includes and may be expected to consider and articulate the interests of all segments of the population of its area in health planning, no specific quota or percentages of representation are required.

Health planning agencies, as recipients of Federal financial assistance, are subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Title VI prohibits discrimination on the basis of race, color, or national origin; Section 504 prohibits discrimination against qualified handicapped persons on the basis of handicap.

Regulations have been issued by the Department pursuant to these two statutes regarding participation on planning and advisory bodies. 45 CFR 80.3(b)(1) provides that, "A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin * * * (vi) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program". 45 CFR 84.4(b)(1)(vi) establishes a similar requirement with regard to handicapped persons.

In monitoring compliance with these requirements, the Office for Civil Rights of the Department (OCR) reviews the extent to which the demographic characteristics of the health service area population with regard to race, color, national origin, and handicap, are proportional to the demographic characteristics of the governing body or advisory committee. The absence of proportional representation does not establish a violation of either Title VI or Section 504. However, when the groups protected by these statutes are not proportionately represented, OCR may investigate whether discriminatory selection procedures or criteria have been used.

The Secretary notes that certain groups have tended to be underrepresented on HSA governing bodies. These are: low and middle economic groups; women; persons age 65 and over; and the handicapped. The proposed regulations specify that these groups must be represented on the consumer majority of the governing body.

The regulations would further require representation of each identifiable racial or linguistic population group which constitutes at least 10 percent of the population of the area. The 10 percent minimum population percentage is consistent with the guideline previously suggested by the Bureau of Health Planning for translation of summaries or relevant portions of Health Systems Plans and Annual Implementation Plans into a language other than English. See the Bureau of Health Planning's Program policy Notice 79-05, Guidance for the Development of Health Systems Plans and Annual Implementation Plans. An HSA may, at its discretion, adopt a lower percentage for purposes of identifying "principal" population groups for representation on the governing body.

Proposed § 122.109(b)(1)(i)(B) requires, governing body representation of lower, middle, and upper income economic groups. For purposes of reviewing governing body composition, the Department has defined "lower income" as family income under $10,000, "middle income" as family income between $10,000 and $24,999, and "upper income" as family income greater than $25,000. The Secretary recognizes that these ranges do not reflect changes in income as a result of inflation, nor do they allow for regional variations in income; and therefore invites suggestions on alternative methods of establishing income ranges.

Proposed § 122.109(b)(1)(i)(E) defines the term "handicapped" to have the same meaning as in section 504 of the Rehabilitation Act of 1973. It should be noted that the Secretary does not construe the language of the statute to require separate representation of various groups or categories of handicapped persons, but only that the handicapped population of the area in general be represented.

The proposed regulations reflect the deletion by Pub. L. 96-79 of the requirement that to be considered a consumer an individual cannot have been a provider within the twelve months preceding his or her appointment to the governing body.

Finally, proposed § 122.109(b)(1)(ii) provides, in accordance with the specific statement of intention of the Conference Committee, that, in order to be considered a representative of a population group, an individual must either be a member of that group or be selected by an organization composed primarily of members of that group. See S. Rep. No. 96-309, at p. 64.

§ 122.109(b)(2) Provider composition requirements.

The proposed regulations reflect a number of amendments to the statutory provision (section 1512(b)(3)(C)(ii)) pertaining to membership of providers on HSA governing bodies, as follows:

Providers who have their principal place of business in the health service area are now eligible for membership in addition to those who reside in the area. The regulations propose, as a matter of fairness, to require that a provider who lives in one area and works in another be permitted to serve on the governing body of *either* HSA but not *both* HSAs. See § 122.109(d)(6).

Representatives of podiatrists, physician assistants, and rehabilitation facilities have been added.

A new required category, entitled "other providers of health care", has been added. According to the legislative history (see S. Rep. No. 96-96, at p. 62), "other providers" include, for example, nurses' aides and outreach workers. See § 122.109(b)(2)(vi).

In accordance with amendments made by Pub. L. 96-79, the proportion of provider governing body members who must be direct providers of health care (as described in section 1531(3) of the Act) has been increased to one-half from one-third, and a requirement has been added that at least one of the direct providers must be engaged in the administration of a hospital.

§ 122.109(b)(3) Miscellaneous composition requirements.

The pertinent statute (section 1512(b)(3)(C)(iii)) has been amended in

several respects which are reflected in the proposed regulations:

The governing body membership must include (either through consumer or provider members) public elected officials *and* other representatives of "units of general purpose local government" (formerly "governmental authorities") in the health service area. The proposed regulations, following the clear grammatical construction of this provision, require membership of a least one public elected official *and* at least one representative of units of general purpose local government. The statute also was amended to require that, "to be considered a representative of a unit of general purpose local government," an individual "must be appointed by such unit or a combination thereof;" and to provide that in the case of "a State which is comprised of a single health service area," the government of the State shall be deemed a unit of general purpose local government.

The statute previously required inclusion on the governing body of a percentage of residents of nonmetropolitan areas "equal to" the percentage of nonmetropolitan residents in the area's population. As amended, the language reads "at least equal to". Thus, the percentage of nonmetropolitan residents on the governing body may exceed their proportionate share of the population of the area. See proposed § 122.109(b)(3)(iii).

The amended statute requires that the governing body "include (through consumer and provider members) individuals who are knowledgeable about mental health services." The Bureau will be issuing guidance on determining who may be considered to be "knowledgeable." The Secretary notes, however, that the term is not intended to exclude the appointment of consumers who are or have been mental health service beneficiaries. Section 122.109(b)(3)(iv) of the proposed regulations, which reflects that new requirement, specifies that the requirement of a consumer member "knowledgeable about mental health services" and the requirement of consumer representation of the handicapped cannot both be satisfied by the designation of a single individual to serve in both capacities. While the definition of "handicapped" in section 504 of the Rehabilitation Act of 1973 includes the physically and mentally handicapped, so that a representative of the handicapped may in fact be knowledgeable about mental health services, it is the Secretary's judgment that these two new consumer representation requirements will not adequately be satisfied unless separate individuals are selected and designated to articulate the concerns of each of the two categories of consumers.

Section 122.109(b)(3)(v) has been amended to reflect the new statutory requirement that the Veterans Administration representative be a *non-voting* ex-officio member of the governing body and executive committee. The Secretary wishes to emphasize, however, that when the V.A. representative serves on a committee or advisory group, he or she may, at the option of the HSA, be considered a full voting member of the committee or advisory group.

Section 1512(b)(3)(C)(iii)(V) of the Act provides that if an HSA "serves an area in which there is located" one or more HMOs, the governing body must include at least one member "who is representative of such organizations." Proposed § 122.109(b)(3)(vi) would implement this requirement by requiring an HMO representative (1) if at least one HMO has more enrollees residing in the area than in any other health service area, or (2) if any HMO has a health service delivery facility located in the area, or (3) if a substantial number of area residents are enrollees of an HMO. HMOs which provide basic health services through an individual practice association (IPA) frequently provide these services by individual practitioners in their private offices. The Secretary notes that although these offices may not be "health service delivery facilities" and hence do not require representation under proposed § 122.109(b)(3)(vi)(B), an HMO designated as an IPA (as well as any other HMO as defined in section 1531(8) of the Act) do cause there to be a requirement for HMO representation on the governing body of the HSA in the health service area in which the largest number of enrollees of the HMO reside. The Secretary requests comments on whether a percentage should be specified to determine whether a substantial number of area residents are enrollees of an HMO, and if so, what that percentage should be. It should also be noted that the requirement for HMO representation is no longer limited to HMOs which are Federally qualified under Title XIII of the Public Health Service Act.

§ *122.109(d) Selection of members.*

Pub. L. 96–79 amended the Act by adding a new section 1512(b)(3)(D), establishing requirements for the procees of selecting governing body members. In general, the new provision requires that each HSA establish, make public, and report to the Secretary a process which is designed to assure that the membership requirements are satisfied, that there is "the opportunity for broad participation in such process by the residents" of the area and that "the participation of such residents will be encouraged and facilitated." The process must also "prohibit the selection of more than one-half of the members of [the governing] body by members of such body." The Secretary notes that there are a variety of selection methods that agencies may adopt which would satisfy these requirements. (See the Bureau's Program Information Letter 80-33, Guidance on Governing Body Selection Processes, for descriptions of some of the methods.) The Secretary also proposes to require that agencies must allow for public participation and comment in the development of the selection process. The Secretary suggests that an agnecy, when developing its selection process, circulate drafts of the proposed process and hold a public meeting to obtain comments on it. The Secretary calls attention to the following features of the proposed regulations implementing these new requirements.

Section 122.109(d)(2)(i) specifies that the process must provide for the selection of at least one-half of the members of the governing body by other than the existing governing body. This requirement would apply to the total membership of the governing body and to the annual turnover in governing body members.

Section 122.109(d)(2)(ii) specifies that the process must provide for the selection of at least one-half of the consumer members and one-half the provider members of the governing body by other than the existing governing body. This requirement would apply to the total membership of the governing body but not necessarily to the annual turnover in governing body members.

Section 122.109(d)(7) repeats another provision of section 1512(b)(3)(D), which states that subarea advisory councils (SACs) may select members of the governing body only if the SACs themselves are selected in accordance with that section. One effect of this provision is to prohibit the selection of any governing body members by a SAC a majority of whose members are chosen by the governing body.

Proposed § 122.109(d)(3) would require that selection processes which involve an election open to the general public (1) must ensure that the election will be conducted fairly and (2) must ensure that only consumers will vote for consumers and only providers will vote for providers. The Secretary recognizes that this requirement may present

practical problems in administering elections, and specifically seeks comment on potential problems and on the requirement. Provisions for fairness may include such procedures as having a neutral observer and using secret ballots and registration. Elections must be held in such manner as to be reasonably accessible to all persons eligible to vote. Under proposed § 122.109(d)(4), processes which involve selection by local elected or other officials must also encourage and facilitate broad participation by residents of the area.

Proposed § 122.109(d)(5) would required that if an HSA is a membership corporation (or association) whose governing body members are selected solely from among the membership, the membership is required to be unlimited and open to all residents of the area, at no more than a nominal membership fee. The Secretary expects this membership fee to be low enough to ensure that area residents will not be denied membership solely because of inability to pay. In any case where the corporation selects governing body members, if consumers do not comprise a majority of the membership, either (1) the membership must appoint a committee with a consumer majority to select governing body members, or (2) the process must provide that only consumers may select consumers and only providers may select providers to serve on the governing body, or (3) the agency must provide another method approved by the Secretary to ensure that consumers will cast a majority of the votes in the selection of governing body members.

The Secretary is concerned that in the past agencies have allowed vacancies to exist on boards for unnecessarily long periods of time. For that reason, the proposed regulations (§ 122.109(d)(9)) require each agency to adopt a process for the expeditious filling of vacancies. For those agencies whose selection process includes appointments by officials or groups other than the governing body, the process must specify the maximum length of time available to make the appointment following a vacancy, and the procedure the agency will follow if the position remains vacant beyond that time.

Finally, proposed § 122.109(d)(10) would require that selection processes include provisions for challenging whether the agency has followed its adopted procedures in the selection of any member.

§ 122.109(e) Responsibilities and authority.

The proposed regulations reflect a number of changes in section 1512(b)(3)(B) of the Act as it relates to the relationship in a public HSA between the public regional planning body of unit of general purpose local government and its separate governing body for health planning. The statutory amendments negate, with certain limited exceptions, the effect of the decision in *Montgomery County, Md.* v. *Califano*, 599 F.2d 1048 (4th Cir. 1979), *aff'g* 449 F. Supp. 1230(D.Md. 1978). In that case, the court held invalid that portion of the current regulations which states that the governing body for health planning of a public HSA must have "the sole, undivided authority to act for the agency" in performing the HSA's health planning functions; and held that the Secretary was without authority under the statue to deprive a regional planning body or unit of local government of its authority to control" the governing body for health planning in the performance of those functions. 449 F. Supp. 1230. 1241.

The amendments to section 1512(b)(3)(B) remove any doubt as to the exclusivity of the responsibility of the governing body for health planning of a public HSA for the performance of the HSA's health planning functions. The amendments do, however, provide for the following exceptions:

(1) The public body is responsible for the establishment of personnel rules and practices for the staff of the agency and for the agency's budget, unless it specifically authorizes the governing body for health planning to perform those functions. Section 1512(b)(3)(B)(i)(I) of the Act as amended.

(2) The four HSAs which units of general purpose local government whose designation agreements were in effect on January 1, 1979 (those serving Montgomery County, Md., the City of Chicago, Santa Clara County, Cal., and the Navajo Nation) are authorized to review and approve the health systems plan and annual implementation plan for their respective jurisdiction. Section 110(e)(2)(B) of Pub. L. 96–79; 93 Stat. 604.

(3) With respect to all public HSAs other than the four listed in (2) above, the public body must be given a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the government body for health planning, and to propose revisions in them. Section 1512(b)(3)(B)(ii) of the Act.

In addition, the Secretary notes that proposed § 122.109(a)(1) would require that the public body appoint the members of the governing body for health planning. Section 1512(b)(3)(A) of the Act as amended.

The regulations set out below reflect these statutory changes

§ 122.109(f) Meetings and conduct of business

Section 1512(b)(3)(B)(viii) of the Act was amended by Pub. L. 96–79 (1) to permit an HSA to close to the public that part of any meeting at which information will be disclosed relating to the HSA's participation in a judicial proceeding, or to the performance or remuneration of an employee where such disclosure would constitute a "clearly unwarranted invasion of the personal privacy" of the employee; and (2) to withhold from the public records and data pertaining to the same subjects. Paragraphs (3) and (4) of § 122.109(f) include these changes. All other meetings to conduct the business of the agency must still be held in public upon adequate notice to the public, and all other records and data must still be made available, upon request, to the public. Similar requirements apply to meetings of an executive committee and of any committee, subcommittee or advisory group appointed by the governing body or executive committee.

Section 1512(b)(3)(B)(viii) of the Act (and § 122.109(f)(2) of the proposed regulations) specifies that a governing body (and executive committee (if any)) shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all its members and at which a quorum is in attendance. Although under this provision a quorum is required to be in attendance only when meetings of the governing body (or executive committee) are brought to order, the Secretary strongly encourages agencies to conduct all business, particularly votes for the purpose of adopting plans and making certificate of need recommendations, in the presence of quorum.

Paragraph (5) of § 122.109(f) has been revised to reflect the amendment to section 1512(b)(3)(B)(vi) of the Act that requires HSAs to reimburse or, when appropriate, to make advances to, governing body members for their "reasonable costs" in performing HSA duties and functions in addition to attendance at governing body meetings. The paragraph has also been amended to specify that "reasonable costs" includes expenses for travel, meals, and child care and may, at the option of the HSA, include wages lost by low-income members in the performance of HSA duties and functions.

§ 122.109(g)(1) Executive committee

The statute (section 1512(b)(3)(A)) provides that an HSA governing body with more than 30 members must establish an executive committee of not

less than 10 nor more than 30 (formerly, not more than 25) members, which must meet the composition requirements applicable to governing bodies and to which must be delegated the authority to take such action (other than establishment and revision of Health Systems Plans and Annual Implementation Plans) as the governing body is authorized to take. The proposed regulations repeat this statutory requirement, and provide that an executive committee may not be delegated the authority to amend the HSA articles of incorporation or bylaws. See proposed §122.109(g)(1)(i). Additionally, the proposed regulations provide that a governing body of 30 or less members may, if it wishes, also appoint an executive committee to assist in the efficient operation of the agency. See proposed § 122.109(g)(1)(ii). Any such executive committee must have not less than 10 members and may be delegated authority within the limits applicable to executive committees appointed by over-30 governing bodies. It it is delegated such authority, it must meet the composition requirements applicable to governing bodies.

The proposed regulations also make clear that a governing body itself may perform any function or activity the authority for which it has delegated to an executive committee.

Section 122.109(g)(1)(iv), pertaining to the selection of executive committee members by the governing body, requires that either (1) consumer members of the executive committee must be selected only by consumer members of the governing body, and provider members of the committee by provider members of the governing body, or (2) a majority of persons present and eligible to vote for both consumer and provider members of the committee must be consumers. The Secretary believes that these options will effectively protect the interests of consumers in the selection of the executive committee membership while allowing each HSA the flexibility to choose the selection method that best serves its needs.

§ 122.109(g)(2) Committees, subcommittees, and advisory groups

Section 1512(b)(3)(C)(vi) was amended by Pub. L. 96-79 to require that any subcommittee or advisory group appointed by the governing body or executive committee must have a majority of consumers, and to delete the words "of its members" after "subcommmittee." The proposed regulations reflect these changes.

§ 122.109(h) Data and information

The Office of Management and Budget clearance number assigned to the data and information requirements in this section is 68-S1656.

Effective Dates

Section 129 of Pub. L. 96-79 (93 Stat. 629-30) provides in pertinent part that the amendments to the Act made by Pub. L. 96-79 reflected in the proposed regulations set out below shall take effect on October 4, 1980, except that on and after October 4, 1979.

(1) the changes in the membership of the health systems agencies * * * required by amendments to sections 1512 * * * and 1531 [of the Public Health Service Act] shall be implemented through selections of members to fill vacancies occurring after such date, [and]

(2) a health systems agency * * * may make the organizational and related changes required by the amendments to sections 1521 * * * and 1531 of the Public Health Service Act * * *

Therefore, any selection to an agency's governing body after October 4, 1980, must be made in a manner which complies with the new selection requirements.

It is proposed that Part 122 of 42 CFR be amended in the manner set forth below.

Dated: November 5, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 9, 1981.

Patricia Roberts Harris,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Paragraph (o) of § 122.1 is revised to read as follows:

§ 122.1 Definitions

* * * * *

(o) "Provider of health care" means an individual:

(1) Who is a direct provider of healh care (including, but not limited to, a physician (doctor of medicine or doctor of osteopathy), dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities (including, but not limited to, hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such are provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

(2) Who holds a fiduciary position with, or has a fiduciary interest in, any entity described in paragraph (o)(3) (ii) or (iv) of this section other than an entity described in section 501(c)(3) of the Internal Revenue Code of 1954 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles described in paragraph (o)(3)(iii) of this section.

(i) For purposes of this paragraph, a "fiduciary position or interest" means a position or interest with respect to such entity that is affected with the character of trust, including members of boards of directors and officers, majority shareholders, agents and attorneys.

(ii) Notwithstanding paragraph (o)(2)(i) of this section, an individual shall not be considered a provider of health care solely because the individual is a member of the governing board of one or more entities described in paragraph (o)(3) (ii) or (iv) of this section.

(3) Who receives (either directly or through the individual's spouse) more than one-fifth of the individual's gross annual income from any one or combination of the following:

(i) Fees or other compensation for research into instruction in the provision of health care;

(ii) Entities, or associations or organizations composed of entities or individuals, engaged in the provision of health care or in research or instruction in the provision of health care;

(iii) Producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care; or

(iv) Entities, or associations or organizations composed of entities or individuals, engaged in producing drugs or such other articles;

(4) Who is a member of the immediate family of an individual described in paragraphs (o)(1), (2), or (3) of this section. For purposes of this paragraph, "immediate family" includes only parents, spouse, children, and brothers and sisters who reside in the same household; or

(5) Who is engaged in issuing any policy or contract of individual or group health insurance of hospital or medical service benefits.

* * * * *

2. Section 122.1 is amended by adding the following new paragraph:

* * * * *

(v) "Health maintenance organization" means a public or private organization, organized under the laws of any State, which—

(1) Is a qualified health maintenance organization under section 1310(d) of the Act; or

(2)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (v)(2)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

3. Section 122.109 is revised to read as follows:

§ 122.109 Governing body; executive and other committees.

(a) *General.* (1) A health systems agency which is a public regional planning body or unit of a general purpose local government shall, in addition to any other governing board, appoint a governing body for health planning which meets the requirements of paragraphs (b) and (c) of this section and which has the responsibilities prescribed in paragraph (e) of this section. The members of the governing body for health planning shall be selected in accordance with paragraph (d) of this section.

(2) A health systems agency which is a nonprofit private corporation (or similar legal mechanism) shall have a governing body to direct all its health planning and development activities which meets the requirements of paragraphs (b) and (c) of this section and which has the responsibilities prescribed in paragraph (e) of this section. The members of the governing body shall be selected in accordance with paragraph (d) of this section.

(b) *Composition.* The membership of the governing body of an agency shall meet the following requirements:

(1) *Consumer composition requirements.* A majority (but not more than 60 percentum) of the members shall be residents of the health service area served by the agency who are consumers of health care and who are not providers of health care, and who are broadly representative of the health service area. The consumer majority must include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas of the health service area and major purchasers of health care in the area.

(i) The purpose of the requirements of this subparagraph is to ensure that each health systems agency will be governed by a body with a consumer majority which, looked at as a whole, includes and may reasonable be expected to consider and articulate the interests of all segments of the population of its health service area in carryng out its health planning functions. Accordingly, while no specific quotas or percentages of representation are required, the Secretary must be satisfied that the consumer majority of the governing body is broadly representative of the entire population of the area. In particular, the following groups must be represented on the consumer majority:

(A) Each identifiable racial or linguistic population group which constitutes at least ten percent of the population of the area;

(B) Lower, middle and upper income economic groups;

(C) Women;

(D) Persons age 65 and over; and

(E) The handicapped, as that term is defined in section 504 of the Rehabilitation Act of 1973 (see also paragraph (b)(3)(iv) of this section).

(ii) In order to be considered a representative of a specific population group, an individual must either be a member of that group or have been selected as a representative by an organization composed primarily of members of that group.

(iii) For purposes of this paragraph, "major purchaser of health care" means an entity (including a labor organization or a business corporation), other than an entity described in paragraph (b)(2) of this section, which either directly or indirectly (such as through the purchase of group health insurance or hospital or medical service beneftis) provides health care for its employees, members, or beneficiaries.

(2) *Provider composition requirements.* The remainder of the members shall be residents of, or individuals whose principal place of business is in, the health service area served by the agency who are providers of health care and who represent:

(i) Physicians (particularly practicing physicians), dentists, nurses, optometrists, podiatrists, physician assistants, and other health professionals;

(ii) Health care institutions (particularly hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, and health maintenance organizations);

(iii) Health care insurers;

(iv) Health professional schools (which include schools of medicine, dentistry, osteopathy, optometry, podiatry, pharmacy and veterinary medicine as defined in section 724(4) of the Act, and schools of nursing as defined;

(v) The allied health professions; and

(vi) Other providers of health care.

At least one-half of the providers of health care who are members of the governing body shall be direct providers of health care, at least one of whom must be a person engaged in the administration of a hospital.

(3) *Miscellaneous composition requirements.* The total membership as described in paragraphs (b)(1) and (b)(2) of this section shall:

(i) Include (either through consumer or provider members) at least one public elected official and at least one other representative of a unit of general purpose local government in the agency's health service area. To be considered a representative of a unit of general purpose local government, an individual must be appointed by that unit or a combination of such units. Where the health service area of the agency includes an entire State, the government of that State shall be deemed to be a unit of general purpose local government for purposes of this subsection;

(ii) Include representatives of public and private agencies in the area concerned with health;

(iii) Include a percentage of individuals who reside in nonmetropolitan areas within the health service area that is at least equal to the percentage of residents of the area who reside in nonmetroplitan areas;

(iv) Include at least one consumer and one provider member who are knowledgeable about mental health services. The requirement of this subsection pertaining to consumer membership and the requirement of paragraph (b)(1)(i)(E) pertaining to representation of the handicapped may not be satisfied by the designation of a single individual to serve in both capacities;

(v) If the agency serves an area in which there is located one of more hospitals or other health care facilities of the Veterans Administration, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans Administration shall have designated for that purpose. A member appointed under this subsection shall not be considered in determining the number of members of the governing body for purposes of the numerical limits perscribed by paragraph (c) of this section; and

(vi) If the agency serves a health service area in which there is located one or more health maintenance organizations, include at least one member who is representative of such organizations. For purposes of this subsection, a health maintenance organization shall be considered to be "located in" a health service area if (A) more of the HMO's enrollees reside in the area than in any other health service area, or (B) a health service delivery facility owned or operated by the organization is located in the area, or (C) a substantial number of area residents are enrollees of a health maintenance organization.

(c) *Number of members.* The governing body must be composed of not less than 10 members or more than 30 members, except that the number of members may exceed 30 where the governing body has, in accordance with its Articles of Incorporation or bylaws (or in the case of a public regional planning body or single unit of general purpose local government, its charter, authorizing statute, ordinance or executive order, or any rules or regulations governing its internal management), established an executive committee which meets the requirements of paragraph (g)(1) of this section.

(d) *Selection of members.* Each health systems agency must establish a process for the selection of the members of its governing body (or, in the case of a public regional planning body or unit of general purpose local government, its governing body for health planning) which process is designed to ensure that the membership meets the requirements of paragraph (b) of this section, that there is the opportunity for broad participation in the process by the residents of the health service area of the agency, and that the participation of the residents will be encouraged and facilitated. In addition, agencies must allow for public participation and comment in the development of the process.

(1) Each health systems agency must make public the process established under this paragraph, and shall report it to the Secretary at a time and in a form and manner prescribed by the Secretary.

(2)(i) The process must provide for the selection of at least one-half of the members of the governing body by other than the existing governing body. This requirement shall apply to the total membership of the governing body and to the annual turnover in governing body members.

(ii) The process must provide for the selection of at least one-half the consumer members and one-half the provider members of the governing body by other than the existing governing body. This requirement shall apply to the total membership of the governing body but not necessarily to the annual turnover in governing body members.

(3) Where the selection process involves an election which is open to the general public, the process (i) must be designed so as to ensure that the election will be conducted fairly and (ii) must provide that only consumers will vote for consumers and only providers will vote for providers. The election must be held in a place or places reasonably accessible to persons eligible to vote.

(4) Where local elected or other officials make the final selection of members, the process must provide for, encourage and facilitate broad participation by the residents of the area in the nomination of candidates for such selection.

(5) Where a health systems agency is a membership corporation or association or other similar membership organization whose governing body members are selected solely from among the membership of the organization, such membership must be unlimited and open to all residents of the area at no more than a nominal membership fee. In any case where the corporation selects governing body members and if consumers do not comprise a majority of the membership of the organization, its bylaws must (i) require that the membership appoint a committee with a consumer majority which is empowered to select governing body members, or (ii) prohibit consumer members of the organization from voting for provider members of the governing body and provider members of the organization from voting for consumer members of that body, or (iii) provide another method approved by the secretary to ensure that consumers will cast a majority of the votes in the selection of governing body members.

(6) The process must prohibit the selection as a governing body member of any individual who is a member of the governing body of another health systems agency.

(7) Where a subarea advisory council established under section 1512(c) of the Act is authorized to select or selects one or more members of the governing body, the members of the council must be selected in accordance with the requirements of section 1512(b)(3)(D) of the Act.

(8) If the process for the selection of governing body members by other than governing body members involves a nominating committee, a majority of the members of the nominating committee must be individuals who are not governing body members.

(9) The process must provide for the expeditious filling of governing body vacancies. Where the selection process includes appointments by officials or groups other than the governing body, the process must specify the maximum length of time available to make the appointment following a vacancy, and the procedure the agency will follow if the position remains vacant beyond that time.

(10) The process must include a provision for challenging whether the Agency used its adopted procedures in the selection of any member.

(e) *Responsibilities and authority.* (1) The governing body of a health systems agency shall:

(i) Be responsible for the internal affairs of the agency, including matters relating to the staff of the agency and the agency's budget, except that the governing body for health planning of an agency which is a public regional planning body or unit of general purpose local government shall not be responsible for the establishment of personnel rules and practices for the staff of the agency or for the agency's budget unless authorized by the planning body or unit of government;

(ii) Be responsible for the adoption of procedures and criteria, developed and published under section 1532 of the Act and applicable regulations of the Secretary, to be utilized in the agency's performance of its functions under section 1513(e), (f) and (g) of the Act;

(iii) Be responsible for issuing an annual report concerning the activities of the agency in accordance with § 122.115 of this subpart; and

(iv) Have the exclusive authority to perform the functions described in section 1513 of the Act and the agency's designation agreement entered into in accordance with § 122.106 or § 122.107 of this subpart. For such purposes the term "exclusive" as it applies to the role of the governing body means that the governing body shall have the sole, undivided authority to act for the agency

in performing those functions subject to the provisions of paragraph (g)(1) of this section relating to the delegation of functions to an executive committee; *Provided, that*

(A) the public regional planning body or single unit of general purpose local government may establish procedures not inconsistent with the requirements of this part for the functioning of the agency, including an opportunity to comment on any action proposed by the governing body in the performance of its functions;

(B) the public regional planning body or single unit of general purpose local government must be given the opportunity to comment on the health systems plan and the annual implementation plan, and to propose additions to and other revisions to those plans, prior to their establishment; and

(C) any public regional planning body or single unit of general purpose local government which was designated as a health systems agency before January 1, 1979, is authorized to approve or disapprove the health systems plan and annual implementation plan. No plan which has been disapproved by such body or unit may be considered established.

(2) The public regional planning body or single unit of general purpose local government may establish rules and regulations not inconsistent with the Act and the regulations of this part for the exercise of the responsibilities described in paragraph (d)(1) of this section by the governing body.

(f) *Meetings and conduct of business.* The governing body shall:

(1) Meet at least once in each calendar quarter of a year and shall meet at least two additional times in a year unless its executive committee, if any, meets at least twice in that year;

(2) Act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all its members and at which a quorum, which shall be not less than one-half of its members, is in attendance;

(3) Hold in public all meetings to conduct the business of the agency (other than any part of a meeting in which it is likely, as determined by the governing body, that information respecting the performance or remuneration of an an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed) and give adequate notice to the public of such meetings (as required by the agency's Articles of Incorporation or bylaws or, in the case of a public entity, its charter, authorizing statute, ordinance, or executive order or any rules or regulations for internal management); and

(4) Make its data and records available to the public in accordance with the requirements of § 122.114 of this subpart. "Data and records" do not include records or data respecting the performance or remuneration of an employee the disclosure of which would be clearly unwarranted invasion of the personal privacy of the employee or records or data of the agency relating to its participation in a judicial proceeding.

(5) Reimburse (or when appropriate make advances to) its members for their reasonable costs incurred in attending meetings of the governing body and performing any other duties and functions of the health systems agency. For purposes of this paragraph, "reasonable costs" includes expenses for travel, meals, and child care and may, at the option of the agency, include wages lost by low-income members.

(g) *Executive committee; subcommittees and advisory committees.* (1) *Executive committee.* (i) A governing body whose membership exceeds 30 shall establish an executive committee of its members, which shall consist of not less than 10 or more than 30 members, shall be composed in accordance with the requirements of paragraph (b) of this section, and shall be delegated the authority to take such action as the governing body is authorized to take except that the executive committee shall not be delegated the authority (A) to take action with respect to the agency's Articles of Incorporation or bylaws or, in the case of an agency which is a public regional planning body or single unit of general purpose local government, its charter, authorizing statute, ordinance, or executive order and any internal rules or regulations which govern its operations; or (B) to establish or amend the health systems plan and annual implementation plan required by section 1513(b) (2) and (3) of the Act.

(ii) A governing body whose membership is 30 or less may establish an executive committee of not less than 10 of its members. Any such committee must be composed in accordance with the requirements of paragraph (b) of this section, and may be delegated authority in accordance with subsection (i) above.

(iii) A governing body may itself perform any function or activity the authority for which it has delegated to an executive committee.

(iv) The members of the executive committee shall be selected by the governing body from among its members; *Provided, that* either (A) the HSA must develop a procedure which requires that a majority of the individuals present and eligible to vote for the selection of each consumer and provider to be named to the executive committee must be consumers, or (B) only consumer members of the governing body may participate in the selection of consumer members of the executive committee, and only provider members of the governing body may participate in the selection of provider members of the executive committee.

(v) The executive committee shall conduct itself in accordance with the requirements of paragraph (f) (2) and (3) of this section.

(2) *Committees, subcommittees, and advisory groups.* (i) Where in the exercise of its functions the governing body or exectutive committee appoints a committee, subcommittee, or an advisory group, appointments to that committee, subcommittee or group shall, to the extent practicable, be made in such a manner as to provide that the representation on the committee, subcommittee or group meets the composition requirements of paragraph (b) of this section; *Provided, that* a majority of the membership of each such committee, subcommittee and advisory group must be consumers of health care.

(ii) Committees, subcommittees and advisory groups shall conduct themselves in accordance with the requirements of paragraphs (f) (2) and (3) of this section.

(h) *Data and information.* The health systems agency shall provide to the Secretary such data and information as the Secretary may require relating to compliance with the requirements of this section, including the following:

(1) Income, racial and other pertinent characteristics of consumer members of the governing body and executive committee. In addition, the health systems agency shall collect such data for consumer members of subarea advisory councils and committees, subcommittees and advisory groups appointed by the governing body or executive committee, and shall retain it at the health systems agency to be made available to the Secretary upon request.

(2) In the case of provider members, information on their occupations and affiliations and other pertinent characteristics which form the basis for their membership. In addition, the health systems agency shall collect such data for provider members of subarea advisory councils and committees, subcommittees and advisory groups appointed by the governing body or executive committee, and shall retain it

at the health systems agency to be made available to the Secretary upon request.

(3) Quantitative information supporting the health systems agency's determination of the demographic characteristics of the population in its health service area.

(4) The process of selection of members of the governing body, executive committee, subcommittees, advisory groups, and subarea advisory councils.

[FR Doc. 81-2134 Filed 1-21-81; 8:45 am]
BILLING CODE 4110-83-M

federal register

Thursday
January 22, 1981

Part V

Department of Health and Human Services

Public Health Service

Mental Health System; Equitable Arrangements for Employee Protection; Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 54c

Mental Health Systems; Equitable Arrangements for Employee Protection

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations establish criteria for State mental health authorities to follow in the development and implementation of the equitable arrangements for employee protection required by section 801 of the Mental Health Systems Act. The Act requires that each State mental health authority have these arrangements in effect to protect the interests of employees affected adversely by actions taken by the authority to emphasize outpatient mental health services. This proposal has been prepared in consultation with the Secretary of Labor and his concurrence will, as required by section 801 of the Act, be obtained prior to promulgation of the final rule.

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

ADDRESS: Submit comments to: Anne B. Drissel, Assistant to the Director for Program Policy and Planning, Division of Mental Health Service Programs, National Institute of Mental Health, Parklawn Building, Room 11C–22, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments will be available for public inspection at the above location between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne B. Drissel, telephone: (301) 443–4676.

SUPPLEMENTARY INFORMATION:

General

The Mental Health Systems Act was enacted on October 7, 1980, as Pub. L. 96–398 with the purpose of improving the delivery of mental health services and otherwise promoting mental health throughout the country. Among the Act's statutory findings is the following—

> The shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion.

This finding states the Congressional concern which is addressed in section 801 of the Act. Under that section each State mental health authority must establish, in accordance with regulations issued by the Secretary of Health and Human Services with the concurrence of the Secretary of Labor, equitable arrangements to protect the interests of State employees affected adversely by actions of the State mental health authority to emphasize outpatient mental health services. This notice proposes for public comment the regulations which are referred to in section 801.

Over the last 30 years, there has been a growing emphasis on maintaining mentally ill persons in the community with mental health and related support services rather than in inpatient mental health facilities. The Act assists in meeting the need for providing services in the community by authorizing the Department to fund part of the costs associated with comprehensive community mental health centers and with several other programs for the provision of community-based mental health care and related support services.

The Congress found that due to this shift in emphasis the jobs of employees of inpatient mental health facilities might change or be displaced. Accordingly, Congress mandated that each State mental health authority must protect the interests of these employees through the establishment of arrangements "designed to preserve employee rights and benefits and to provide training and retraining of employees, where necessary, for work in mental health or other fields and arrangements under which maximum effort will be made to place employees in employment."

Sec. 801(a)(1)—Obligations of State Mental Health Authorities—Criteria for Arrangements

Under these regulations the State mental health authority must be October 1, 1981:

(a) Adopt the equitable arrangements in writing, with copies available to the public upon request; and

(b) Include certain types of protections in the equitable arrangements.

After careful consideration of the available alternatives, a determination was made to propose regulations which provide substantial protections for employees but do not describe the protections in minute detail. This allows discretion at the State level for making decisions on the particular arrangements which would be fair and equitable to the employees in that State. However, the Department believes the proposed regulations provide meaningful minimum requirements for the State mental health authority to follow in conforming to the statutory standard.

The Department believes that a compelling reason for proposing regulations which give the States discretionary authority is that the Act does not specifically direct or authorize the funding of the various costs of providing employee protections, other than the limited funds available under section 207 for employee training, retraining, and assistance in securing employment. Thus, it would be inequitable and impractical to require detailed employee protections which might be inconsistent with existing State laws or threaten the budgets of the several States. In this regard, the legislative history of the Act states:

> "[T]he Conferees intend that the Secretary * * * may, to the extent feasible, consistent with the objective of protecting against a worsening of the positions of affected employees, take into account the State's financial circumstances and legal requirements." *H.R. Rep. No. 96–1367, 96th Cong. 2d. Sess. 63 (1980).*

In addition, regulations mandating more detailed requirements were not favored because (1) the State's personnel systems are diverse and their capabilities to implement protections vary greatly and (2) the Act only requires each State mental health authority to effectuate "equitable" arrangements and does not require that the arrangements be approved or certified at the Federal level.

An alternative to the middle course taken by the Department in these proposed regulations would be to promulgate a bare outline which would allow each State mental health authority to exercise greater discretion on the type and scope of protections. This approach was rejected because the Department believes it would amount to little more than a repetition of the statutory provisions and would provide insufficient guidance to the State mental health authorities for complying with the requirement to establish employee protections.

In summary, we believe the proposed regulations represent a successful effort to avoid being either overly general or too detailed and inflexible.

Enforcement Provisions

Under the proposed regulations the Secretary may, after consultation with the Secretary of Labor, discontinue payments under section 107 (allotments to improve administration of State mental health programs) or 305 (assistance to carry out exclusive agent agreements) of the Act as a penalty for failure to comply substantially with any requirement of section 801(a) of the Act

or the regulations. In addition, the State mental health authority will be required to include in any application for assistance under section 107 or 305, certification that the arrangements have been adopted and are available in writing to the Secretary and the general public upon request. The regulations do not include a "procedures" section, since the statute adequately ensures that no penalty could be imposed unless the State is afforded reasonable notice and an opportunity for a hearing.

The proposed regulations follow the statutory language of section 801 in requiring that each State mental health authority must have in effect equitable arrangements for employee protection. However, consistent with the limited enforcement authority of section 801(b), it provides for Departmental enforcement of compliance with section 801(a) only through the withholding of assistance to the State mental health authority under sections 107 or 305 of the Act.

Consideration was given to requiring Federal review and approval of the equitable arrangements pursuant to section 801(a) as a pre-condition to recognition by the Secretary that a State mental health authority has in effect a State mental health services program under section 301 of the Act. This alternative was rejected because it is not specifically provided for in the statute and because it would unreasonably penalize all beneficiaries of the Act within a State (a State mental health services program is required to be in effect before the State mental health authority or any entity in the State is eligible to receive funding under Titles II or III of the Act)—a penalty which is not commensurate with the relationship of the employee protection provisions to the Act as a whole. Further, Congress makes not reference to the principal assistance programs of Title II in the enforcement and penalty provision of section 801(b).

The Department also considered a system under which the Secretary would accept, adjudicate, and order remedial action for complaints that individual employees had not received the protections required by law. This concept was not incorporated because of the potential difficulties in administering such a system and because it was decided to require, instead, that the equitable arrangements established by the State mental health authority include a mechanism for resolution of individual disputes.

Substantive Actions To Protect Employees

These proposed regulations prescribe the minimum protections which are believed to be fair and equitable, viz.: each State mental health authority must provide some arrangements for affected employees in each of the following categories:

(a) Preservation of employment, wages, hours, and benefits;

(b) Training or retraining;

(c) Job placement activities; and

(d) Preservation of collective bargaining rights and benefits under existing agreements.

The Department believes there is nothing in the Act to warrant an abrupt termination of any bargaining agreement which currently covers the State employees covered by the equitable arrangements. Accordingly, the State mental health authority is required to honor labor-management contracts during the period of employee protection, and to recognize that the right to bargain collectively follows any facility, or work unit, which might be transferred to another agency or facility under the control of the State.

There is an affirmative obligation imposed on the State mental health authority to search the State's personnel system in order to identify opportunities for a comparable substitute job which can be offered to each affected employee. In all probability, there will be some situations where the State may wish to unilaterally transfer the employee. However, these regulations are intended to require that unless the job is substantially equivalent in terms of wages, salaries, and benefits, the employee is permitted to decline the job without forfeiting the eligibility for other protective measures.

Further, the State must utilize existing training programs or develop a satisfactory program to retrain affected employees so they may obtain substantially equivalent employment as it becomes available. Training must be conducted in a manner which does not produce economic or other disadvantages for the employee during the training period. It is expected that the State would continue to pay employees their regular salaries or wages, but excuse them from the performance of duties during their training period. The training which is provided under the arrangements is not required to be of a longer duration than the employee's eligibility for protections. It is not intended that States be obligated under this provision to retrain employees who already have professional degrees or licenses. It is especially not intended that a State be obligated to provide training for a professional employee to become certified in a new specialty.

It is noteworthy that the Act expressly authorizes training for work in fields other than mental health. The proposed regulations incorporate this alternative in the arrangements required for training and in the requirement for assisting employees to find new jobs. The Department believes that this provides expanded opportunities for employees and needed flexibility to the States in the efficient utilization and deployment of personnel.

Finally, the State mental health authority must provide severance pay to employees who do not find suitable reemployment under one of the other protective arrangements. The proposed requirements for protective arrangements deliberately avoid mandatory guarantees or minimum levels for such things as training or severance pay. It is expected that each State will assess its own capabilities and adopt arrangements which are equitable under its particular circumstances.

The Department considered, but rejected, a requirement that the States pay affected employees a percentage of wages or salary for a fixed period of time. An acceptable arrangement for each State will depend on its fiscal resources as well as the requirements of State law. Here again, the Department believes the statutory standard of "equitability" outweighs the benefit of a simplistic, but administratively attractive, nationwide standard.

Eligibility for Protections

The proposed regulations require the State mental health authority to protect the interests of State employees who work in a State-operated mental health facility for inpatient treatment on a paid, permanent basis with the exception of officers and directors. Other people engaged in delivering mental health care or support services are not required to be included, because:

1. Unpaid volunteers will not be affected in a tangible or measurable manner.

2. Temporary staff, by definition, do not have any expectation of continuing employment which will be adversely affected by actions to emphasize outpatient mental health services.

3. Coverage of State employees not working in the affected facility would present burdensome administrative problems as a result of having to prove a casual connection between the effect on their jobs and the State action.

4. The Department has concluded that the focus of the protection of employment interests is on the staff of State institutions for inpatient care and treatment. Employees of local governmental units, or private providers, or contractors and employees of contractors who work in inpatient mental health facilities are not within the ambit of Congressional intent as reflected in section 801 of the Act and its legislative history. Given this lack of statutory authority, the Department does not believe it can impose an enforceable obligation on the States to provide for people who are not employees of the State.

5. The Department also considers other employees in the community (whose jobs may be linked to the economic activity at the covered facility) to be beyond the scope of statutory coverage.

Specific Actions Which Have an Adverse Effect

The range of activities and decisions which any State might elect to pursue to "emphasize outpatient mental health services" (the statutory standard for protection) cannot be accurately predicted. Accordingly, these regulations do not attempt to define any specific State action which should trigger an employment protection response. Rather, State actions which will be covered by the regulations will be identifiable by their result, i.e., the closure or partial closure of, or reduction of the inpatient population in, a State-operated mental health care facility.

Moreover, most cases will be clear because the State mental health authority is required to furnish advance written notice to affected employees. Consequently, the State mental health authority will be under a continuing obligation to consider the "employment effect" of its actions to emphasize outpatient mental health services.

Cost of Implementing This Regulation

Some additional costs could occur to States as a result of the regulation which is proposed by this NPRM. However, it is the belief of the Department that these costs are likely to be limited because most States already require training, retraining, or reemployment of permanent public employees who are displaced by changes in their jobs. This regulation will establish a minimum set of protections which would not reduce a State's obligation under its own laws or collective bargaining agreements. Therefore, it is expected that significant additional costs to States would be incurred only in those cases where it was necessary to provide severance pay to employees who do not obtain or receive offers of substantially equivalent employment. Analysis of the expected cost of implementing this regulation is underway. Public comments on the expected costs of this regulation are especially invited.

Effective Date of Protections

The Act does not specify when the States must have the arrangements in place. Similarly, the Act is silent on the timing of events which might make an employee eligible for protection. The proposed regulations mandate that each State mental health authority adopt the required protections in order to comply with the statutory standard and that the protections must be in effect no later than October 1, 1981. The Department selected this date because it marks the first day for which funds are authorized under Titles I, II, and III of the Act and believes that it will allow sufficient time for the State mental health authority to implement the required projections.

No protections are required to be available retroactively to employees affected by State actions taken prior to establishment of the arrangements as the Department believes it would create administrative problems disproportionate to the number of employees who might be eligible for benefits and that it would not be equitable to impose upon the States the financial burden of implementing the employee protections prior to the availability of assistance under the Act.

Miscellaneous

The Department is required to submit to the Office of Management and Budget for review and approval § 54c.104 of the proposed regulations which deals with reporting and recordkeeping requirements. The Department will submit this section to OMB.

Because this proposed rule applies only to State mental health authorities and the employees protected by it are limited to State employees in State-operated facilities, the Department certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

Dated: January 9, 1981.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 14, 1981.

Patricia Roberts Harris,

Secretary.

It is proposed to add a new Part 54c to 42 CFR as follows:

PART 54c—MENTAL HEALTH SYSTEMS

Subpart A—Equitable Arrangements for Employee Protection

Sec.

54c.101 Purpose.
54c.102 To whom do these regulations apply?
54c.103 Definitions.
54c.104 What are the procedures for the development of the equitable arrangements for employee protection?
54c.105 What are the minimum equitable arrangements for employee protection?
54c.106 When do the equitable arrangements for employee protection become effective and what employees are entitled to benefit from them?
54c.107 What is the penalty for noncompliance?
54c.108 What other terms and conditions apply?

Authority: Pub. L. 96-398, 94 Stat. 1564-1613 (42 U.S.C. 9401-9522).

Subpart A—Equitable Arrangements for Employee Protection

§ 54c.101 Purpose.

This subpart provides standards for State mental health authorities to follow in implementing the requirements of section 801 of the Mental Health Systems Act that they provide equitable arrangements for protecting the employment interests of persons whose jobs are adversely affected by actions taken by the State mental health authority to emphasize outpatient mental health services.

§ 54c.102 To whom do these regulations apply?

This subpart applies to each State mental health authority designated under section 105 of the Act to be responsible for the mental health programs of the State.

§ 54c.103 Definitions.

For purposes of this subpart, unless the context otherwise requires:

"Act" means the Mental Health Systems Act (Pub. L. 96-398).

"Actions to emphasize outpatient mental health services" means actions of the State mental health authority to close, to partially close, or to reduce substantially the inpatient population of any State-operated facility (or unit or ward thereof) for the provision of mental health care services, as a result of a shift in emphasis from institutional care to community-based care in the delivery of mental health and support services.

"Adversely affect" means to displace an employee or to abolish, or cause a worsening of, the employee's position with respect to the wages, salaries, or benefits of employment, as a result of

actions taken by the State mental health authority to emphasize outpatient mental health services.

"Employee" means any permanent employee of the State who is employed in a State-operated facility, or unit or ward thereof, for the provision of mental health care services. The term includes administrative, clinical, and support personnel. The following are excluded from the definition of employee:

(1) Probationary employees.

(2) Members of the board of directors and corporate officers.

(3) Self-employed persons.

"Secretary" means the Secretary of Health and Human Services or the Secretary's delegate.

"Secretary of Labor" means the Secretary of Labor or the Secretary of Labor's delegate.

"State" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"State mental health authority" means the agency designated by a State under section 105 of the Act to be responsible for the mental health programs of the State.

"Substantially equivalent employment" means permanent employment in mental health or other fields that is the same or similar to the employment in which an employee was serving at the time the employee was adversely affected with regard to the wages, salaries, or benefits of the employment. If the adversely affected employee's new employment or offer of new employment provides approximately the same value of wages, salaries, and benefits, taken as a whole rather than by category, as the employee's previous employment, the new employment shall be considered substantially equivalent employment.

§ 54c.104 What are the procedures for the development of the equitable arrangements for employee protection?

(a) *Written arrangements available to the public.* In order to comply with section 801 of the Act, the State mental health authority must have in effect written equitable arrangements for employee protection which meet the requirements of this subpart. The written arrangements must be available for inspection and copying by the Secretary and members of the public.

(b) *Negotiations.* The State mental health authority must attempt to develop the equitable arrangements for employee protection through good faith negotiations with the labor organization or organizations representing employees who may be affected or, if there as no such organizations, with the employees who may be affected. If the negotiations do not result in agreement upon the equitable arrangements, the State mental health authority must adopt equitable arrangements meeting the requirements of this subpart and, by October 1, 1981, submit to the Secretary a summary of the attempts to negotiate and the address where the Secretary and members of the public may obtain a copy of the adopted arrangements and the summary of the attempts to negotiate.

(c) *Equitable arrangements a prerequisite for certain awards.* In order to qualify for assistance under section 107 (allotments to improve administration of State mental health programs) or 305 (assistance to carry out exclusive agent agreements) of the Act, the State mental health authority must in its application for that assistance certify that in compliance with paragraph (b) of this section it has adopted equitable arrangements for employee protection which meet the requirements of this subpart and state where the Secretary and members of the public may obtain a copy of those arrangements.

§ 54c.105 What are the minimum equitable arrangements for employee protection?

The equitable arrangements for employee protection adopted by the State mental health authority must at least provide for:

(a) *The preservation of rights, privileges and benefits under existing collective bargaining agreements or otherwise.* During the period of protection, adversely affected employees' rights, privileges and benefits, including pension benefits, vacation benefits, health and insurance benefits, seniority rights, and other fringe benefits must be preserved and continued.

(b) *The continuation of collective bargaining rights.* Collective bargaining rights of employees must continue when—

(1) The administration of a facility is transferred from one State agency to another; or

(2) An employee unit is moved to another State-operated facility.

(c) *The continuation of employment.* (1) Adversely affected employees must be offered substantially equivalent employment if it is available. In order to meet this requirement the State mental health authority must give employees who qualify the right to early retirement under State civil services laws and make maximum efforts to place those employees who do not take early retirement in employment in other State-operated facilities for the provision of mental health care services—including out-patient facilities—or other fields of employment by—

(i) Arranging for the reassignment of adversely affected employees to other State jobs;

(ii) Considering adversely affected employees for transfer to any vacancies for substantially equivalent State employment; and

(iii) Posting employment opportunities at locations convenient for employees.

(2) An adversely affected employee is entitled to receive relocation expenses upon obtaining substantially equivalent employment, if its location is more than 50 miles beyond the location of the employee's previous job.

(d) *Training and retraining.* If adversely affected employees do not take early retirement or have not obtained or been offered substantially equivalent employment under paragraph (c) of this section, the State mental health authority must offer training or retraining to those employees in order that they may obtain other substantially equivalent employment for which positions are available or are expected to become available in the foreseeable future. In carrying out this requirement, the State mental health authority must:

(1) Make maximum efforts to offer training and retraining in or near the present place of employment of adversely affected employees;

(2) Offer training and retraining at no expense to employees;

(3) Insure that employee compensation will not be adversely affected during training and that the employee will receive compensation for additional indirect expenses incurred during training (e.g., travel to the training site);

(4) Count hours of training as regular working hours; and

(5) Whenever reasonably possible, commence training and retraining before the date on which an employee is adversely affected.

(e) *Severance pay.* The State mental health authority must provide for severance pay if an employee has not taken early retirement or has not obtained or been offered substantially equivalent employment during the period in which the employee is entitled to protection under paragraph (f) of this section.

(1) Severance pay may be provided through a lump sum payment or through either monthly or weekly allowances.

(2) In determining the amount of, and the conditions for, severance pay, the State mental health authority may take into consideration the financial capacity

of the State to absorb any additional costs that will be incurred by this provision.

(3) A State mental health authority may require employees to report, as a condition of receiving dismissal allowances, the amounts they receive from unemployment insurance and other employment.

(4) If severance pay provisions are already provided for the employee under State civil service or collective bargaining agreements, those provisions may be incorporated into the equitable arrangements for employee protection in satisfaction of the requirements of this provision.

(f) *Period of protection for adversely affected employees.* (1) Except as provided in paragraph (a)(2) of this section, an employee is entitled to protection under the equitable arrangements for employee protection beginning with the date on which the employee is adversely affected and ending with completion of the longer of the following periods—

(i) One year; or,

(ii) The average period required for an employee to accept a new job in the same occupation in the State as determined by the most recent statistics available from the State's department of labor or similar agency.

(2) The period of protection shall not exceed an employee's period of employment with the State or extend beyond the date on which the employee obtains, or refuses an offer for, substantially equivalent employment. The period of protection ceases in the event of the employee's resignation, death, retirement or dismissal for cause. This does not affect any other rights, privileges or benefits the employee may have under an existing collective bargaining agreement or established personnel policy.

(g) *Procedures for the resolution of disputes.* These procedures must provide for the impartial resolution of disputes between the State mental health authority and any adversely affected employee concerning the interpretation, application, or enforcement of the equitable arrangements.

(h) *Notice to employees.* Employees must be given notification prior to the expected adverse affect resulting from actions taken to emphasize outpatient mental health services. These notification procedures must be congruent with other State policies on informing employees as to potential adverse effects of State actions.

§ 54c.106 When do the equitable arrangements for employee protection become effective and what employees are entitled to benefit from them?

The equitable arrangements for employee protection become effective on the date on which they are adopted by the State mental health authority. In order to comply with section 801, this date must be no later than October 1, 1981. Any employee that is adversely affected, following the date of adoption of the arrangements, by actions of the State mental health authority to emphasize outpatient mental health services is entitled to benefit from the protections provided by these arrangements.

§ 54c.107 What is the penalty for non-compliance?

For a failure to comply substantially with section 801(a) of the Act or this subpart, the Secretary, after consultation with the Secretary of Labor, may discontinue payments to the State mental health authority under sections 107 (allotments to improve administration of State mental health programs) and 305 (assistance to carry out exclusive agent agreements) of the Act as authorized by section 801(b) of the Act.

§ 54c.108 What other terms and conditions apply?

The Secretary may from time to time require the State mental health authorities to submit reports on their efforts to implement these requirements.

[FR Doc. 81-2064 Filed 1-21-81; 8:45 am]
BILLING CODE 4110-88-M

federal register

Thursday
January 22, 1981

Part VI

Environmental Protection Agency

State Implementation Plans; Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension; and Approved Ozone Modeling Techniques; Final Policy and Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[A-FRL 1722-8]

State Implementation Plans; Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension

AGENCY: Environmental Protection Agency.

ACTION: Final policy.

SUMMARY: Provisions of the 1977 Clean Air Act Amendments require states that have received an extension of the attainment date for a national ambient air quality standard (NAAQS) for ozone or carbon monoxide beyond 1982 to submit a state implementation plan (SIP) revision by July 1, 1982. This policy describes the criteria that the Environmental Protection Agency (EPA) will use to review these 1982 SIP submittals and also updates and supplements the Administrator's February 24, 1978 memorandum, "Criteria for Approval of 1979 SIP Revisions," (43 FR 21673) and subsequent guidance.

EPA proposed this policy on September 30, 1980 (45 FR 64855) and announced a 60-day period for public comment. The comments received on major issues, EPA's response to the comments, and the changes to the proposed policy are summarized below. A more detailed summary of comments and the EPA responses have been included in Docket No. A-79-43 and are also available for review at EPA regional offices.

DATES: Final policy effective January 22, 1981.

ADDRESS: Docket No. A-79-43, containing material relevant to this action, is located at the EPA Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for copying. A summary of the comments received on the proposed policy and EPA responses to the comments are also available for review at the EPA regional office locations listed in Appendix E.

FOR FURTHER INFORMATION CONTACT: Additional information about the policy is available from the following: General policy contact: Mr. Johnnie L. Pearson, Standards Implementation Branch, Environmental Protection Agency (MD-15), Research Triangle Park, North Carolina 27711, telephone (919) 541-5497.

Transportation policy contact: Mr. Gary C. Hawthorn, Office of Transportation and Land Use Policy (ANR-445), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 755-0603.

Vehicle inspection and maintenance contact: Mr. Donald White, Motor Vehicle Emission Test Lab, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313) 668-4350.

SUPPLEMENTARY INFORMATION: During the 60-day comment period for the proposed policy EPA received comments from 28 organizations and individuals. Comments from over 30 other organizations and individuals were received after the close of the comment period. EPA carefully considered all the comments and made several changes to the policy. Major issues raised by those submitting comments, EPA's responses, and any resultant changes in the policy are summarized below. A more detailed summary of comments and EPA responses are included in Docket No. A-79-43 and available at EPA regional offices.

Attaining NAAQSs After 1987

In the proposed policy EPA recognized that a few large urban areas with very severe ozone and carbon monoxide problems may not be able to attain NAAQSs by December 31, 1987, the deadline set in the Clean Air Act. EPA proposed that such areas should submit SIP revisions by July 1, 1982 that demonstrate attainment as soon as possible after 1987 using additional, more effective measures beyond those required in other areas.

Some public and private organizations commenting on this portion of the proposal supported the course of action outlined by EPA. Others believed, however, that such a policy would encourage some areas to slow or abandon their air quality clean-up efforts. For example, one state environmental agency commented that granting any delay was inappropriate as federal policy and that asking the public to accept additional years of poor air quality was unacceptable. Several state and local agencies stated they believed that the EPA Administrator would be exceeding his authority under the Clean Air Act if he accepted a SIP that did not demonstrate attainment by 1987.

The final EPA policy still permits the submission from a few urban areas with severe ozone and carbon monoxide problems of SIPs that provide for expeditious attainment of NAAQSs by a specific date after 1987. The policy now makes more explicit, however, EPA's intent to carefully evaluate the effectiveness of measures in SIPs for all area and ensure that the most effective measures have been adequately considered in any area that does not demonstrate attainment by 1987.

EPA recognized in the proposal that current provisions of the Clean Air Act may not allow approval of a SIP that provides for attainment of NAAQSs after 1987 and that action by the Congress may be necessary. EPA considers any request to the Congress for additional delay of attainment deadlines to be a serious step and one that should be considered only after it is clear that all available and implementable control measures will be adopted.

Providing Adequate Time for SIP Adoption

The proposed policy reiterated and expanded upon the Clean Air Act requirements that a fully adopted, legally enforceable SIP revision must be submitted to EPA by July 1, 1982. Several state and local agencies responsible for SIP development commented that they would be unable to ensure the adoption and submittal of all required measures by July 1982, particularly if EPA guidance mentioned in the proposed policy is not available early in 1981. EPA recognizes that meeting the July deadline may be a problem for some areas, but is constrained by the Clean Air Act from granting any time extensions.

EPA will continue the practice of granting conditional SIP approval followed in acting on the plan revisions due in 1979. If a SIP revision is in substantial compliance with Part D of the Clean Air Act and the state provides assurances that remaining minor deficiences will be remedied within a short time, EPA may approve the plan with conditions that corrective actions will be completed according to a specified schedule. For example, if missing regulations applying RACT to required sources constitutes a minor deficiency in the SIP and the state commits to a schedule for submitting those regulations, then EPA may conditionally approve the SIP.

The proposed policy included the requirement that states must adopt regulations applying reasonably available control technology (RACT) to all sources of volatile organic compounds (VOCs) covered by a control technique guideline (CTG) and to all other major sources of VOCs. EPA also announced its intent to issue additional CTGs during 1981. A number of agencies

responsible for developing SIPS commented that they do not have sufficient resources to finalize regulations for both CTG and non-CTG source categories. Some of the agencies also indicated that the time necessary to satisfy state and local procedural requirements makes it unlikely that the required regulations will be fully adopted by July 1982. A state environmental agency, for example, stated that although the agency agrees in principle with the requirements for regulating both CTG and non-CTG source categories, the agency does not have adequate staff and financial resources to complete the necessary technical analysis and rulemaking activities. In addition, the requirements of the state administrative review process cannot be met by July 1982, even if rulemaking is limited only to CTG sources. A local environmental agency commented that it may not be possible to submit regulations for source categories covered by CTGs issued late in 1981. In order for the regulations to be included in the July 1982 submittal, the local agency must provide the regulations to the state by the end of 1981.

To help ensure that states have adequate opportunity to meet the July 1982 deadline, EPA will issue the new CTGs as early as possible in 1981. The CTGs are in preparation and will be available in draft form between January and May 1981. The final CTGs will be published between July and October 1981. If state and local agencies begin now to develop the necessary data and work with the draft CTGs, they should be able to complete development of regulations by July 1982.

Providing for the Implementation of I/M Programs

The proposed policy included the requirement that states submit, by July 1982, the rules and regulations for vehicle inspection and maintenance (I/M) programs, as well as documentation of 10 other critical I/M program elements. The proposed policy stated that EPA would update I/M guidance for determining I/M program adequacy.

Some state and local agencies commented that guidance not available for their use in planning and implementing I/M programs should not be used to evaluate the I/M portion of the 1982 SIP. Many of these agencies were concerned that updated guidance would include new requirements which could adversely affect I/M activities already in progress and which could not be completed by July 1, 1982. Other agencies commented that EPA should not evaluate individual elements of an I/M program, but should evaluate the program as a whole; that the I/M guidance should be promulgated through rulemaking to allow review and comment by interested parties; and that the intent of requiring the I/M public awareness plan in the 1982 SIP is unclear.

A state agency also questioned whether additional emission reductions from other source categories could be used to offset any shortfall from I/M, rather than making the I/M program more stringent. That agency also questioned whether, in a state with a post-1978 attainment date and with legislative authority which needed to be changed before I/M effectiveness could be increased, commitments to obtain needed legislative changes were adequate for the 1982 SIP, rather than having the legislative changes themselves before July 1982.

EPA's basic requirements for I/M programs are included in a widely distributed July 17, 1978 policy memorandum. Subsequent clarifications to that policy have defined the factors involved in designing I/M program elements and provided information on designing programs which optimize technical and cost effectiveness. Additional information along these lines will be provided.

The July 17, 1978 policy memorandum will be the primary basis for determining I/M program adequacy in the 1982 SIP process. The final policy has been revised to reflect this. EPA agrees that the policy should contain provisions for those states that are meeting an approved schedule, but will not be able to make a complete I/M submission by July 1982. Appropriate changes have been incorporated into the final policy. EPA also agrees that the I/M program must be evaluated as a whole, rather than element by element.

EPA does not believe that I/M policy and guidance needs to be promulgated through rulemaking, but does agree that review and comment by interested parties are important. The appropriate place for rulemaking for I/M is the SIP review and approval process. EPA feels that the states and other interested parties have always been extensively involved in the policy and guidance development process. EPA will continue to seek such review and comment.

EPA feels that the I/M public awareness plan is critical for the successful implementation of an I/M program and that it must be included as part of the 1982 SIP. EPA recognizes, however, that much of the public awareness activity should generally have been completed before the 1982 SIP deadline and will work with the states in developing and implementing their public awareness plans. Guidance is available on what should be included in a good public awareness plan.

If an I/M programs fails to achieve the requisite emission reduction, then the program will have to be modified to obtain that reduction. Additional emission reductions from other source categories cannot be used to compensate for a shortfall from I/M.

Because section 172(c) of the Act requires all measures in the 1982 SIP to be legally enforceable, any further legislative authority will have to be obtained before the 1982 SIP is submitted. A commitment to obtain such authority will not be sufficient for the 1982 SIP.

Making Commitments to Implement Transportation Measures

The proposed policy required that the 1982 SIP submittal include commitments by state and local governments to implement the necessary transportation measures. The documentation of the commitment must include identification of costs, funding sources, and responsibilities of state and local agencies and officials. Several state and local agencies commenting on the proposal expressed concern about making commitments to transportation improvement projects that are only in the early stages of planning and have not been included in state and local budgets or been approved for federal funding.

The definition of implementation commitments contained in Appendix C has been expanded to clarify the form of the commitment for projects that are progressing towards implementation, but have not received budget approvals. Essentially, the implementation commitment for these projects or measures should be a schedule of the major steps required to advance the project through the planning and programming processes. This schedule should also contain an identification of the responsible agencies that must take significant actions to implement the measure. An illustration of such a schedule is also contained in Appendix C.

If a particular measure cannot be implemented because the necessary funds cannot be obtained from the funding source identified in the schedule and if the SIP planning agencies can demonstrate compliance with the provisions of the Clean Air Act requiring priority treatment for projects important for improved air quality and basic transportation needs, then the measure may justifiably be delayed. If this does occur, another substitute measure may

be needed for replacement to ensure that NAAQSs are attained (see the section on contingency plans).

Developing Monitoring and Contingency Plans for Transportation Measures

The proposed policy included requirements for developing a monitoring plan for regularly assessing the effectiveness of transportation measures and a contingency plan for implementing additional transportation measures if forecasted emission reductions do not occur. A number of state and local governments commented that they do not have sufficient time and resources to develop monitoring and contingency plans at the same time that they are developing the measures to meet the emission reduction targets for transportation. Some of those commenting interpreted the monitoring requirements as being primarily for air quality monitoring.

In the final policy the monitoring plan requirements emphasize the use of methods that rely on surrogate measures and on data already being collected for other purposes. The monitoring plan need *not* include additional air quality monitoring.

The requirements for a contingency plan have been revised to require a listing only of transportation measures and projects that, because of their potentially adverse effect on air quality, will be delayed while a SIP is being revised. The projects will be delayed when the Administrator of EPA finds that a SIP is inadequate to attain ozone or carbon monoxide NAAQSs and calls for a SIP revision under section 110(c) of the Clean Air Act. EPA has also adopted the suggestion of a local transportation planning agency and is requiring that the SIP include a description of the process to be used to develop and implement additional transportation control measures when they are determined necessary.

Establishing Emission Reduction Targets

The proposed policy required state and local officials to reach agreement on the emission reductions necessary to attain NAAQSs, the extent to which the emission reductions will come from controls on mobile or stationary sources, and the responsibilities for implementation of the measures. Several comments were received noting the difficulties in determining emission reduction targets for meeting the ozone NAAQS because of the form of the standard, the characteristics of the Empirical Kinetic Modeling Approach (EKMA) model, and the effects of pollutant transport. Other comments reflected confusion about where in the SIP development process the identification of targets would occur.

An August 1, 1978 EPA policy memorandum outlined the reasons for establishing emission reduction targets through a negotiated process involving state and local officials from affected jurisdictions. In the past, emission reduction targets and responsibilities for achieving the targets have sometimes been determined without adequate intergovernmental consultation. In some instances, for example, states attempted to require local agencies to make up large shortfalls in needed reductions entirely through transportation measures without examining whether other measures, such as more stringent emission limitations for stationary sources, might make up some of the shortfall.

The final policy has been revised to help clarify the intent of the section on emission reduction targets. The process for negotiating emission reduction targets becomes especially important in those areas where the minimum control measures described in subsections I.B–I.D are not sufficient to attain NAAQSs and additional measures must be evaluated and selected. The subsection on analysis of alternatives has been revised to indicate that the results of the evaluation of alternatives should be used in defining emission reduction targets.

Demonstrating Reasonable Further Progress

The proposed policy included requirements for demonstrating reasonable further progress towards attaining NAAQSs. A substantial number of comments were received objecting to the requirement for a "linear attainment program" represented graphically by a straight line from base year to attainment year emissions. Those commenting noted that many control measures, particularly those for vehicle emissions, have long lead times and do not have significant effects within the first few years after adoption. Those measures that are implemented within the early years will generally not result in a linear rate of emission reduction.

The final policy has been redrafted to clarify that the linear attainment program represents only the upper limit for annual net emissions from 1980 through the year of attainment. The measures encompassed by the linear attainment program include those in both the 1979 and 1982 submittals. Although there may be some lag time before the measures in the 1982 submittal result in emission reductions, reductions should already be occurring as a result of measures in the 1979 submittal.

The final policy now also reiterates the reporting requirements included in the approval criteria for the 1979 submittal and asks that the annual reasonable further progress reports be combined with related information already being submitted on July 1 of each year.

Ensuring Conformity of Federal Actions

Section 176(c) of the Clean Air Act requires that federal actions conform to SIPs. The proposed policy indicated that states should, where possible, identify the emissions associated with federal actions planned during the period covered by the SIP. A number of comments received on that portion of the proposed policy requested clarification of the process for ensuring conformity and the respective responsibilities of federal, state, and local governments. The comments noted the potentially large number of actions involved, the associated work load for state and local governments, and the lack of available state and local resources. The comments also included questions about the methods to be used for determining conformity.

The final policy outlines the general responsibilities of federal, state, and local governments. Further clarification will be provided in a proposed rule that EPA intends to issue shortly. Section 176(c) states that the assurance of conformity of federal actions is the affirmative responsibility of the head of each federal agency. EPA believes that each federal agency should establish criteria and procedures for making conformity determinations and that state and local governments should have opportunity to review proposed criteria and procedures, as well as the individual conformity determinations that result from their application. The proposed rule that EPA is preparing encourages the use of existing review processes, such as those required by the National Environmental Policy Act and Office of Management and Budget Circular A–95, to reduce the resources required for ensuring conformity.

Interim criteria for use in making and reviewing conformity determinations are included in an advance notice of proposed rulemaking published by EPA on April 1, 1980 (45 FR 21590). Criteria and procedures for evaluating the direct and indirect air quality effects of wastewater treatment facilities funded under the Clean Water Act are included in the section 316 policy published on August 11, 1980 (45 FR 53382). Identification, during SIP preparation, of the emissions associated with future

major federal actions will facilitate state and local review of conformity determinations.

Consultation Among State and Local Officials

Two state environmental agencies commenting on the proposed policy thought that the consultation provisions were generally unclear. A local planning agency asked that the policy be supplemented to indicate that the designations of agency responsibilities made by governors prior to the 1979 plan submittals remain in effect. A public interest group requested that the policy forbid states from making unilateral changes in SIP provisions developed by local governments.

Modifications were made in the consultation provisions of the final policy to help clarify apparently ambiguous points and to indicate that new section 174 agency designations are not necessary. Although EPA agrees that a state should not revise a locally developed SIP provision without consulting local officials, EPA believes that the regulations for implementing section 121 of the Clean Air Act already adequately cover such a situation and provide opportunity for appeal to EPA if adequate consultation does not take place.

Determining Data and Modeling Requirements

The proposed policy required that emission inventories should, where possible, be prepared for a 1980 base year. The policy also required that base year and projected year emission inventories for the ozone portion of the SIP be seasonally adjusted annual inventories. The proposal required the SIP to be based on the most recent three years of air quality data, generally including data collected through the third quarter of 1981. The proposal recommended use of the city-specific EKMA model to develop the ozone portion of the SIP.

Several agencies responsible for developing emission inventories commented that agreements had been reached and work had already begun on inventories for base years other than 1980. The agencies recommended that EPA remain flexible in the final policy and accept inventories for those other base years. The final policy continues to allow inventories for base years other than 1980 to be used.

A number of state and local agencies questioned the validity of requiring seasonally adjusted annual inventories of VOCs. Most of those commenting recommended that the inventories be prepared for a typical summer weekday instead. The final policy requires the weekday inventory.

Several agencies indicated in their comments that their normal processing time to validate air quality data would prevent them from using data through the third quarter of 1981, if the SIP was to be developed and submitted by July 1982. The final policy encourages the use of data through the third quarter of 1981, but allows states to use earlier data. If a state selects to use earlier data, it still must present a summary of air quality data through 1981 in its July 1982 submittal and describe how the data may affect the SIP.

State and local agencies that had applied photochemical dispersion models in their previous SIP development work commented that they should be allowed to use these models, rather than the less sophisticated city-specific EKMA model, in developing their 1982 submittals. The final polciy encourages the use of the photochemical dispersion models where the agency developing the SIP has a demonstrated capability to use such models and wishes to do so. Use of a model other than city-specific EKMA or its equivalent must be approved by EPA.

Final Policy—Criteria for Approval of The 1982 Plan Revisions

Introduction

In circumstances where a state has received an extension beyond 1982 for attaining a NAAQS for ozone or carbon monoxide, the Clean Air Act Amendments of 1977 [Section 129(c) of Pub. L. 95-95] require the state to adopt and submit a SIP revision to the Administrator of EPA by July 1, 1982. The areas that are affected by this requirement are listed in Appendix A. The purpose of this notice is to outline the criteria that EPA will use in evaluating the adequacy of the 1982 SIP revisions. These criteria fall into four general categories: (1) Control strategies and attainment demonstration, (2) SIP development process, (3) data collection, and (4) modeling.

The Clean Air Act Amendments of 1977 require all SIPs for the areas that have received an extension beyond 1982 to demonstrate attainment of the NAAQSs for ozone and carbon monoxide as expeditiously as practicable, but not later than December 31, 1987. As a condition for extending the attainment date, Congress also required that each SIP contain certain control provisions covering stationary sources, vehicle I/M, and transportation measures. The control provisions must be included in the SIP for an area where an extension has been granted, regardless of the date after December 31, 1982 when attainment can be demonstrated. These minimum measures and their relationship to the plan's attainment demonstration are described in Section I. Section I also discusses the approach that EPA believes should be followed by those few large urban areas where air quality problems are so severe that analyses may indicate that attainment by 1987 is not possible.

In addition to including a demonstration of attainment, the development of the 1982 SIP must conform to the process and follow the procedures required by the Clean Air Act and described in subsequent EPA guidance. Section II identifies the major steps in the SIP development process. Selected EPA guidance documents for the SIP process are listed in Appendix B. Terms used in the transportation-air quality process are defined in Appendix C. Also, the air quality and emissions data bases to be used in developing the 1982 SIP must be updated. The data requirements for both ozone and carbon monoxide are explained in Section III. The data base for the ozone portion of the SIP must be sufficient to support at least a Level III modeling analysis. The requirements for a Level III analysis are summarized in Appendix D.

Finally, Section IV describes the status of the various air quality models and alerts states to modeling requirements. EPA recommends application of city-specific EKMA or an equivalent method for developing the ozone portion of the SIP, unless the agency preparing the SIP already has the capability and wants to apply a more sophisticated level of modeling. For the carbon monoxide portion, EPA recommends application of the models identified in existing EPA guidance.

I. Control Strategies and Attainment Demonstration

A. Summary

The Clean Air Act requires the 1982 SIPs to contain a fully adopted, technically justified program that adopts and commits to implement groups of control measures that will result in attainment of the ozone and carbon monoxide NAAQSs no later than 1987 and that will provide reasonable further progress in the interim. All plans must contain the three categories of minimum control measures described in this section. If these minimum control measures are not adequate to show attainment by 1987, additional measures which can be implemented by 1987 must be identified and adopted. If all measures which can be implemented by

1987 are not adequate to demonstrate attainment by 1987, additional measures which can be implemented after 1987 must be identified and adopted and attainment must be demonstrated by the earliest possible date. the date of attainment must be specified in all SIPs. In order to ensure equity among the areas unable to demonstrate attainment by 1987, EPA intends to evaluate all SIPs submitted in July 1982 for the effectiveness of measures applied in all areas. Should EPA find that any of the areas not demonstrating attainment by 1987 have failed to adopt the most effective measures available, EPA will compile a list of such controls and require these areas to revise their SIPs to include the more effective control measures.

Subsections B–D describe in detail the minimum control measures which must be contained in each plan submitted in July 1982. The state must demonstrate that adoption and implementation of these elements will result in the attainment of the ozone and carbon monoxide standards by the most expeditious date possible. Control measures must be adopted in legally enforceable form. The SIP submittal must include implementation schedules and commitments. Subsections E and F describe reasonable further progress and attainment demonstration requirements. Subsection G describes the conformity of federal actions requirement.

B. Stationary Sources

Section 172(b) of the Clean Air Act requires states to implement all reasonably available control measures as expeditiously as practicable and, in the interim, maintain reasonable further progress, including such reduction in emissions from existing sources as may be obtained through the adoption, at a minimum, of RACT. In order to complete the requirement to adopt all reasonably available control measures, states must include as part of the 1982 submittal, adopted regulations applying RACT to the following categories of sources: (1) All sources of VOCs covered by a CTG, (2) all remaining major (emitting more than 100 tons per year potential emissions as defined under section 302(j) of the Clean Air Act) stationary sources of VOCs, and (3) all sources of carbon monoxide emitting more than 1,000 tons per year potential emissions.

The guidelines for the 1979 ozone submittals permitted states to defer the adoption of regulations until the CTG for a source category was published. This delay allowed the states to make more technically sound decisions regarding the application of RACT. EPA anticipates issuing a number of additional CTGs in 1981 for various source categories of VOCs. These documents, in conjunction with the previously issued CTGs, will address most of the major source categories which are of national importance. Legally enforceable measures implementing RACT for all sources addressed by these documents must be included in the July 1982 submittal.

There will remain numerous other major sources of VOCs that may be of local importance for which a CTG will not be available. For the major sources for which a CTG does not apply, a state must determine whether additional controls representing RACT are available. EPA will require the submittal to include either legally enforceable measures implementing RACT on these sources or documentation supporting a determination by the state that the existing level of control represents RACT for each of these sources.

If application of RACT to all sources covered by a CTG and all other major sources, together with implementation of a vehicle I/M program and transportation controls, does not result in attainment of the ozone standards by 1987, then additional stationary source controls must be adopted by the state.

C. Vehicle Inspection and Maintenance

All major urban areas needing an extension beyond 1982 for attainment of a standard for ozone or carbon monoxide were required to include vehicle I/M as an element of the 1979 SIP revision. States were required at that time to submit only evidence of adequate legal authority, a commitment to implement and enforce a program that will reduce hydrocarbon and carbon monoxide exhaust emissions from light duty vehicles in 1987 by 25 percent, and a schedule for implementation. Full implementation of that program, in accordance with EPA's established I/M policy, is required in all cases by December 31, 1982.

States with areas that have I/M programs under development or operational as part of their 1979 SIP revisions were required to submit only qualitative descriptions of their I/M program elements in the 1979 SIP submittal. The documentation discussed below must be submitted by July 1982, if not previously submitted as evidence of compliance with the 1979 implementation schedule. The 1982 SIP revision must include rules and regulations and all other I/M elements which could affect the ability of the I/M program to achieve the minimum emission reduction requirements. More specifically, the 1982 submittal must include: (1) Inspection test procedures; (2) emission standards; (3) inspection station licensing requirements; (4) emission analyzer specification and maintenance/calibration requirements; (5) recordkeeping and record submittal requirements; (6) quality control, audit, and surveillance procedures; (7) procedures to assure that noncomplying vehicles are not operated on the pubic roads; (8) any other official program rules, regulations, and procedures; (9) a public awareness plan; and (10) a mechanics training program if additional emission reduction credits are being claimed for mechanics training.

As part of the 1982 SIP review process, EPA will determine the overall adequacy of the critical elements of each I/M program and, therefore, the approvability of the 1982 SIP by comparing those elements to established I/M policy. I/M program elements must be consistent with EPA policy or a demonstration must be made that the program elements are equivalent.

State or local governments that have I/M programs, but plan to increase the coverage and/or stringency of the programs in order to achieve greater reductions, must submit the progam modifications in legally enforceable form through the 1982 SIP revision process.

If a state wishes to submit all or part of the I/M elements required for the 1982 SIP revision before July 1982, with or without other portions of the 1982 SIP revision, EPA will review and evaluate the submittal and take appropriate action as expeditiously as practicable. In the case of a partial submittal, EPA's action will be limited to the available program elements. Final action on the total I/M program must be reserved until all elements are submitted and reviewed in order to assure that the program satisfies the provisions in Part D of the Clean Air Act.

If a state is implementing an I/M program on an approved schedule which extends beyond July 1, 1982, and the state is unable to finalize some of the critical elements of its I/M program in time to include them in the 1982 SIP revision, the state may submit those elements at a later date. This later date must, however, be identified and justified by the state in its 1982 SIP revision and be consistent with the I/M implementation schedule in its 1979 SIP submittal. In such cases EPA will review the available program elements and, if adequate, conditionally approve the I/M program on the submittal (by the designated date) and approval of the outstanding elements.

D. Transportation Measures

The portion of the 1982 SIP addressing emission reductions to be achieved through the implementation of transportation measures must include the basic provisions listed below.

Further guidance will be issued, as necessary, to describe these requirements in greater detail.

1. An updated emission reduction target for the transportation sector. As discussed below, the target must be determined by consultation among state and local officials using the procedures established under sections 121 and 174 of the Act.

2. All reasonably available transportation measures and packages of measures necessary for the expeditious attainment of the transportation emission reduction target. Categories of reasonably available transportation measures are identified in section 108(f) of the Act. The submittal should present documentation, based on technical analysis, of the basis for not implementing any of the measures identified in this section. The 1982 SIP submittal must contain transportation emission reduction estimates for adopted measures and packages of measures for each year between 1982 and the attainment date. Any reasonably available transportation measures that have been adopted between the submission of the 1979 revision and the preparation of the 1982 revision should be included in the 1982 submittal along with the associated emission reductions.

3. Commitments, schedules of key milestones, and, where appropriate, evidence of legal authority for implementation, operation, and enforcement of adopted reasonably available transportation measures. Costs and funding sources for planning, implementing, operating, and enforcing adopted measures must be determined for all measures. Tasks and responsibilities of state and local agencies and elected officials in carrying out required programming, implementation, operation, and enforcement activities associated with adopted transportation measures must be identified. The 1982 submittal must also include documentation that state and local governments are continuing to meet the schedules and commitments for the transportation measures included in the 1979 SIP.

4. Comprehensive public transportation measures to meet basic transportation needs. The measures must be accompanied by an identification and commitment to use, to the extent necessary, federal, state, and local funds to implement the necessary improvements. Commitments and schedules for the implementation of these measures must also be submitted.

5. A description of public participation and elected official consultation activities during development of the transportation measures.

6. A monitoring plan for periodically assessing success or failure of transportation measures or packages of measures in meeting emission reduction projections. The plan should contain methods for determining the reasons for success or failure.

7. Administrative and technical procedures and agency responsibilities for ensuring, in response to section 176(c) of the Clean Air Act, that transportation plans, programs, and projects approved by a metropolitan planning organization (MPO) are in conformance with the SIP.

8. A two-part contingency provision. the first part is applicable to only those areas with populations of 200,000 or more. These areas must submit as part of the SIP a list of planned transportation measures and projects that may adversely affect air quality and that will be delayed, while the SIP is being revised, if expected emission reductions or air quality improvements do not occur. The second part, which must be submitted by all areas preparing 1982 SIP revisions, consists of a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reductions. The contingency provision must be initiated when the EPA Administrator determines that a SIP is inadequate to attain NAAQSs and that additional emission reductions are needed.

The Administrator's February 24, 1978 memorandum, "Criteria for Approval of 1979 SIP Revisions," and the October 1978 SIP Transportation Checklist identified the elements necessary for the transportation portion of the 1979 SIP. The provisions listed above supplement the elements described in the earlier guidance.

The guidance for 1979 placed primary emphasis on the establishments of a continuing air quality-transportation planning process. This continuing planning process must be used in developing the transportation portion of the 1982 SIP revision. The process is described in the June 1978 EPA-Department of Transportation (DOT) Transportation-Air Quality Planning Guidelines and the May 1, 1980 EPA–DOT Expanded Guidelines for Public Participation. Where the process for an area has changed from that described in the 1979 submittal, an updated description, including key planning, programming, and funding decision points, should be submitted in 1982.

Solutions to carbon monoxide problems can be found through metropolitan-wide planning, as well as through analyses of relatively small ("hotspot") problem areas. Evidence of specific carbon monoxide problem areas is derived from modeling and monitoring information. Although the geographic area that is nonattainment for carbon monoxide may be small, the measures necessary to meet standards may have to be applied over a larger area. It is essential to guard against selecting measures that will solve the carbon monoxide problem in a small geographic area, but that will worsen the ozone problem or simply transfer the carbon monoxide problem to another area.

E. Reasonable Further Progress

The July 1982 submittal must demonstrate that reasonable further progress toward attainment of the ozone and carbon monoxide standards will continue to be made and reported throughout the period of nonattainment. The annual emission reductions must at least equal the emission reductions that would be achieved through a linear attainment program. As described in the criteria for approval of the 1979 SIP submittal, this program is represented graphically by a straight line drawn from the emissions inventory for the base year of the 1979 submittal to the allowable emissions on the attainment date. Compliance with the reasonable further progress requirement does not authorize delays in implementation or adoption of any measures. All controls must be implemented as expeditiously as practicable.

The demonstration of reasonable further progress must indicate the total amount of the annual reduction in emissions and must distinguish between those reductions projected to result from mobile source and stationary source measures. The projected reductions to be achieved from these source categories must be consistent with the emission reduction targest established through the consultation process involving state and local officials.

The criteria for approval of the 1979 submittal recognized that there would be a lag in the early years in achieving reasonable further progress because most measures would not achieve immediate reductions. By 1982, however, a significant number of the stationary source controls and transportation measures included in the 1979 submittal will be implemented, as will the vehicle

emission I/M program. Emission reductions will also continue to result from the control systems required by the Federal Motor Vehicle Control Program for new vehicles. Accordingly, each plan must demonstrate for each year until attainment is achieved that the annual net emissions fall on or below the point representing that year on the straight line. No lag period will be allowed in 1982 and later years.

The criteria for approving the 1979 SIP submittals included a requirement for annual reporting of reasonable further progress. The information demonstrating reasonable further progress shall be submitted along with the source emissions and annual state action report required by July 1 of each year (40 CFR 51.321–51.328).

F. Additional Control Measures Required for Attainment

If the minimum control measures described in subsections B–D are not adequate to demonstrate attainment by 1987, the state must identify, evaluate, and adopt additional measures which can be implemented as quickly as possible, but no later than 1987. Examples of such measures include the following:

(1) Requiring control of all major stationary sources to levels more stringent than those generally regarded as RACT,

(2) Extending controls to stationary sources and scource categories other than those subject to the minimum control measures described in subsection B,

(3) Implementing a broader range of transportation controls (e.g., extending the geographic coverage of some measures or providing more intensive implementation), and

(4) Increasing the coverage and stringency of the vehicle emission I/M program.

If implementation of all measures which can be implemented by 1987 will still not demonstrate attainment by 1987, the state should then analyze the transportation and other measures possible *in a longer time frame* that, together with the measures already evaluated, will result in attainment as quickly as possible after 1987. The specific date for attainment shall be included in the SIP. State and local governments must commit to implementation of such measures.

Given the additional time and potential resources available to areas with a post-1987 attainment date, more extensive evidence will be required to demonstrate that any of the measures identified in section 108(f) of the Clean Air Act is not reasonably available. Many transportation measures which cannot be implemented by 1987 can, because of the additional time and resources available, be implemented by a post-1987 attainment date. The 108(f) measures ultimately selected should, both individually and collectively, be at least as ambitious as applications of these measures in other comparable areas. EPA, in consultation with the DOT, will act as a clearinghouse in identifying ambitious performance levels for specific measures.

The 1982 SIP revision to achieve a post-1987 emission reduction target must include a convincing demonstration that the target cannot be achieved by 1987 and that the post-1987 date is the most expeditious date possible. The demonstration must identify the minimum times needed for planning, programming, and implementation of adopted transportation and stationary source control measures and must demonstrate that all possible measures will be implemented prior to 1987. In addition, the demonstration must show that projected resources from available sources (federal, state, and local) are insufficient for faster implementation of the measures.

EPA will use the technical evaluation prepared by a state to assess whether areas are making all efforts possible to attain the ozone and carbon monoxide standards by 1987. If an area is unable to attain the ozone and carbon monoxide NAAQSs by 1987, then the "most expeditious date beyond 1987" must be agreed to by state and local agencies. The transportation and stationary source control measures necessary for demonstrating attainment by the most expeditious date must be adopted as part of the 1982 SIP submitted to EPA.

EPA believes that an approach which requires a state to demonstrate attainment by a certain date using measures it is committed to implement is more in keeping with the spirit of the Clean Air Act than an approach which would accept "paper" demonstrations of attainment by 1987 which relied on measures which would be virtually impossible to implement. EPA will not approve a plan which relies on such unimplementable measures to demonstrate attainment, when it is clear that the state is not committed to implement and enforce those aspects of the plan.

EPA will review plans with post-1987 attainment dates in accordance with the requirements of the Clean Air Act. If EPA concludes that the current provisions of the Act do not allow approval of a SIP that provides for expeditious attainment of standards after 1987, EPA intends to seek legislative changes that will allow such an approval. The nature of any legislative change that the Agency may request will be based on a careful evaluation of the status of state efforts to develop plans which attain the standards on or before 1987. One option for legislative change that EPA will consider recommending would provide area-specific schedules and control requirements for each of the areas that cannot demonstrate attainment by 1987.

G. Conformity of Federal Actions

Section 176(c) of the Clean Air Act requires all federal projects, licenses, permits, financial assistance and other activities to conform to SIPs. Assurance of conformity is an affirmative responsibility of the head of each federal agency. In addition, section 316(b) requires that the direct and indirect emissions associated with any wastewater treatment facility funded under the Clean Water Act be accommodated in the SIP. In preparing the 1982 SIP revision, states and local governments should identify, to the extent possible, the direct and indirect emissions associated with major federal actions, including wastewater treatment facility grants, that will take place during the period covered by the SIP. Explicit identification of emissions will enable state and local governments to more quickly and easily evaluate subsequent federal conformity determinations. To assist in determining conformity, the population projections on which the 1982 SIP revision is based should be capable of being disaggregated at the time of project analysis so that the areas affected by individual federal actions not explicitly accounted for in the SIP can be identified.

II. SIP Development Process

The Clean Air Act, as amended in 1977, and subsequent regulations, policies and guidance from EPA have defined specific procedural requirements for developing SIP revisions for nonattainment areas. Appendix B includes a list of selected guidance documents that should be used in the preparation of the 1982 SIP. EPA regional offices will work with states and affected local governments during the preparation of the SIP to help ensure that procedural requirements are satisfied and that interim products and activities are completed on a schedule that will enable the July 1, 1982 submittal deadline to be met.

A. Consultation Among State and Local Officials

Section 121 of the Clean Air Act requires each state to provide a process for consultation with local governments, organizations of local elected officials, and federal land managers during certain actions under the Act, including preparation of SIP revisions for nonattainment areas. Section 174 of the Act requires a joint determination by state and local officials of the roles that various governmental agencies will take in the SIP development, implementation, and enforcement process. Section 174 also requires the governor of each state to designate the agency or agencies responsible for SIP development. The designation made by the governor for the 1979 SIP submittal remains in effect, unless the governor designates a new agency. The joint determination of responsibilities and any revised agency designations should be completed early in the process and must be submitted as a part of the 1982 SIP revision. Final regulations on section 174 and 121 (40 CFR Part 51, (Subpart M) were published on June 18, 1979 (44 FR 35176).

B. Establishment of Emission Reduction Targets

The control strategy for the 1982 SIP must reflect agreement among affected state and local officials on the emission reductions needed to attain NAAQSs. It is particularly important that the emission reduction targets established for stationary and mobile sources be determined through a process of negotiation among state and local officials of affected jurisdictions. In most cases, the initial emission reduction targets will be established soon after the technical evaluation of reasonably available stationary and mobile source control measures. Targets may have to be revised as additional information becomes available during SIP development. Revised targets should also be determined through consultation among state and local officials.

C. Analysis of Alternatives and Their Effects

In order for decision-makers and the public to have adequate information during development of SIPs requiring measures beyond the minimum described in subsections I.B.–I.D, alternative control strategies should be developed and analyzed. For example, where a vehicle I/M program and RACT applied to all major stationary sources will not be sufficient, in combination with reasonably available transportation measures, to attain standards, a range of more stringent stationary and mobile source controls should be evaluated to determine the best combination to achieve the required emission reductions. This evaluation should be used in determining the emission reduction targets described in the previous subsection. Examples of these more stringent controls are listed in subsection I.F.

The Clean Air Act requires that SIP submittals include an analysis of air quality, health, welfare, economic, energy, and social effects of the SIP and of the alternative measures considered during SIP development. EPA believes that, in assessing the effects of alternative control measures, two national concerns should receive special emphasis. These concerns are (1) conservation of petroleum and natural gas, and (2) protection of the economies of declining urban areas. Additional emphasis on the effects of SIPs on energy conservation and economies of distressed urban areas will implement the intent of Executive Order 12185, Conservation of Petroleum and Natural Gas (45 FR 8537, February 7, 1980), and the National Urban Policy.

III. Air Quality and Emission Data Bases

The requirements for the 1979 SIP submittal included use of the best data available at the time of SIP development. Although states generally complied with this provision, in many cases the available data base had many shortcomings. All states will have had adequate time by 1982 to have an updated data base.

States will need to have the data necessary for SIP development significantly before the July 1, 1982 submittal date. To ensure that this effort receives appropriate priority and attention, EPA expects states to complete data collection, analyses, and documentation by December 31, 1981. This requirement in no way relieves a state from any prior commitments to have such data available at an earlier date.

Emission inventories should, where possible, be prepared for a 1980 base year and projected to a date that will, at a minimum, include the anticipated year of attainment. Population projections and other forecasts used for determining growth rates and areawide emission estimates must be consistent with population projections developed in accordance with the EPA's cost-effectiveness guidelines for wastewater treatment facilities (40 CFR Part 35, Supart E, Appendix A).

The most recent three years of air quality data from the state and local air monitoring system network must be reduced, validated, and summarized in the plan submittal. Generally, this will include all data collected through the third quarter of 1981. All data from special studies implemented to support the modeling effort must also be compiled, reduced, and documented. If a state cannot reduce, evaluate, and validate data through the third quarter of 1981 in sufficient time to develop the SIP revision and still meet intergovernmental consultation, public participation, and other requirements, the state shall present the data in the SIP submittal and describe how the data may effect the plan.

A. Data for Ozone SIP Revisions

EPA previously described the minimum data that the Agency anticipated would be necessary to prepare an ozone modeling effort for four levels of analyses (44 FR 65667, November 14, 1979). It now appears, however, that many of the areas requiring the more sophisticated levels of modeling will not be able to complete the more extensive data base collection efforts required for these models in time to support the 1982 SIP submittal. Accordingly, every urban area must complete a data base sufficient to support at least a Level III (city-specific EKMA) modeling analysis. The elements of this data base are summarized in Appendix D.

EPA anticipates that states with especially severe ozone problems will need to apply a photochemical dispersion model or an equivalent technique in subsequent modeling analyses after 1982. Data collection efforts should be structured to provide for this contingency.

In order to ensure that all the data bases will be compatible and that there is a consistent level of documentation and quality assurance, state submittals of environmental data must be consistent in format and content with the EPA guideline document, *Emission Inventory Requirements for 1982 Ozone SIPs.*

B. Data for Carbon Monoxide SIP revisions

The emission inventory for carbon monoxide must be of sufficient accuracy and detail to provide the necessary input to models, and to determine the effectiveness of proposed control measures. The inventory should normally represent a typical weekday during the worst carbon monoxide season and should cover the entire urban area. More detailed inventories for smaller hotspot areas may be needed for analyzing specifically identified

problems. In developing carbon monoxide emission inventories states may, if they desire, limit the identification of stationary sources to those with potential emissions of 1000 tons per year. The final acceptability of the inventory developed will be dependent on the modeling approach selected and will be judged on a case-by-case basis.

IV. Modeling

States will need to apply the best tools available in their 1982 SIP submittal. The air quality models that EPA considers acceptable are identified below.

A. Ozone Models

Photochemical dispersion models have the greatest potential for evaluating the effectiveness of ozone control strategies. This potential arises primarily from the ability to relate emissions directly to ambient ozone concentrations, taking into account atmospheric chemistry and dispersion. In most cases, however, data requirements associated with applying these models by 1982 are prohibitive. Of the generally available, less data intensive models, only the various applications of EKMA consider local meteorological influences and atmospheric chemistry in evaluating control requirements. The city-specific EKMA approach is the most promising for 1982 and EPA recommends its use. If the agency preparing the SIP already has the capability to apply a more sophisticated level of modeling and wants to do so, EPA encourages such applications. The use of a modeling approach other than city-specific EKMA must be approved by EPA prior to a commitment by the state to its use. EPA is currently finalizing the guideline on the use of city-specific EKMA; the guideline should be available by March 1981.

The inability of other simpler models to adequately consider chemical kinetics and meteorological parameters reduces their ability to represent local situations. Accordingly, EPA will not consider plans based on linear or proportional rollback to provide an adequate demonstration of attainment. EPA is publishing a proposal in today's **Federal Register** to modify 40 CFR 51.14 by deleting the provision allowing the use of rollback as an acceptable modeling technique. A state that used rollback in the SIP revision submittal in 1979 to demonstrate attainment by 1982 will not be required to revise the analysis on which its SIP is based, unless EPA determines the SIP to be deficient for attaining the ozone NAAQS. Upon such a determination, the state will be required to meet the provisions of this policy including adoption of the minimum control measures, as well as the modeling requirements.

B. Carbon Monoxide Models

States and urban areas must estimate the impact of local and regional control strategies on carbon monoxide nonattainment areas and demonstrate attainment of the carbon monoxide standard. The generally available carbon monoxide models are described in *Guideline on Air Quality Models*, April 1978, EPA 450/2–78–027. These guidelines, and any subsequent updates, should be followed in preparing a carbon monoxide attainment analysis. The acceptability of models other than those listed in the guideline will be evaluated on a case-by-case basis. Other models proposed for use must be adequately documented and validated.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

Appendix A—Extension Areas

Table 1.—*Areas Requesting an Extension Beyond 1982 for Attaining the Ozone Standard*

EPA region	State	Metropolitan area
I	Connecticut	Statewide.
	Massachusetts	Statewide.
	Rhode Island	Statewide.
II	New Jersey	Statewide.
	New York	New York City.
III	Delaware	Wilmington.
	District of Columbia	Washington.
	Maryland	Baltimore, Washington.
	Pennsylvania	Allentown, Philadelphia, Pittsburgh, Scranton/Wilkes-Barre.
	Virginia	Richmond, Washington.
IV	Kentucky	Cincinnati, Louisville.
	Tennessee	Nashville.
V	Illinois	Chicago, St. Louis.
	Indiana	Chicago, Louisville.
	Michigan	Detroit.
	Ohio	Cincinnati, Cleveland.
	Wisconsin	Milwaukee.
VI	Texas	Houston.
VII	Missouri	St. Louis.
VIII	Colorado	Denver.
	Utah	Salt Lake City.
IX	California	Fresno,[1] Sacramento, San Diego, San Francisco Bay Area Basin, South Coast Basin, Ventura-Oxnard.[2]
X	Oregon	Portland.
	Washington	Portland, Seattle.

[1] San Joaquin Valley Nonattainment Area.
[2] South Central Coast Nonattainment Area.

Table 2.—*Areas Requesting an Extension Beyond 1982 for Attaining the Carbon Monoxide Standard*

EPA region	State	Metropolitan area
I	Connecticut	Bridgeport, Hartford, New Haven.
	Massachusetts	Boston, Springfield, Worcester.
	New Hampshire	Manchester, Nashua.
II	New Jersey	Atlantic City, Burlington, Camden, Elizabeth, Freehold, Hackensack, Jersey City, Morristown, Newark, Paterson, Penns Grove, Perth Amboy, Somerville, Toms River, Trenton.
	New York	New York City.
III	District of Columbia	Washington.
	Maryland	Baltimore, Washington.
	Pennsylvania	Pittsburgh, Philadelphia.
IV	Georgia	Atlanta.
	Kentucky	Louisville.
	North Carolina	Charlotte.
	Tennessee	Nashville, Memphis.
V	Illinois	Chicago.
	Ohio	Cincinnati, Cleveland.
	Michigan	Detroit.
	Wisconsin	Milwaukee.
VI	New Mexico	Albuquerque.
VII	Missouri	St. Louis.
VIII	Colorado	Denver, Colorado Springs, Fort Collins, Greely.
	Utah	Salt Lake City.
IX	Arizona	Phoenix.
	California	Fresno, Lake Tahoe, Sacramento, San Diego, San Francisco Bay Area Basin, South Coast Basin.
	Nevada	Las Vegas.
X	Oregon	Eugene, Medford, Portland.
	Washington	Seattle, Tacoma.
	Idaho	Boise.

Appendix B—Selected EPA Guidance for SIP Development

The following list identifies selected EPA guidance for SIP development. A compilation of major EPA guidance for SIP development is included in the "Air Programs Policy and Guidance Notebook," which is distributed to state and local agencies. Copies of the notebook are available for copying at the EPA Public Information Reference Unit in Washington, D.C. and at each EPA regional office.

1. Criteria for Approval of 1979 SIP Revisions, memorandum from Douglas M. Costle, Administrator of EPA to Regional Administrators, Regions I–X, February 24, 1978 (43 FR 21673).

2. Memorandum of Understanding Between DOT and EPA Regarding the Integration of Transportation and Air Quality Planning, June 1978.

3. EPA–DOT Transportation-Air Quality Planning Guidelines, June 1978.

4. Inspection/Maintenance Policy, memorandum from David G. Hawkins to Regional Administrators, Regions I–X, July 17, 1978.

5. Determination of Emission Reduction Responsibilities, memorandum from David G. Hawkins to Regional Administrators, August 1, 1978.

6. General Preamble for Proposed Rulemaking, April 4, 1979 (44 FR 20372). The General Preamble was amended on the following dates: April 30, 1979 (44 FR 25243); July 2, 1979 (44 FR 38583); August 28, 1979 (44 FR 50371); September 17, 1979 (44 FR 53161); and November 23, 1979 (44 FR 67182).

7. 40 CFR Part 51, Subpart M—Intergovernmental Consultation, June 18, 1979 (44 FR 35176)

8. EPA-DOT Expanded Public Participation Guidelines, May 1, 1980 (45 FR 42032).

9. DOT-EPA Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans, June 12, 1980.

10. Policy and Procedures to Implement Section 316 of the Clean Air Act, as Amended, memorandum from Douglas M. Costle to Regional Administrators, Regions I-X, July 23, 1980, (45 FR 53382).

Appendix C—Description of Terms Used in the Transportation-Air Quality SIP Development Process

Adopted Measures

A transportation measure, program, or policy that state and local planning and implementing agencies and governments have agreed to include in the official SIP submission.

Planning Process

The process defined in the September 17, 1975 Federal Highway Administration (FHWA)-Urban Mass Transportation Administration (UMTA) regulations, the June 1978 EPA-DOT Transportation-Air Quality Planning Guidelines, and the May 1, 1980 EPA-DOT Expanded Public Participation Guidelines. Through this process transportation measures are introduced, evaluated, placed in the Transportation Systems Management (TSM) or long range element of the urban transportation plan, and advanced to the Transportation Improvement Program (TIP) and the annual element of the TIP.

Programming Process

The process by which transportation measures are advanced from the annual element of the TIP to the capital programs and budgets of implementing agencies and then to funding by state and local governments, FHWA (through the statewide 105 program), or UMTA (through the section 3 and 5 programs).

Expeditious Attainment Date

The attainment date approved in the 1979 SIP submission. This date may be modified if the analysis of alternatives done as part of the development of the 1982 SIP submittal shows that an earlier date is possible through expeditious implementation of all reasonably available control measures or that a later date is necessary because the approved attainment date cannot be achieved.

Reasonably Available Transportation Measures

A measure that has been determined to be beneficial to air quality and which will not result in substantial and long-term adverse impacts. These measures need to be adopted by the affected state and local officials participating in the planning and programming processes. The process of determining reasonably available transportation measures is analytical, participatory, and negotiatory, and involves the public, as well as local, state, and federal agencies and officials. The analytic part of the process includes determinations of technical and economic feasibility.

Expeditious Implementation of Reasonably Available Transportation Measures

Implementation by the earliest possible date considering:

1. The minimum time required to advance the measure through planning and programming processes.

2. The minimum time required to obtain implementation commitments.

3. The minimum time required to construct (if needed) and begin operation of the measures.

Implementation Commitments

Certification (may be by reference to budgets or other legally adopted documents) by federal, state, and local agencies with the authority to implement SIP measures that (1) funds to implement the measure are obligated and (2) all necessary approvals have been obtained. Identification by the implementing agency of the scheduled dates for start of construction (if appropriate) and for start of operation.

If a project has not reached the stage of receiving budget approval, then the implementation commitment should be in the form of a schedule that lists the projected dates for completing the major steps required to advance the measure through the remaining planning and programming processes. The schedule should also contain an identification of the responsible agencies that must take significant actions to implement the measure.

Actions by many agencies and elected officials are usually required before a transportation project is implemented. The SIP should list the important actions, the agencies or officials required to take each action, and a schedule that will lead to implementation.

The lead planning agency is usually charged with obtaining the various commitments. This requires:

1. Identifying all remaining actions and the agency or official responsible for each action.

2. Consulting with each agency or official to establish the date by when the action will be taken.

The product of these efforts should be submitted in the SIP in a form similar to the following example.

Example

The MPO for an urban area has adopted for inclusion in the SIP a busway that will connect a suburban residential area with the central business district. Operation of the busway will require the purchase of 25 new buses. Corridor location studies have been completed and final design is underway. The provision in the 1982 SIP submittal should include an approximate schedule similar to that outlined below for completion of the project:

1. MPO places project in annual element of the SIP; each funding agency prepares budget requests for necessary funds—Complete.

2. Transit operating agency adopts project as part of capital program—Complete.

3. Transit operating agency or appropriate project sponsor solicits approval of local government share of project costs from the city and county councils—Fall 1982.

4. Transit operating agency submits project application to state department of transportation—Winter 1982.

5. State department of transportation requests state legislature to appropriate state share of matching funds—Spring 1983.

6. Transit operating agency submits a grant application to UMTA (submittal occurs if the funding match has been approved; if the project is delayed at this point, contingency provisions will be adopted)—Summer 1983.

(Checkpoint: project receives approval from UMTA)—Spring 1984.

7. Transit operating agency places order for new buses—Spring 1984.

8. State department of transportation starts construction contract for busway—Winter 1985.

9. Agreement with state and local enforcement authorities is signed—Spring 1986.

(Checkpoint: Buses delivered and construction completed)—Summer 1986.

10. Transit operating agency initiates operation—Summer 1986.

Justification for not Adopting a Section 106(f) Measure

Justification should include:

1. Documentation of air quality, health, welfare, economic, energy, social and mobility effects of the measure, as appropriate for the type of measure and the scale of application.

2. Documentation that the measure was considered in a process that involved the public and state and local officials.

3. Determination that implementation of the measure results in substantial and long-term adverse impacts.

4. Demonstration that the air quality standards can be expeditiously attained without the measure.

Monitoring Plan

The monitoring plan to be contained in the 1982 SIP should be designed for periodically assessing the extent to which transportation measures, either individually or packaged, are resulting in projected emission reductions and the reasons for any shortfalls in reductions. The monitoring plan need *not* cover air quality monitoring. The plan should contain methods for determining the reasons for success or failure of the emission reduction achievements of the transportation measures contained in the 1982 SIP. The monitoring plan should depend upon existing data, regularly collected data, surrogate emission indicators (such as the number of auto trips, trip speeds, etc.) and approximation techniques. Collection of new data should be minimized.

Contingency Plan

The contingency provision is needed in the event that EPA calls for a SIP revision based on its determination that the reasonable further progress schedule is not being met. The contingency provision contains two parts. The first part is only for areas over 200,000 population. For these areas, the contingency provision should include a locally developed list of projects which implementing agencies have agreed can be delayed during an interim period while the SIP is being revised. The second part of the contingency provision is a description of a process for determining additional transportation measures beneficial to air quality that can be implemented to compensate for unanticipated shortfalls in emission reductions or can be accelerated to replace adopted measures that are not proceeding on schedule. This second part of the contingency provision should be included in every 1982 SIP submittal.

Appendix D—Summary of Minimum Level III Data Requirements for 1982 Ozone Modeling Submittals

A. Emission Data Requirements

1. *Spatial Resolution.* County-wide emission inventories for VOCs and nitrogen oxides (NO_x) are needed for a Level III analysis.

2. *Temporal Resolution.* Typical summer weekday emission estimates are required as part of the Level III data submittal. Preparation of these estimates is described in the guideline, *Emission Inventory Requirements for the 1982 Ozone SIPs.*

3. *VOC Categories.* Classification into reactive species of VOCs is not required for a Level III analysis.

4. *Source Category Delineation.* It is necessary to separate the emissions estimates according to major source categories such as is described in the guideline, *Emission Inventory Requirements for the 1982 Ozone SIPs.* This disaggregation of estimates is useful for making projections of future aggregated emissions.

B. Air Quality Data Requirements

1. *Ozone Monitors* (3 sites). Ozone monitors should be located at (a) one upwind site, (b) one downwind site at the edge of the urbanized area, and (c) one downwind site approximately 15–40 kilometers from the urbanized area.

2. *THC/CH_4 NO_x Monitors* (1 site required, 2 sites desirable). Guidance presented in EPA–450/4–80–011, *Guidance for the Collection of Ambient NMOC Data for Use in 1982 Ozone SIP Development, and Network Design and Siting Criteria for the NMOC and NO_x Monitors,* should be followed.

3. *Upwind Precursor Data.* Optional air quality data for Level III are measurements of ambient NO_x and THC/CH_4 at one site upwind of an urbanized area. These data are generally unnecessary and are needed only for unusual cases when it is desirable to take explicit account of transported precursors in the analysis. Most studies have indicated that transported ozone is of greater significance than transported precursors in contributing to urban problems. Because of the lack of precision associated with nonmethane hydrocarbon (NMHC) estimates from continuous THC/CH_4 monitors at low concentrations, use of these instruments at upwind sites is not recommended. It is preferable to collect a limited number of grab samples, analyze these chromatographically, and sum species to estimate upwind NMHC. Guidance presented in EPA–450/4–80–008, *Guidance for the Collection and Use of Ambient Hydrocarbon Species Data in the Development of Ozone Control Strategies,* should be followed. Continuous measurement of NO/NO_x is appropriate.

C. Meteorological Data Requirements

1. *Upper Air and Surface Temperature Data.* Estimates of the morning (8:00 a.m.) and maximum afternoon mixing heights are required. Preferably, estimates should be obtained using the nearest National Weather Service radiosonde data (if available) in conjunction with hourly urban surface temperature data. If radiosonde data are not available, morning and afternoon mixing heights can be estimated using AP–101, "Mixing Heights, Wind Speeds and Potential for Urban Air Pollution Throughout the Contiguous United States."

2. *Surface Wind Data.* Surface wind data at two sites (one site located in an area of high precursor emissions and another outside the urban core) are required. The wind data are used to help ensure that the recorded design value is measured downwind of the city.

Appendix E—Regional Office Locations of Comments and Responses on the Proposed 1982 SIP Policy

The locations and times for review of the comments on the proposed 1982 SIP policy and EPA responses may be determined by contacting the following:

Harley F. Laing, Chief, Air Programs Branch, EPA—Region I, John F. Kennedy Federal Building, Boston, MA 02203, 617–223–6683

Bill Baker, Chief, Air Programs Branch, EPA—Region II, 26 Federal Plaza, New York, NY 10007, 212–264–2517

Raymond Cunningham, Chief, Air Programs Branch, EPA—Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, 215–597–8175

Winston Smith, Chief, Air Programs Branch, EPA—Region IV, 345 Courtland Street, N.E., Atlanta, GA 30308, 404–881–3043

Steve Rothblatt, Chief, Air Programs Branch, EPA—Region V, 230 South Dearborn Street, Chicago, IL 60604, 312–353–6030

Jack Divita, Chief, Air Programs Branch, EPA—Region VI, First International Building, 1201 Elm Street, Dallas, TX 75270, 214–767–2742

Art Spratlin, Chief, Air Programs Branch, EPA—Region VII, 324 East Eleventh Street, Kansas City, MO 64106, 816–374–3791

Robert DeSpain, Chief, Air Programs Branch, EPA—Region VIII, 1860 Lincoln Street, Denver, CO 80295, 303–837–3471

David Howekamp, Chief, Air Programs Branch, EPA—Region IX, 215 Fremont Street, San Francisco, CA 94105, 415–556–4708

Richard Thiel, Chief, Air Programs Branch, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, 206–442–1230

[FR Doc. 81–2221 Filed 1–21–81; 8:45 am]

BILLING CODE 6560–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD FRL-1722-8a, Docket No. A-80-56]

State Implementation Plans; Approved Ozone Modeling Techniques

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: In the policy on 1982 Ozone State Implementation Plan (SIP) revisions for areas needing an attainment date extension published elsewhere in the Federal Register today, EPA stated that it would not consider linear or proportional rollback modeling as acceptable techniques to demonstrate attainment for the 1982 plans.

Today EPA is proposing to modify 40 CFR 51.14 to delete rollback as an acceptable ozone modeling methodology.

DATES: Comments must be received by the Central Docket Section by March 23, 1981. All comments received by that date will be considered before final action is taken.

ADDRESSES: Written comments must be submitted (in duplicate, if possible) to: Central Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. A-80-56. The docket may be inspected at Gallery 1, West Tower, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Johnnie L. Pearson, Office of Air Quality Planning and Standards (MS-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919-541-5437).

SUPPLEMENTARY INFORMATION:

A. Background

The Clean Air Act Amendments of 1977 required the States to revise their SIPs for all areas that had not attained the national ambient air quality standards (NAAQS). Each State was to submit a SIP revision by January 1, 1979 providing for attainment of the NAAQS as expeditiously as practicable, but no later than the end of 1982 (or the end of 1987 for areas with particularly difficult ozone or carbon monoxide problems). A State that requires an extension of the attainment date beyond 1982 for ozone or carbon monoxide areas is required to submit a further SIP revision of these areas by July 1, 1982.

On February 8, 1979, EPA revised the national ambient air quality standard for ozone (44 FR 8202). At that time EPA also revised the requirements set forth in 40 CFR 51.14 for the preparation, adoption, and submittal of SIPs related to ozone (44 FR 8234). Specifically, § 51.14(c)(7) was revised to require that one of the following modeling techniques be used to determine the amount of hydrocarbon control necessary to demonstrate attainment of the ozone standard:

1. Photochemical dispersion models.
2. Empirical Kinetic Modeling Approach (EKMA).
3. Empirical and statistical models.
4. Proportional rollback.

For purposes of the 1979 SIP revisions, States generally used only the standard EKMA and proportional rollback techniques to evaluate ozone control strategies and make ozone attainment demonstrations. The States used these techniques rather than the more rigorous photochemical dispersion models because the detailed data required for the more rigorous techniques were generally not available. EPA, therefore, approved ozone attainment demonstrations based on proportional rollback and EKMA techniques for the 1979 SIPs. On November 14, 1979, however, EPA published guidance on the collection of the detailed data base necessary for the more sophisticated techniques and indicated that the agency would expect these techniques to be used in future SIP revisions (44 FR 65667, November 14, 1979).

Elsewhere in today's Federal Register EPA is issuing the policy for approval of the 1982 ozone and carbon monoxide SIP revisions for those areas needing an attainment date extension beyond 1982. This policy recognizes that even though photochemical dispersion models have the greatest potential for accurately evaluating the effectiveness of ozone control strategies, the extensive data requirements for these models preclude their use for the 1982 SIP revisions. The policy also recognizes that the States should have the data base necessary for application of the city-specific EKMA model. EKMA, unlike proportional rollback techniques, takes into consideration local meteorological influences and atmospheric chemistry in evaluating control requirements. For this reason, city-specific EKMA is a more accurate method of evaluating ozone control strategies. Therefore, in the 1982 SIP policy, EPA recommends that States use city-specific EKMA for the 1982 ozone SIPs. EPA's policy also states that 1982 plans based on proportional rollback would not be considered to provide an adequate demonstration of attainment.

B. Proposed Rule

EPA is proposing to delete proportional rollback from from the list of approved modeling techniques for ozone SIP attainment demonstrations. This action is consistent with the policy on 1982 ozone SIPs and is based on the fact that the States now have or can develop the data bases necessary for the more rigorous techniques and use of these techniques, provide more accurate evaluations of ozone control strategies and more realistic attainment demonstrations.

This deletion will be prospective in nature. In other words, after promulgation of this change to 40 CFR 51.14, EPA will not approve any ozone SIP revision based on proportional rollback modeling techniques, but States with approved SIPs based on rollback will not be required to revise their SIPs. However, if the ozone standard is not attained by means of present SIP requirements by 1982 or if for any other reason a SIP revision if necessary, the revision cannot be based on a rollback technique. Since the States have notice of this action and should have the data bases necessary for the more rigorous techniques, the deletion of the rollback technique should not unduly burden the SIP development process.

C. Solicitation of Comments

EPA is soliciting comments on all aspects of today's proposal and in particular, its impact on SIP revisions not covered by the policy on SIP revision for areas which requested extension of the 1982 attainment date.

D. Classification

EPA has determined that this revision is "specialized" and therefore, is not subject to the procedural requirements of executive order 12044.

E. Economic Impacts

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action imposes no new regulatory requirements, but only revises the ozone modeling techniques available to states in making attainment demonstrations. Few, if any, small entities will need to expend additional resources to meet the revised requirements. Accordingly, this action will not cause significant economic impacts on a substantial number of small entities.

F. Authority

This proposed action is issued pursuant to sections 110, 171–174, 301 of the Clean Air Act 42 U.S.C. 7410, 7501–7504 and 7601.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

§ 51.14 [Amended]

It is proposed to amend 40 CFR 51.14 as follows: (1) 40 FR Part 51 is amended by removing § 51.14(c)(7)(iv).

[FR Doc. 81-2222 Filed 1-21-81; 8:45 am]

BILLING CODE 6560-26-M

federal register

Thursday
January 22, 1981

Part VII

Department of Education

Office of Elementary and Secondary Education

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 223

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary issues final regulations to implement the amendments, made by the Education Amendments of 1978, Pub. L. 95-561, to Title I (Financial assistance for local educational agencies in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81-874, that apply to local educational agencies (LEAs) claiming entitlements based on the number of children residing on Indian lands. The regulations clarify the requirements which these LEAs must meet to receive their entitlements; contain minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process; describe the process that a tribe or its designee must follow to file a complaint regarding these policies and procedures; and establish hearing procedures to resolve complaints.

DATES: All comments on these final regulations must be received on or before March 23, 1981.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you wish to know the effective date of these final regulations, call or write the Department of Education contact person.

ADDRESSES: Comments should be addressed to Ms. Edna K. Cave, Division of Impact Aid, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2109, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Edna K. Cave. Telephone: (202) 245-1975.

SUPPLEMENTARY INFORMATION:

A. Background

The Education Amendments of 1978 (Pub. L. 95-561) enacted several amendments to Title I (Financial assistance for local educational agencies in areas affected by Federal activity) of the Act of September 30, 1950 (Pub. L. 81-874) (hereinafter "the Act") that significantly altered the provisions applying to local educational agencies (LEAs) that claim entitlements based on the number of children residing on Indian lands. In particular, the amendments made two major changes. First, they established a new weighting factor for computing the entitlements for these LEAs. Second, they enumerated the policies and procedures that each LEA receiving a entitlement must establish to ensure the increased participation of Indian parents and tribes in the Education process. The amendments also established complaint and hearing procedures to guarantee the meaningfulness of Indian input.

On June 29, 1979, the Commissioner of Education issued proposed regulations implementing these amendments as part of a notice of proposed rulemaking (44 FR 38184, 38222) (Subpart I—Entitlements for Children Residing on Indian Lands). When these proposed regulations were published, however, the Commissioner was operating under a directive from the Secretary of Health, Education, and Welfare to simplify program regulations by incorporating by reference other applicable regulations and eliminating provisions that merely repeated or paraphrased the authorizing statute. As a result, the regulations in Subpart I concerning "Entitlements for Children Residing on Indian Lands" were so succinct that they failed to implement several statutory provisions and to provide necessary clarification on others.

Following the notice of proposed rulemaking, interested persons were given sixty days in which to submit comments, either in writing or in person at one of thirteen public hearings held throughout the nation. Frequently, these comments criticized the regulations in Subpart I because they were too brief, not self-contained, and insufficient to provide guidance on implementing the new legislation. In response to these comments, the Secretary is issuing final regulations that include more detail than the June 29, 1979 proposed regulations.

B. Summary of Changes From the June 29, 1979 Proposed Regulations

In the June 29, 1979 proposed regulations, the provisions concerning LEAs that claimed entitlements for children residing on Indian lands were contained in Subpart I of 45 CFR Part 115 (now 34 CFR Part 222) (Assistance for local educational agencies in areas affected by Federal activities and arrangements for education of children where local educational agencies cannot provide suitable free public education). Because of the need to provide immediate guidance to these LEAs, final regulations governing entitlements based on the number of children residing on Indian lands are being issued separately as 34 CFR Part 223.

As Part 223, these final regulations implement all the relevant statutory provisions that were added by the Education Amendments of 1978 (Pub. L. 95-561). In particular, these regulations explain the requirements which LEAs claiming entitlements based on the number of children residing on Indian lands must meet to receive their entitlements; contain minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process; describe the process a tribe or its designee must follow to file a complaint regarding these policies and procedures; and establish hearing procedures to resolve complaints.

The following discussion briefly explains some of the major provisions in Part 223 and summarizes the most significant changes that have been made since publication of the June 29, 1979 proposed regulations:

Entitlement based on the number of children residing on Indian lands (§ 223.5).

The regulations in Part 223 apply to LEAs that claim entitlements under Section 3(d)(2)(D) of the Act. Essentially, an LEA must meet three requirements to receive an entitlement. First, the LEA must serve children who reside on Indian lands. Second, the LEA must meet the general eligibility requirements in Section 3(c) of the Act. Section 3(c) provides that, before an LEA may receive any payments under the Act, it must serve a minimum number of federally affected children, including children residing on Indian lands. Finally, the LEA must establish the policies and procedures described in § 223.10.

If an LEA meets these requirements, it is eligible to receive an entitlement based on the number of children it serves who reside on Indian lands. Specifically, this entitlement is computed by counting the number of children residing on Indian lands in average daily attendance at the LEA. The number of children is multiplied by the local contribution rate and then multiplied by 125 percent.

Unless the LEA requests a waiver of the deadline for establishing its policies and procedures under § 223.8, and the Secretary grants the LEA's request, an LEA that does not meet the above requirements may not receive either its entitlement under § 223.5 or its preliminary payment as defined in § 223.4. Moreover, as the definition of entitlement in § 223.4 indicates, the LEA is also precluded from receiving that portion of its regular Impact Aid payment based on the number of children residing on Indian lands.

For the purpose of computing the entitlement, therefore, an LEA counts all children, including non-Indian children, who reside on Indian lands. Once the LEA is eligible to receive an entitlement, however, the remaining provisions in these regulations address the rights of parents of Indian children and Indian tribes having children in the LEA's schools, as well as the responsibilities of LEAs regarding the participation of Indians in the education process.

Waiver of deadline for establishing policies and procedures (§ 223.8).

Section 5(b)(3)(A) of the Act provides that the entitlement described in § 223.5 of these regulations may be paid only to LEAs that have established the policies and procedures described in § 223.10 within certain deadlines. These deadlines are contained in § 223.7. However, Section 5(b)(3)(A) also authorizes the Secretary to waive these deadlines for good cause shown. Section 223.8 of these final regulations implements this statutory provision.

If an LEA cannot meet its deadline in § 223.7 for establishing policies and procedures, the LEA may request the Secretary to waive that deadline. According to § 223.8(a)(2), the LEA's request must be in writing, provide a full justification of the need for a waiver, indicate when policies and procedures can be established, and include any supporting information the Secretary may require.

If the LEA shows good cause, the Secretary may waive the deadline. Section 223.8(b)(2) contains several factors for the Secretary to consider in determining good cause: the progress of the LEA in establishing its policies and procedures; administrative obstacles faced by the LEA in establishing its policies and procedures; and exceptional or unforseen circumstances.

Although the Secretary may find that good cause exists to grant a waiver, the justification supporting the request may not warrant payment of the full entitlement. Therefore, § 223.8(c) gives the Secretary the discretion to vary the method for paying the LEA's entitlement according to the circumstances underlying the waiver request. For example, an LEA that did not establish policies and procedures by the end of the 1979–80 school year as required by § 223.7(a) may request a waiver under this section. However, the Secretary may decide, based on the justification in the request, that the LEA should only receive prospective payments of the entitlement from the year in which the LEA establishes policies and procedures, rather than retroactive payments covering the years in which the LEA was out of compliance. On the other hand, a newly established LEA may be unable to meet its deadline in § 223.7(b). If the underlying circumstances so warrant, the Secretary may waive the deadline but nevertheless pay the LEA its full entitlement at that time.

Policies and procedures (§§ 223.10–223.13).

Section 5(b)(3)(B) of the Act states the objectives that an LEA's policies and procedures must address to ensure the participation of parents of Indian children and Indian tribes in the education process. Section 223.10 of these final regulations implements this statutory requirement, although the regulations paraphrase the statutory language to give more guidance to LEAs concerning what the policies and procedures must include. In keeping with the legislative history, § 223.10(a) requires the policies and procedures to ensure that the LEA gives tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the school program with all other children educated by the LEA.

Similarly, § 223.10(b) requires the LEA to disseminate certain documents to tribal officials and parents of Indian children. This section clarifies the documents that must be disseminated, limiting them to those dealing with educational programs assisted with funds provided under the Act. The regulations impose this limitation because, as § 223.6 of these regulations indicates, an LEA that receives an entitlement under § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children. Rather, the entitlement becomes part of the LEA's general fund. Thus, tribal officials and parents of Indian children should receive information on those educational programs assisted from the LEA's general fund of which the Pub. L. 81–874 entitlement is a part.

Section 223.11 contains minimum standards with which an LEA's policies and procedures must comply. These standards, which coincide with the objectives of the policies and procedures, are designed to give guidance to LEAs in establishing their policies and procedures without prescribing how the LEA must achieve the objectives. Discretion is needed because particular local circumstances will dictate different policies and procedures. For example, factors such as the extent to which there has been cooperation and dialogue between the LEA and Indian representatives in the past, the current practices of the LEA to ensure that Indian children are afforded equal educational opportunity, and the size, location, and geographical characteristics of the Indian community in relation to the LEA should be considered by an LEA in formulating its policies and procedures.

These minimum standards also allow flexibility for LEAs to adopt creative procedures. For example, LEAs may indicate in their policies and procedures that they will hold meetings of the school board or PTA on tribal lands; that they will schedule meetings between tribal officials and school board members; or that they will plan special meetings for Indians to voice their concerns. This flexibility permits an LEA's policies and procedures to reflect a spirit of cooperation rather than mere strict adherence to the minimum statutory requirements.

Section 223.12 of these final regulations requires an LEA that has established policies and procedures under § 223.7 to review them annually to ensure that they meet the minimum standards in § 223.11 and continue to provide for an adequate level of Indian participation. If the LEA determines that its policies and procedures do not meet these requirements, it must amend them.

Likewise, § 223.13 provides for periodic review by the Secretary of an LEA's policies and procedures. This review will ensure that the LEA has amended its policies and procedures to meet the minimum standards in § 223.11. If the Secretary finds that the LEA's policies and procedures do not meet these minimum standards, the LEA must correct its policies and procedures within sixty days or the Secretary will withhold the LEA's entitlement according to § 223.42(b).

Compliant procedures (§§ 223.30–223.26).

Section 5(b)(3)(C)(i) of the Act permits any tribe, or its designee, that has students attending an LEA to file a written complaint with the Secretary regarding the policies and procedures that LEA has established. Sections 223.20–223.26 of these final regulations implement this provision. However, as the regulations indicate, the Assistant

Secretary for Elementary and Secondary Education has, under the general delegation of authority for Impact Aid programs from the Secretary to the Assistant Secretary, assumed responsibility for receiving and resolving complaints.

Section 223.20(a) of these final regulations defines the scope of a complaint. Under this section, a tribe may complain about an LEA's failure to establish adequate policies and procedures, to adhere to its policies and procedures, or to take into consideration meaningful Indian imput in designing its education program. Resolution of the issues in a complaint, therefore, necessarily requires the Assistant Secretary to make qualitative judgments, including whether the LEA has taken particular local circumstances such as those listed above into consideration in developing its policies and procedures. Because these final regulations cannot establish minimum standards that reflect the variety of particular local circumstances that exist, it is possible that an LEA's policies and procedures may meet the minimum standards in § 223.11 yet be inadequate to provide the requisite level of participation by Indian tribes and parents of Indian children in the education process.

Section 223.21(a) specifies that any tribe, or its designee, that has students attending an LEA's schools may file a complaint. Indian tribe, as defined in § 223.4, includes only those groups of Indians recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

As indicated in § 223.21(b), parents of Indian children are not eligible to file a complaint. Rather, they must submit their grievances to the tribe or its designee. However, neither the tribe nor its designee is obligated to file these grievances in a complaint. Moreover, according to § 223.21(c), a complaint need not reflect the views of a majority of the parents of Indian children attending the LEA's schools.

Section 5(b)(3)(C)(ii) of the Act imposes strict time constraints on the complaint resolution process once a complaint is received by the Assistant Secretary. Thus, before a complaint may be considered to have been received, § 223.24 requires that the complaint satisfy the requirements in §§ 223.20–223.21 and § 223.23 and be signed by a tribal official or the tribe's authorized designee. If a complaint does not meet these requirements, § 223.25 authorizes the Assistant Secretary to notify the tribe that its complaint has been dismissed for purposes of invoking the hearing procedures in §§ 223.30–223.41. Notice that a complaint has been dismissed, however, does not preclude other efforts to investigate or resolve the issues raised in the complaint, including the filing of an amended complaint.

Hearing procedures (§§ 223.30–223.41).

Sections 223.30–223.41 of the final regulations contain the hearing procedures that follow receipt of a complaint. In addition to implementing all of the procedures required by Section 5(b)(3)(C)(ii)–(vii) of the Act, the regulations contain several other provisions that are helpful in resolving the complaint. Section 223.34, for example, requires an LEA to file a reply to the charges in a complaint. Similarly, § 223.37 affords each party, following the hearing, the opportunity to submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing. Finally, § 223.39 gives each party the opportunity to comment to the Assistant Secretary on the hearing examiner's findings and recommendations. These provisions have been added to the statutory procedures outlined in the Act in order to provide all parties the maximum opportunities to present evidence in their favor within the tight time constraints imposed by the Act for complaint resolution.

Invitation To Comment

As previously indicated, the Department received public comments on the proposed regulations which it has considered in preparing the final regulations. A discussion of these public comments and the Department's responses to them is contained in the appendix to the final regulations. Because these final regulations are different from the proposed regulations, however, interested persons are also invited to submit comments and recommendations on these final regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 23, 1981, will be considered in the revision of these final regulations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 2109, 400 Maryland Avenue SW., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981; and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction," as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. It is impracticable, however, to delay publication of these regulations while the necessary definitions are being developed. Therefore, in these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations.

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities.

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations.

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations.

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

• The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.

• The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.

• The use of performance rather than design standards.

• An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance for Federally Affected Areas—Maintenance and Operation)

Dated: January 15, 1981.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 223 to read as follows:

PART 223—SPECIAL IMPACT AID PROVISIONS FOR LOCAL EDUCATIONAL AGENCIES THAT CLAIM ENTITLEMENTS BASED ON THE NUMBER OF CHILDREN RESIDING ON INDIAN LANDS

Subpart A—General

Sec.

223.1 Purpose.
223.2 Applicability of regulations in this part.
223.3 Applicability of other statutes and regulations.
223.4 Definitions.
223.5 Entitlement based on the number of children residing on Indian lands.
223.6 Use of entitlement.
223.7 Requirements to receive entitlement.
223.8 Waiver of deadline for establishing policies and procedures.
223.9 [Reserved]

Subpart B—Policies and Procedures

223.10 Required policies and procedures.
223.11 Minimum standards for establishing policies and procedures.
223.12 Review by LEAs of policies and procedures.
223.13 Review by the Secretary of policies and procedures.
223.14–223.19 [Reserved]

Subpart C—Complaint Procedures

223.20 Contents of a complaint.
223.21 Who may file a complaint.
223.22 Where to file a complaint.
223.23 When to file a complaint.
223.24 Receipt of a complaint by the Assistant Secretary.
223.25 Dismissal of a complaint.
223.26 Consolidation of complaints.
223.27–223.29 [Reserved]

Subpart D—Hearing Procedures

Sec.

223.30 Applicability of hearing procedures in this subpart.
223.31 Applicability of other laws.
223.32 Parties to a hearing.
223.33 Notice.
223.34 LEA's reply to the complaint.
223.35 General procedural rules.
223.36 Conduct of the hearing.
223.37 Opportunity to submit additional evidence.
223.38 The hearing examiner's findings and recommendations.
223.39 Opportunity to comment on the hearing examiner's findings and recommendations.
223.40 The Assistant Secretary's final determination.
223.41 Judicial review of the Assistant Secretary's final determination.
223.42 Effects of noncompliance with the Assistant Secretary's final determination.

Authority: Sec. 5(b)(3) of Title I of the Act of September 30, 1950, Pub. L. 81–874, as amended by the Education Amendments of 1978, Pub. L. 95–561 (20 U.S.C. 240(b)(3)), unless otherwise noted.

Subpart A—General

§ 223.1 Purpose.

The purpose of this part is to—

(a) Clarify the requirements which local educational agencies (LEAs) must meet to receive an entitlement under Section 3(d)(2)(D) of the Act and § 223.5 of these regulations;

(b) Establish minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process;

(c) Describe the process that a tribe or its designee shall follow to file a complaint regarding those policies and procedures; and

(d) Establish hearing procedures to resolve complaints.

(20 U.S.C. 240(b)(3))

§ 223.2 Applicability of regulations in this part.

(a) The regulations in this part apply to LEAs that claim entitlements under § 223.5.

(b)(1) Except as provided in paragraph (b)(2) of this section, these regulations are designed to ensure participation in the LEA's education program by Indian tribes and parents of Indian children residing on Indian lands.

(2) For purposes of computing the entitlement only, the LEA shall count all children, including any non-Indian children, residing on Indian lands.

(20 U.S.C. 238(d)(2)(D); 20 U.S.C. 240(b)(3))

§ 223.3 Applicability of other statutes and regulations.

In addition to the regulations in this part, the following statutes and regulations apply to LEAs that claim entitlements under § 223.5:

(a) Title I (Financial assistance for LEAs in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81–874, as amended in 20 U.S.C. 236 *et seq.* particularly 240(b)(3).

(b) The Impact Aid regulations in 34 CFR Part 222 pertaining to LEAs in areas affected by Federal activity.

(c) The General Education Provisions Act (GEPA) in 20 U.S.C. 1221 *et seq.*

(20 U.S.C. 240(b)(3); 20 U.S.C. 1221 *et seq.*; 34 CFR Part 222)

§ 223.4 Definitions.

For purposes of this part, the following definitions apply:

"Act" means Title I (Financial assistance for LEAs in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81–874, as amended. Significant amendments pertinent to this part were made by the Education Amendments of 1978, Pub. L. 95–561.

"Assistant Secretary" means the Assistant Secretary for Elementary and Secondary Education or the Assistant Secretary's designee.

"Child" means any child who is within the age limits for which the applicable State provides free public education.

"Department" means the U.S. Department of Education.

"Entitlement" means, for purposes of this part, the amount of funds (or whatever portion of those funds that is provided by an appropriation) determined by the number of children residing on Indian lands in average daily attendance at the LEA multiplied by the local contribution rate multiplied by 125 percent.

"Indian children" means children residing on Indian lands who are recognized by an Indian tribe as being affiliated with that tribe.

"Indian lands" means—

(a) Real property held in trust by the United States for individual Indians or Indian tribes; and

(b) Real property held by individual Indians or Indian tribes that is subject to restrictions on alienation imposed by the United States.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Local Educational Agency (LEA)" means a board of education or other

legally constituted local authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. This term includes any State agency which directly operates and maintains facilities for providing free public education.

"Parent" includes a legal guardian or other person standing in loco parentis.

"Preliminary payment" means a payment equal to 75 percent (or the percentage permitted by an appropriation) of the total impact aid payment received by the LEA for the preceding year.

"Secretary" means the Secretary of the U.S. Department of Education.

(20 U.S.C. 240(b)(3); 20 U.S.C. 244)

§ 223.5 Entitlement based on the number of children residing on Indian lands.

(a) To be eligible for an entitlement under this part, an LEA that serves children who reside on Indian lands shall meet—

(1) The eligibility requirements in Section 3(c) of the Act; and

(2) The requirements in § 223.7.

(b) If an LEA meets the requirements in paragraph (a) of this section, the Secretary pays the LEA the entitlement defined in § 223.4.

(c) Except as provided in § 223.8, if an LEA that serves children who reside on Indian lands does not meet the requirements in paragraph (a) of this section, the Secretary may not pay either—

(1) The entitlement defined in § 223.4; or

(2) The preliminary payment defined in § 223.4.

(20 U.S.C. 238(d)(2)(D); 20 U.S.C. 240(b)(3)(A))

§ 223.6 Use of entitlement.

An LEA that receives the entitlement referred to in § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children.

(20 U.S.C. 240(b)(3); H. Rept. 15, 95th Cong., 2d Sess. 114 (1978))

§ 223.7 Requirements to receive entitlement.

To receive the entitlement referred to in § 223.5—

(a) An LEA formed before November 1, 1978 shall have complied with the requirements under Section 5(b)(3) of the Act for establishing policies and procedures by the end of the 1979–1980 school year; or

(b) An LEA formed after November 1, 1978 shall—

(1) Establish the policies and procedures described in §§ 223.10–223.11, in consultation with and based on information from tribal officials and parents of Indian children, within one year of its formation; and

(2) Include in its application for payments under the Act—

(i) An assurance that the LEA established these policies and procedures in consultation with and based on information from tribal officials and parents of Indian children; and

(ii) A copy of the policies and procedures.

(20 U.S.C. 240(b)(3)(A))

§ 223.8 Waiver of deadline for establishing policies and procedures.

(a)(1) If an LEA cannot meet its deadline in § 223.7 for establishing policies and procedures, the LEA may request the Secretary to waive that deadline and set a new one.

(2) The LEA's request for a waiver must—

(i) Be in writing;

(ii) Provide a full justification of the need for a waiver;

(iii) Indicate when policies and procedures can be established; and

(iv) Include any supporting information the Secretary may require.

(b)(1) The Secretary may waive the deadline in § 223.7 for establishing policies and procedures and set a new one if the LEA shows good cause.

(2) In determining whether the LEA has shown good cause, the Secretary considers the following factors:

(i) The progress of the LEA in establishing its policies and procedures.

(ii) Administrative obstacles faced by the LEA in establishing its policies and procedures.

(iii) Exceptional or unforeseen circumstances.

(c) If the Secretary decides to grant the LEA's request for a waiver, the Secretary may vary the method for paying the LEA's entitlement under § 223.5, depending on the circumstances underlying the waiver request. The methods available to the Secretary include the following:

(1) Pay the LEA the full entitlement for the current year in which the Secretary grants the waiver.

(2) Grant the waiver but pay the LEA the full entitlements for past years retroactively when the LEA establishes it policies and procedures.

(3) Grant the waiver but only pay the entitlement prospectively from the year in which the LEA establishes policies and procedures.

(d) If the Secretary denies the LEA's request for a waiver, the Secretary may not pay either—

(1) The entitlement referred to in § 223.5; or

(2) The preliminary payment defined in § 223.4.

(20 U.S.C. 240(b)(3)(A))

§ 223.9 [Reserved]

Subpart B—Policies and Procedures

§ 223.10 Required policies and procedures.

The policies and procedures required under §223.7 must ensure that an LEA that serves children residing on Indian lands—

(a) Gives tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the school program with all other children educated by the LEA;

(b) Disseminates to tribal officials and parents of Indian children—

(1) The Pub. L. 81–874 application;

(2) Any evaluations of education programs assisted with funds provided under the Act; and

(3) Any program plans for education programs that the LEA plans to initiate or eliminate;

(c) Consults actively and involves regularly tribal officials and parents of Indian children in the planning and development of education programs assisted with funds provided under the Act; and

(d) Affords tribal officials and parents of Indian children an opportunity to—

(1) Make recommendations concerning—

(i) The needs of their children; and

(ii) The ways by which they can assist their children in realizing the benefits to be derived from the education programs assisted with funds provided under the Act; and

(2) Present their overall views on the education program in the LEA, including—

(i) The operation of the LEA's education program; and

(ii) The degree of parental participation allowed.

(20 U.S.C. 240(b)(3)(B))

§ 223.11 Minimum standards for establishing policies and procedures.

To accomplish the objectives in § 223.10, an LEA's policies and procedures must include, at a minimum—

(a) Specific procedures for how the LEA will—

(1) Give tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the education program;

(2) Assess the extent to which Indian children do participate on an equal basis; and

(3) Modify its education program to allow Indian children to participate on an equal basis;

(b) Specific procedures for disseminating the information required in § 223.10(b). This dissemination must—

(1) Take place in a timely manner; and

(2) Ensure that tribal officials and parents of Indian children have had adequate time and opportunity to present their views;

(c) A description of how the LEA will actively consult and regularly involve tribal officials and parents of Indian children in the planning and development of education programs assisted with funds provided under the Act;

(d) A description of the LEA's methods to afford tribal officials and parents of Indian children the opportunity to make recommendations and to present their views as provided in § 223.10(d). This description should include specific ways the LEA will gather information concerning Indian views, including the frequency, location, and time of meetings; and

(e) Specific procedures for—

(1) Assessing the meaningfulness of Indian input; and

(2) Modifying the LEA's policies and procedures, if necessary, based on that input.

(20 U.S.C. 240(b)(3)(B); 20 U.S.C. 1221e-3(a)(1); H. Rept. 15, 95th Cong., 2d Sess. 114-115 (1978))

§ 223.12 Review by LEAs of policies and procedures.

(a) Each LEA that has established policies and procedures under § 223.7 shall review those policies and procedures annually to ensure that they—

(1) Meet the minimum standards in § 223.11; and

(2) Continue to provide for an adequate level of Indian participation.

(b) If an LEA determines that its policies and procedures do not meet the requirements in paragraph (a) (1)-(2) of this section, the LEA shall amend its policies and procedures to conform with those requirements.

(c) An LEA that must amend its policies and procedures under paragraph (b) of this section shall send a copy of those amended policies and procedures to—

(1) The Secretary; and

(2) The affected tribe or tribes.

(20 U.S.C. 1221e-3(a)(1))

§ 223.13 Review by the Secretary of policies and procedures.

(a) The Secretary periodically reviews an LEA's policies and procedures to ensure that they meet the minimum standards in § 223.11.

(b) If the Secretary determines that the LEA's policies and procedures do not meet the minimum standards in § 223.11, the LEA shall make the necessary changes within 60 days after receiving the Secretary's determination.

(c) If the LEA fails to correct its policies and procedures within 60 days, the Secretary withholds the LEA's entitlement according to § 223.42(b).

(20 U.S.C. 1221e-3(a)(1))

§§ 223.14-223.19 [Reserved]

Subpart C—Complaint Procedures

§ 223.20 Contents of a complaint.

For purposes of this part, a complaint is a signed statement that includes—

(a) An allegation that an LEA has failed to—

(1) Establish adequate policies and procedures under §§ 223.10-223.11 to ensure the participation of Indian parents and tribes in the education process;

(2) Adhere to these policies and procedures; or

(3) Take into consideration meaningful Indian input in designing the education program;

(b) Information that supports the allegation;

(c) A specific request for relief; and

(d) A statement describing what steps it has taken under § 223.23(b) to resolve with the LEA the matters on which the complaint is based.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1); H. Rept. 15, 95th Cong., 2d Sess. 115 (1978))

§ 223.21 Who may file a complaint.

(a)(1) Any tribe, or its designee, that has students attending an LEA's school may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Assistant Secretary regarding any action of the LEA pursuant to, or relevant to, the matters in § 223.20(a).

(2) If a tribe files a complaint through a designee, the tribe shall acknowledge in writing in the complaint that the designee is authorized to act on its behalf.

(b)(1) Parents of Indian children may not file a complaint directly with the Assistant Secretary.

(2) These parents shall submit their grievances to the tribe or its designee, although neither the tribe nor its designee is obligated to file these grievances in a complaint with the Assistant Secretary.

(c) A complaint filed under paragraph (a) of this section need not reflect the views of a majority of the parents of Indian children attending the LEA's schools.

(20 U.S.C. 240(b)(3)(C)(i); H. Rept. 15, 95th Cong., 2d Sess. 115 (1978))

§ 223.22 Where to file a complaint.

To file a complaint, a tribe must—

(a) Designate the complaint "SAFA Indian Complaint"; and

(b) Send it to the Assistant Secretary for Elementary and Secondary Education.

(20 U.S.C. 240(b)(3)(C)(i))

§ 223.23 When to file a complaint.

A tribe may file a complaint with the Assistant Secretary only if—

(a) The LEA has complied with the requirements in § 223.7; and

(b) The tribe has taken reasonable steps to resolve with the LEA the issues on which the complaint is based.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1))

§ 223.24 Receipt of a complaint by the Assistant Secretary.

The Assistant Secretary considers a complaint to have been received only after the Assistant Secretary determines that the complaint—

(a) Satisfies the requirements in §§ 223.20-223.21 and § 223.23; and

(b) Is in writing and signed by a tribal official or the tribe's authorized designee.

(20 U.S.C. 240(b)(3)(C)(i))

§ 223.25 Dismissal of a complaint.

(a) If the Assistant Secretary determines that a complaint fails to meet the requirements in § 223.24, the Assistant Secretary notifies the tribe or its designee that the complaint has been dismissed for purposes of invoking the hearing procedures in §§ 223.30-223.41.

(b) Each notice that a complaint has been dismissed includes the reasons why the Assistant Secretary determined that the complaint did not meet the requirements in § 223.24.

(c) Notice that a complaint has been dismissed does not preclude other efforts to investigate or resolve the issues raised in the complaint, including the filing of an amended complaint.

(20 U.S.C. 240(b)(3)(C)(i); 20 U.S.C. 1221e-3(a)(1))

§ 223.26 Consolidation of complaints.

The Assistant Secretary may consolidate complaints involving the same tribe or LEA.

(20 U.S.C. 240(b)(3)(C)(viii))

§§ 223.27–223.29 [Reserved]

Subpart D—Hearing Procedures

§ 223.30 Applicability of hearing procedures in this subpart.

The hearing procedures in this subpart apply only to proceedings under Section 5(b)(3)(C) of the Act.

(20 U.S.C. 240(b)(3)(C)

§ 223.31 Applicability of other laws.

The following provisions do not apply to proceedings under this subpart:

(a) Administrative Procedure Act.

(b) Federal Rules of Civil Procedure.

(c) Federal Rules of Evidence.

(20 U.S.C. 240(b)(3)(C); 20 U.S.C. 1221e–3(a)(1))

§ 223.32 Parties to a hearing.

The parties to a hearing under this subpart are—

(a) The complaining tribe or tribes; and

(b) The affected LEA or LEAs.

(20 U.S.C. 240(b)(3)(C)

§ 223.33 Notice.

Within 10 working days after receiving a complaint, the Assistant Secretary—

(a) Appoints a hearing examiner to conduct the hearing;

(b) Selects a time for the hearing so that the hearing occurs no more than 30 days after the appointment of a hearing examiner;

(c) Designates a place for the hearing that is, to the extent possible—

(1) Near the LEA; or

(2) At another location convenient to the tribe and the LEA, if the Assistant Secretary determines there is good cause to designate another location;

(d) Notifies the tribe and the LEA of the time, place, and nature of the hearing; and

(e) Sends copies of the complaint to the LEA and the tribe.

(20 U.S.C. 240(b)(3)(C)(ii))

§ 223.34 LEA's reply to the complaint.

Within 15 days after receiving the notice described in § 223.33, the LEA shall file with the Assistant Secretary its reply to the charges in the complaint.

(20 U.S.C. 1221e–3(a)(1))

§ 223.35 General procedural rules.

(a) *Communications.* No party shall communicate orally or in writing with the hearing examiner or the Assistant Secretary on matters under review, except minor procedural matters, unless all parties to the complaint are given—

(1) Timely and adequate notice of the communication; and

(2) Reasonable opportunity to respond.

(b) *Submission of documents.* For each document that a party submits, the party shall—

(1) File one copy for inclusion in the record of the proceedings; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) *Record.* A record of the proceedings will be established and maintained by the Assistant Secretary.

(20 U.S.C. 240(b)(3)(C); 20 U.S.C. 1221e–3(a)(1))

§ 223.36 Conduct of the hearing.

(a) *Public hearing.* The hearing must be open to the public.

(b) *Representation by counsel.* Parties may be represented by counsel.

(c) *Evidence.* (1) Each party may submit oral and written testimony that is relevant to the issues in the proceedings.

(2) A party may object to evidence it considers to be irrelevant or unduly repetitious.

(d) *Authority and responsibilities of the hearing examiner.* (1) The hearing examiner may regulate the course of the proceedings and the conduct of the parties during those proceedings. The hearing examiner takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(i) The hearing examiner may clarify, simplify, or define the issues or consider other matters that may aid in the disposition of the complaint.

(ii) The hearing examiner may direct the parties to exchange relevant documents or information.

(iii) The hearing examiner may receive, rule on, exclude, or limit evidence.

(iv) Although hearings are open to the general public, the hearing examiner may establish reasonable rules governing public attendance at the proceedings.

(v) The hearing examiner may examine witnesses.

(2) The hearing examiner may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(e) *Transcripts.* (1) The Assistant Secretary—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the proceedings; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reporting service's reproduction fee.

(f) *Hearing costs.* Each party shall bear only its own costs in the proceeding.

(20 U.S.C. 240(b)(3)(C)(iii)–(iv); 20 U.S.C. 1221e–3(a)(1))

§ 223.37 Opportunity to submit additional evidence.

(a) Each party may submit to the hearing examiner additional evidence that is relevant to the issues raised at the hearing.

(b) The hearing examiner must receive each party's additional evidence within 10 days after the hearing.

(20 U.S.C. 1221e–3(a)(1))

§ 223.38 The hearing examiner's findings and recommendations.

Within 30 days after the hearing, the hearing examiner—

(a) Makes, on the basis of the record, written findings of fact and recommendations concerning any appropriate remedial action that should be taken;

(b) Submits those findings and recommendations, along with the hearing record, to the Assistant Secretary; and

(c) Sends a copy of those findings and recommendations to each party.

(20 U.S.C. 240(b)(3)(C)(v); 20 U.S.C. 1221e–3(a)(1))

§ 223.39 Opportunity to comment on the hearing examiner's findings and recommendations.

(a) Each party may file with the Assistant Secretary comments on the hearing examiner's findings and recommendations.

(b) The Assistant Secretary must receive each party's comments within 10 days after the party receives a copy of the hearing examiner's findings and recommendations.

(20 U.S.C. 1221e–3(a)(1))

§ 223.40 The Assistant Secretary's final determination.

(a) Within 30 days after receiving the hearing record and the hearing examiner's findings and recommendations, the Assistant Secretary makes, on the basis of the record, a written determination that includes—

(1) Any appropriate remedial action that the LEA must take;

(2) A schedule for completing any remedial action; and

(3) The reasons for the Assistant Secretary's decision.

(b) After completing the final determination required by paragraph (a)

of this section, the Assistant Secretary sends the parties a copy of—

(1) The hearing record;

(2) The hearing examiner's findings and recommendations; and

(3) The Assistant Secretary's final determination.

(c) The Assistant Secretary's final determination under paragraph (a) of this section is the final action of the Department concerning the complaint.

(20 U.S.C. 240(b)(3)(C)(vi)–(vii))

§ 223.41 Judicial review of the Assistant Secretary's final determination.

If a party is dissatisfied with the Assistant Secretary's final determination, the party may seek judicial review before a court of competent jurisdiction.

(20 U.S.C. 240(b)(3)(C)(vii))

§ 223.42 Effects of noncompliance with the Assistant Secretary's final determination.

(a) *Determination of compliance.* (1) For an LEA that was required under §§ 223.40–223.41 to undertake remedial action, the Secretary determines whether the LEA has—

(1) Undertaken the required remedial action; or

(2) Failed to undertake the remedial action within the time established and the Secretary determines that an extension of time will not effectively encourage the required remedial action.

(b) *Withholding by the Secretary.* (1) Except as provided in paragraphs (b)(1)(i)–(ii) of this section, if the Secretary determines under paragraph (a)(2) of this section that the LEA has failed to undertake the remedial action, the Secretary withholds payment of all funds to which an LEA is entitled under Section 238(d)(2)(D) of the Act until that remedial action is undertaken.

(i) The Secretary does not withhold funds if the tribe or its designee requests in writing that these funds be released to the LEA.

(ii) The Secretary may not withhold funds during the course of the school year if the Secretary determines that a withholding would substantially disrupt the education programs of the LEA.

(2) If an LEA is aggrieved by the Secretary's action under paragraph (b)(1) of this section, the LEA may request a hearing under Section 5(g) of the Act.

(c) *Election of alternative services by the tribe.* (1) If the Secretary determines under paragraph (a)(2) of this section that the LEA has failed to undertake the remedial action, the affected tribe may elect to—

(i) Contract with the Bureau of Indian Affairs under Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638 (25 U.S.C. 450 *et seq.*) to provide educational services previously provided by the LEA; or

(ii) Have a Bureau of Indian Affairs' school provide those educational services.

(2)(i) If the affected tribe exercises its option under paragraph (c)(1) of this section, any Indian students affiliated with that tribe who wish to remain in attendance at the LEA against whom the complaint was filed may be counted by the LEA for the purpose of receiving funds under Section 3(d)(2)(D) of the Act.

(ii) If Indian students remain affiliated with the LEA under paragraph (c)(2)(i) of this section—

(A) The Secretary may not withhold funds under paragraph (b)(1) of this section that are based on the number of Indian students who remain affiliated with the LEA; and

(B) The tribe may not file any further complaints with respect to these Indian students.

(20 U.S.C. 240(b)(3)(D)–(E); 20 U.S.C. 240 note)

Appendix—Comments and Responses on NPRM (Formerly Subpart I of 34 CFR Part 222)

Part 223—Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

Comment. A number of commenters stated that the regulations of concern to Indian parents and tribes and to LEAs educating Indian children were too brief, not self-contained, and did not help to promote an understanding of the new legislation.

Response. A change has been made. These final regulations implement all the relevant statutory provisions that were added by the Education Amendments of 1978 (Pub. L. 95–561). In particular, these regulations explain the requirements which LEAs claiming entitlements based on the number of children residing on Indian lands must meet to receive their entitlements; contain minimum standards for formulating policies and procedures to ensure the participation of Indian parents and tribes in the education process; describe the process a tribe or its designee must follow to file a complaint regarding these policies and procedures; and establish hearing procedures to resolve complaints.

Comment. Several commenters recommended exempting LEAs from the requirements of the new legislation in cases where Indians are serving on the school boards of the LEAs.

Response. No change has been made. The law does not provide authority to exempt LEAs from the requirements in these cases. Although H.R. Rep. No. 15, 95th Cong., 2d Sess. 116 (1978) indicates that the House bill exempted LEAs when a majority of school board members were Indians, this exemption was removed by the House-Senate conferees and was not included in the law.

Comment. Several commenters stated that more emphasis should be placed on parents and less on tribal officials because some tribal officials live far away from the school districts.

Response. No change has been made. The regulations cannot change the law which requires the involvement of both tribal officials and parents of Indian children residing on Indian lands. *See, e.g.,* sections 5(b)(3)(A), 5(b)(3)(B)(ii), 5(b)(3)(B)(iii).

Comment. One commenter suggested that the regulations should ensure that all lands claimed under the Alaska Native Lands Settlement Act of 1971 are included as Indian lands for purposes of Pub. L. 81–874 entitlement calculations.

Response. A change has been made. In § 223.4, the definition of "Indian tribe" specifically includes "any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688)." Thus, the provisions in this part apply to LEAs that serve children who reside on such lands.

Comment. One commenter recommended that the regulations transfer the authority of the Commissioner of Education under the new legislation to the Bureau of Indian Affairs because of concern that the Commissioner would delegate that authority to the States.

Response. No change has been made. The law assigns responsibility to the Commissioner of Education for administering section 5(b)(3) of Pub. L. 81–874, as amended by the Education Amendments of 1978, Pub. L. 95–561. The Commissioner (now the Secretary) is not authorized to delegate that responsibility to anyone outside the Department of Education.

Comment. One commenter recommended that children of teachers who live on school district property in order to teach Indian children be considered as Federally connected children. Housing for these teachers must be constructed on school district property because tribal regulations do not permit such housing to be constructed on Indian lands.

Response. No change has been made. To qualify for an entitlement under this part, an LEA must count the number of children "residing on Indian lands." The definition of "Indian lands" in section 403(1) of Pub. L. 81–874 and § 223.4 of these regulations is specific, and does not suggest the inclusion of school district property.

Comment. One commenter asked whether Indian parents have any recourse if an LEA refuses to apply for payments for children residing on Indian lands.

Response. No change has been made. The law does not provide Indian parents any recourse if an LEA refuses to apply for payments for children residing on Indian lands. However, § 223.5 of these regulations indicates that the Secretary may not pay either the entitlement defined in § 223.4 or the preliminary payment defined in § 223.4 if an LEA refuses to establish policies and procedures. Although this recourse is not specifically available to parents, it should

encourage LEAs to establish policies and procedures in order to receive their entitlements.

Comment. One commenter suggested that the regulations should ensure that, if Indian parents or tribes request specific programs affecting the basic education of Indian students, the programs be implemented as conveniently as possible if it would not impose an undue hardship on the LEA.

Response. No change has been made. The Secretary is not authorized to exercise any direction, supervision or control over the curriculum or program of instruction of any school system. The 1978 amendments to section 5(b)(3) of Pub. L. 81–874 only require that, as a condition of receiving Pub. L. 81–874 funds based on the number of children residing on Indian lands, LEAs establish policies and procedures to ensure the participation of Indian parents and tribes in the education process. These required policies and procedures and the minimum standards for formulating them are contained in §§ 223.10–223.11 of these regulations. Of course, if a tribe believes that an LEA has failed to establish adequate policies and procedures, to adhere to its policies and procedures, or to take into consideration meaningful Indian input in designing its education programs, the tribe may complain to the Assistant Secretary under §§ 223.20–223.26.

Comment. Several commenters asked if an LEA could refuse to educate children who live on Indian lands if it did not apply for Pub. L. 81–874 funds. Also, they asked if Federal law supersedes a State law that requires an LEA to educate every child in its school district.

Response. No change has been made. Section 5(b)(3)(F) of Pub. L. 81–874 specifically states that "nothing in [section 5(b)(3)] shall be deemed to relieve any State of any duty with respect to any citizens of that State." Therefore, this provision does not supersede a State law that requires an LEA to educate every child in its school district. Moreover, an LEA's responsibility to educate children who reside on Indian lands is not tied to its application for the entitlement referred to in § 223.5 of these regulations. Section 5(b)(3)(A) of Pub. L. 81–874 does not require LEAs to apply for an entitlement; it only permits them to do so. If such an entitlement is granted, LEAs are not required, according to § 223.6, to spend that entitlement exclusively for Indian children or for special programs for Indian children.

Comment. Several commenters suggested that the Secretary should provide personnel to give local training and technical assistance and to monitor implementation at the local level to assure the maximum implementation of the new legislation.

Response. A change has been made. Section 223.13 of these regulations requires the Secretary to review an LEA's policies and procedures periodically to ensure that they meet the minimum standards in § 223.11. Moreover, Impact Aid program review procedures currently include some technical assistance during on-site reviews of LEA records.

Comment. Several commenters asked if non-Indian children and their parents have any specific rights under section 5(b)(3) of Pub. L. 81–874.

Response. No substantive change has been made. Section 223.2 provides clarification that—except for computing the entitlement, in which case the LEA counts all children, including non-Indian children, residing on Indian lands—these regulations are designed to ensure participation in the LEA's education program by Indian tribes and parents of Indian children residing on Indian lands. Thus, the required policies and procedures do not apply to non-Indian children who reside on Indian lands.

Comment. One commenter recommended that a tribe be allowed the option to be an SEA and distribute the Impact Aid funds.

Response. No change has been made. There is no basis in the law or in the legislative history that would permit the Secretary to consider a tribe as an SEA or to allow a tribe to distribute Impact Aid funds. Impact Aid payments may be made only to eligible LEAs.

Comment. One commenter suggested that tribal governments should be involved in developing State standards for educating children in a State, especially when membership of a tribe spanned several States.

Response. No change has been made. The Secretary does not have the authority to direct the involvement of tribes in developing State standards. However, the Secretary encourages tribes to communicate to SEAs their desires to participate in this process.

Comment. One commenter questioned which tribe is responsible for a child who has descended from more than one tribe.

Response. A change has been made. Section 223.4 of these regulations defines "Indian children" as children residing on Indian lands who are recognized by an Indian tribe as being affiliated with that tribe.

Comment. One commenter suggested that, to ensure full participation of Indian parents, some provision should be included to ensure that Indians serve on the school board.

Response. No change has been made. The Secretary has no authority to interfere in local matters such as electing or appointing school board members.

Comment. One commenter stated that the hearing examiner appointed by the Secretary should be a person designated by the State who has responsibility for supervising primary and secondary education in that State—for example, the Superintendent of Public Instruction.

Response. No change has been made. The regulations do not presently state specific qualifications for hearing examiners. The Secretary believes, however, that the hearing examiner must be able to examine the basis of the complaint in an objective manner, to judge impartially the facts presented, and to provide a fair and honest recommendation based on those facts. To accomplish these goals, the Secretary will make every effort to appoint a hearing examiner who is affiliated with none of the parties to the complaint.

Comment. Several commenters stated that the regulations should contain a section that indicates how payments for children residing on Indian lands may be used by an LEA. This section should clarify that the payments are not just for Indian children or for special programs.

Response. A change had been made. Section 223.6, which has been added to these regulations, provides that an "LEA that receives the entitlement referred to in § 223.5 is not required to spend that entitlement exclusively for Indian children or for special programs for Indian children."

Comment. One commenter asked if some students decided to return to the LEA, after the tribe has elected and received other educational services, would Pub. L. 81–874 funds return to the LEA or stay with the other educational services provided by the Bureau of Indian Affairs' school. Another commenter asked a similar question concerning payments for students who choose to remain in the schools of the LEA.

Response. A change has been made. Pub. L. 81–874 payments are made only to LEAs and not to the Bureau of Indian Affairs' schools. Moreover, according to § 223.42(c)(2)(i) of these regulations, Indian students who either remain or return to an LEA in the situations described can be claimed for Pub. L. 81–874 payments by the LEA.

Comment. One commenter stated that the regulations should clearly prohibit LEAs from receiving funds when they are not in compliance with the requirements of Pub. L. 81–874 or when complaints are pending against them.

Response. A change has been made. Section 223.5 of these regulations indicates that, unless a waiver is granted, an LEA that does not establish policies and procedures may not recieve either the entitlement or the preliminary payment defined in § 223.4. The statute and regulations, however, do not require payments to be withheld while a complaint is pending. Rather, payments may only be withheld, under § 223.13(c) or § 223.42(b), after an LEA has failed to comply with a determination by the Secretary or Assistant Secretary that required remedial action.

Comment. One commenter stated that the regulations fail to state clearly the requirements which an LEA must meet before receiving the entitlement provided under section (3)(d)(2)(D) of Pub. L. 81–874.

Response. A change has been made. Section 223.5 specifically requires an LEA to meet the following requirements in order to be eligible for an entitlement:

- The LEA must serve children who reside on Indian lands.
- The LEA must meet the general eligibility requirements in Section 3(c) of Pub. L. 81–874.
- The LEA must establish the policies and procedures described in § 223.10. Section 223.11 provides minimum standards for formulating these policies and procedures.

Comment. One commenter stated that, if monies are withheld during the time that children still attend the public school district, only the children will be hurt.

Response. A change has been made. Section 223.42(b)(1)(i)–(ii) implements the statutory language in Section 5(b)(3) of Pub. L. 81–874 which prohibits the Secretary from withholding funds if the tribe formally requests that those funds be released to the LEA or from withholding funds, during the course of the school year, if it would

substantially disrupt the educational programs of the LEA.

Comment. One commenter stated that the regulations should contain the method under which a tribe would contract for Pub. L. 81–874 funds.

Response. A partial change has been made. Section 223.42(c)(1) of these regulations sets out the options available to a tribe if the LEA does not comply with any remedial action that is required under §§ 223.40–223.41. In addition, the Bureau of Indian Affairs is responsible for promulgating regulations that will ensure an orderly and expeditious transfer of educational services previously provided by LEAs to services under contract with, or provided by, BIA. Under Pub. L. 81–874, however, funds cannot be paid to either BIA or to a tribe because that statute only authorizes payments of Federal assistance to LEAs.

Comment. Several commenters asked whether, in school districts that include children from several tribes, each of the tribes had to be contacted.

Response. A change has been made. Section 223.10, for example, requires an LEA that serves children residing on Indian lands to establish policies and procedures that ensure the participation of Indian tribes and parents of Indian children in the education process. This requirement in no way excuses an LEA from establishing policies and procedures that apply to each tribe that has children in its schools. An LEA may have to establish separate policies for each tribe in order to ensure adequate participation.

Comment. Several commenters suggested that the Indian Parent Committee elected under Part A of Title IV or, if there is not a Title IV committee, the Johnson O'Malley Parent Committee should be the voice of the Indian parents for Pub. L. 81–874 purposes.

Response. No change has been made. For the purpose of filing a complaint under § 223.20 of these regulations, a tribe may, according to § 223.21, designate a group, such as a parent committee, to act on its behalf. If not so designated, § 223.21(b) precludes such a committee from filing a complaint on behalf of Indian parents. Regarding the general opportunities for the participation of tribal officials and parents of Indian children included in these regulations, all parents are entitled to participate.

Comment. Several commenters asked what is meant by "applications, evaluations, and program plans."

Response. A change has been made. Section 223.10(b) of these regulations describes the applications, evaluations, and program plans referred to in Section 5(b)(3)(B)(ii) of Pub. L. 81–874.

Comment. A number of commenters suggested that the regulations should define how Indian children are considered to participate on an equal basis with all other children educated by an LEA. Several other commenters suggested that the definition should be established by the Indian parents and tribes in conjunction with the LEA.

Response. A change has been made. Section 223.10(a) provides that an LEA that serves Indian children residing on Indian lands must give tribal officials and parents of Indian children the opportunity to comment on the participation of Indian children on an equal basis in the school program with all other children educated by the LEA. Under § 223.11(a), the LEA is required to include, in its policies and procedures, specific procedures for how the LEA will accomplish this goal. These procedures must also include how the LEA will assess the extent to which Indian children do participate on an equal basis and how the the LEA will modify its education program to allow Indian children to participate on an equal basis.

Comment. One commenter asked how Indians not affiliated with a tribe but who live on Indian lands file a complaint.

Response. A change has been made. Section 223.21 provides that only a tribe, or its designee, that has students attending an LEA's schools may file a complaint. Section 223.4 defines "Indian tribe" to mean "any Indian tribe, band, nation, or other organized group or community . . . which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians." Thus, Indians who are not affiliated with a tribe may not file a complaint.

Comment. One commenter asked whether parents have any recourse if they have a grievance and the tribe decides not to file it in a complaint. Another commenter stated that a complaint should represent the viewpoint of a majority of the Indian parents whose children are in that particular school district.

Response. No change has been made. Pub. L. 96–46, approved August 6, 1979, amended Section 5(b)(3)(C)(i) of Pub. L. 81–874 to provide discretion to a tribe or its designee in filing a complaint. Thus, it is the tribe's decision whether to pursue a particular complaint. There is no recourse available to parents under the statute because parents cannot file complaints themselves. *See* H.R. Rep. No. 15, 95th Cong., 2d Sess. 115 (1978).

Section 223.21(c) provides that a complaint need not reflect the view of a majority of the parents of Indian children.

Comment. Several commenters stated that the requirements placed on LEAs by the new legislation have the effect of usurping the authority of locally-elected school boards.

Response. No change has been made. Although the Secretary does not believe that Section 5(b)(3) of Pub. L. 81–874 usurps the authority of locally-elected school boards, the Secretary is powerless to change the requirements that Congress has enacted. The statute requires an LEA that claims entitlements based on the number of children residing on Indian lands to establish policies and procedures. The Secretary must enforce this requirement.

Comment. Several commenters suggested that the regulations should explain the basis of a complaint and who may file a complaint.

Response. A change has been made. According to § 223.20, a complaint is based on an allegation that on LEA has failed to establish adequate policies and procedures, to adhere to those policies and procedures, or to take into consideration meaningful Indian imput in designing its education program. Section 223.21(a) permits any tribe, or its designee, that has students attending an LEA's schools to file a complaint.

[FR Doc. 81–2309 Filed 1–21–81; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 223

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations for the Impact Aid program in Title 34 of the Code of Federal Regulations. These regulations implement the amendments, made by the Education Amendments of 1978, Pub. L. 95-561, to Title I (Financial assistance for local educational agencies in areas affected by Federal activity) of the Act of September 30, 1950, Pub. L. 81-874, that apply to local educational agencies claiming entitlements based on the number of children residing on Indian lands

The Secretary invites comments on these proposed regulations.

The text of the regulations on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the **Federal Register.** The regulations have been adopted as final regulations and will govern this program until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 23, 1981.

ADDRESS: Comments should be addressed to Ms. Edna K. Cave, Division of Impact Aid, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2109, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Edna K. Cave. Telephone: (202) 245-1975.

Invitation to Comment

For additional details on how to comment, see the preamble of the final regulations for these programs published in this issue of the **Federal Register.**

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance for Federally Affected Areas—Maintenance and Operations)

Dated: January 15, 1981.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 81-2306 Filed 1-21-81; 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday,
January 22, 1981

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Prime Farmlands: Initial Regulatory Program; Final Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 716

Prime Farmland: Initial Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (the Office or OSM) is amending a portion of its initial regulatory program (42 FR 62639–62716, December 13, 1977, codified at 30 CFR Chapter VII, Subchapter B) relating to prime farmland. The changes and the basis and purpose of each are discussed below. The Office is required to effect these changes primarily as a result of the decisions of the United States District Court in *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. 327 (D. D.C. 1978) and 456 F. Supp. 1301 (D. D.C. 1978). (The Office is also promulgating regulation changes which are not the direct result of the court's decision.) These final regulations are intended to replace those portions of the prime farmland regulations which the court enjoined and remanded to the Secretary of the Interior for reconsideration, to clarify some provisions of the regulations, and to make the Office's initial regulations with respect to prime farmland more analogous to the permanent regulatory program on prime farmland.

EFFECTIVE DATE: February 23, 1981.

ADDRESSES: Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, 202/343–4006.

FOR FURTHER INFORMATION CONTACT: Donal F. Smith, Agricultural Engineer, Branch of Applied Research, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave. N.W., Washington, D.C. 20240; 703/756–6964.

SUPPLEMENTARY INFORMATION: .

Background

On December 13, 1977 (42 FR 62639–62716), the Office promulgated final initial regulations (30 CFR Chapter VII, Subchapter B), as required by Section 501(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Section 1251(a), (SMCRA or the Act). Section 716.7 of the initial regulations pertains to surface coal mining and reclamation operations conducted on prime farmland (42 FR 62693–95 (1977)).

The validity of § 716.7 was challenged in *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. 327 (D. D.C. 1978 and 456 F. Supp. 1301 (D. D.C. 1978). The court's opinions in these cases as they relate to prime farmland will be discussed below in greater detail under the headings "HISTORICAL USE CLAUSE" and "GRANDFATHER EXEMPTION." The regulations discussed under those headings are intended primarily to replace those portions of the initial prime farmland regulations which the court enjoined and remanded to the Secretary of the Interior for reconsideration. These rules together with the unaffected portion of § 716.7 of the initial regulations constitute the initial regulations of the Office with regard to surface coal mining and reclamation operations on prime farmland. Other revisions to the prime farmland grandfather clause are now pending before the agency. (See discussion below.)

Historical Use Clause

Sections 510(d) and 515(b)(7) of the Act provide for special environmental protection during the mining and reclamation process for lands classified as "prime farmland." Section 701(20) of the Act defines prime farmland as having the same meaning as that previously prescribed and published by the Secretary of Agriculture and lists several factors which shall be the components of that definition.

In addition, Section 701(20) requires that land meeting the technical criteria of the Department of Agriculture must also have been historically used for intensive agricultural purposes (30 U.S.C. Section 1291(20)). The statutory definition of prime farmland was implemented in the initial regulations of the Office in § 716.7(a) and (b) (42 FR 62693–95 (1977)). The technical criteria which had previously been published by the Secretary of Agriculture were referenced in § 716.7(b) and the pertinent portion of the technical criteria was reproduced for the convenience of the reader (42 FR 62694 (1977)). Section 716.7(b) was not challenged in the litigation and thus was not an issue in the District Court's opinion.

Section 716.7(a)(1) of the initial regulations further defined the concept of historic use for intensive agricultural purposes by specifying the historical use period (the period of time the land must have been in crop production) as at least 5 years out of the 20 years preceding the date of the permit application (42 FR 62693 (1977)). The District Court enjoined this part of the initial regulations because the regulation was not explained or supported in the preamble and the regulation as written was overly broad. (See *In re: Surface Mining Litigation*, 456 F. Supp. at 1312 (D. D.C. 1978)).

Grandfather Clause

Section 510(d)(2) of the Act, 30 U.S.C. Section 1260(d)(2), sets forth a grandfather exemption with respect to some surface coal mining and reclamation operations as follows:

> Nothing in this Subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

The grandfather clause was implemented in the initial regulations of the Office as § 716.7(a)(2). (See 42 FR 62693 (1977)).

The District Court held that this Section was generally a reasonable exercise of the Secretary's discretion in implementing the Act and properly limited the areas which are exempt from the prime farmland provision of the initial regulations. (See *In Re: Surface Mining Regulation Litigation*, 452 F. Supp. at 340 (D. D.C. 1978)). However, to the extent that § 716.7(a)(2) as originally promulgated attempted to limit the effect of the grandfather exemption to the permit application requirements of Section 510(d)(1) of the Act, the court found that the exemption was an incorrect application of the statute. The court found that the exemption stated in Section 510(d)(2) of the Act specifically applies to the prime farmland performance standards of Section 515(b)(7), 30 U.S.C. Section 1265(b)(7), as well as to the permit application requirement of Section 510(d)(1) of the Act. The Court then enjoined enforcement of the provisions of § 716.7 to the extent they imposed performance standards on operations exempt from those requirements under Section 510(d) of the Act. Thus, the grandfather clause, as a result of the Court's opinion, should be construed as exempting surface coal mining and reclamation operations operating under permits issued prior to August 3, 1977, or renewals or revisions thereof, from both the prime farmland permit application requirements and performance standards.

Supplemental Judicial Decision and Related Rulemaking

As noted above, the District Court has previously upheld the Secretary's interim program regulations implementing the grandfather clause of the Act.

On April 16, 1980, OSM published proposed revisions to 30 CFR 716.7(a)(2)

and its counterpart in the permanent program, 30 CFR 785.17(a). (45 FR 25992–95, April 16, 1980; comment period extended at 45 FR 39448, June 10, 1980; comment period reopened 45 FR 56364, August 25, 1980.) The proposed revision to the permanent program grandfather regulation was mandated by the Department's decision to suspend that regulation as part of the permanent program litigation. OSM proposed a revision in the interim program regulations in an attempt to respond to difficulties encountered in attempting to enforce the regulation as written. States were also having difficulty in applying the interim program regulation.

On May 2, 1980, the U.S. Court of Appeals for the District of Columbia issued a decision invalidating the interim program regulation at 30 CFR 716.7(a)(2). *In Re: Surface Mining Regulation Litigation*, Nos. 78–2190, 78–2191, 78–2192, Slip op. 26–31.

In the proposed regulations which are the subject of this notice (44 FR 33628, June 11, 1979), OSM proposed to revise 30 CFR 716.7(a)(2) to take into consideration the District Court's holding that operations having permits issued prior to August 3, 1977, or renewals or revisions thereof, were exempt from both the prime farmland permit application requirements *and* performance standards. See 44 FR 33628, June 11, 1979. This change was reflected in the deletion of the words, "regarding actions to be taken before a permit is issued", from the original version of 30 CFR 716.7(a)(2), second sentence, December 13, 1977, and is preserved in the final rule published today. Compare 42 FR 62693, December 13, 1977, and 44 FR 33628, June 11, 1979, and see discussion below.

The proposed grandfather regulation for the interim program published on April 16, 1980, does not contain any of the second sentence of 30 CFR 716.7(a)(2) which appeared in previous versions of the regulation. See 45 FR 25995, April 16, 1980. This sentence appears to be unnecessary based on the scope of the grandfather exemption as published in the April 16, 1980 proposed grandfather regulation. However, OSM will retain the second sentence of 30 CFR 716.7(a)(2) until the proposed regulations published on April 16, 1980 are published in the **Federal Register** in final form. That **Federal Register** will discuss and explain the treatment of 30 CFR 716.7(a)(2) in its entirety.

Public Hearings

Public hearings on the proposed regulations were held on June 27, 1979, in Washington, D.C., Indianapolis, Indiana, and Kansas City, Missouri. Scheduled morning, afternoon, and evening sessions were held to give the public maximum time to participate in the development of the rules. Members of the public took advantage of these public hearings by submitting their comments, both verbally and written, to representatives from the Office. These comments were then made part of the public record and were carefully considered in preparation of the final rules.

Public Meetings

Representatives of the Office were available to meet with members of the public between June 15, 1979, and July 27, 1979, at their request to receive their advice and recommendations concerning the content of the proposed regulations. Notice of the Office's availability was published in the proposed rules at 44 FR 33628, June 11, 1979. One public meeting was held at 1951 Constitution Avenue, NW., Washington, D.C. The comments received at this meeting were made a part of the public record and carefully considered in preparation of the final rules.

Analysis of Public Comments

The Office received 33 different comments from 30 individuals, organizations, and government agencies during the comment period. This preamble to the final rules contains the bases and purpose, alternatives considered, and decisions made by the Office in responding to significant comments. The Office considered significant comments to be those urging the adoption of viable alternatives or questioning the provisions in the proposed regulations, and those which provided reasonable rationale, justification, technical references, or other materials supporting the recommendations or comments. Insignificant comments, that is, of a more general nature or those which correct minor errors, appear in the administrative record but are not discussed in the preamble.

In its June 11, 1979, **Federal Register** notice, the Office proposed a total of six changes. Briefly described, these proposed changes were as follows: (1) Defining *historically used for cropland* as 5 out of 10 years; (2) measuring the historical use period from the date of acquisition of the land for mining purposes; (3) providing for the regulatory authority to have flexibility to classify as prime farmland those lands important to the state or local economy; (4) providing for the regulatory authority to have flexibility to classify as prime farmland those lands taken out of cropland use of more that 5 years in 10 due to ownership circumstances which do not relate to the capability of the land to produce crops; (5) substitution of the term "cropland" for "cultivated crops"; and (6) implementing the grandfather clause of the Act (Section 510(d)(2)) as exempting surface coal mining and reclamation operations operating under permits issued prior to August 3, 1977, or renewals or revisions thereof, from both the prime farmland permit application requirements and performance standards of the Act. These proposals and the comments received are discussed below.

Measuring the Historical Use Period

The initial regulations promulgated on December 13, 1977 provide that the date from which the historical use period must be measured is the date of the permit application (42 FR 62693). In its June 11, 1979 notice, the Office proposed to change the date of measurement to the date of acquisition of the land for the purpose of mining. Several commenters felt that the historical use period should begin prior to the date of the permit application. They felt that the whole program would make more sense and could be more easily implemented; that land purchased prior to mining and held out of cropland use would no longer be prime farmland and therefore should not be required to be reconstructed to prime farmland standards; that it may be difficult to establish as a matter of fact, how the land was actually used in instances where a long period of time is involved; that the time period proposed could provide a basis of historical farming determinations far in excess of the past 10-years concept; that the starting data was adequate in the final rules of December 13, 1977, and it should continue to be acceptable; that in some instances the burden of proof would be impossible to comply with; that a time frame starting from the date of filing of a mining application is straight forward, enforceable and workable; that proposed § 716.7(b)(2)(ii) gives the regulatory authority the flexibility to curtail abuses of the present system.

Another commenter felt the historical use period should begin from the date of the Act, August 3, 1977. He felt that the regulations pose an unnecessary hardship on the operators to delve into the use of land acquired many years ago; that local records may not indicate the use of the land, in which case the operator would be forced to base a decision on historical use on the memories and hearsay of local residents, and the belief that, "the years prior to the date of the land purchase would better represent a prime farmland

historical use, because it would not be influenced by the mining activity", (44 FR 14931, March 13, 1979), is mere supposition. Also, the regulation, as proposed, would require the regulatory authority to determine motives for acquiring the land. Furthermore, the land would have to be returned to row crop use despite the historical use as other than cropland. Finally, an operator who is an owner or lessee of prime farmland is as likely, as is any other private owner, to use the land for row crops, in order to make a profit from the land.

Several other commenters supported the historical use clause as proposed by OSM. They felt that the existing regulations provided a loophole for coal operators, and needed revision; that coal companies can control the land and let it remain in pasture 5 years prior to mining; that this type of loophole was being used by coal companies in Illinois until that State passed a law in 1975 which required all prime farmland to be reconstructed to prime farmland standards; that the intent of the Act and initial regulations is to identify a class of very productive soil, "prime farmland", and ensure that those lands were restored to their original productivity.

As a result of careful evaluation of these comments, the Office continues to feel that the years prior to the date of the land purchase would better represent a prime farmland historical use, because it would not be influenced by the mining activity. The Office does not expect the historical use period to extend beyond the year 1949 as stated at 44 FR 14931, March 13, 1979. This will alleviate some of the difficulty in determining land use in the past. The fact that land can be held out of crop land use for a period of time, thus avoiding the prime farmland reconstruction standards, was one of the reasons for changing the date from which the historical use period was to be measured. The Office feels that these rules are more sensible and consistent with the final permanent program regulations. The date of measurement in the permanent program definition at 30 CFR 701.5 has been upheld by the District Court in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, D. D.C., slip op. at 8, n. 7 (May 16, 1980). It is true that proposed § 716.7(b)(2)(ii) does give the regulatory authority more flexibility to include additional agricultural lands under the prime farmland reconstruction standards. Several commenters have pointed out that a few regulatory authorities have been avoiding the prime farmland reconstruction standards. The Office feels that these State regulatory authorities may not exercise their more stringent options immediately.

Several commenters disagreed with OSM's statement that cropland records for the 5 out of 10 years are readily available from local sources. 44 FR 33626, June 11, 1979. OSM has considered these objections. In instances where specific cropland history is not readily available, the regulatory authority may accept other methods such as affidavits, certifications from landowners, aerial photography, cropping history, etc. to reveal the historical cropland use.

Defining Historically Used for Cropland as 5 Years or More Out of 10 Years

Several comments were received with respect to the historical use period of any 5 years out of the 10 years preceding the date of acquisition of the land for the purposes of mining. Some commenters supported the five year in ten criterion as representative of modern agricultural practices. Most of these commenters supported this criterion only if the full set of changes proposed by OSM are adopted as final rules. They stated that the relationship between the 5 years in 10 years criterion and the start of the historical use period at the date of acquisition of the land for the purposes of mining (together with the other proposed changes) was an important step in preserving prime farmland.

Some commenters felt that the historical use period should remain for 20 years because land ownership of 10 years prior to mining is common where the land was purchased for purposes other than farming. These commenters expressed the belief that much land acquired and left fallow would not fall within the historical use period criteria. Other commenters suggested that five consecutive years be used rather than any five years out of the ten year historical use period citing as support an unspecified conferees' report. An additional commenter suggested that any use for agricultural purposes in the entire past history of land use qualified land as prime farmland and that a specified number of years of historical use is bound to leave out of the prime farmland designation areas suitable for cropland use. Some commenters stated that all soils meeting the U.S. Department of Agriculture criteria for prime farmland should be reclaimed regardless of the historical use of those soils.

The Office is unable to accept those comments which recommend placing no limitations on or eliminating the concept of historical use in the definition of prime farmland. OSM must be guided by the statutory definition of prime farmland which specifies that such land shall meet the technical definition of the U.S. Department of Agriculture and must have been historically used for intensive agricultural purposes. Section 701(20), 30 U.S.C. 1291(20). Congress did not intend that any past use for agricultural activities qualified the land as prime farmland (123 Cong. Rec. 8110, May 20, 1977 (daily ed.) The Office continues to believe that a historical use period of 10 years prior to the date of acquisition of the land for the purpose of mining constitutes a reasonable method for establishing agricultural land use with recent and generally more available data. Fifty percent or more of this period represents the predominant land use, *i.e.*, 5 or more years out of 10. The Offaice finds nothing in the legislative history of the Act to support the assertion that the 5 years must be consecutive.

Providing Flexibility to the Regulatory Authority To Classify Additional Lands a Prime Farmland

OSM's proposed regulations (proposed § 716.7(b)(2) (ii) and (iii)) included provisions to allow regulatory authorities to classify as prime farmland lands important to the State or local economy and lands taken out of cropland use for more than 5 years out of 10 for reasons not related to the capability of the land to produce crops (*e.g.*, retirement, litigation, death). Several commenters felt that proposed § 716.7(b)(2) (ii) and (iii) should be deleted because: (1) the operator is being penalized for management and production decisions by persons over which he has no control, (2) these provisions are vague and overly broad, and (3) the rule is not rational or authorized by the statute. Several commenters also supported these provisions. These subsections are included to permit the regulatory authority to consider local conditions and practices and to protect prime farmland that may be temporarily inactive for reasons not related to crop capability. The Office believes these provisions are consistent with the intent of Congress to allow the States to have a lead role in administering the Act (Section 503) and to have more stringent laws and regulations than those mandated by the Act (Section 505). (See also the preamble to the permanent program regulations at 44 FR 14931–2, March 13, 1979).

One commenter requested a punctuation change with respect to § 716.7(b)(2)(iii) suggesting that a semicolon following the word "or"

preceding subparagraph (iii) will make it clear that subparagraphs (i), (ii), and (iii) are intended to be separate and independent bases for a determination that land has been historically used for cropland.

The Office rejects this comment because these criteria are not intended to be separate and independent bases. The regulatory authority may make a determination based upon "additional cropland history" or "some fact of ownership or the land" to only increase the minimum cropland acreage identified in § 716.7(b)(2)(i). The regulation has been revised to reflect this intent (the phrase on increasing acreage has been moved to the end of subparagraph (iii)).

Other comments suggested that these provisions should be drafted to permit the regulatory authority to exclude small size or odd shape parcels and parcels which do not form a viable economic unit. The Office has not accepted this comment because it has no authority to provide a variance from the specific prime farmland requirements of the Act. However, the initial regulations allow for reasonable flexibility in meeting the standards of the Act where small or odd shaped parcels are involved. These parcels may be consolidated and relocated so long as the requirements of § 716.7 of the regulations are met. Compliance with § 716.7 has a result in which the aggregated amount of prime farmland that is restored equals the amount that existed before mining and satisfies the prime farmland reconstruction requirements.

Substitution of the Term "Cropland" for "Cultivated Crops"

The Act defines prime farmland as lands which meet certain technical criteria and which have been historically used for intensive agricultural purposes (Section 701(20) of the Act). For purposes of the initial regulations, "intensive agricultural purposes" was defined as "cultivated crops." (See §§ 716.7(a)(1) and 716.7(d)(1), 42 FR 62693 and 62694 (1977) respectively.) The Office proposed amending 30 CFR 716.7 to substitute "cropland" for "cultivated crops" because cropland is a term with a long history of use by the Department of Agriculture and is a basis for collection of statistical data on crop production and land use. (See 44 FR 33628, June 11, 1979).

One comment received suggested replacing the term "cropland" with the phrase "instensive agricultural activities", returning to this definition the exact language of the statute. The Office has not made this change. As noted above, the term cropland is appropriate because of its history of use by the governmental agency with responsibility to define prime farmland. In addition and as noted in the preamble to the permanent regulations, itensity of agricultural use refers to the amount of economic input, less land costs, that is expended to produce a crop (44 FR 14931, March 13, 1979).

Intensive farming is farming in which a comparatively large amount of labor and working capital is used per acre of farmland. Accordingly, the Office has defined "intensive agricultural purposes" to mean cropland for purposes of the initial and permanent regulations.

Implementation of Section 510 of the Act (The "Grandfather" Clause)

As noted in the above discussion, the District Court enjoined enforcement of the provisions of 30 CFR 716.7 to the extent they imposed prime farmland performance standards on operations exempt from those requirements under Section 510(d)(2) of the Act. The Office proposed a change which would have the effect of exempting qualified operations from both the prime farmland permit application requirements and performance standards (See proposed § 716.7(a)(2)). The Office received no comments on the proposed change. This revision to the initial regulations does not relieve an operator from compliance with all other applicable performance standards of the initial program for those lands which, but for the application of the grandfather clause, would qualify for classification as prime farmland.

The Office did, however, receive numerous comments on other aspects of the grandfather clause regulations which were not directly affected by the proposal of June 11, 1979. Issues raised in the comments include contiguous expansion, revisions or renewals, use of types of permits utilized in grandfathering decisions, and revegetation standards. Some commenters recommended eliminating grandfathering expansion entirely. The Office is cognizant of concens regarding the implementation of the grandfather clause in Section 510(d) of the Act. Those comments are technically outside the scope of the proposal published for comment on June 11, 1979. Since the close of the comment period on that proposal, OSM has published proposed rules on the scope of Section 510(d)(2) of the Act in the permanent program. (See 45 FR 25992–95, April 16, 1980.) These comments will be transferred to that rulemaking. This action is particularly appropriate since many commenters expressed their general views on the correct interpretation of the statute—an issue fundamental to the April 16, 1980, proposed rulemaking.

Miscellaneous Comments

One commenter noted that the preamble to the proposed regulations implied that the regulatory authority had some flexibility in identifiying prime farmland. The Office agrees with this commenter that the Department of Agriculture defines prime farmland (Section 701(20) of the Act) and that the latitude of the regulatory authority is with respect to historical use (30 CFR 716.7(b)(2) (ii) and (iii)). However, no change is required in the regulations.

One commenter suggested that the Office make further provisions for land that has been brought into agricultural use more recently than the 5 years out of 10 years, where special changes such as irrigation or new agricultural techniques, have made such land use feasible in a lesser time period. The commenter felt that the special environmental protection afforded land in use for longer time periods should be made applicable to these newer prime farmlands. The regulatory authority may designate these lands under 30 CFR 716.7(b)(2) (ii) and (iii). Alternatively, the Department of Agriculture may in the future undertake to recognize new techniques in its definition of prime farmland in 7 CFR Part 657, which in turn is part of OSM's definition (See § 716.7(b)(1)). The Office believes that these are the appropriate means for accommodating as yet undefined technological advances.

One commenter suggested that the reference in proposed § 716.7(b)(1) to 7 CFR Part 657 should be changed to 7 CFR 657.5(a). The Office acknowledges that 7 CFR 657.5(a) specifically defines prime farmland and that other lands not classified as prime farmlands (e.g., unique farmland) are also defined in 7 CFR Part 657. However, the Office believes the suggested change is unnecessary since prime farmland is clearly defined in only one subsection of 7 CFR Part 657.

A commenter questioned the proposed change to 30 CFR 716.7(d)(1) as having no explanation. The term "cropland" was placed in § 716.7(d)(1) for reasons stated in the preamble to the proposed change at 44 FR 33628, June 11, 1979. (See also discussion above on comments received on substituting "cropland" for "cultivated crops".)

One commenter questioned the reference to Section 702(d) as a basis for an exemption from the environmental impact statement requirement of the National Environmental Policy Act.

Futhermore, this commenter stated that an impact statement should be prepared since an emergency situation does not exist for revisions to the initial regulations. This comment correctly points out a typographical error. The correct statutory reference in Section 501(a) of the Act. The Office believes that the unqualified exemption in Section 501(a) of the Act applies to all regulations of the initial program. Accordingly, no impact statement has been prepared.

Drafting Information

These changes to the interim program regulations and the accompanying preamble have been drafted by Donald F. Smith, Agricultural Engineer, and Arlo Darlymple, Agronomist, Technical Services and Research, OSM, Washington, D.C. (703) 756-6964.

Statements of Significance and Environmental Impact

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. Section 501(a) of the Act (30 U.S.C. Section 1251(a)) exempts this action from the environmental impact statement of the National Environmental Policy Act.

Dated: January 12, 1981.

Joan M. Davenport,

Assistant Secretary—Energy and Minerals.

1. 30 CFR 716.7 (a) and (b) are removed in their entirety and new § 716.7 (a) and (b) is added as follows:

§ 716.7 Prime farmland.

(a) *Applicability.* (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this section.

(2) The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this section. Permit renewals or revisions shall include only those areas that—

(i) Were in the original permit area or in a mining plan approved prior to August 3, 1977; or

(ii) Are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

(b) *Definitions.* For purposes of this section, the following definitions are applicable.

(1) *Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been historically used for cropland.

(2) *Historically used for cropland* means (i) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (ii) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding such acquistion but for some fact of ownership or control of the land unrelated to the productivity of the land, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(3) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

* * * * *

[FR Doc. 81-2327 Filed 1-21-81; 8:45 am]
BILLING CODE 4310-05-M

federal register

Thursday
January 22, 1981

Part IX

Department of Commerce

Bureau of Economic Analysis

Direct Investment Surveys; Solicitation of Comments

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1980; Solicitation of Written Public Comment on Proposed Survey Form and Associated Rule Changes

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Proposed rules.

SUMMARY: Section 4(b) of the International Investment Survey Act of 1976, Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108 (the Act), requires that a benchmark survey of foreign direct investment in the United States be conducted at least once every five years. Such a survey will be conducted early in 1981, covering the year 1980.

A draft 1980 BE–12 report form and *Instruction Booklet* have been prepared. Written public comment is solicited on the drafts, the associated rule changes, and the changes in related quarterly and other periodic report forms for reporting foreign direct investment in the United States. The changes are detailed below.

DATES: Written comments must be received by BEA no later than February 23, 1981.

ADDRESS: Written comments should be addressed to the U.S. Department of Commerce, Bureau of Economic Analysis, International Investment Division (BE–50), Washington, D.C. 20230. All comments in response to this notice will be available for public inspection from 8:00 a.m. to 4:00 p.m. in room 608, 1401 K Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230, (202) 523–0657.

SUPPLEMENTARY INFORMATION: In the September 12, 1980 **Federal Register**, Volume 45, No. 3, page 60850–1, the Bureau of Economic Analysis (BEA) requested written public suggestions concerning the content of the 1980 BE–12 report form, and gave an announcement of a public meeting to be held on October 20, 1980 to discuss the written suggestions received and to receive verbal suggestions. The written and verbal suggestions received as a result of the **Federal Register** notice, suggestions received at a meeting of the Interagency Committee on International Investment Statistics called to discuss the proposed survey, and the requirements of the Act were considered in designing the proposed form.

The Act, in Section 4(b), states that the benchmark survey, "* * * shall, among other things and to the extent he (the President) determines necessary and feasible—

"(1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

"(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade between a parent and each of its affiliates and between each parent or affiliate and any other person;

"(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

"(4) Obtain information on tax payments by parents and affiliates by country; and

"(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

Regulations implementing the Act in regard to direct investment are contained in 15 CFR Part 806.

Reproduced as part of this notice are the standard Form BE–12 for all nonbank U.S. affiliates; a shorter, specialized report form for U.S. affiliates in banking (BE–12 BANK), and the *Instruction Booklet*. The *Industry Classifications and Export and Import Trade Classifications Booklet* is not reproduced.

Listed below are some of the major decisions made in drafting the proposed report form that should be considered by those who will have to file a report and those who will use the data.

1. Exemption levels of $1,000,000 of assets, sales, or net income, and 200 acres of U.S. land owned, have been set and a U.S. affiliate below these levels will not be required to file a BE–12 report form, but must file a "Claim for Not Filing a Form BE–12."

2. U.S. affiliates may report on a fiscal year basis rather than a calendar year basis. BEA itself is opposed to fiscal year reporting for several reasons; the most important is that serious distortions will result in aggregating data from reports that may cover any one year period over a span of two years. Nevertheless, the Office of Federal Statistical Policy and Standards has ruled on another BEA form that fiscal year reporting must be permitted in order to reduce the reporting burden. That decision carries over to the 1980 BE–12.

3. A change in the method of reporting by unincorporated U.S. affiliates is being introduced with this survey. In past benchmark surveys and in the quarterly BE–606 and annual BE–15 report forms, an unincorporated affiliate was required to net its asset and liability positions with its foreign parent and to report only the net amount in owners' equity rather than showing the assets and the liabilities separately. Thus, owners' equity represented the net position, including undistributed earnings, of the foreign parent in the U.S. affiliate. Under the new reporting method, all positions that the U.S. affiliate has with its foreign parent will be shown in the proper balance sheet accounts. Thus, if the affiliate has received a long-term loan from its foreign parent that is still outstanding, this will now be shown as long-term debt. Similarly, if it has trade receivables due from its foreign parent, these will now be shown in trade accounts and notes receivable.

This change in reporting affects not only the balance sheet, but also Part III, Section A, "Investment Between U.S. Affiliate and Foreign Parent." It also requires unincorporated U.S. affiliates to report that portion of their earnings that has been distributed.

4. U.S. affiliates will be required to identify the ultimate beneficial owner (UBO) of the foreign investment, except where the UBO is an individual; only the country of location of an individual must be given.

5. A U.S. affiliate must fully consolidate all majority-owned domestic subsidiaries that are also U.S. affiliates of its foreign parent; foreign subsidiaries cannot be fully consolidated.

6. A short form (BE–12 BANK) has been prepared for reporting by U.S. affiliates that are banks.

7. U.S. affiliates must breakdown total employment by BEA industry code, for the eight largest industries in which it is active. For U.S. affiliates engaged in manufacturing activities, a breakdown of production worker employment, hours worked, and wages and salaries paid,

by BEA manufacturing industry code, is required (see Part II, Section I).

8. In the schedule of data by State (Part II, Section K), the gross book value of "all land, and other property, plant, and equipment, wherever carried on the balance sheet" must be disaggregated by State by use. (Would a breakdown of plant and equipment only by State by use be more useful?)

9. A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

10. Trade data must be reported on a "shipped" rather than a "charged" basis to conform to official U.S. trade data.

11. Close fiscal year 1979 balances are to be before restatement due to a change in the entity.

The other forms for reporting foreign direct investment in the United States are:

BE–605—Transactions of U.S. Corporation with Foreign Parent
BE–606—Transactions of Unincorporated U.S. Business Enterprise (Except a Bank) with Foreign Parent
BE–606B—Transactions of U.S. Banking Branch or Agency with Foreign Parent
BE–607—Industry Classification Questionnaire
BE–13A—Form for a U.S. Business Enterprise, Business Segment, or Operating Unit that has been Established or Acquired by a Foreign Person or Existing U.S. Affiliate of a Foreign Person
BE–13B—Form for Foreign Person, or Existing U.S. Affiliate of a Foreign Person, that Establishes or Acquires a U.S. Business Enterprise, or a Business Segment or Operating Unit of a U.S. Business Enterprise
BE–14—Report by a U.S. Person who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture with, a Foreign Person
BE–15—Interim Survey of Foreign Direct Investment in the U.S.

The major changes that will affect these other forms are:

1. Form BE–606 will be eliminated; instead, unincorporated U.S. affiliates will report on the BE–605. The BE–605 instructions will be changed to accommodate its use by unincorporated affiliates.

2. The exemption levels for Forms BE–13 and BE–14 will be raised to $1,000,000.

3. A U.S. affiliate that was partially exempt from filing Form BE–13A and which had to complete only items 1 and 5 through 19 of Form BE–13A, will now be considered totally exempt and rather than filing a partially completed Form BE–13A, will now have to file an "Exemption Claim, Form BE–13A." The latter will contain the same data as item 5 of the BE–12's "Claim for Not Filing a Form BE–12."

4. Data reported on the BE–15 may be for a U.S. affiliate's fiscal year rather than for a calendar year.

5. The aggregation of a foreign person's real estate investments for purposes of the exemption level tests will be imposed for all forms.

6. In general, all special instructions relating to real estate given in Part IV, Section E of the *Instruction Booklet* will be applicable, as appropriate, for the other report forms.

These changes will be effected commencing on January 1, 1981 for reports covering reporting periods or transactions occurring in 1981. BEA may continue to use supplies of old report forms on hand, but they must be filed in accordance with the new regulations once they are adopted. Revised forms are not being printed as part of this notice; they will be handled at a later date like the usual revisions to existing report forms whereby the revised form is submitted to OMB for clearance. OMB will put a notice in the **Federal Register** that they have received the form for clearance and give the public a period of time in which to comment.

Note.—The Department of Commerce has determined that this proposal is not a significant regulation requireing preparation of a regulatory analysis under Executive Order 12044.

It is therefore proposed to modify Part 806 as set forth below.

George Jaszi,

Bureau of Economic Analysis.

1. The following paragraph is added to § 806.15(a):

§ 806.15 Foreign direct investment in the United States.

(a) Specific definitions.

* * * * *

(6) "Ultimate beneficial owner (UBO)" is that owner, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (An owner who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

2. In § 806.15, the following paragraphs are redesignated as follows:

(b) becomes (e)
(c) becomes (f)
(d) becomes (g)
(e) becomes (h)
(f) becomes (i)
(g) becomes (j)

3. In § 806.15, the following new paragraphs are inserted:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(b) Beneficial, not record, ownership is the basis of the reporting criteria.

(c) Bearer shares—If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with non-publicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.

(d) Aggregation of real estate investment—A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

4. The following changes are made to various paragraphs in § 806.15; reference to lettered paragraphs are after they have been relettered as prescribed above:

a. Paragraph (g) is amended by removing in the first sentence, the word "net" where it precedes "sales."

b. Paragraph (h)(1) is revised as follows:

* * * * *

(1) BE–605—Transactions of U.S. Affiliate, Except an Unincorporated Bank, with Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $5,000,000.

* * * * *

c. Paragraph (h)(2) is removed and paragraph (h)(3) is redesignated as (h)(2).

d. Paragraph (i) is amended in the first sentence, by removing the word "net" where it precedes "sales."

e. Paragraph (j)(3) concerning the BE-13:

1. In subparagraph (i), for Form BE-13A, under Exemptions, *Total*, paragraph (a) is revised as follows:

* * * * *

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside his/her country of residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

* * * * *

2. In paragraph (b), change the $500,000.00 to $1,000,000.

3. Under Exemptions, *Partial*, the paragraph is revised as follows:

* * * * *

An established or acquired U.S. business enterprise, as consolidated, is exempt if its total assets (not the foreign parent's or existing U.S. affiliate's share) at the time of acquisition or immediately after being established were $1,000,000 or less and it does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, it must report regardless of the value of total assets.) If exempt, the established or acquired U.S. business enterprise must, nevertheless, file an "Exemption Claim, Form BE-13A," to validate the exemption.

* * * * *

4. In subparagraph (ii) for Form BE-13B, the section entitled Total Exemption is revised as follows:

* * * * *

Total Exemption—The foreign parent or existing U.S. affiliate is exempt from filing a BE-13B if a BE-13A is not required to be filed.

* * * * *

5. In subparagraph (4) concerning Form BE-14: Under Total Exemptions, paragraph (a) is revised as follows:

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside his/her country of residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

In paragraph (b), change the $500,000.00 to $1,000,000.

5. Section 806.17 is revised as follows:

§ 806.17 Rules and Regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1980.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1980. All legal authorities, provisions, definitions, and requirements contained in 806.1 through 806.13, and 806.15 (a), (b), (c) and (d) are applicable to this Survey. Specific additional rules and regulations for the BE-12 Survey are given below.

(a) Basic requirement—A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year. A business enterprise's 1980 fiscal year is the business enterprise's financial reporting year that has an ending date in calendar year 1980. For a business enterprise that does not have a financial reporting year, such as investments in unimproved real estate, or does not have a financial reporting year ending in calendar year 1980, its 1980 fiscal year is deemed to be the same as calendar year 1980. A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, or liquidated or sold during the reporting period.

(b) Exemption—A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a BE-12 report if:

(1) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between −$1,000,000 and +$1,000,000 during the reporting period:

(i) Total assets,

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes and

(2) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above). If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE-12 because it falls below the exemption levels, then it must complete and file a "Claim for Not Filing a Form BE-12" with item 5 of the Claim marked and the information requested in item 5 provided. (The Claim is on the last page of the standard Form BE-12 and should be detached for filing.)

(c) Banks—A specialized report form (Form BE-12 BANK) has been adopted for U.S. affiliates that are banks (including bank holding companies), that is, for U.S. business enterprises over 50 percent of whose total revenues are generated by activities classified in industry code 600. Use of specialized Form BE-12 BANK is at the discretion of BEA; in situations where use of Form BE-12 BANK is not clear-cut, permission to use it must be secured from BEA in advance of filing. Nonbank U.S. affiliates owned by a U.S. affiliate that is a bank or a bank holding company may not be consolidated on Form BE-12 BANK, but must be reported separately on a standard Form BE-12. Activities of nonbank U.S. affiliates that provide support to the parent bank company, such as a real estate subsidiary set up to hold the office building occupied by the parent company, are considered part of the bank activity. Form BE-12 BANK, where its use is permitted, stands in place of Form BE-12, and the instructions given for Form BE-12 BANK should be so construed.

(d) Due date—A completed and certified 1980 Form BE-12 must be filed with BEA not later than (a date will be given in the final notice and will be at least 60 days after the mailout of the forms; mailout is not expected prior to April 30, 1981.)

(e) Inquires concerning Form BE-12 should be directed to: U.S. Department of Commerce, Bureau of Economic Analysis (BE-50/IN), Washington, D.C. 20230. Telephone (202) 523-0547.

The text of the Instruction Booklet and Form BE-12 are set forth below. This material will not appear in the code of Federal. Regulations.

BE-12 Instruction Booklet—Benchmark Survey of Foreign Direct Investment in the United States—1980

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I. Purpose and Legal Authority

A. *Purpose*—Reports on this form are required in order to provide complete and accurate data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States.

B. *Authority*—Reports on Form BE–12 are mandatory under Section 5(b)(2) of the International Investment Survey Act of 1976 (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108—hereinafter the "Act"). In Section 3 of Executive Order 11961, the President designated the President designated the Department of Commerce as the federal agency responsible for collecting the require data on direct investment, and the Secretary of Commerce has assigned this responsibility to the Bureau of Economic Analysis (BEA). The implementing regulations are contained in Title 15, CFR, Part 806.

This report has been approved by the Office of Management and Budget under the Federal Reports Act (Pub. L. 931, 77th Congress).

C. *Penalties*—Whoever fails to report may be subject to a civil penalty not exceeding $10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105.)

D. *Confidentiality*—The information filed in this report may be used only for analytical and statistical purpose and access to the information shall be available only to officials and employees (including consultants contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchanged of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

II. Definitions

A. *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

B. *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

C. *Person* means any individual, branch, partnership, association, associated group, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial insstitution, or other entity or instrumentality thereof, including a government sponsored agency).

D. *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

E. *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

F. *Foreign direct investment in the United States* means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

G. *Branch* means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity.

H. *Affiliate* means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.

I. *U.S. affiliate* means an affiliate located in the United States in which a foreign person has a direct investment.

J. *Foreign parent* means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.

K. *Affiliated foreign group* means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

L. *Associated group* means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise or appear to exercise, their voting privileges in a concerted manner to influence the management of a business enterprise. The following are deemed to be associated groups:

1. Members of the same family.
2. A business enterprise and one or more of its officers or directors.
3. Members of a syndicate or joint venture
4. A corporation and its domestic subsidiaries.

M. *Foreign affiliate of a foreign parent* means with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the U.S. affiliate that is not a foreign parent of the U.S. affiliate.

N. *U.S. corporation* means a business enterprise incorporated in the United States.

O. *Business enterprise* means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

P. *Intermediary* means any agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.

Q. *Ultimate beneficial owner (UBO)* is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (A person who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

R. *Lease* is an agreement conveying the right to use property, plant, or equipment (i.e., land and/or depreciable assets), usually for a stated period of time.

1. Capital lease—A long-term lease under which a sale of the asset is recognized at the inception of the lease. These may be shown as lease contracts or accounts receivable on the lessor's books. The assets would not be considered as owner by the lessor.

2. Operational lease—Generally, a lease with a term which is less than the useful life of the asset and the transfer of ownership is not contemplated.

S. *U.S. affiliate's 1980 fiscal year* is the affiliate's financial reporting year that has an ending date in calendar year 1980.

III. General Instructions

A. *Who must report*—A BE–12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year.

A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

Beneficial, not record, ownership is the basis of the reporting criteria.

Voting securities, voting stock, ownership interest, equity interest, and voting interest all have the same general meaning and are used more or less interchangeably throughout the instructions and the report form, although one may be more appropriate than the others when referring to a specific business enterprise, or group of enterprises.

B. *Fiscal year reporting period*—The report is to cover the U.S. affiliate's 1980 fiscal year. The affiliate's 1980 fiscal year is defined to be the affiliate's financial reporting year that has an ending date in calendar year 1980. For a business enterprise that does not have a financial reporting year, such as investments in unimproved real estate, or does not have a financial reporting year ending in calendar year 1980, its 1980 fiscal year is deemed to be the same as calendar year 1980. (U.S. affiliates that changed the ending date of their financial reporting year in 1980 should contact BEA to determine what reporting period should be used.)

C. *Calculation of indirect ownership interest*—All direct and indirect lines of ownership interest held by a foreign person in a given U.S. business enterprise must be summed to determine whether the enterprise is a U.S. affiliate of the foreign person for purposes of reporting.

A foreign parent's percentage of indirect ownership interest in a given U.S. business enterprise is the product of the direct ownership percentage of the foreign parent in the first U.S. business enterprise in the ownership chain times that first enterprise's direct ownership percentage in the second U.S. business enterprise times each succeeding direct ownership percentage of each other intervening U.S. business enterprise in the ownership chain between the foreign parent and the given U.S. business enterprise.

If there is more than one line of ownership from the foreign parent, or if other members of the affiliated foreign group hold direct or indirect lines of ownership to the U.S. business enterprise, then all ownership interest lines must be summed to determine if the U.S. business enterprise is a U.S. affiliate of a foreign person.

D. *Accounting methods and records*—Generally accepted U.S. accounting principles should be followed, unless otherwise specified. Corporations should generally use the same methods and records that are used to generate reports to stockholders except where the instructions indicate a variance.

E. *Consolidated reporting by U.S. affiliate*—A U.S. affiliate must file on a fully consolidated domestic (U.S.) basis, including in the full consolidation all of its foreign parent's other *U.S. affiliates* in which it directly or indirectly owns more than 50 percent of the outstanding voting interest. Hereinafter the fully consolidated entity is considered to be one U.S. affiliate.

A separate BE–12 report may be filed by a U.S. affiliate that is more than 50 percent owned by another U.S. affiliate if the first U.S. affiliate is not normally fully consolidated due to unrelated operations or lack of control and provided that written permission has been requested from and granted by BEA.

If a U.S. affiliate is not fully consolidated in its U.S. parent's BE–12 report, it must be listed on Supplement B of the U.S. parent's Form BE–12 and must file its own BE–12 report.

Foreign subsidiaries, branches, or other foreign operations or equity investments of a U.S. affiliate are *not* to be included on a fully consolidated basis, but are to be included only as provided under III.H.

F. *Aggregation of real estate investment*—A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

G. *Exemption*—A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a BE–12 report if:

1. Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between −$1,000,000 and +$1,000,000 during the reporting period:

a. Total assets;

b. Sales or gross operating revenues, excluding sales taxes, and

c. Net income after provision for U.S. income taxes; and

2. The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE–12 because it falls below the exemption levels, then it must complete and file a "Claim for Not Filing a Form BE–12" with item 5 of the "Claim" marked and the information requested in item 5 filled in. (The Claim is on the last page of Form BE–12 and should be detached for filing.)

H. *Method of accounting for equity investments in business enterprises that are not fully consolidated*—A U.S. affiliate's equity investment in all foreign business enterprises and in U.S. business enterprises that are not fully consolidated should be accounted for as detailed below. Foreign business enterprises must not be fully consolidated with the U.S. affiliate, no matter what the percentage ownership. When equity investments are included under the equity method, intercompany account items *must not* be eliminated.

1. Investment in those business enterprises ownded 20 percent or more should be reported using the equity method. However, immaterial investments may be reported using the cost basis provided this method is consistent with normal reporting practice.

2. Investment in those business enterprises owned less than 20 percent should be reported using the cost method.

I. *Changes in the reporting entity*—Changes in the consolidated reporting entity that occurred during FY 1980 reporting period must *not* result in restatement of close FY 1979 balances. The close FY 1979 balances for balance sheet or other items should represent the reporting entity as it existed at the close of FY 1979. This principle applies throughout the report form; for example, in Part III, close FY 1979 intercompany account balances should be those between the foreign parent and the U.S. affiliate as it actually existed at the close of FY 1979.

J. *Reporting by unincorporated U.S. affiliate:*

Directly-owned—A separate BE–12 report shall be filed by each unincorporated U.S. affiliate, including a branch, which is directly owned 10 percent or more by a foreign person; two or more such directly-owned U.S. affiliates may not be combined on a single Form BE–12. The only exception is for U.S. affiliates that are real estate investments (see Special Instructions, Real Estate).

Indirectly-owned—An indirectly-owned unincorporated U.S. affiliate owned more than 50 percent by another U.S. affiliate should be fully consolidated on the report with the U.S. affiliate that holds the ownership interest in it. Otherwise, a separate report is required for each indirectly-owned unincorporated U.S. affiliate, except real estate.

K. *Industry and export and import trade classifications*—A list of explanation of the industry classifications and export and import trade classifications used are given in the revised *"Industry Classifications and Export and Import Trade Classifications Booklet,"* BE–799, which is included as part of the BE–12 package.

L. *Number of BE–12 Part IIIs, Investment and Transactions Between U.S. affiliate and Foreign Parent, to be filed*—A separate Part III is required to be filed by the U.S. affiliate for each foreign parent that the affiliate had during its 1980 fiscal year. If multiple Part III's are required because there was more than one foreign parent, the foreign parent that held the largest percentage of direct ownership interest should be reported on the Part III that is included in the BE–12 report itself. Each other foreign ownership line should be reported on a Form BE–12, Part III-ADDITIONAL. If copies of BE–12, Part III-ADDITIONAL are not available, reproduced copies of BE–12 Part III may be used as necessary.

M. *Bearer shares*—If the ownership in a U.S. affiliate by any owner in the ownership chain up to including the ultimate beneficial

owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of a company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with non-publicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors, or any other official or intermediary.

N. *Required information not available*—All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where specifically exempt. When only partial information is available, an appropriate indication should be given.

O. *Estimates*—If actual figures are not available, estimates should be supplied and labeled as such. When data items cannot be fully subdivided as required, totals and an estimated breakdown of the totals should be supplied.

P. *Specify*—When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line instruction.

Q. *Space on form insufficient*—When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and references to the item number and the form.

IV. Special Instructions

A. *Insurance companies*—When there is a difference, the financial and operating data in this report are to be prepared on the same basis as an annual report to stockholders, rather than on the basis of an annual statement to an insurance department. Valuation should be according to normal commercial accounting procedures, *not* at the rates promulated by the National Association of Insurance Commissioners. Include assets not acceptable for inclusion in the annual statement to an insurance department.

ITEM Trade accounts and trade notes receivable—Include current items such as agents' balances, uncollected premiums, amounts recoverable from reinsurers, and other current notes and accounts receivable (net of allowances for doubtful items) arising from the ordinary course of business.

Trade accounts and trade notes payable—Include current items such as loss liabilities, policy claims, commissions due, and other current liabilities arising from the ordinary course of business. Policy reserves are to be included in "Other non-current liabilities," item 49, unless they are clearly current liabilities.

Sales or gross operating revenues, excluding sales taxes—Include items such as earned premiums, annuity considerations, gross investment income, and items of a similar nature. Exclude income from unconsolidated affiliates that is to be reported in item 58 or 59.

Costs and expenses relating to operations—Include costs relating to sales or gross operating revenues, item 56 such as policy losses incurred, death benefits, matured endowments, other policy benefits, increases in liabilities for future policy benefits, other underwriting expenses, and investment expenses.

B. *Banks*—A specialized report form has been adopted for U.S. affiliates in banking (including bank holding companies); that is, for U.S. affiliates over 50 percent of whose total revenues are generated by activities classified in industry code 600. Use of specialized Form BE-12 BANK is at the discretion of BEA; in situations where its possible use is not clear-cut, permission must be secured from BEA in advance of filing.

Non-bank subsidiaries must not be consolidated with a bank or bank holding company on Form BE-12 BANK, but must be reported separately on standard Form BE-12. An exception is that activities of subsidiaries that are not banks but that provide support to their bank parent, such as a real estate subsidiary set up to hold the office building occupied by the bank parent, are considered bank activities. The specialized report form, where its use is permitted, stands in place of the standard form, and the instructions given should be so construed.

C. *Airlines and ship operators*—U.S. stations, ticket offices, and terminal and port facilities of foreign airlines and ship operators which provide services *only* to the foreign airlines' and ship operators' own operations are not required to be reported. Reports are required when such enterprises produce significant revenues from services provided to unaffiliated persons.

D. *Railroad transportation companies*—Railroad transportation companies should include only the net annual balances for interline settlement items (car hire, car repair, freight revenues, switching revenues, and loss and damage settlements) in items 35, 43 46, 312 and 313. Receipts or payments of the same interline settlement items should be excluded from items 340 and 342.

E. *Real estate*—In the International Investment Survey Act of 1976, the ownership of real estate is defined to be a business enterprise, and if foreign-owned, is a U.S. affiliate of a foreign person. A BE-12 report is required unless the enterprise is otherwise exempt.

Residential real estate held exclusively for personal use and not for profit-making purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use.

Ownership of U.S. residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the owner(s) of the corporation, is considered to be real estate hold for personal use and therefore not subject to the reporting requirements.

A foreign person holding real estate investment that are business enterprises reportable as foreign direct investment in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt. A single report form should be filed to report the aggregated holdings. Nevertheless, if preferred, separate reports may be filed, but the aggregate of holdings must be used for the purpose of applying the exemption level tests. If separate reports are filed, they must be filed as a group and notice given that they are all for one owner.

In Part I, Identification of U.S. Affiliate, for real estate investments being reported, BEA is not seeking a legal description of the property, not necessarily the address of the property itself. Since there may be no operating business enterprises as such for the investment, what is wanted is a consistently identifiable investment (i.e., U.S. affiliate) together with an address to which report forms can be mailed so that the investment (affiliate) can be reported on a consistent basis from survey to survey, or period to period. Thus, in item 1 of Form BE-12, the "name and address" of the U.S. affiliate might be:

XYZ Corp. N.V., Real Estate Investments
c/o B&K Inc., Accountants
120 Major Street
Miami, Florida XXXXX

If the investment property has a name, such as Sunrise Apartments, Acme Building, etc., the name and address in item 1 of Form BE-12 might be:

Sunrise Apartments
c/o ABC Real Estate
120 Major Street
Miami, Florida XXXXX

BEA will accommodate foreign owners that wish to have report forms sent directly to them. However, owners should be aware that extra time consumed in mailing to and from a foreign place may make filing deadlines difficult.

There are questions throughout the report form that may not be applicable to certain types of real estate affiliates—questions such as the employer identification number (Part I, item 4), or, for unimproved land held as an investment, number of employees (Part II, item 120); and all of Part II, Section J, Exports and Imports of U.S. Affiliate. In such cases, the items should be left blank.

Persons engaged in a joint venture solely to hold, develop, or operate real estate should report only their share of the venture and consider that share to be a 100 percent owned business enterprise. If the share in the joint venture is directly held by a foreign person, then the foreign person may consider its share to be a 100-percent owned U.S. affiliate; the affiliate should report its prorata share of data as taken directly from the books of the joint venture. If the share in the joint venture is directly held by a U.S. affiliate, then the owning U.S. affiliate should fully consolidate in its BE-12 report its prorata share of the data of the joint venture is taken directly from the books of the joint venture. If two or more foreign persons have a reportable ownership interest in a given joint venture, then each must report on the prorata basis described above in order to avoid duplication in reported data.

Foreign owners of farms, which the owners do not operate themselves, should prepare the income statement and related items based on the extent to which the income from the farm accures to, and the expenses of the farms are borne by, the owner. Generally this means that to the extent the risk of the operation falls on the owner, then the income, expenses and the gain (loss) assignable to the owner or to the farm itself should all be shown in the income statement and related items. For example, even though the operator and other workers on the farm are hired by a management firm, if their wages and salaries are assigned to and borne by the farm operation being reported, then the operator and other workers should be reported as employees of that farm operation and the wages and salaries should be included as an expense in the income statement.

EXAMPLES:

1. If the farm is leased to an operator for a fixed fee, then the owner should report the fixed fee as his "sales or gross operating revenue," and should report the non-operating expenses that he may be responsible for, such as real estate taxes, interest on loans, etc., as expenses in the income statement.

2. If the farm is operated by another person on a share arrangement whereby income and expenses are shared by the owner and operator in some ratio, the owner's share of income should be shown in "sales or gross operating revenues." and the owner's share of operating expenses and the owner's non-operating expenses should be shown elsewhere in the income statement, and in related items, as appropriate.

3. If the farm is operated by a management firm that oversees the operation of the farm and hires an operator, but the operating income and expenses are assigned to the farm, the income and expenses so assigned should be shown in the requested detail in the income statement, and related items, as appropriate. (The report should not show just one item, i.e., the net of income less the management fee, where the management fee includes all expenses.)

F. *Estates, trusts, and intermediaries:*

A *foreign estate* is a person and therefore may have direct investment, and the estate, not the beneficiary, is considered to be the owner.

A *trust* is a person, but is not a business enterprise. The trust shall be considered the same as an intermediary and reporting should be as outlined below. For reporting purposes, the beneficiary(ies) of the trust, or the creator(s) of the trust in the situation detailed in the next sentence, or if there is, or may be, a reversionary interest, shall be considered to be the owner(s) of the investments of the trust for determining the existence of direct investment. When a corporation or other organization creates a trust designating its shareholders or members as beneficiaries, the creating corporation or organization shall be deemed to be the owner of the investments of the trust, or succeeding trusts where the presently existing trust had evolved out of a prior trust, for the purposes of determining the existence and reporting of direct investment.

This procedure is adopted in order to fulfill the statistical purposes of this survey and does not imply that control over an enterprise owner or controlled by a trust is, or can be, exercised by the beneficiary(ies) or creator(s).

Intermediary—

a. If a particular foreign direct investment in the United States is held, exercised, administered, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the U.S. affiliate, and shall report on behalf of the U.S. affiliate or shall instruct the U.S. affiliate to submit the required information. Upon so instructing the U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed this Bureau of the date such instructions were given and the name and address of the U.S. affiliate, and has supplied the U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the U.S. affiliate to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the U.S. affiliate, they may be required to be reported by the intermediary.

b. If a foreign beneficial owner holds a U.S. affiliate through a foreign intermediary, the U.S. affiliate may report the intermediary as its foreign parent but, when requested, must also identify and furnish information concerning the foreign beneficial owner. Accounts or transactions of the U.S. affiliate with the foreign intermediary shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner.

G. *Partnerships*—Limited partners do not have voting rights in a partnership and therefore cannot have a direct investment in a partnership; their investment is considered to be portfolio investment. Determination of the existence of direct investment in a partnership shall be based on the country of residence of, and the percentage control exercised by, the general partner(s), although the latter may differ from the financial interest of the general partner(s).

H. *Determining place of residence and country of jurisdiction of individuals*—An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

1. Individuals who reside, or expect to reside, outside their country of citizenship for less than one year are considered to be residents of their country of citizenship.

2. Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in H.3.

3. Notwithstanding paragraph H.2., if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering, the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner or employee, then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.

4. Individuals and members of their immediate families who are residing outside their country of citizenship as a result of employment by the government of that country—diplomats, consular officials, members of the armed forces, etc.—are considered to be residents of their country of citizenship.

V. Response Required When Contacted by BEA

The publication in the **Federal Register** of the notice implementing this survey is considered legal notice to covered U.S. business enterprises of their obligation to report. Therefore, a report is required from persons subject to the reporting requirements of the BE-12 survey, whether or not they are contacted by BEA. Also, a person, or their agent, to whom a BE-12 report form is sent by BEA, must respond in writing pursuant to Section 806.4 of 15 CFR, Chapter VIII. This may be accomplished either by filing a completed Form BE-12 on a timely basis or, if applicable, by completing and returning the "Claim for Not Filing a Form BE-12," which is included as the last page of Form BE-12, and which is due within 30 days of the date the BE-12 was sent by BEA.

VI. Filing the BE-12

A. *Due date*—A fully completed and certified Form BE-12 is due to be filed with BEA not later than

A U.S. person that is sent a Form BE-12, but that is exempt or not subject to the reporting requirements must file a "Claim for Not Filing a Form BE-12" within 30 days of the date the BE-12 was sent by BEA. (See V. above.) Any other U.S. person that is a U.S. affiliate but that is exempt from completing Form BE-12, must file a "Claim for Not Filing a Form BE-12" within 30 days of the publication in the **Federal Register** of the notice implementing this survey.

B. *Extension*—Requests for an extension of the reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension. BEA will provide a written response to such requests.

C. *Assistance*—If there are any questions concerning the report, telephone (202) 523-0547 for assistance.

D. *Annual stockholders' report*—Business enterprises issuing annual reports to stockholders are to furnish a copy of their FY 1980 annual report when filing the BE-12 report.

E. *Number of copie.*—A single copy of the BE-12, including any Supplements, is to be filed with BEA. This should be the copy with the address label in Part I, if such a labeled copy has been provided by BEA. You must also retain a file copy of the BE-12 report for five years, to facilitate resolution of any

questions that BEA may have concerning your report. (Both copies are protected by law; see statement on confidentiality in I.D.)

F. *Where to send report*—Return the report to U.S. Department of Commerce, Bureau of Economic Analysis (BE-50/IN), Washington, D.C. 20230.

VII. Instructions for Specific Sections of the Report Form

A. *Employment and employee compensation*—Employment and employee compensation data must be based on payroll records, and relate to activities during the reporting period. The employment and employee compensation data must cover only activities that were charged as an expense on the income statement, charged to inventories, or capitalized during the reporting period. Do not include data related to activities of prior periods, such as those capitalized or charged to inventories in prior years.

1. *Employment* is the average number of employees for the reporting period, including part time employees but excluding home workers and independant sales personnel who are not employees. If possible, the average for the reporting period should be computed as the average of the number of persons on the payroll at the end of each pay period, month or quarter, during the reporting period. Employment at the end of the reporting period may be used as an estimate of average employment only if employment throughout the reporting period did not vary significantly due to seasonal operations, a strike, temporary shutdowns, etc.

2. *Production workers*—Those employees most directly connected with carrying out the activities of the business being reported, up to and including working foremen, but excluding other supervisory employees. They are those employees involved in the physical production of goods, handling and storage of goods, related services (e.g., maintenance and repair), and auxiliary production for plant's own use (e.g., power plant).

3. *Employee compensation* consists of wages and salaries of employees and employer expenditures for all employee benefit plans.

a. *Wages and salaries* are the gross earnings of all employees before deduction of employees' payroll withholding taxes, social insurance contributions, group insurance premiums, union dues, etc. Include time and piece rate payments, cost of living adjustments, overtime pay and shift differentials, bonuses, profitsharing amounts, and commissions. Exclude commissions paid to independent personnel who are not employees.

Wages and salaries include direct payments by employers for vacations, sick leave, severance (redundancy) pay, etc. Exclude payments made by, or on behalf of, benefit funds rather than by the employer. (Employer contributions to benefit funds are included in "employee benefit plans".)

Wages and salaries include in-kind payments, valued at their cost, that are *clearly and primarily of benefit to the employees as consumers.* Do not include expenditures that benefit employers as well as employees, such as for plant facilities, employee training programs, and reimbursements for business expenses.

b. *Employee benefit plans*—Employer expenditures for all employee benefit plans, including those required by government statute, those resulting from a collective-bargaining contract, or those that are voluntary. Employee benefit plans include retirement plans, life and disability insurance, guaranteed sick pay programs, workers' compensation insurance, medical insurance, family allowances, unemployment insurance, severance pay funds, etc. If plans are financed jointly by the employer and the employee, only the contributions of the employer should be included.

4. *Hours worked* by production workers. Include standby or reporting time; exclude hours paid for holidays, vacations, sick leave, or other paid leave.

B. *U.S. merchandise exports and imports*—The data on U.S. merchandise trade between U.S. affiliates and foreigners must be reported on a "shipped" basis, i.e., on the basis of when, where, and to (or by) whom the goods were shipped, irrespective of to (or by) whom the goods were billed or charged. It may be necessary to obtain the shipment data from shipping and receiving, rather than from accounting, records.

The merchandise trade categories given in the *Industry Classifications and Export and Import Trade Classifications Booklet* are not the same as the SIC categories used to classify your company by industry. Please check the trade category descriptions to facilitate accurate answers to the trade questions. (In particular, note that for the trade data, parts and accessories for transportation equipment are, in important instances, classified outside the transportation equipment category.)

1. *U.S. exports and imports* refer to physical movements of goods between the customs area of the United States and the customs area of a foreign country. Consigned goods must be included as a shipment or receipt of merchandise, even though not normally recorded as sales or purchases when initially consigned.

2. *Only goods shipped* between the United States and a foreign country in the U.S. affiliate's 1980 fiscal year should be included, regardless of when the goods were charged or consigned. For example, capital goods shipped by the U.S. affiliate to a foreign parent in fiscal year 1980, that were charged or consigned to the foreign parent in fiscal year 1981, should be included; but such goods shipped in fiscal year 1979 that were charged or consigned to the foreign parent in fiscal year 1980 should by excluded.

3. *U.S. exports* should be valued f.a.s. (free along side) at the U.S. port of exportation. This includes costs incurred up to the point of loading the goods aboard the export carrier including the selling price at the interior point of shipment (or cost if not sold), packaging costs, and inland freight and insurance. It excludes all subsequent costs, such as loading costs, freight and insurance from the U.S. port of exportation, etc.

4. *U.S. imports* should be valued at the contract price, adjusted to an f.a.s. foreign-port-of-exportation basis. This includes all costs incurred up to the point of loading the goods aboard the export carrier, including the selling price at the interior point of shipment (or cost if not sold), packaging costs, and inland freight and insurance. It excludes all subsequent costs, such as loading costs, freight and insurance from the foreign port of exportation, etc.

5. *"Products of shipper"* refers to merchandise which has been produced (i.e., grown, extracted, processed, assembled, or manufactured) by the shipper, or which has been physically changed by the shipper so as to increase the value of the merchandise. Merchandise shipped in essentially the same condition as when purchased is not considered a product of the person shipping the merchandise.

6. *Goods shipped* by an independent carrier or a freight forwarder at the expense of, or on behalf of, a business enterprise, are shipments of that business enterprise.

7. *Country of ultimate destination or origin*—The country of ultimate destination is the country where the goods are to be consumed, further processed, or manufactured, as known to the shipper at the time of exportation. If the shipper does not know the country of ultimate destination, the shipment is credited to the last country to which the shipper knows that the merchandise will be shipped in the same form as when exported. The country of origin is the country where the goods were grown, mined, or manufactured. In instances where the country of origin cannot be determined, the transactions are credited to the country of shipment.

C. *Distribution of selected data by State*—The schedule of employment, wages and salaries, land and other property, plant, and equipment by State covers the 50 States, the District of Columbia, and all territories and possessions of the United States. Include in this schedule only data pertaining to those U.S. business enterprises that are fully consolidated into the reporting U.S. affiliate; foreign business enterprises or operations, whether incorporated or unincorporated, should not be consolidated with the reporting U.S. affiliate and no data for them should be included. Exclude data for employees permanently located outside the United States. The "foreign" category is primarily for use in reporting movable fixed assets temporarily outside the United States or for reporting any foreign fixed assets carried directly on the U.S. affiliate's books.

1. *Location* of employees or of an asset is the U.S. State, territory, or possession in which the person is permanently employed, or in which the land or other property, plant, and equipment is physically located and to which property taxes, if any, on such assets are paid. In the case of equipment which may reside in more than one location during the reporting period, such as transportation equipment, location of the asset is to be—

a. The State, territory, or possession to which property taxes, if any, were paid.

b. If no tax was paid, the State, territory, or possession in which the asset was physically located at the end of the reporting period. (If the plant and equipment is movable, and is temporarily located outside the United States, enter in the "foreign" category.)

2. *Valuation of property, plant, and equipment*—Land and other property, plant, and equipment are to be valued at historical

cost before any allowances for depreciation, depletion, and like charges.

3. *Classification of land and other property, plant, and equipment by use category*—For purposes of this survey, land and other property, plant, and equipment are classified according to various use categories. If a given asset can be classified in more than one of the use categories, the entire asset should be considered to fall within the category best describing its primary use. If not in actual use during the reporting period, classify by expected or intended use.

BILLING CODE 3510-06-M

FORM BE-12
(REV. 12-80)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS (BEA)

MANDATORY – CONFIDENTIAL

BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE U.S. 1980

RETURN REPORTS TO: U.S. Department of Commerce, Bureau of Economic Analysis BE-50 (IN), Washington, D.C. 20230

Important *Read Instruction Booklet*

before completing form. The instructions given below are only a brief summary of certain ones relating to this form.

BANKS – See page of Instruction Booklet regarding special instructions and report forms for reporting by banks and bank holding companies.

• DEFINITIONS

1. **Foreign direct investment in the United States** means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.
2. **Business enterprise** means any organization, association, branch, or venture which exists to profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.
3. **Affiliate** means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.
4. **U.S. affiliate** means an affiliate located in the United States in which a foreign person has a direct investment.
5. **U.S. affiliate's 1980 fiscal year** is the affiliate's financial reporting year that has an ending date in calendar year 1980.

• REPORTING REQUIREMENTS

1. **Who must report** – A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which one foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at anytime during the business enterprise's 1980 fiscal year.
2. **Consolidated reporting** – A U.S. affiliate shall file on a fully consolidated basis, including in the full consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting securities. Hereinafter, the fully consolidated entity is considered to be one U.S. affiliate. See Instruction Booklet, page . Exemption criteria are applied to the consolidated entity.
3. **Aggregation of real estate investments** – A foreign person holding real estate investments must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.
4. **Exemption** – A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a report, if:

   (a) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between –$1,000,000 and +$1,000,000 during the reporting period:
   (1) Total assets,
   (2) Sales or gross operating revenues, excluding sales taxes, and
   (3) Net income after provision for U.S. income taxes;
   and

   (b) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

   A U.S. affiliate that is not required to file a completed Form BE-12 because it falls below the exemption levels, must complete and file a Claim for Not Filing a Form BE-12, with item 5 of the Claim marked, and furnish the information requested in item 5. (The Claim is on the last page of Form BE-12 and should be detached for filing.)
5. **Response required** – A person or their agent who is sent a report form by BEA and who claims to not be subject to the reporting requirements must file a completed "Claim for Not Filing a Form BE-12" which is printed on the last page of Form BE-12. The Claim must be filed within 30 days of the date the BE-12 was sent by BEA.
6. **Due Date** – A completed report on Form BE-12 is due no later than

• ASSISTANCE – Telephone (202) 523–0547.

• GENERAL NOTES:

1. Number of acres, number of employees, hours worked, and other non-monetary amounts must be reported to the nearest whole unit.
2. Monetary amounts must be reported in U.S. dollars rounded to the nearest thousand (omitting 000). Do not enter amounts in the shaded portions of any line.
   EXAMPLE: If amount is $1,334,615.00, report as:

Bil.	Mil.	Thous.	Dols.
	1	335	///////

3. If an item is between +$500,000 or –$500,000 enter "0."
4. Use parentheses to indicate negative numbers.
5. All questions must be answered in the context of the reporting period delineated in items 8, 9, and 10.

Part I IDENTIFICATION OF U.S. AFFILIATE

1. Name and principal mailing address

A mailing label, if affixed, shows, among other things, the name and address of this U.S. affiliate, as known to BEA. If there are no changes to the name and address, write "same" in space below. If there are any changes in name or address, enter correct name and address below in full.

If no mailing label is affixed, or if there is a change in the name and address as given on the mailing label, print name and address in blocks; skip a single block between words.

BEA USE ONLY

Name of U.S. Affiliate

Street or P.O. Box

City and State ZIP Code

2. Is more than 50 percent of the ownership interest in this U.S. affiliate owned by another U.S. affiliate of your foreign parent?

1 ☐ Yes 2 ☐ No

If the answer is "Yes," do not complete this report unless this affiliate qualifies for filing separately and has obtained permission from BEA to do so. Otherwise, the report must reflect information and data for, and be filed in the name of, the fully-consolidated U.S. business enterprise meeting the definition of U.S. affiliate. Please forward this BE-12 survey packet to the U.S. business enterprise owning your company to the extent of more than 50 percent, notify BEA of the action taken, and provide to BEA the name and address of the U.S. business enterprise that is required to file for the fully-consolidated U.S. business enterprise.

(WHEREVER THE INSTRUCTION "MARK ONE" IS GIVEN BELOW, IF IT IS NECESSARY TO MARK MORE THAN ONE ANSWER, GIVE AN EXPLANATION.)

3. Form of organization of U.S. affiliate *(Mark one)*

1 ☐ Incorporated in U.S.
2 ☐ U.S. partnership
3 ☐ U.S. branch of a foreign person
4 ☐ Real property not in 1–3 above
5 ☐ Business enterprise incorporated abroad, but whose head office is located in the United States and whose business activity is conducted in, or from, the United States
6 ☐ Other – Specify:

4. Enter primary Employer Identification Number used by U.S. affiliate to file U.S. income and payroll taxes.

– ← E.I. Number

5. U.S. affiliates fully consolidated in this report:

If this report is for a single unconsolidated U.S. affiliate enter "1" in the box. If more than one U.S. affiliate is fully consolidated in this report, enter the number of U.S. affiliates fully consolidated. (Hereinafter, they are considered to be one U.S. affiliate.) Exclude all minority-owned U.S. business enterprises, and all foreign business enterprises owned by this U.S. affiliate, from full consolidation; such affiliates must be included in this report on the equity basis, or cost basis if less than 20 percent owned. See consolidation instructions, page of the Instruction Booklet. (Note that all-more-than-50-percent-owned U.S. affiliates must be fully consolidated in this report unless permission has been received from BEA to do otherwise; those not fully consolidated must file a separate Form BE-12.)

☐ ← Number If number is greater than one, Supplement A must be completed.

6. U.S. affiliates not fully consolidated:

Number of U.S. affiliates in which this U.S. affiliate has an ownership interest that ARE NOT fully consolidated in this report.

☐ ← Number If figure is not zero, Supplement B must be completed. The U.S. affiliate named in item 1 must include data for such U.S. affiliates in this report on an equity basis, and must notify such other U.S. affiliates of their obligation to file a BE-12 in their own name.

7. Does this U.S. affiliate have an equity interest in a foreign business enterprise or conduct operations outside the United States?

1 ☐ Yes 2 ☐ No If "Yes," do not fully consolidate such enterprises in this report; include them in data on an equity basis, or cost basis if less than 20 percent owned.

MANDATORY – This survey is being conducted pursuant to the International Investment Survey Act of 1976 (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108 – hereinafter "the Act"), and the filing of reports is mandatory pursuant to Section 5(b)(3) of the Act (22 U.S.C. 3104).

PENALTIES – Whoever fails to report may be subject to a civil penalty not exceeding $10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment, or both. (See Section 6 of the Act, 22 U.S.C. 3105.)

CONFIDENTIALITY – The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchange of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

Print name and address

U.S. PERSON FOR BEA TO CONSULT ABOUT THIS REPORT:

U.S. TELEPHONE NUMBER: Area Code | Number | Extension

CERTIFICATION The undersigned official certifies that the information contained in this report is correct and complete to the best of his/her knowledge.

Authorized Official's Signature | Type Name and Title | Date

18 U.S.C. 1001 (Crimes and Criminal Procedure) makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Any officer, director, employee, or agent of any corporation who knowingly participates in a willful failure to report, upon conviction, may be punished by a fine, imprisonment, or both (22 U.S.C. 3105). For a further citation of applicable statutes, see the Instruction Booklet to this form.

Part I – IDENTIFICATION OF U.S. AFFILIATE (Continued)

8. This U.S. affiliate's 1980 fiscal year ends on: (Month / Day / Year)

NOTE: For a U.S. business enterprise that was a U.S. affiliate for all of FY 1980 – Data for the reporting period should be for the U.S. affiliate's 1980 fiscal year; data for close FY 1980 should be for the U.S. affiliate as it existed at the ending date of the 1980 fiscal year; and data for close FY 1979 should be for the U.S. affiliate as it existed one year prior to the 1980 fiscal year date. (Close FY 1979 data must not be restated due to changes in the entity during FY 1980.)

For a U.S. business enterprise that was a U.S. affiliate for only part of FY 1980 – If the enterprise became a U.S. affiliate during the reporting period, the Close FY 1979 data columns should all be zero. If the enterprise ceased to be an affiliate during the reporting period, the Close FY 1980 data columns should all be zero.

9. Was the U.S. business enterprise a U.S. affiliate for only part of FY 1980?

1 ☐ Yes

2 ☐ No

10. If the answer to item 9 is yes, complete one of the following: (Month / Day / Year)

Date U.S. business enterprise became a U.S. affiliate.

OR

Date U.S. business enterprise ceased to be a U.S. affiliate.

11. Was there a change in the entity during FY 1980 that caused prior year data to be restated?

1 ☐ Yes If "Yes," please note that all close FY 1979 data must be before restatement due to a change in the entity, unless otherwise specified. The effect of restatement on retained earnings of an incorporated affiliate or owners' equity for an unincorporated affiliate, must be entered in item 70, and the effect of restatement on property, plant, and equipment accounts must be entered in item 99.

2 ☐ No

Ownership – Enter percent of ownership, to a tenth of one percent, based on voting stock if an incorporated affiliate or an equivalent interest if an unincorporated affiliate, in this U.S. affiliate held directly by –	Close FY 1980 (1)	Close FY 1979 (2)
12. All foreign parents of this affiliate – Give name of each (If more than 4, continue on separate sheet):	1 . %	2 . %
a.	////	////
b.	////	////
c.	////	////
d.	////	////
13. All U.S. affiliates of the foreign parents included in item 12	1 . %	2 . %
14. All other U.S. persons	1 . %	2 . %
15. All other foreign persons	1 . %	2 . %
16. TOTAL – Sum of items 12 through 15 →	100.0 %	100.0 %

If there is an entry in item 13, column 1 or column 2, give the information requested for each U.S. affiliate holding a direct ownership interest in this U.S. affiliate (If more than 4, continue on separate sheet).

U.S. affiliates holding direct ownership interest in this U.S. affiliate				U.S. affiliate in ownership chain which is directly owned by a foreign parent	
Name (1)	BEA Identification Number (2)	Percent direct ownership in this U.S. affiliate (For the close of each year the sum of these percents for all direct owners must equal item 13): Close FY 1980 (3)	Close FY 1979 (4)	Name (5)	BEA Identification Number (6)
17.		. %	. %		
18.		. %	. %		
19.		. %	. %		
20.		. %	. %		

21. Major activity of fully consolidated U.S. affiliate (Mark one)

(For inactive affiliates, indicate the activity pertinent to the last active period; for "startup," show the intended activity.)

Extracting oil or minerals (including exploration and development) (BEA codes in the 100 series, except 070 and 138) 1 ☐

Manufacturing (fabricating, assembling, processing) (BEA codes in the 200–300 series) 2 ☐

Selling or distributing goods (BEA codes in the 500 series) 3 ☐

Real estate (investing in or engaging in as an operator, manager, developer, lessor, agent, or broker) (BEA codes 640, 650, and 652) 4 ☐

Providing a service (BEA codes in the 400–800 series, and 070 and 138; exclude 640, 650, and 652) 5 ☐

Other – Specify: 6 ☐

22. What is the major product or service involved in this activity? If a product, also state what is done to it; i.e., whether it is mined, manufactured, sold at wholesale, transported, packaged, etc.

BEA USE ONLY

Part I – IDENTIFICATION OF U.S. AFFILIATE (Continued)

Industry classification of fully consolidated U.S. affiliate (based on sales or gross operating revenues) – Enter the appropriate 3-digit industry code(s) and the sales (as defined in item 56) associated with each code. For a full explanation of each code, see the Industry Classifications and Export and Import Trade Classifications booklet. If you use fewer than eight codes you must account for total sales. For an inactive affiliate, show the industry classification(s) pertinent to the last active period; for "start-ups" with no sales, show the intended activity(ies).	Industry code (1)	Sales (2) Bil. Mil. Thous. Dols.
23. Enter code with largest sales	1	2
24. Enter code with second largest sales	1	2
25. Enter code with third largest sales	1	2
26. Enter code with fourth largest sales	1	2
27. Enter code with fifth largest sales	1	2
28. Enter code with sixth largest sales	1	2
29. Enter code with seventh largest sales	1	2
30. Enter code with eighth largest sales	1	2
31. Sales accounted for (Sum of items 23 through 30)		2
32. Sales not accounted for above		2
33. Total sales – Sum of items 31 and 32 and must equal item 56. →		2
BEA USE ONLY ▶		2

Summary of Industry Classifications

AGRICULTURE, FORESTRY, AND FISHING

- 018 Agricultural production – crops
- 020 Agricultural production – livestock, except beef cattle feedlots
- 021 Agricultural production – beef cattle feedlots
- 070 Agricultural services
- 080 Forestry
- 090 Fishing, hunting, and trapping

MINING

- 101 Iron ore
- 102 Copper, lead, zinc, gold, and silver ores
- 103 Bauxite and other aluminum ores
- 109 Other metallic ores and metal mining services
- 118 Coal and other nonmetallic minerals, except oil and gas
- 131 Crude petroleum extraction (no refining) and natural gas
- 138 Oil and gas field services

CONSTRUCTION

- 198 Construction

MANUFACTURING

- 201 Meat products
- 202 Dairy products
- 203 Canned and preserved fruits and vegetables
- 204 Grain mill products
- 205 Bakery products
- 208 Beverages
- 209 Other food and kindred products
- 210 Tobacco manufactures
- 220 Textile mill products
- 230 Apparel and other finished products made from fabrics and similar materials
- 240 Lumber and wood products, except furniture
- 250 Furniture and fixtures
- 263 Pulp, paper, and board mills
- 264 Miscellaneous converted paper products
- 265 Paperboard containers and boxes
- 270 Printing, publishing, and allied industries
- 281 Industrial chemicals, plastics materials, and synthetics
- 283 Drugs
- 284 Soap, cleaners, and toilet goods
- 285 Paints and allied products
- 287 Agricultural chemicals
- 289 Chemical products, n.e.c.
- 291 Integrated petroleum refining and extraction
- 292 Petroleum refining without extraction
- 295 Petroleum and coal products, n.e.c.
- 301 Rubber products
- 307 Miscellaneous plastics products
- 310 Leather and leather products
- 321 Glass products
- 329 Stone, clay, cement, and concrete products

MANUFACTURING – Continued

- 331 Primary metal products, ferrous
- 335 Primary metal products, non-ferrous
- 341 Metal cans and shipping containers
- 342 Cutlery, hand tools, and hardware
- 343 Metal plumbing fixtures and heating equipment, except electric and warm air
- 344 Fabricated structural metal products
- 345 Screw machine products, bolts, nuts, screws, rivets, and washers
- 346 Metal stampings and forgings
- 349 Fabricated metal products, n.e.c.; ordnance; and coating, engraving, and allied services
- 351 Engines and turbines
- 352 Farm and garden machinery and equipment
- 353 Construction, mining, and materials handling machinery and equipment
- 354 Metalworking machinery and equipment
- 355 Special industry machinery
- 356 General industrial machinery and equipment
- 357 Office, computing, and accounting machines
- 358 Refrigeration and service industry machinery
- 359 Machinery, except electrical, n.e.c.
- 363 Household electrical appliances
- 364 Electric lighting and wiring equipment
- 366 Radio, television, and communication equipment
- 367 Electronic components and accessories
- 369 Electrical machinery, n.e.c.
- 371 Motor vehicles and equipment
- 379 Other transportation equipment, n.e.c.
- 381 Scientific instruments and measuring and controlling devices
- 383 Optical and ophthalmic goods
- 384 Surgical, medical, and dental instruments and supplies
- 386 Photographic equipment and supplies
- 387 Watches, clocks, and watchcases
- 390 Miscellaneous manufactured products, n.e.c.

TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES

- 441 Petroleum tanker operations
- 449 Other water transportation
- 450 Transportation by air
- 461 Pipeline transportation, including natural gas transmission
- 478 Petroleum storage for hire
- 479 Transportation, warehousing, terminal facilities, travel agents, and related services, n.e.c.
- 488 Communications
- 490 Electric, gas, and sanitary services

WHOLESALE TRADE

- 501 Motor vehicles and automotive parts and supplies
- 503 Lumber and other construction materials
- 504 Farm and garden machinery, equipment, and supplies
- 505 Metals and minerals, except petroleum
- 506 Electrical goods
- 507 Hardware, plumbing and heating equipment and supplies
- 508 Machinery, equipment, and supplies, except farm and garden machinery and equipment
- 509 Miscellaneous durable goods, n.e.c.
- 511 Paper and paper products
- 512 Drugs, proprietaries, and sundries
- 513 Apparel, piece goods, and notions
- 514 Groceries and related products
- 515 Farm-product raw materials
- 517 Petroleum and petroleum products
- 519 Miscellaneous nondurable goods, n.e.c.

RETAIL TRADE

- 540 Food stores and eating and drinking places
- 554 Gasoline service stations
- 590 Retail trade, except gasoline service stations, food stores, and eating and drinking places

FINANCE, INSURANCE, AND REAL ESTATE

- 600 Banking, including bank holding companies
- 610 Finance, except banking
- 630 Insurance carriers, agents, brokers, and services
- 640 Lessors of gasoline service stations and sites
- 650 Real estate, except agricultural and forestry and except lessors of gasoline service stations and sites
- 652 Real estate, agricultural and forestry
- 660 Combinations of real estate, insurance, loans, and law offices
- 671 Holding companies, excluding bank holding companies
- 672 Individuals, estates, and trusts holding investments

SERVICES

- 700 Hotels, rooming houses, camps, and other lodging places
- 731 Advertising
- 780 Motion pictures, including television tape and film
- 891 Engineering, architectural, and surveying services
- 893 Accounting, auditing, and bookkeeping services
- 894 Religious, charitable, and other groups, associations or organizations operating on a noncommercial, nonprofit basis
- 899 Other personal business services, n.e.c., provided on a commercial basis

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE

- Use U.S. generally accepted accounting principles unless otherwise specified. All data must represent a full consolidation of domestic majority-owned U.S. affiliates only; include other U.S. and foreign business enterprises on the equity basis, or cost basis if less than 20 percent owned.
- Close FY 1979 balances should not be restated due to changes in the entity.
- U.S. AFFILIATES THAT ARE INSURANCE COMPANIES OR IN REAL ESTATE – See the special instructions in the Instruction Booklet, page .
- IMPORTANT NOTE – UNINCORPORATED U.S. AFFILIATES – A change in method of reporting has been instituted for unincorporated U.S. affiliates commencing with this survey. Before proceeding, see discussion of change as given in the Instruction Booklet, page .

IMPORTANT EXAMPLE: Report all dollar figures below in thousands of U.S. dollars, as illustrated:

EXAMPLE: If figure is $2,125,628,000.00

Bil.	Mil.	Thous.	Dols.
2	125	628	

SECTION A – BALANCE SHEET

UNINCORPORATED U.S. AFFILIATE: All asset and liability items should be disaggregated in the detail shown, in particular, receivables and payables between the affiliate and the foreign parent should be shown in the proper asset and liability accounts of the affiliate rather than being included only as a net amount in total owners' equity. Include asset and liability items of the U.S. affiliate that are carried only on an owners' books.

	Balances							
	Close FY 1980 (1)				Close FY 1979 (unrestated) (2)			
	Bil.	Mil.	Thous.	Dols.	Bil.	Mil.	Thous.	Dols.
• ASSETS								
34. Cash items – Deposits in financial institutions and other cash items. Do NOT include overdrafts here as negative cash.	1 $				2 $			
35. Trade accounts and trade notes receivable, current, net of allowances for doubtful items.	1				2			
36. Other current receivables, net of allowances for doubtful items.	1				2			
37. Inventories – Land development companies should exclude land held for resale (include in item 38); finance and insurance companies should exclude inventories of marketable securities (include in item 38 or item 42, as appropriate).	1				2			
38. Other current assets, including current marketable securities.	1				2			
39. Property, plant, and equipment, net – Land, timber, mineral rights, structures, machinery, equipment, special tools, deposit containers, construction in progress, and capitalized tangible and intangible exploration and development costs of the affiliate, at historical cost net of accumulated depreciation, depletion, amortization, and like charges. Include items on capital leases from others, per FASB 13. Exclude all other types of intangible assets, and land held for resale. (An unincorporated affiliate should include items owned by its foreign parent but which are in the affiliate's possession whether or not carried on its own books or records.)	1				2			
40. Equity investment in other U.S. affiliates that are not fully consolidated – For those owned 20 percent or more, show on the equity basis to include equity in undistributed earnings since acquisition; for those owned less than 20 percent, show at cost.	1				2			
41. Equity investment in foreign business enterprises owned 20 percent or more – Show on the equity basis to include equity in undistributed earnings since acquisition.	1				2			
42. Noncurrent investments not shown in items 40 and 41 – Noncurrent marketable securities, other equity investments whether carried at cost or on equity basis, and other investments.	1				2			
43. Trade accounts and trade notes receivable, noncurrent, net of allowances for doubtful items	1				2			
44. Other noncurrent assets – Intangible assets, net of amortization, and other noncurrent assets not included above.	1				2			
45. TOTAL ASSETS – Sum of items 34 through 44. →	1 $				2 $			
• LIABILITIES								
46. Trade accounts and trade notes payable, current	1				2			
47. Other current liabilities – Current portion due of long-term debt, overdrafts, and other current liabilities not included in item 46; having an original maturity of one year or less.	1				2			
48. Long-term debt – Debt with an original maturity of more than one year or with no stated maturity, and debt with an original maturity of one year or less that has been renewed, or with respect to which there is the intention and the means to renew, extend or refinance for more than one year. Include capitalized lease obligations; exclude current portion due of long-term debt.	1				2			
49. Other noncurrent liabilities – Items other than those identifiable as long-term debt, such as deferred taxes and underlying minority interest in consolidated U.S. subsidiaries. Specify major items:	1				2			
50. TOTAL LIABILITIES – Sum of items 46 through 49 →	1 $				2 $			
• OWNERS' EQUITY (INCORPORATED AFFILIATE ONLY, ITEMS 51–54)								
51. Capital stock – Common and preferred, voting and non-voting.	1				2			
52. Additional paid-in capital.	1				2			
53. Retained earnings (deficit).	1				2			
54. Treasury stock.	1 ( )				2 ( )			
• TOTAL OWNERS' EQUITY (INCORPORATED OR UNINCORPORATED U.S. AFFILIATE)								
55. Items 51 + 52 + 53 + 54 for incorporated U.S. affiliate. For an unincorporated U.S. affiliate, give no breakdown in items 51–54, but enter total owners' equity in this item. For both incorporated and unincorporated affiliates, total owners' equity must equal item 45 minus item 50.	1 $				2 $			

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION B — INCOME STATEMENT

(Net income must be calculated in accordance with the "all inclusive" concept of the income statement.)

	Amount (1) Bil. Mil. Thous. Dols.
* INCOME	
56. **Sales or gross operating revenues, excluding sales taxes** – Gross sales minus returns, allowances, and discounts, or gross operating revenues, both exclusive of sales or consumption taxes levied directly on the consumer and excise taxes levied directly on manufacturers, wholesalers and retailers.	$
57. **Income from other U.S. affiliates for which investment is shown in item 40** – For those owned 20 percent or more, report equity in earnings during the reporting period; for those owned less than 20 percent, report dividends received.	
58. **Equity in net income of foreign business enterprises owned 20 percent or more, for which investment is shown in item 41** – Equity in earnings during the reporting period.	
59. **Income from other equity investments** – Income from equity investments included in item 38 or item 42. For those business enterprises owned 20 percent or more, report equity in earnings during the reporting period; for those owned less than 20 percent, report dividends received. Do not include any interest income.	
60. **Net realized and unrealized capital gains (losses)** – Include gains (losses) resulting from the sale or disposition of investment securities, property, plant, and equipment, or other assets; those resulting from changes in the dollar value of the affiliate's foreign currency denominated assets and liabilities due to changes in foreign exchange rates during the reporting period; and all other recognized capital gains (losses), including those resulting from revaluation of assets, whether or not realized.	
61. **Other income** – Non-operating and other income not included above. *Specify*	
62. **TOTAL INCOME – Sum of items 56 through 61.** →	$
* COSTS AND EXPENSES	
63. **Costs of goods sold** – Operating expenses (other than selling, general and administrative expenses) that relate to sales or gross operating revenues, item 56. Include production royalty payments to governments, their subdivisions and agencies, and to other persons. Include depletion charges representing the amortization of the actual cost of capital assets, but exclude all other depletion charges.	$
64. **Selling, general, and administrative expenses.**	
65. **Income taxes** – Provision for U.S. Federal, State, and local income taxes. Exclude production royalty payments.	
66. **Other costs and expenses not included above, including underlying minority interest in profits that arises out of consolidation.** – *Specify major items:*	
67. **TOTAL COSTS AND EXPENSES – Sum of items 63 through 66** →	$
* NET INCOME	
68. **Net income after provision for U.S. Federal, State, and local income taxes (item 62 minus item 67).**	$

SECTION C — CHANGE IN RETAINED EARNINGS OF INCORPORATED U.S. AFFILIATE, OR IN TOTAL OWNERS' EQUITY OF UNINCORPORATED U.S. AFFILIATE

	Amount (1) Bil. Mil. Thous. Dols.
69. **Balance, close FY 1979 before restatement due to a change in the entity, if any** – Incorporated affiliate, enter amount from item 53, column 2; unincorporated affiliate, enter amount from item 55, column 2.	$
70. **Increase (decrease) to FY 1979 closing balance resulting from restatement due to a change in the entity.** *Specify reasons for change.*	
71. **FY 1979 closing balance as restated** – Item 69 plus item 70.	$
72. **Net income** – Enter amount from item 68.	
73. **Dividends or remitted earnings** – Incorporated affiliate, enter amount of dividends declared, inclusive of withholding taxes, out of current or prior period income, on common and preferred stock, excluding stock dividends. Unincorporated affiliate, enter amount of current or prior period net income distributed to owners.	
74. **Net realized and unrealized capital gains (losses) that were not included in the determination of net income and therefore excluded from item 60, but that were taken directly to retained earnings or to a surplus account for an incorporated affiliate, or to owners' equity for an unincorporated affiliate.** Report amount after giving effect to income tax liability (benefit) if any, on the gains (losses). *Specify* –	
75. **Other increases (decreases) in retained earnings of an incorporated affiliate, including stock or liquidating dividends, or in total owners' equity of an unincorporated affiliate, including capital contributions (return of capital).** *Specify* –	
76. **FY 1980 closing balance** – Sum of items 71, 72, 74, and 75 minus item 73. For incorporated affiliate, must equal item 53, column 1; and for an unincorporated affiliate, must equal item 55, column 1.	$

SECTION D — CHANGE IN ADDITIONAL PAID-IN CAPITAL OF INCORPORATED AFFILIATE

	Amount (1) Bil. Mil. Thous. Dols.
77. **Increase (decrease) in all additional paid-in, or contributed, capital, in addition to or in excess of capital stock items, causing difference between close FY 1980 and close FY 1979 balances of item 52.** *Specify* –	$

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION E – COMPOSITION OF EXTERNAL FINANCES OF U.S. AFFILIATE

	Total (1)	Foreign parent(s) and its (their) foreign affiliates (2)	Other foreign persons, including foreign business enterprises, owned by this U.S. affiliate (3)	U.S. persons (4)
* CLOSE FY 1980:	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
Current liabilities – Sum of items 78 and 79, column 1, must equal sum of items 46 and 47, column 1	1	2	3	4
78. To banks	$	$	$	$
79. To other than banks	1	2	3	4
Long-term debt – Sum of items 80 and 81, column 1, must equal item 48, column 1	1	2	3	4
80. To banks				
81. To other than banks	1	2	3	4
82. Current receivables – Column 1 must equal sum of items 35 and 36, column 1	1	2	3	4
83. Noncurrent financial investments and noncurrent receivables – Column 1 must equal sum of item 43 and that part of item 42 that is financial investments, column 1	1	2	3	4
84. Total owners' equity – For incorporated U.S. affiliate, column 1 must equal sum of items 51, 52, and 53, column 1; for unincorporated U.S. affiliate, column 1 must equal item 55, column 1 →	1 $	2 $	3 $	4 $
* CLOSE FY 1979, before restatement due to a change in the entity:				
Current liabilities – Sum of items 85 and 86, column 1, must equal sum of items 46 and 47, column 2	1	2	3	4
85. To banks	$	$	$	$
86. To other than banks	1	2	3	4
Long-term debt – Sum of items 87 and 88, column 1, must equal item 48, column 2	1	2	3	4
87. To banks				
88. To other than banks	1	2	3	4
89. Current receivables – Column 1 must equal sum of items 35 and 36, column 2	1	2	3	4
90. Noncurrent financial investments and noncurrent receivables – Column 1 must equal sum of item 43 and that part of item 42 that is financial investments, column 2	1	2	3	4
91. Total owners' equity – For incorporated U.S. affiliate, column 1 must equal sum of items 51, 52, and 53, column 2; for unincorporated U.S. affiliate, column 1 must equal item 55, column 2 →	1 $	2 $	3 $	4 $
BEA USE ONLY ▶	1 $	2 $	3 $	4 $

SECTION F – LAND AND OTHER PROPERTY, PLANT, AND EQUIPMENT

Land and other property, plant, and equipment includes all land and other property, plant, and equipment carried anywhere on the U.S. affiliate's balance sheet, whether or not the intent is to hold and actively use the asset in the operating activity of the business. Land refers to any part of the earth's surface; other property, plant, and equipment includes timber, mineral and like rights owned, all structures, machinery, equipment, special tools, and other depreciable property, construction in progress, and capitalized tangible and intangible exploration and development costs, but excludes other types of intangible assets. In addition to items carried in property, plant, and equipment (item 99), such items may be carried in noncurrent investments (item 42), or in other current or noncurrent assets.

Items, including land, being acquired from others pursuant to capital leases are to be considered as owned by the affiliate; items which the affiliate has sold on a capital lease basis are not to be considered as owned by the affiliate. The capitalized value of timber, mineral, and like rights leased by the affiliate from others is to be included.

Expenditures cover all acquisitions by, or transfers to, the U.S. affiliate of the items detailed above, irrespective of where carried on the balance sheet. Exclude from expenditures all changes in land and in other property, plant, and equipment accounted for by a change in the entity (i.e., due to mergers, acquisitions, divestitures, etc.) during your 1980 fiscal year; such changes are separately accounted for in item 99.

	Land		Other property, plant, and equipment	
	Number of acres (1)	Gross book value (historical cost) (2)	Gross book value (historical cost) (3)	Net book value (4)
* Land and other property, plant, and equipment at close of FY 1980:		Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.	Bil. Mil. Thous. Dols.
92. Carried in property, plant, and equipment accounts – Column 2 plus column 4 must equal item 99, column 1.	1	2 $	3 $	4 $
93. Carried in noncurrent investments – that part of item 42 that is land or other property, plant, and equipment.	1	2	3	4
94. Carried elsewhere on balance sheet (Specify where):	1	2	3	4
95. Total – Sum of items 92 through 94 →	1 $	2 $	3 $	4 $

	Amount (1)
* Schedule of change from FY 1979 closing balances to FY 1980 closing balances:	
Balances at close FY 1979, before restatement due to a change in the entity:	Bil. Mil. Thous. Dols.
96. Gross book value (historical cost) of all land and other property, plant, and equipment, wherever carried on balance sheet	1 $
97. Accumulated depreciation and depletion applicable to assets included in item 96	1
98. Net book value of assets included in item 96 – Item 96 minus item 97	1
Changes during FY 1980:	
99. If answer to item 11 was "Yes," give amount by which the net book value in item 98 would be restated due to a change in the entity. If a decrease, put amount in parentheses.	1
Expenditures by the U.S. affiliate for, or transfers into the U.S. affiliate of:	
100. Land	1
101. Mineral rights	1
102. New* plant, equipment and property other than land and mineral rights	1
103. Used* plant, equipment, and property other than land and mineral rights.	1
104. Depreciation and like charges applicable to assets defined for inclusion in this section	1
105. Depletion and like charges applicable to assets defined for inclusion in this section	1
106. Net book value of sales, retirements, or transfers out of assets defined for inclusion in this section. Other increases (decreases)– Specify:	1
Balances at close of FY 1980:	
107. Net book value – Equals sum of items 98, 99, 100, 101, 102, and 103, minus sum of items 104, 105, and 106, and must also equal item 95, column 2 plus column 4	1
108. Accumulated depreciation, depletion, and like charges applicable to assets included in item 107	1
109. Gross book value (historical cost) of all land and other property, plant, and equipment, wherever carried on balance sheet – Sum of items 107 and 108 and also must equal item 95, column 2 plus column 3.	1 $

* If it would be burdensome to exclude all used plant, equipment, etc., from new, then minor used items may be included in item 102 and only major items of used reported in 103.

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION G – INTEREST, TAXES, AND SUBSIDIES

	Amount (1) Bil. Mil. Thous. Dols.
110. **Interest received** by U.S. affiliate from, or credited to U.S. affiliate by, all payers (including foreign parents and affiliates), net of tax withheld at the source. Do not net against interest paid (item 111).	$
111. **Interest paid** or credited to all payees (including foreign parents and affiliates), by U.S. affiliate, gross of tax withheld by the affiliate. Do not net against interest received (item 110).	
112. **Production royalty payments** – Include amounts paid or accrued for the year to U.S. Federal, State, or local governments, their subdivisions and agencies for production royalties for natural resources.	
113. **Taxes (other than income and payroll taxes) and non-tax payments (other than production royalties)** – Amount paid or accrued for the year, net of refunds or credits, to U.S. Federal, State, or local governments, their subdivisions and agencies for sales, consumption and excise taxes; property and other taxes on the value of assets and capital; any remaining taxes (other than income and payroll taxes); and all payments and accruals of non-tax liabilities (other than for purchases of goods and services and payments of production royalties), such as import and export duties, license fees, fines, penalties, and similar items.	
114. **Subsidies and grants received** – Monetary and other grants received or accrued from U.S. Federal, State, or local governments, their subdivisions and agencies, that are not payments for property, goods, or services purchased from this affiliate, whether such subsidies or grants are reflected in income of the affiliate, or are used for investment or are to cover losses of property, plant, and equipment.	$

SECTION H – RESEARCH AND DEVELOPMENT (R&D)

	Amount (1) Bil. Mil. Thous. Dols.
115. **Research and development expenditures, calculated in accordance with FASB-2.** All R & D costs incurred, including depreciation, amortization, wages and salaries, taxes, cost of materials and supplies, allocated overhead, indirect R & D costs, and the costs of R & D conducted by others on behalf of the U.S. affiliate. Exclude costs incurred in R & D activities conducted for others under a contractual arrangement (such as those reported in item 116).	$
116. **Federally-funded R & D expenditures** – R & D expenditures not included in item 115, but conducted under a contractual arrangement for the Federal government, its subdivisions and agencies.	$

SECTION I – EMPLOYMENT AND EMPLOYEE COMPENSATION

Employment and compensation data should be based on payroll records. They should relate to activities during the reporting period regardless of whether such activities were charged as an expense on the income statement, charged to inventories, or capitalized. Do NOT include data related to activities of a prior period, such as those capitalized or charged to inventories in prior periods. See Instruction Booklet, page .

* EMPLOYMENT – Report the average of the number of persons on the payroll at the end of each pay period, month, or quarter, during the reporting period. Include part-time employees.	Number of employees (1)
117. **Research and development managers, scientists, and engineers, and other professional and technical employees engaged in research and development**	
118. **All other employees**	
119. **TOTAL NUMBER OF EMPLOYEES** – Sum of items 117 and 118. →	
120. **Number of employees in item 119 covered by collective bargaining agreements**	

* EMPLOYEE COMPENSATION – All expenditures made by employer in connection with the employment of workers, including cash payments, payments in-kind, and employer expenditures for employee benefit plans.	Total, for all employees (1) Bil. Mil. Thous. Dols.
121. **Wages and salaries** – Employee's gross earnings (before payroll deductions), and all direct and in-kind payments by the employer to employees	$
122. **Employee benefit plans** – Employer expenditures for all employee benefit plans, including those required by statute, such as employer's social security taxes, those resulting from collective bargaining contracts, and those that are voluntary.	
123. **TOTAL EMPLOYEE COMPENSATION** – Sum of items 121 and 122 →	$

* Employment and wage and salary data by industry	Industry Code – Enter respective industry codes from items 23 through 30 (1)	Number of employees engaged in activities encompassed in each industry code in column 1 (2)	To be completed only for the industry codes listed in column 1 that fall within manufacturing – BEA codes 201 through 390: Number of production workers engaged in activities encompassed in each manufacturing industry code in column 1 (3)	Number of hours of work for which the production workers in column 3 were paid (4)	Wages and salaries paid to production workers in column 3 (5) Bil. Mil. Thous. Dols.
124. Code of industry with largest sales					$
125. Code of industry with second largest sales					
126. Code of industry with third largest sales					
127. Code of industry with fourth largest sales					
128. Code of industry with fifth largest sales					
129. Code of industry with sixth largest sales					
130. Code of industry with seventh largest sales					
131. Code of industry with eighth largest sales					
132. Employees in central administrative offices and headquarters	//////		//////	////	//////////
133. Amount accounted for above – Sum of items 124 through 132	//////				$
134. Employees not accounted for above	//////		//////	////	//////////
135. TOTAL EMPLOYMENT – Column 2 must equal item 119 →	//////		//////	////	//////////
BEA USE ONLY ▶					

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION J EXPORTS AND IMPORTS OF U.S. AFFILIATE – GOODS ONLY, DO NOT INCLUDE SERVICES

IMPORTANT NOTES: This section requires data on U.S. merchandise trade for the U.S. affiliate's reporting period. The data must be reported on a "shipped" basis, irrespective of to or from whom the shipments were billed or "charged." The value of merchandise exports or imports shipped by or to the U.S. affiliate is not the same as the affiliate's sales to, or purchases from, foreign persons. Thus, data for Section J usually cannot be obtained from your financial or accounting records, but must be derived from documents of your shipping and receiving department showing when, where, and to whom goods actually were sent.

Data in this section cover all goods which physically left or entered the U.S. customs area in the reporting period, including capital goods but excluding the value of ships, planes, railroad rolling stock, and trucks that are temporarily outside the United States transporting people or merchandise. Consigned goods must be included in the trade figures when shipped or received, even though not normally recorded as sales or purchases when initially consigned. (See page of the Instruction Booklet for additional details of data requirements.

Please indicate source of your data for this Section J *(Mark "X")*

1 ☐ Accounting records

2 ☐ Documents of your shipping and receiving department

3 ☐ Other – *Specify*

The certification on page 1 of this BE-12 includes a certification that the trade data supplied in this Section J are on a shipment basis.

MERCHANDISE TRADE OF U.S. AFFILIATE WITH ALL FOREIGNERS	BEA USE ONLY	EXPORTS – Shipped by U.S. affiliate to foreigners (valued f.a.s. U.S. port)			IMPORTS – Shipped to U.S. affiliate by foreigners (valued f.a.s. foreign port)		
		TOTAL	To foreign parent(s) and its (their) foreign affiliates	To all other foreigners	TOTAL	By foreign parent(s) and its (their) foreign affiliates	To all other foreigners
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
		BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.
136. Merchandise trade of U.S. affiliate with foreigners, total – Equals sum of items 137 through 148; sum of items 149 and 150; sum of items 151 through 154; and, beginning with item 155, the sum of data for all countries with entries.	1	2	3	4	5	6	7
BY PRODUCT (See the "Export and Import Trade Classifications" portion of the Industry Classifications and Export and Import Trade Classifications Booklet)							
137. Raw and prepared foods and live animals (SITC 0)	1	2	3	4	5	6	7
138. Beverages and raw and manufactured tobacco (SITC 1)	1	2	3	4	5	6	7
139. Inedible crude materials, except fuels (SITC 2)	1	2	3	4	5	6	7
140. Petroleum and products, mineral waxes, natural and manufactured gas (Part of SITC 3)	1	2	3	4	5	6	7
141. Coal, coke, and briquets (Part of SITC 3)	1	2	3	4	5	6	7
142. Chemicals (SITC 5)	1	2	3	4	5	6	7
143. Machinery, electrical and non-electrical (SITC 71–77)	1	2	3	4	5	6	7
144. Road motor vehicles and parts) (SITC 78) – Include all parts that are shipped with the vehicles. Parts that are shipped separately may be in this or another classification*	1	2	3	4	5	6	7
145. Other transportation equipment (SITC 79) – Include all parts that are shipped with the equipment. Parts that are shipped separately may be in this or another classification*	1	2	3	4	5	6	7
146. Metal manufactures (SITC 67, 68, and 69)	1	2	3	4	5	6	7
147. Other manufactures (SITC 61 through 66, and 81) Specify –	1	2	3	4	5	6	7
148. All other products (SITC 4 and 9) Specify –	1	2	3	4	5	6	7
BY WHOSE PRODUCTS:							
149. Products of shipper – That part of item 136 that is products grown, extracted, processed, assembled, or manufactured by the U.S. affiliate (for exports), or by the foreign parent, etc., (for imports).	1	2	3	4	/////	6	/////
150. Products of others – That part of item 136 that is products grown, extracted, processed, assembled, or manufactured by persons other than the shipper.	1	2	3	4	/////	6	/////
BY INTENDED USE:							
151. Capital equipment and other goods charged by U.S. affiliate to its fixed asset accounts	1	/////	/////	/////	5	6	7
152. Goods intended for further processing, assembly, or manufacture by this affiliate before resale to others	1	/////	/////	/////	5	6	7
153. Goods for resale without further processing, assembly, or manufacture by U.S. affiliate	1	/////	/////	/////	5	6	7
154. Other: *Specify* –	1	/////	/////	/////	5	6	7

* In the SITC, some parts that are shipped separately are included in SITC 78 and 79, respectively; however, others are included in SITC product categories appropriate to the type of part based, not on the part's end-use, but rather on the main type of material from which it is made or its general function. Major examples of such parts are gasoline and diesel engines (SITC 71); air conditioners for motor vehicles (SITC 74); tires and tubes (SITC 62); and lamps, batteries, and electrical parts for engines (SITC 77). For more complete information see the Industry Classifications and Export and Import Trade Classifications Booklets.

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION J EXPORTS AND IMPORTS OF U.S. AFFILIATE – GOODS ONLY, DO NOT INCLUDE SERVICES (Continued)

MERCHANDISE TRADE OF U.S. AFFILIATE WITH ALL FOREIGNERS	BEA USE ONLY	EXPORTS – Shipped by U.S. affiliate to foreigners (valued f.a.s. U.S. port)			IMPORTS – Shipped to U.S. affiliate by foreigners (valued f.a.s. foreign port)		
		TOTAL	To foreign parent(s) and its (their) foreign affiliates	To all other foreigners	TOTAL	By foreign parent(s) and its (their) foreign affiliates	To all other foreigners
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
		BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.	BIL. MIL. THOUS.
136. *(Repeated) Bring forward amount from item 136, page 8, and beginning with item 155, must equal sum of all countries with entries and item 182.*							
BY COUNTRY OF ULTIMATE DESTINATION OR ORIGIN							
155. Australia							
156. Belgium and Luxembourg							
157. Brazil							
158. Canada							
159. Denmark							
160. France							
161. Germany							
162. Ireland							
163. Italy							
164. Japan							
165. Mexico							
166. Netherlands							
167. New Zealand							
168. Sweden							
169. Switzerland							
170. South Africa							
171. United Kingdom							
172. Venezuela							
Other individual countries to which exports were $100,000,00 or more – Specify: (Use supplemental sheets, if necessary, to account for all such countries)							
173.							
174.							
175.							
176.							
177.							
178.							
179.							
180.							
181.							
182. Sum of exports to all countries to which exports were less than $100,000.00 – The sum of this item and all countries with entries must equal item 136							

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION K — SCHEDULE OF EMPLOYMENT, WAGES AND SALARIES, LAND AND OTHER PROPERTY, PLANT, AND EQUIPMENT, BY LOCATION

Land and other property, plant, and equipment covers all such items, whether carried as investments, in fixed asset accounts, or in other balance sheet accounts. Include land held for resale, held for investment purposes, and all other land owned. Land and other property, plant, and equipment on capital lease from others should be included, but that on capital lease to others should be excluded.

In categorizing land and other property, plant, and equipment by use, classify by primary use. For land not in use, classify it by expected or intended use, if known; otherwise, include it in "other."

Do not include in the "foreign" category land and other property, plant, and equipment owned either by foreign business enterprises in which this U.S. affiliate has an equity interest or by foreign operations of this affiliate. The "foreign" category is primarily for use in reporting movable fixed assets temporarily outside the U.S. or for reporting any foreign fixed assets carried directly on the U.S. affiliate's books.

Location	BEA USE ONLY	State Code	Number of employees (Total must equal item 199)	Wages and salaries of employees listed in column 3 (Total must equal item 121)	Acres of mineral rights owned or leased from others, at close of FY 1980. Do not include acreage reported as land owned in column 6	All acres of land owned at close of FY 1980, by use					
						Total (Total must equal item 95, column 1)	Agriculture and forestry	Natural resources	Manufacturing	Residential, office buildings, stores, and shopping centers	Other
	(1)	(2)	(3) Number	(4) Thous. Dols.	(5)	(6)	(7)	(8)	(9)	(10)	(11)
183. TOTAL for each column must equal sum of items 184 through 241											
184. Alabama		01									
185. Alaska		02									
186. Arizona		04									
187. Arkansas		05									
188. California		06									
189. Colorado		08									
190. Connecticut		09									
191. Delaware		10									
192. Florida		12									
193. Georgia		13									
194. Hawaii		15									
195. Idaho		16									
196. Illinois		17									
197. Indiana		18									
198. Iowa		19									
199. Kansas		20									
200. Kentucky		21									
201. Louisiana		22									
202. Maine		23									
203. Maryland		24									
204. Massachusetts		25									
205. Michigan		26									
206. Minnesota		27									
207. Mississippi		28									
208. Missouri		29									
209. Montana		30									
210. Nebraska		31									
211. Nevada		32									
212. New Hampshire		33									
213. New Jersey		34									
214. New Mexico		35									
215. New York		36									
216. North Carolina		37									
217. North Dakota		38									
218. Ohio		39									
219. Oklahoma		40									
220. Oregon		41									
221. Pennsylvania		42									
222. Rhode Island		44									
223. South Carolina		45									
224. South Dakota		46									
225. Tennessee		47									
226. Texas		48									
227. Utah		49									
228. Vermont		50									
229. Virginia		51									
230. Washington		53									
231. West Virginia		54									
232. Wisconsin		55									
233. Wyoming		56									
234. District of Columbia		11									
235. Puerto Rico		43									
236. Virgin Islands		52									
237. Guam		14									
238. American Samoa		03									
239. U.S. Offshore Oil and Gas Sites		65									
240. Other U.S. Territories and Possessions		60									
241. Foreign*		70									

* Include only that of U.S. business enterprises fully consolidated into the U.S. affiliate. No foreign business enterprises, incorporated or unincorporated, can be considered part of the reporting U.S. affiliate.

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE (Continued)

SECTION K

SCHEDULE OF EMPLOYMENT, WAGES AND SALARIES, LAND AND OTHER PROPERTY, PLANT, AND EQUIPMENT, BY LOCATION (Continued)

Location	BEA USE ONLY (1)	State Code (2)	Gross book value (historical cost) of all land and other property, plant, and equipment, wherever carried on balance sheet, FY 1980 closing balance, by use – Total, column 3 must equal sum of item 95, column 2 plus column 3.								
			Total (3)	Agriculture and forestry (4)	Natural resources (5)	Manufacturing			Residential, office buildings, stores, and shopping centers (9)	Other (10)
						Petroleum refining (6)	Chemicals (7)	Other (8)		
			Thous. Dols.	Thous. Dols.	Thous. Dols.	Thous. Dols.	Thous. Dols.	Thous. Dols.	Thous. Dols.	Thous. Dols.
242. TOTAL, for each column must equal sum of items 243 through 300.			$	$	$	$	$	$	$	$
243. Alabama		01	$	$	$	$	$	$	$	$
244. Alaska		02								
245. Arizona		04								
246. Arkansas		05								
247. California		06								
248. Colorado		08								
249. Connecticut		09								
250. Delaware		10								
251. Florida		12								
252. Georgia		13								
253. Hawaii		15								
254. Idaho		16								
255. Illinois		17								
256. Indiana		18								
257. Iowa		19								
258. Kansas		20								
259. Kentucky		21								
260. Louisiana		22								
261. Maine		23								
262. Maryland		24								
263. Massachusetts		25								
264. Michigan		26								
265. Minnesota		27								
266. Mississippi		28								
267. Missouri		29								
268. Montana		30								
269. Nebraska		31								
270. Nevada		32								
271. New Hampshire		33								
272. New Jersey		34								
273. New Mexico		35								
274. New York		36								
275. North Carolina		37								
276. North Dakota		38								
277. Ohio		39								
278. Oklahoma		40								
279. Oregon		41								
280. Pennsylvania		42								
281. Rhode Island		44								
282. South Carolina		45								
283. South Dakota		46								
284. Tennessee		47								
285. Texas		48								
286. Utah		49								
287. Vermont		50								
288. Virginia		51								
289. Washington		53								
290. West Virginia		54								
291. Wisconsin		55								
292. Wyoming		56								
293. District of Columbia		11								
294. Puerto Rico		43								
295. Virgin Islands		52								
296. Guam		14								
297. American Samoa		03								
298. U.S. Offshore Oil and Gas Sites		65								
299. Other U.S. Territories and Possessions		60								
300. Foreign*		78	$	$	$	$	$	$	$	$

* Include only that of U.S. business enterprises fully consolidated into the U.S. affiliate. No foreign business enterprises, incorporated or unincorporated, can be considered part of the reporting U.S. affiliate.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

A separate Part III, or Part III-ADDITIONAL, must be completed for each foreign parent that held a direct or indirect equity interest in the U.S. affiliate at any time during the reporting period.

301. Number of Part III schedules filed by the U.S. affiliate – If there is only one, enter "1" in the box below; if more than one, enter the number of Part III's to be filed.

☐ ← Number

If number is greater than "1," use Part III-ADDITIONAL schedules for the remaining foreign parents.

302. Name of foreign parent that this Part III, or Part III-ADDITIONAL is for:

Name:

The foreign parent named in item 302 holds: *(Mark either item 303 or 304):*

303. ☐ A direct equity interest in the U.S. affiliate

304. ☐ An indirect equity interest in the U.S. affiliate

(If a foreign parent holds both direct and indirect equity interests, then separate Part III's must be completed for each line of ownership. However, do not duplicate positions or transactions where multiple Part III's are filed. The marking of either 303 or 304 will indicate which is being reported on this Part III.)

305. If item 303 is marked, give percent of voting rights owned.

Close FY 1980 (1)	Close FY 1979 (2)
. %	. %

(For the close of each year, the sum of this item from all Part III's filed for the U.S. affiliate must equal item 12.)

306. Country of location of foreign parent named in item 302.

BEA USE ONLY

307. Industry code* of foreign parent named in item 302:

← Code

308. Is the foreign parent named in item 302 the ultimate beneficial owner (UBO)? *(See definition)*

1 ☐ Yes

2 ☐ No

If the answer to item 308 is "No," complete the following:

309. Name of UBO *(If the UBO is an individual, a name is not required, complete only items 310 and 311):*

310. Country of UBO named in item 309:

BEA USE ONLY

311. Industry code* of UBO named in item 309:

← Code

NOTE: If item 304 is marked, then only the following items in the rest of this Part III need be completed to report direct transactions or positions, if any, between the U.S. affiliate and the foreign parent: 312, 313, 314, 315, 321, 322, 338, 339, 340, 341, 342, and 343.

SECTION A – INVESTMENT BETWEEN U.S. AFFILIATE AND FOREIGN PARENT NAMED IN ITEM 302, ACCORDING TO BOOKS OF THE U.S. AFFILIATE

	Balance at Close FY 1980 (1)					Balance at Close FY 1979 (2)				
	Bil.	Mil.	Thous.	Dols.		Bil.	Mil.	Thous.	Dols.	
* CURRENT ITEMS										
312. Current liabilities owed by U.S. affiliate to foreign parent – That portion of items 46 and 47 representing amounts owed to foreign parent					$					$
313. Current receivables due to U.S. affiliate from foreign parent – That portion of items 35, 36, and 38 representing amounts due from foreign parent										
* LONG-TERM ITEMS										
314. Long-term debt owed by U.S. affiliate to foreign parent – That portion of item 48 representing amounts owed to foreign parent										
315. Long-term receivables due U.S. affiliate from foreign parent – That portion of items 42 and 43 representing amounts due from foreign parent										
* OWNERS' EQUITY ITEMS, INCORPORATED AFFILIATES ONLY – FOREIGN PARENT'S EQUITY IN:										
316. Capital stock, common and preferred, voting and nonvoting										
317. Additional paid-in capital										
318. Retained earnings (deficit)										
319. Treasury stock held by U.S. affiliate					( )					( )
* FOREIGN PARENT'S SHARE OF TOTAL OWNERS' EQUITY OF INCORPORATED OR UNINCORPORATED U.S. AFFILIATE										
320. For incorporated U.S. affiliate, sum of items 316, 317, 318, and 319. For unincorporated U.S. affiliate, give no breakdown in items 316 through 319, but enter foreign parent's share of total owners' equity, item 55.										
* Net book value of property, plant, and equipment on lease and not reflected in items 312 to 319. Exclude operating leases of one year or less. (Net book value for operating leases of more than one year is the original cost less accumulated depreciation; for capital leases, it is the amount of principal payments remaining due at the specified time including payment called for by bargain purchase option, if any.)										
321. On lease from foreign parent to U.S. affiliate										
322. On lease from U.S. affiliate to foreign parent					$					$
323. BEA USE ONLY ▶ Total direct investment position in the U.S. affiliate					$					$

* Secure industry code for foreign parent or ultimate beneficial owner from page of the Industry Classifications and Export and Import Trade Classifications Booklet.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT (Continued)

SECTION B – CHANGES IN FOREIGN PARENT'S EQUITY HOLDINGS IN U.S. AFFILIATE

Report in items 324 through 334 transactions during the reporting period by the foreign parent that changed its equity holdings in the U.S. affiliate. Exclude changes caused by carrying net income to the equity account, the payment of stock or cash dividends (other than liquidating dividends), or the distribution of earnings during the period. Exclude effect of treasury stock transactions with persons other than the foreign parent and reorganizations in capital structure that do not affect total equity. Report all amounts as transactions value, i.e., the value of the consideration given (received) by the foreign parent.

	Amount (1) Bil. Mil. Thous. Dols.
Transactions between foreign parent and U.S. affiliate:	
Increase in equity interest –	
324. Establishment of affiliate by foreign parent	$
325. Purchase by foreign parent of capital stock from incorporated affiliate	
326. Additional equity capital contributed by foreign parent (for an incorporated affiliate, report only those contributions not resulting in the issuance of stock)	
Decrease in equity interest –	
327. Total liquidation of affiliate by foreign parent	
328. Sale by foreign parent of capital stock to incorporated affiliate	
329. Return of contributed equity capital to foreign parent (for an incorporated affiliate, report here only those returns not resulting in a reduction of issued stock)	
Transactions between foreign parent and a person other than U.S. affiliate:	
Acquisition by foreign parent of equity interest in U.S. affiliate from –	
330. All U.S. persons	
331. All foreign persons	
Sale by foreign parent of equity interest in U.S. affiliate to –	
332. All U.S. persons	
333. All foreign persons	
334. Increase (decrease) at transactions value of changes in equity holdings – The consideration given (received) by the foreign parent in order to bring about the change in equity holdings; must equal sum of items 324, 325, 326, 330, and 331 minus sum of items 327, 328, 329, 332, and 333.	
335. Approximate book value on the date of the transaction(s), based on books of the U.S. affiliate, that is equivalent to the transactions value reported in item 334. (The amount given here should approximate the change in item 320, column 1 minus column 2, after allowance is made in item 320 to exclude changes caused by carrying net income to the equity account, payment of stock or cash dividends (other than liquidating dividends), distribution of earnings, and treasury stock transactions.)	$

SECTION C – PAYMENTS AND RECEIPTS OF DIVIDENDS, DISTRIBUTED EARNINGS, INTEREST, FEES, ROYALTIES, AND RENTALS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

Enter amounts paid, received, or entered into intercompany accounts. Include amounts for which payments were made in-kind. Amounts should be entered as of the date paid (received) by the affiliate, or entered into intercompany accounts with the foreign parent, whichever occurred first. For an item entered into intercompany account, in order to avoid duplication, any subsequent settlement of the account must not be reflected in one of the items below, but must be reflected only as a reduction in intercompany account.

	Payments or credits by U.S. affiliate to foreign parent: Net of U.S. tax withheld (1) Bil. Mil. Thous. Dols.	Payments or credits by U.S. affiliate to foreign parent: Amount of U.S. tax withheld (2) Bil. Mil. Thous. Dols.	Receipts by or credits to U.S. affiliate from foreign parent: Net of foreign tax withheld (3) Bil. Mil. Thous. Dols.	Receipts by or credits to U.S. affiliate from foreign parent: Amount of foreign tax withheld (4) Bil. Mil. Thous. Dols.
Incorporated U.S. affiliate:				
336. Dividends on the U.S. affiliate's common and preferred stock, paid out of current and past earnings, excluding stock dividends	$	$		
Unincorporated U.S. affiliate:				
337. Earnings distributed, whether out of current or past earnings				
All U.S. affiliates:				
338. Interest – Include interest on capital leases				
339. Royalties, license fees, and other fees for the use or sale of intangible property				
340. Payments and receipts for use of tangible property except film or television tape rentals – Include rentals for operating leases of one year or less and net rent on operating leases of more than one year. Net rent is the equivalent to the total lease payment less the return of capital (depreciation) component				
341. Film or television tape rentals				
342. Fees for services rendered – Include fees for management, professional or technical services, R&D assessments, and allocated expenses other than those given above				
343. TOTAL – Sum of items 336 through 342 →	$	$	$	$

FOREIGN PARENT'S EQUITY IN U.S. AFFILIATE'S NET INCOME

Net income must be calculated in accordance with the all inclusive concept of the income statement.

	Amount (1) Bil. Mil. Thous. Dols.
344. Foreign parent's direct equity in U.S. affiliate's net income (loss) – Enter foreign parent's direct ownership share of net income, item 68.	$
Foreign parent's equity in U.S. affiliate's net realized and unrealized capital gains (losses):	
345. Foreign parent's share of item 60, net realized and unrealized capital gains included in net income	
346. Foreign parent's share of item 74, net realized and unrealized capital gains (losses) taken directly to retained earnings or owner's equity, after provision for income tax liability (benefit), if any, on the gains (losses).	$

Part IV – DIRECT TRANSACTIONS OR ACCOUNTS BETWEEN U.S. AFFILIATE AND FOREIGN AFFILIATES OF THE FOREIGN PARENT(S)

Report all direct transactions or balances between the U.S. affiliate and foreign affiliates of the foreign parent(s). Do not include any direct transactions, accounts, or balances between U.S. affiliate and the foreign parent – they must be reported in Part III. Do not net payables against receivables.

In Section A, report payments and liabilities to, and in Section B report receipts and receivables due from foreign affiliates of the foreign parent(s), by country. Enter only one foreign country per line. If more lines than provided are needed in order to list all countries, use additional copied Part IV sheets as necessary, properly identified with the name and EI number of the U.S. affiliate. An item need be reported by country only if it exceeds $250,000 for that country; for each item, the value not shown by country should be entered on the unallocated line.

347. Does the U.S. affiliate (ex consolidated) have direct transactions or accounts with foreign affiliates of any foreign parent? (Mark one)

☐ Yes – If "Yes", complete Part IV

☐ No – If "No", skip Part IV.

BEA USE ONLY →

IMPORTANT EXAMPLE: Report all dollars in thousands of U.S. dollars, as illustrated

EXAMPLE: If figure is $1,125,628,000.00

Bil.	Mil.	Thous.	Dols.
1	125	628	†

Country of foreign affiliate of foreign parent	BEA USE ONLY	Interest, including interest on capital leases	Royalties, license fees, and other fees for the use or sale of intangible property	Rentals for use of tangible property	Film or television tape rentals	Fees for services rendered including fees for management, professional or technical services, R&D assessments, and allocated expenses	Close FY 1980: Current (Include current portion of long-term debt)	Close FY 1980: Long-term (Exclude current portion due)	Close FY 1979: Current (Include current portion of long-term debt)	Close FY 1979: Long-term (Exclude current portion due)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
SECTION A U.S. AFFILIATE'S PAYMENTS AND LIABILITIES		Payments or accruals to foreign affiliates of the foreign parent (net of U.S. tax withheld)					Liabilities of U.S. affiliate to foreign affiliates of the foreign parent			
348. Canada										
349. United Kingdom										
350. Germany										
351. France										
352. Italy										
353. Japan										
354. Netherlands										
355. Switzerland										
Specify other countries:										
356.										
357.										
358.										
359.										
360.										
361. Unallocated by country – The amounts for countries for which entries are less than $250,000										
362. TOTAL, all countries Section A										

		Receipts or accruals from foreign affiliates of the foreign parent (net of foreign tax withheld)					Receivables of U.S. affiliate from foreign affiliates of the foreign parent			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
SECTION B U.S. AFFILIATE'S RECEIPTS AND RECEIVABLES										
363. Canada										
364. United Kingdom										
365. Germany										
366. France										
367. Italy										
368. Japan										
369. Netherlands										
370. Switzerland										
Specify other countries:										
371.										
372.										
373.										
374.										
375.										
376. Unallocated by country – The amounts for countries for which entries are less than $250,000										
377. TOTAL, all countries, Section B										

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Form BE-12 Supplement A

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS

BEA USE ONLY ▶

Page No. _____ of _____ pages of this Supplement A

LIST OF ALL U.S. BUSINESS ENTERPRISES FULLY CONSOLIDATED INTO THE REPORTING U.S. AFFILIATE

Name of U.S. affiliate as shown in Part I, item 1, of Form BE-12

Supplement A – List of ALL U.S. Business Enterprises Fully Consolidated into the Reporting U.S. Affiliate, must be completed by the U.S. affiliate reporting consolidated financial and operating data to BEA; each U.S. business enterprise so fully consolidated must be more than 10 percent owned, directly or indirectly, by the foreign parent, and must also be more than 50 percent owned by the U.S. affiliate named in Part I, item 1, of Form BE-12. The number of U.S. affiliates listed below plus the reporting U.S. affiliate must agree with item 5, Part I of Form BE-12. Continue listing onto as many additional copied pages as necessary.

Employer Identification Number of the above named U.S. affiliate used by affiliate to file income and payroll taxes (as given in item 4, Form BE-12) ▶ | | | | | | | | | - | | | | | | | | | |

BEA USE ONLY (1)	Name and address of each U.S. business enterprise fully consolidated in this BE-12 Report (2)	Employer Identification Number used by U.S. business enterprise listed in column 2 to file income and payroll taxes (3)	Name of U.S. business enterprise which holds the direct equity interest in the U.S. business enterprise listed in column 2 (4)	Percentage of direct ownership which the U.S. business enterprise listed in column 4 has in the U.S. business enterprise listed in column 2 (Enter percentage to nearest tenth.) (5)
				. %
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				. %

FORM BE-12 Supplement B
(12-80)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS

BEA USE ONLY ▶

Page No. ____ of ____ pages of this Supplement B.

LIST OF ALL U.S. AFFILIATES IN WHICH THE REPORTING U.S. AFFILIATE (AS CONSOLIDATED) HAS A DIRECT EQUITY INTEREST BUT WHICH ARE NOT FULLY CONSOLIDATED ON THIS BE-12 REPORT

IDENTIFICATION– Name of U.S. affiliate as shown in Item 1 Part I of Form BE-12

Employer Identification Number of the above named U.S. affiliate used by affiliate to file income and payroll taxes (as given in Item 4, Form BE-12) ▶ ☐☐☐-☐☐☐☐☐☐☐

List all other U.S. affiliates of the foreign parent(s) in which the fully consolidated U.S. affiliate named in Item 1, Part I has a direct equity interest, but which are not fully consolidated on this BE-12 report. The number of such affiliates must agree with Item 6, Part I of Form BE-12; use as many copied pages as needed.
NOTE: U.S. affiliates listed on Supplement B MUST NOT be listed on Supplement A.
The U.S. affiliate named in Item 1, Part I MUST NOTIFY each U.S. affiliate listed below that it must file in its own name, a completed form BE-12 report or a BE-12 Supplement C, Claim for Not Filing a Form BE-12. Indicate in column 4 whether or not such notification has been given.

BEA USE ONLY (1)	Name of each U.S. affiliate in which a direct interest is held (2)	Address of each U.S. affiliate listed in column 2 Give number, street, city, State and ZIP Code (3)	Has affiliate been notified or previously been made aware of foreign ownership? (Check one) (4)	Employer Identification Number used by U.S. affiliate listed in Column 2 to file income and payroll taxes (5)	Percentage of direct ownership in the U.S. affiliate listed in Column 2, held by the reporting affiliate named in Item 1, Part I of BE-12 (Enter percentage to nearest tenth) (6)
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %
			☐ Yes ☐ No	☐☐☐-☐☐☐☐☐☐☐	. %

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FORM BE-12 Supplement C

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS (BEA)

CLAIM FOR NOT FILING A BE-12
Benchmark Survey of Foreign Direct Investment in the U.S. – 1980

The publication in the Federal Register of the notice implementing this survey is considered legal notice to covered U.S. business enterprises of their obligation to report. Therefore, a report is required from persons subject to the reporting requirements of the BE-12 survey, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting either by sending them a report form or by written inquiry, must respond in writing pursuant to Section 806.4 of 15 CFR, Chapter VIII. For this survey, this may be accomplished by filing a completed Form BE-12 on a timely basis or, if applicable, by completing and returning this claim within 30 days of the date the BE-12 was sent by BEA.

If claim is disallowed, the original due date for the BE-12 remains in force.

Affiliate's 1980 fiscal year is defined to be the affiliate's financial reporting year that has an ending date in calendar year 1980.

See the Instruction Booklet for definitions and rules.

Name and address of U.S. business enterprise for which this claim is filed – If the business enterprise received a prelabeled BE-12 form – See Item 1, Part I, Form BE-12 – Enter name, address and BEA Identification Number from that label into the blocks below; skip a single block between words. If a prelabeled form was not received, enter name and address as contained on letter transmitting the report forms to you, indicating any changes or corrections.

Name

Street or P.O. Box

City and State ZIP Code

BEA Identification Number

BEA USE ONLY

BASIS OF CLAIM FOR NOT FILING *(Mark one and answer applicable questions)*

1. ☐ This U.S. business enterprise was not a U.S. affiliate of a foreign person at any time during its 1980 fiscal year but had been a U.S. affiliate of a foreign person at some time between January 1, 1974 and the beginning of its 1980 fiscal year.

Give date foreign ownership ceased or went below 10 percent:

Month	Day	Year

2. ☐ This U.S. business enterprise was not a U.S. affiliate of a foreign person at any time during its 1980 fiscal year and was not a U.S. affiliate of a foreign person at any time since January 1, 1974.

3. ☐ This U.S. business enterprise was a U.S. affiliate of a foreign person during its 1980 fiscal year but is fully consolidated into the BE-12 report for another U.S. affiliate – *Give name, address, and BEA Identification Number of consolidated U.S. affiliate that is reporting to BEA, in the blocks below (Skip a single block between words):*

Name

Street or P.O. Box

City and State ZIP Code

BEA Identification Number

4. ☐ The U.S. business enterprise is not subject to the reporting requirements because the owners are citizens of the United States who are resident abroad as a result of official employment by the U.S. Government (including the immediate family of such persons), or the owners have been or expect to be resident abroad for less than one year.

5. ☐ This U.S. business enterprise was a U.S. affiliate of a foreign person during its 1980 fiscal year but is exempt because, on a fully consolidated, or, in the case of real estate investments, on an aggregated, basis:

(a) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between –$1 million and +$1 million during its 1980 fiscal year:

(1) Total assets,

(2) Sales or gross operating revenues, excluding sales taxes, and

(3) Net income after provision for U.S. income taxes;

and

(b) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).

Enter value or amount for each:

	Amount (Bil. Mil. Thous. Dols.)
i. Total assets (do not net out liabilities)	$
ii. Sales or gross operating revenues, excluding sales taxes (do not give gross margin)	$
iii. Net income after provision for U.S. income taxes	$
	Number
iv. Number of acres of U.S. land owned	

and complete the following:

i. Country of foreign parent

ii. Country of ultimate beneficial owner

BEA USE ONLY

6. ☐ Other – *Specify and include reference to section of regulations or instructions on which claim is based.*

U.S. PERSON FOR BEA TO CONSULT ABOUT THIS CLAIM

Print name and address

U.S. TELEPHONE NUMBER

Area code	Number	Extension

CERTIFICATION The undersigned official certifies that the information contained in this report is correct and complete to the best of his/her knowledge.

Authorized official's signature	Please type Name and Title	Date

18 U.S.C. 1001 (Crimes and Criminal Procedure) makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Any officer, director, employee, or agent of any corporation who knowingly participates in a willful failure to report, upon conviction, may be punished by a fine, imprisonment, or both (22 U.S.C. 3105). For a further citation of applicable statutes, see the Instruction Booklet to this form.

BE-12 BANK (Report for U.S. affiliate that is a bank)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF ECONOMIC ANALYSIS (BEA)

MANDATORY – CONFIDENTIAL

BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE U.S. 1980

RETURN REPORTS TO: U.S. Department of Commerce, Bureau of Economic Analysis BE-50 (BR), Washington, D.C. 20230

Important *Read Instruction Booklet before completing form. The instructions given below are only a brief summary of certain ones relating to this form.*

See SPECIAL NOTE: BANKS, before proceeding.

- **DEFINITIONS**
  1. **Foreign direct investment** in the United States means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.
  2. **Business enterprise** means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.
  3. **Affiliate** means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting securities for an incorporated business enterprise or an equivalent interest for an unincorporated business enterprise, including a branch.
  4. **U.S. affiliate** means an affiliate located in the United States in which a foreign person has a direct investment.
  5. **U.S. affiliate's 1980 fiscal year** is the affiliate's financial reporting year that has an ending date in calendar year 1980.
  6. **Banking** (industry code 6020) includes business enterprises engaged in deposit banking, Edge Act corporations engaged in international or foreign banking, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, U.S. branches and agencies of foreign banks whether or not they accept deposits in the United States, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks which they hold.
- **REPORTING REQUIREMENTS**
  1. **Who must report** – A BE-12 report is required from each U.S. affiliate, i.e., for each U.S. business enterprise in which one foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at any time during the business enterprise's 1980 fiscal year.
  2. **Consolidated reporting** – Except as specified in SPECIAL NOTE: BANKS, a U.S. affiliate shall file on a fully consolidated basis, including in the full consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting securities. Hereinafter, the fully consolidated entity is considered to be one U.S. affiliate. See Instruction Booklet, page 3. Exemption criteria are applied to the consolidated entity.
  3. **Exemption** – A U.S. affiliate so consolidated is not required to file a report if:
     (a) Each of the following three items for the U.S. affiliate (not the foreign parent's share) was between –$1,000,000 and +$1,000,000 during the reporting period:
     (1) Total assets,
     (2) Sales or gross operating revenues, excluding sales taxes, and
     (3) Net income after provision for U.S. income taxes;
     and
     (b) The U.S. affiliate did not own 200 acres or more of U.S. land during the reporting period (if the U.S. affiliate owned 200 acres or more of U.S. land, it must report regardless of the value of the three items listed above).
  4. **A U.S. affiliate that is not required to file a completed Form BE-12 because it falls below the exemption levels, must complete and file a Claim for Not Filing a Form BE-12, with item 5 of the Claim marked, and furnish the information requested in item 5.** (The Claim is on the last page of Form BE-12 and should be detached for filing.)
  5. **Response required** – A person or their agent who is sent a report form by BEA and who claims to not be subject to the reporting requirements must file a completed "Claim for Not Filing a Form BE-12" which is printed on the last page of Form BE-12. **The Claim must be filed within 30 days of the date the BE-12 was sent by BEA.**
  6. **Due date** – A completed report on Form BE-12 is due no later than
- **ASSISTANCE** – Telephone (202) 523–0547.
- **GENERAL NOTES**
  1. Number of employees and other non-monetary amounts must be reported to the nearest whole unit.
  2. Monetary amounts must be reported in U.S. dollars rounded to the nearest thousand (omitting 000). Do not enter amounts in the shaded portions of any line.

     EXAMPLE: If amount is $1,334,615.00, report as:

Bil.	Mil.	Thous.	1 Dols.
1	335	1	////

  3. If an item is between +$500,000 or –$500,000, enter "0."
  4. Use parentheses to indicate negative numbers.
  5. All questions must be answered in the context of the reporting period delineated in items 8, 9, and 10.

Part I – IDENTIFICATION OF U.S. AFFILIATE

1. Name and principal mailing address

A mailing label, if affixed, shows, among other things, the name and address of this U.S. affiliate, as known to BEA. If there are no changes to the name and address, write "same" in spaces below. If there are any changes in name or address, enter correct name and address below in full.

If no mailing label is affixed, or if there is a change in the name and address as given on the mailing label, print name and address in blocks; skip a single block between words.

BEA USE ONLY

Name of U.S. Affiliate

Street or P.O. Box

City and State ZIP Code

2. Is more than 50 percent of the ownership interest in this U.S. affiliate owned by another U.S. affiliate of your foreign parent?

1 ☐ Yes 2 ☐ No

If the answer is "Yes," do not complete this report unless this affiliate qualifies for filing separately and has obtained permission from BEA to do so. Note, however, that nonbank affiliates of a bank affiliate must file separately regardless of the ownership interest; see "SPECIAL NOTE: BANKS." Otherwise, the report must reflect information and data for, and be filed in the name of, the fully-consolidated U.S. business enterprise meeting the definition of U.S. affiliate. Please forward this Form BE-12 survey packet to the U.S. business enterprise owning your company to the extent of more than 50 percent, notify BEA of the action taken, and provide BEA the name and address of the U.S. business enterprise that is required to file for the fully-consolidated U.S. business enterprise.

(WHEREVER THE INSTRUCTION "MARK ONE" IS GIVEN BELOW, IF IT IS NECESSARY TO MARK MORE THAN ONE ANSWER, GIVE AN EXPLANATION.)

3. Form of organization of U.S. affiliate *(Mark one.)*

1 ☐ Incorporated in U.S.
2 ☐ U.S. partnership
3 ☐ U.S. branch or agency of a foreign person
4 ☐ Business enterprise incorporated abroad, but whose head office is located in the U.S. and whose business activity is conducted in, or from, the United States
5 ☐ Other – Specify:

4. Enter primary Employer Identification Number used by U.S. affiliate to file U.S. income and payroll taxes

– E.I. Number

SPECIAL NOTE: BANKS

A specialized report form, BE-12 BANK, has been adopted for banks (that is, a business enterprise for which over 50 percent of its total revenues are generated by activities classified in banking, industry code 6020). Use of the specialized report form is at the discretion of BEA; in situations where its possible use is not clear-cut, permission must be secured from BEA in advance of filing.

The specialized report form, BE-12 BANK, is for reporting by a U.S. affiliate which is a bank or a bank holding company, and in which a foreign parent holds a direct or indirect ownership interest. It is not to be used by a U.S. affiliate which may technically be classified as a bank holding company because of an interest in a banking activity, but which has 50 percent or more of its revenues generated by non-bank activities. Activities of subsidiaries which may not be banks but which provide support to the parent company, such as real estate subsidiaries set up to hold office buildings occupied by the parent bank company, are considered bank activities.

A U.S. affiliate that is a bank holding company must fully consolidate on its BE-12 BANK report those of its majority-owned subsidiaries that are U.S. affiliates of its foreign parent that are normally consolidated, and that are engaged in banking (or provide support to bank activities of the U.S. bank holding company). Subsidiaries of a bank holding company that are non-bank U.S. affiliates must not be so consolidated, but must submit a standard Form BE-12 in their own name.

Each separately incorporated U.S. bank affiliate that does not meet the consolidation rules given in the Instruction Booklet must file a separate report on Form BE-12 BANK. Each unincorporated U.S. bank affiliate in which a foreign parent holds a direct ownership interest must file a BE-12 BANK. Two or more unincorporated U.S. bank affiliates owned by the same foreign person, and located in the same U.S. State or territory, may be aggregated on a single Form BE-12 BANK, provided that written permission has been obtained from BEA prior to such filing.

A U.S. affiliate that is a bank, but that has a non-bank foreign parent, must file a Form BE-12 BANK. A U.S. affiliate that is not a bank, but that has a bank foreign parent, must file a standard Form BE-12.

The BE-12 BANK form, where its use is permitted, stands in place of the standard form, and the instructions given herein and in the Instruction Booklet should be so construed, and references to Form BE-12 should be interpreted as also covering Form BE-12 BANK.

MANDATORY – This survey is being conducted pursuant to the International Investment Survey Act of 1976 (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108 – hereinafter "the Act"), and the filing of reports is mandatory pursuant to Section 5(b)(2) of the Act (22 U.S.C. 3104).

PENALTIES – Whoever fails to report may be subject to a civil penalty not exceeding $10,000 and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment, or both. *(See Section 6 of the Act, 22 U.S.C. 3105.)*

CONFIDENTIALITY – The information filed in this report may be used only for analytical and statistical purposes and access to the information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act. The President may authorize the exchange of the information between agencies or officials designated to perform functions under the Act, but only for analytical and statistical purposes. No official or employee (including consultants and contractors and their employees) shall publish or make available any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified. Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer (22 U.S.C. 3104).

Print name and address of U.S. PERSON FOR BEA TO CONSULT ABOUT THIS REPORT:

U.S. TELEPHONE NUMBER: Area Code | Number | Extension

CERTIFICATION The undersigned official certifies that the information contained in this report is correct and complete to the best of his/her knowledge.

Authorized Official's Signature	Type Name and Title	Date

(18 U.S.C. 1001 (Crimes and Criminal Procedure) makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. Any officer, director, employee, or agent of any corporation who knowingly participates in a willful failure to report, upon conviction, may be punished by a fine, imprisonment, or both (22 U.S.C. 3105). For a further citation of applicable statutes, see the Instruction Booklet to this form.

Part I – IDENTIFICATION OF U.S. AFFILIATE (Continued)

5. U.S. affiliates fully consolidated in this report:

If this report is for a single unconsolidated U.S. bank affiliate enter "1" in the box. If more than one U.S. affiliate is fully consolidated (or aggregated, in case of unincorporated U.S. bank affiliates) in this report, enter the number of U.S. affiliates fully consolidated or aggregated. (Hereinafter, they are considered to be one U.S. affiliate.) Exclude from full consolidation all nonbank U.S. business enterprises (other than those mainly engaged in activities supportive of U.S. bank affiliates); all minority-owned U.S. business enterprises, and all foreign business enterprises owned by this U.S. affiliate; such affiliates must be included in this report on the equity basis, or cost basis if less than 20 percent owned. See consolidation instructions, page of the Instruction Booklet. (Note that those U.S. affiliates not fully consolidated must file a separate Form BE-12.)

If number is greater than "1," attach a list referencing this item 5 and the name of the U.S. affiliate given in item 1, and give the name and U.S. mailing address of, and your percent ownership interest in each U.S. affiliate fully consolidated on this Form BE-12 BANK report.

☐ ← Number

6. U.S. affiliates not fully consolidated in this report:

Number of U.S. affiliates in which this U.S. affiliate has an ownership interest that ARE NOT fully consolidated (or aggregated, in case of unincorporated U.S. bank affiliates) in this report. The U.S. affiliate named in item 1 must include data for such U.S. affiliates in this report on an equity basis, or cost basis if less than 20 percent owned, and must notify such other U.S. affiliates of their obligation to file a Form BE-12 in their own name.

If figure is not zero, attach a list referencing this item 6 and the name of the U.S. affiliate given in item 1, and give the name and U.S. mailing address of, and your percent ownership interest in, such other U.S. affiliates

☐ ← Number

7. Does this U.S. affiliate have an equity interest in a foreign business enterprise or conduct operations outside the United States?

1 ☐ Yes *If "Yes," do not fully consolidate such enterprises in this report; include them in data on an equity basis, or cost basis if less than 20 percent owned.*

2 ☐ No

8. This U.S. affiliate's 1980 fiscal year ends on:

	Month	Day	Year
1			

NOTE: For a U.S. business enterprise that was a U.S. affiliate for all of FY 1980 – Data for the reporting period should be for the U.S. affiliate's 1980 fiscal year; data for close FY 1980 should be for the U.S. affiliate as it existed at the ending date of the 1980 fiscal year; and data for close FY 1979 should be for the U.S. affiliate as it existed one year prior to the 1980 fiscal year date. (Close FY 1979 data must not be restated due to changes in the entity during FY 1980.)

For a U.S. business enterprise that was a U.S. affiliate for only part of FY 1980 – If the enterprise became a U.S. affiliate during the reporting period, the Close FY 1979 data columns should all be zero. If the enterprise ceased to be an affiliate during the reporting period, the Close FY 1980 data columns should all be zero.

9. Was the U.S. business enterprise a U.S. affiliate for only part of FY 1980?

1 ☐ Yes

2 ☐ No

10. If the answer to item 9 is "YES," complete one of the following:

	Month	Day	Year
Date U.S. business enterprise became a U.S. affiliate: 1			
OR			
Date U.S. business enterprise ceased to be a U.S. affiliate: 1			

11. Was there a change in the entity during FY 1980 that caused prior-year data to be restated?

1 ☐ Yes *If "Yes," please note that all Close FY 1979 data must be restated due to a change in the entity.*

2 ☐ No

Ownership – Enter percent of ownership, to a tenth of one percent, based on voting stock if an incorporated affiliate or an equivalent interest if an unincorporated affiliate, in this U.S. affiliate held directly by –	Close FY 1980 (1)	Close FY 1979 (2)
12. All foreign parents of this affiliate – Give name of each (If more than 4, continue on separate sheet):	. %	. %
a.	////	////
b.	////	////
c.	////	////
d.	////	////
13. All U.S. affiliates of foreign parents of this affiliate	. %	. %
14. All other U.S. persons	. %	. %
15. All other foreign persons	. %	. %
16. TOTAL – Sum of items 12 through 15 →	100.0 %	100.0 %

If there is an entry in item 13, column 1 or column 2, give, beginning with item 17, the information requested for each U.S. affiliate holding a direct ownership interest in this U.S. affiliate (if more than 4, continue on separate sheet).

U.S. affiliate holding direct ownership interest in the U.S. affiliate named in item 1				U.S. affiliates in ownership chain which is directly owned by a foreign parent	
Name (1)	BEA Identification Number (2)	Percent direct ownership in U.S. affiliate named in item 1 (For the close of each year, the sum of these percents for all direct owners must equal item 13) Close FY 1980 (3)	Close FY 1979 (4)	Name (5)	BEA Identification Number (6)
17.		. %	. %		
18.		. %	. %		
19.		. %	. %		
20.		. %	. %		

Industry classification of fully-consolidated U.S. affiliate (based on sales or gross operating revenues) – Enter the appropriate 3-digit industry code(s) and the sales (as defined for item 56 on the standard Form BE-12) associated with each code. For a full explanation of each code, see the Industry Classifications and Export and Import Trade Classifications Booklet. If you use fewer than eight codes you must account for total sales. For an inactive affiliate, show the industry classification(s) pertinent to the last active period; for "startups" with no sales, show the intended activity(ies). Bank holding companies must show percentage of total income (item 33 on this form).

	Industry code (1)	Sales (2) Bil. Mil. Thous. Dols.
21. Banking	1 600	2 $
22. Enter code with second largest sales	1	2
23. Enter code with third largest sales	1	2
24. Enter code with fourth largest sales	1	2
25. Enter code with fifth largest sales	1	2
26. Enter code with sixth largest sales	1	2
27. Enter code with seventh largest sales	1	2
28. Enter code with eighth largest sales	1	2
29. Sales accounted for (sum of items 21 through 28)	//////	2
30. Sales not accounted for above	//////	2
31. Total sales – Sum of items 29 and 30 →	//////	2 $

If the amount of sales as given in item 21 is not more than 50.0 percent of total sales as given in item 31, then the U.S. affiliate most likely does not qualify for using Form BE-12 BANK. *Before proceeding, call BEA for clarification (202) 523-0547.*

Part II – FINANCIAL AND OPERATING DATA OF U.S. AFFILIATE

• Use U.S. generally accepted accounting principles unless otherwise specified. All data must represent a full consolidation of domestic majority-owned U.S. affiliates that are marked; include other U.S. and foreign business enterprises on the equity basis, or cost basis if less than 20 percent owned.

IMPORTANT EXAMPLE: Report all dollar figures below in thousands of U.S. dollars, as illustrated:

	Bil.	Mil.	Thous.	Dols.
EXAMPLE: If figure is $2,125,628,000.00	2	125	628	

	Amount (1) Bil. Mil. Thous. Dols.
32. **Total assets at close FY 1980** – As defined for reporting on the U.S. bank affiliate's consolidated report of condition of its domestic offices and affiliates	$
33. **Total income** – Include sales or gross operating revenues (excluding sales taxes), equity in net income of unconsolidated U.S. and foreign business enterprises, unrealized and realized capital gains (losses) which have been recognized, and other income. Use same basis as required by item 62 of standard Form BE-12	
34. **Net income** – Net income after provision for U.S. Federal, State, and local income taxes, but before dividends on common and preferred stock. Use same basis as required by item 68 of standard Form BE-12	
35. **Net realized and unrealized capital gains (losses)** – Include gains (losses) resulting from the sale or disposition of investment securities, property, plant, and equipment, or other assets; those resulting from changes in the dollar value of the affiliate's foreign currency denominated assets and liabilities due to changes in foreign exchange rates during the reporting period; and all other recognized capital gains (losses), including those resulting from revaluation of assets, whether or not realized. Equals sum of items 36 and 37.	
36. **Those capital gains (losses) that are included in net income, item 34 above**	
37. **Those capital gains (losses) that are carried directly to an equity account and are not included in net income, item 34 above**	
	Number
38. **Total employment** – Report the average number of employees for the year, as defined for item 119 of standard Form BE-12	
	Amount Bil. Mil. Thous. Dols.
39. **Total employee compensation** – For all employees, the sum of wages and salaries and employer expenditures for employee benefit plans, as defined for item 123 of standard Form BE-12	$

If item 38, total employment, or item 39, total employee compensation, is zero, explain here.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

A separate Part III, or Part III–ADDITIONAL, must be completed for each direct or indirect equity interest held by foreign parents in the U.S. affiliate at any time during the reporting period. Permanent debt and equity investments and retained earnings, income, fees, and other items remitted or credited between the U.S. affiliate and the foreign parent, should be reported here on the appropriate lines. **NOTE:** In order to avoid duplication in U.S. Government statistics, permanent debt investment (item 52), and owners' equity (items 53 through 58); and changes in these items should not be reported on Treasury Department International Capital Forms. However, transactions and positions of the U.S. affiliate with foreign affiliates of the foreign parent are all assumed to be regular bank transactions and should be reported on the Treasury Department International Capital forms rather than here.

40. **Number of Part III schedules filed by the U.S. affiliate** – If there is only one, enter "1" in the box below; if more than one, enter the number of Part III's to be filed.

☐ ← Number If number is greater than "1", use Part III–ADDITIONAL schedules.

41. **Name of foreign parent that this Part III is for:**

Name

The foreign parent named in item 41 holds *(Mark either 42 or 43):*

42. ☐ A direct equity interest in the U.S. affiliate

43. ☐ An indirect equity interest in the U.S. affiliate

If a foreign parent holds both direct and indirect equity interests, then separate Part III's must be completed for each line of ownership. The marking of either item 42 or 43 will indicate which is being reported on this Part III.

44. **If item 42 is marked, give percent of voting rights directly owned** (For the close of each year, the sum of this item from all Part III's filed for the U.S. affiliate must equal item 12.)	Close FY 1980 (1)	Close FY 1979 (2)
	. %	. %

45. **Country of location of foreign parent named in item 41:**

☐☐☐ ← BEA USE ONLY

46. **Industry code* of foreign parent named in item 41:**

☐☐☐ ← Code

47. **Is the foreign parent named in item 41 the ultimate beneficial owner (UBO)** *(See definition)?*

1 ☐ Yes

2 ☐ No If the answer to item 47 is "No," complete the following:

48. **Name of UBO** *(if the UBO is an individual, a name is not required, complete only items 49 and 50):*

49. **Country of UBO named in item 48:**

☐☐☐ ← BEA USE ONLY

50. **Industry code* of UBO named in item 48:**

☐☐☐ ← Code

* Secure industry code for foreign parent or ultimate beneficial owner from page of the Industry Classifications and Export and Import Trade Classifications Booklet.

Part III – INVESTMENT AND TRANSACTIONS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT (Continued)

NOTE: If item 43 is marked, then only the following items in the rest of this Part III need be completed to report direct transactions or positions, if any, related to permanent debt investment between the U.S. affiliate and the foreign parent: 51, 52, 73, 74, 75, 76, and 77. Do not duplicate data reported on other Part III's.

SECTION A – INVESTMENT BETWEEN U.S. AFFILIATE AND FOREIGN PARENT NAMED IN ITEM 41, ACCORDING TO BOOKS OF U.S. AFFILIATE

	Balance, Close FY 1980 (1) Bil. Mil. Thous. Dols.	Balance, Close FY 1979 (2) Bil. Mil. Thous. Dols.
* Debt to foreign parent		
51. Long-term debt to foreign parent, total – Debt with an original maturity of more than one year or with no stated maturity, and debt with an original maturity of one year or less which has been renewed, or with respect to which there is the intention and the means to renew, extend, or refinance, for more than one year. Exclude current portion due.	$	$
52. Foreign parent's permanent debt investment in the U.S. affiliate – That part of item 51 which is considered by the foreign parent to be permanent debt investment in the affiliate		
* Foreign parent's share in owners' equity		
Unincorporated affiliate:		
53. Permanent invested equity capital – That part of the foreign parent's investment in the U.S. affiliate, other than permanent debt investment reported in item 52, which the foreign parent considers to be permanent invested equity capital, including unremitted income. This would normally consist of capital allocated to the affiliate, special reserves out of net income, and net income not yet distributed		
Incorporated affiliate:		
54. Capital stock, common and preferred, voting and nonvoting		
55. Additional paid-in capital		
56. Retained earnings (deficit)		
57. Treasury stock held by U.S. affiliate	( )	( )
58. Total owners' equity – Sum of items 54, 55, 56, and 57 →	$	$
* BEA USE ONLY		

SECTION B – CHANGES IN FOREIGN PARENT'S EQUITY HOLDINGS IN U.S. AFFILIATE

Report in items 59 through 69 transactions during the reporting period by the foreign parent that changed its equity holdings, as given in item 53 or item 58, in the U.S. affiliate, but exclude changes caused by carrying net income to the equity account, the payment of stock or cash dividends (other than liquidating dividends), or the distribution of earnings during the period. Exclude effect of treasury stock transactions with persons other than the foreign parent and reorganizations in capital structure that do not affect total equity. Report all amounts at transactions value, i.e., the value of the consideration given (received) by the foreign parent.

	Amount (1) Bil. Mil. Thous. Dols.
* Transactions between foreign parent and U.S. affiliate:	
Increase in equity interest –	
59. Establishment of affiliate by foreign parent	$
60. Purchase by foreign parent of capital stock from incorporated affiliate	
61. Additional equity capital contributed by foreign parent (for an incorporated affiliate, report only those contributions not resulting in the issuance of stock)	
Decrease in equity interest –	
62. Total liquidation of affiliate by foreign parent	
63. Sale by foreign parent of capital stock to incorporated affiliate	
64. Return of contributed equity capital to foreign parent (for an incorporated affiliate, report only those returns not resulting in a reduction of issued stock)	
* Transactions between foreign parent and a person other than U.S. affiliate:	
Acquisition by foreign parent of equity interest in U.S. affiliate from –	
65. U.S. persons other than the U.S. affiliate	
66. All foreign persons	
Sale by foreign parent of equity interest in U.S. affiliate to –	
67. U.S. persons other than the U.S. affiliate	
68. All foreign persons	
69. Increase (decrease) of transactions value of changes in equity holdings – The consideration given (received) by the foreign parent in order to bring about the change in equity holdings: must equal sum of items 59, 60, 61, 65, and 66 minus sum of items 62, 63, 64, 67, and 68.	
70. Approximate book value on the date of the transaction(s), based on books of the U.S. affiliate, that is equivalent to the transactions value reported in item 69. (The amount given here should approximate the change in item 53 or item 58, column 1 minus column 2, after allowance is made in item 53 or item 58 to exclude changes caused by carrying net income to the equity account, payment of stock or cash dividends (other than liquidating dividends), distribution of earnings, and treasury stock transactions.)	$

SECTION C – PAYMENTS AND RECEIPTS OF DIVIDENDS, DISTRIBUTED EARNINGS, INTEREST, FEES, ROYALTIES, AND RENTALS BETWEEN U.S. AFFILIATE AND FOREIGN PARENT

Enter amounts paid, received, or accrued into intercompany accounts. Include amounts for which payments were made in-kind. Amounts should be entered as of the date paid (received) by the affiliate, or entered into intercompany accounts with the foreign parent, whichever occurred first. For an item entered into intercompany account, in order to avoid duplication, any subsequent settlement of the account must not be reflected in one of the items below, but must be reflected only as a reduction in intercompany accounts.

	Payments or credits by U.S. affiliate to foreign parent: Net of U.S. tax withheld (1) Bil. Mil. Thous. Dols.	Payments or credits by U.S. affiliate to foreign parent: Amount of U.S. tax withheld (2) Bil. Mil. Thous. Dols.	Receipts by or credits to U.S. affiliate from foreign parent: Net of foreign tax withheld (3) Bil. Mil. Thous. Dols.	Receipts by or credits to U.S. affiliate from foreign parent: Amount of foreign tax withheld (4) Bil. Mil. Thous. Dols.
Incorporated U.S. affiliate:				
71. Dividends on the U.S. affiliate's common and preferred stock, paid out of current and past earnings, excluding stock dividends	$	$	//////	//////
Unincorporated U.S. affiliate:				
72. Earnings distributed, whether out of current or past earnings			//////	//////
All U.S. affiliates:				
73. Interest on long-term debt considered to be permanent debt investment – Enter interest paid by U.S. affiliate on the affiliate's long-term debt to the foreign parent which is considered to be permanent debt investment in the affiliate, item 52			//////	//////
74. Royalties, license fees, and other fees for the use or sale of intangible property			$	$
75. Payments and receipts for use of tangible property – Include rentals for operating leases of one year or less and net rent on operating leases of more than one year. Net rent is the equivalent to the total lease payment less the return of capital (depreciation) component				
76. Fees for services rendered – Include fees for management, professional or technical services, R & D assessments, and allocated expenses other than those given above				
77. TOTAL – Sum of items 71 through 76 →	$	$	$	$

FOREIGN PARENT'S EQUITY IN U.S. AFFILIATE'S NET INCOME

Net income must be calculated in accordance with the all inclusive concept of the income statement.

	Amount (1) Bil. Mil. Thous. Dols.
78. Foreign parent's direct equity in U.S. affiliate's net income (loss) – Enter foreign parent's direct ownership share of net income, item 34	$
79. Foreign parent's share of item 36, net realized and unrealized capital gains (losses) included in net income	
80. Foreign parent's share of item 37, net realized and unrealized capital gains (losses) taken directly to retained earnings of owner's equity, after provision for income tax liability (benefit), if any, on the gains (losses)	$

[FR Doc. 81-2367 Filed 1-21-81; 8:45 am]
BILLING CODE 3510-06-C

15 CFR Part 806

Direct Investment Surveys; Solicitation of Written Public Comment on Proposed Survey Rule Changes

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Proposed rule.

SUMMARY: This rule is being proposed to accomplish the following:

(1) Solicit written public comments on increasing the exemption level for the quarterly reports on U.S. direct investment abroad (Forms BE–577, 578, and 578B) from $1,000,000 to $5,000,000.

(2) Notify the public that Form BE–577S has been discontinued.

(3) Notify the public that the proposal to initiate an annual survey of U.S. direct investment abroad, the BE–11, is being dropped from consideration at this time; and that the BE–133, Sources and Applications of Funds of U.S. Direct Investment Abroad, survey is being discontinued.

(4) Make three minor changes to update, clarify, and correct the regulations.

DATES: Written comments must be received by BEA no later than February 23, 1981.

ADDRESS: Written comments should be addressed to the U.S. Department of Commerce, Bureau of Economic Analysis, International Investment Division (BE–50), Washington, D.C. 20230. All comments in response to this notice will be available for public inspection from 8:00 to 4:00 p.m. in room 608, 1401 K Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230, (202) 523–0657.

SUPPLEMENTARY INFORMATION: Each of the proposed actions is discussed below.

1. Based on the results of the Benchmark Suvery of U.S. Direct Investment Abroad–1977, it has been determined that the exemption level for the quarterly balance of payments reports for U.S. direct investment abroad can be increased from $1,000,000 to $5,000,000 (positive or negative, of assets, sales, or net income) without significantly affecting the validity of the country by industry data normally published. The numbers and titles of the forms are:

BE–577—Direct Transactions of U.S. Reporter with Foreign Affiliate Incorporated Abroad

BE–578—Transactions of U.S. Reporter with Unincorporated Foreign Affiliate, Except a Bank

BE–578B—Transactions of U.S. Reporter with Unincorporated Foreign Banking Affiliate

This action will result in a reduction from about 15,000 to about 11,000 in the number of reports filed each quarter.

It is proposed that the change become effective with the reports due to be filed covering the first quarter of 1981.

2. After consultations with the Office of Federal Statistical Policy and Standards (OFSPS), Form BE–577S, U.S. Reporter's Directly-Owned Foreign Affiliate's Share in Net Income of Indirectly-Owned Foreign Affiliate, an annual report, was discontinued after collecting data for 1979. This action will remove from the regulations the requirement for filing the report.

3. In the January 4, 1980 **Federal Register**, Volume 45, No. 3, page 1049, BEA published a notice proposing to abolish the mandatory reporting requirement for an annual statistical survey, the BE–133, Sources and Applications of Funds of U.S. Direct Investment Abroad, and to establish a mandatory reporting requirement for a new statistical survey, the BE–11, Annual Survey of U.S. Direct Investment Abroad.

These proposed actions were the subject of a public hearing and several interagency meetings conducted by OFSPS. It was decided that the BE–11 survey should not be initiated at this time but will be reconsidered as an annual survey to follow the next benchmark survey of U.S. direct investment abroad, which will cover 1982. At the same time, it was decided that BEA would not continue the BE–133, Sources and Applications of Funds of U.S. Direct Investment Abroad, survey. This action will remove from the regulations the requirement for filing the report.

4. The following minor changes are being made to update, clarify, and correct the regulations:

(a) The definition of "United States" as contained in the regulations is being revised to eliminate the "Canal Zone" as part of the United States;

(b) Language is being added to the section on real estate to clarify the circumstances whereby real estate owned is considered real estate held for personal use and, therefore, not subject to reporting requirements; and

(c) § 806.14(b) is being revised to add two words—"conditions apply"—that were inadvertently dropped in a prior notice.

It is therefore proposed to modify Part 806 as set forth below.

George Jaszi,

Bureau of Economic Analysis.

1. Section 806.7(a) is revised to eliminate the Canal Zone from the definition of the United States as follows:

§ 806.7 General definitions.

(a) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

2. Section 806.8 is revised to read as follows:

§ 806.8 Real estate.

Residential real estate held exclusively for personal use and not for profit-making purposes is not subject to the reporting requirements of this Part. A residence which was an owner's primary residence that is then leased by the owner while outside his/her country of residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owners(s) of the corporation, is considered real estate held for personal use.

If a business enterprise, otherwise required to report, is in the form of real property not identifiable by name, reports are required to be filed by and in the name of the beneficial owner, or in the name of such beneficial owner by the intermediary of such beneficial owner.

3. The introductory paragraph of § 806.14(b) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(b) Foreign affiliate consolidation. In cases where the recordkeeping system of foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply: * * *

* * * * *

4. In § 806.14(e)(1), (2), and (3), change the exemption level in each from $1,000,000 to $5,000,000.

5. In § 806.14(f), strike subparagraphs (1) and (4), and renumber subparagraph (2) to (1); and renumber subparagraph (3) to (2).

[FR Doc. 81–2366 Filed 1–19–81; 1:18 am]

BILLING CODE 3510–06–M

federal register

Thursday
January 22, 1981

Part X

Department of Health and Human Services

Office of Human Development Services

Social Services Programs Under Title XX and Titles I, IV-A, X, XIV and XVI (AABD) of the Social Security Act

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1392, 1393, 1396 and 1397

Social Services Programs Under Title XX and Titles I, IV-A, X, XIV and XVI (AABD) of the Social Security Act

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: These rules are proposed to implement the amendments to title XX of the Social Security Act contained in the "Adoption Assistance and Child Welfare Act of 1980," Pub. L. 96-272. In addition, we propose to make conforming changes in the regulations for the social services programs under titles I, IV-A, X, XIV and XVI (AABD) in the Territories that are necessitated by proposed changes in the rules governing the title XX program. We are also proposing several clarifying changes and technical corrections to the current regulation.

DATE: Consideration will be given to written comments on or before March 23, 1981. Agencies or organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Cesar A. Perales, Assistant Secretary for Human Development Services, Department of Health and Human Services, P.O. Box 1923, Washington, D.C. 20013. Comments will be available for public inspection in room 722-E in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., area code (202) 472-4415.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie U. Brooks, Room 722-E, HHH Building, Department of HHS, 200 Independence Avenue SW., Washington, D.C. 20201 (202) 472-4415.

SUPPLEMENTARY INFORMATION: Pub. L. 96-272, the "Adoption Assistance and Child Care Welfare Act of 1980," was signed by the President on June 17, 1980. Implementation of the statute requires a substantial number of revisions to the title XX regulations in 45 CFR Part 1396 (formerly Part 228), and modifications to the regulations contained in Parts 1392, 1393, and 1397 of title 45 (formerly Parts 220, 222 and 229 respectively). With the exception of the training plan, most of the provisions of the statutory amendments are nondiscretionary. Therefore, these proposed regulations, for the most part, adhere strictly to the statute.

First, we will discuss the provisions in the statute and the corresponding changes we are proposing in Parts 1396 and 1397 in the order in which they will appear in those Parts. Second, we will discuss the conforming changes we propose in Parts 1392 and 1393 of the regulations for the social services programs in the Territories under titles I, IV-A, X, XIV, and XVI (AABD) of the Act. The proposed revisions to the title XX rules are as follows:

1. *Program definitions*—This section adds a definition of "Training plan" and is revised to recognize the multi-year service plan option.

2. *Multi-Year Plan and Choice of Fiscal Year*—Section 2004 of the Act previously required each State to publish and make available for public review an annual comprehensive services plan which describes its services program. Pub. L. 96-272 amended Section 2004 to allow States to use a multi-year service program period. States may now choose a one, two, or three-year program period and must publish the services plan prior to the beginning of the program period selected. The program period must begin at the beginning of the fiscal year of the Federal, State or local government and end at the close of that fiscal year or the second or third fiscal year, as appropriate.

When a State adopts a multi-year program period, the statute requires that it must publish and make generally available information about the program at intervals prescribed by the Secretary. We think that the public should be informed about the program at least on an annual basis. We gave much consideration to what information States should make available, at what intervals and to what audience or audiences. We considered requiring that States publish an annual display ad similar to current requirements. We decided against this option as it would require an undue amount of paperwork, would prove too costly and would not provide States with flexibility consistent with the multi-year program period option.

We also considered allowing States complete discretion in determining the content, publication methods and publication intervals for this information. This proposal offers the advantage of simplicity, but we believe that minimum Federal requirements are necessary to ensure that all interested individuals and organizations are informed about the title XX program.

Therefore, we are proposing in a new § 1396.37 that States opting for a multi-year program period take action prior to the beginning of the second and/or third fiscal year that is part of the State's service program period aimed at two major "audiences" for two purposes. First, we believe certain information is important to individuals, advocacy organizations, services agencies and others to keep them informed about and involved in the State's public review process. We also believe that actual and potential service recipients need to know about the title XX services that are available and where to go to apply for and receive them.

Therefore, for addressing interested individuals, organizations, and agencies, we propose that the State publish written information consisting of: (1) the name of the State agency administering the plan; (2) the program period; (3) the publication date of the services plan; (4) the actual amount of the Federal allotment for the forthcoming fiscal year; (5) where to obtain information about the services program and where to apply; (6) where the services plan may be reviewed or a copy obtained; and (7) the information required by section 1616(e) of title XVI(SSI) about standards for residential facilitites for SSI recipients. By not requiring that this information be published as a display ad, we propose to give States the option of selecting the manner in which this information is published.

Second, for informing actual and potential service recipients, we propose that the State make the following information information generally available throughout the State at least annually, and preferably on an ongoing basis: (1) a description of services offered; (2) who is eligible for services; and (3) where to call throughout the program period for information about and where to apply for a service. This may be accomplished through the news media (e.g., newspapers, television or radio) and/or by means of posters or pamphlets located in places frequented by the general public.

Also, we are proposing that the information desctibed above be made available in foreign language(s) when the State agency determines that it is appropriate.

Although we propose to allow States to select the publication and/or media methods best suited to their particular audiences, we expect that the method(s) used will insure that the information will reach a maximum number of interested parties, that the information may be understood by the average citizen in the State, and that the State will periodically examine the method(s)

it uses to access the effectiveness of such method(s).

In order to reflect the multi-year program period option, the word "annual" has been deleted from all references to "Comprehensive Annual Services Program Plan" (CASP); all references to "program year" have been changed to "program period"; and other language changes have been made in Parts 1396 and 1397 as necessary.

3. *Permanent Extension of Provisions Related to Services For Alcoholics and Drug Addicts*—From October, 1975 through March 31, 1980, States could receive Federal matching under title XX for detoxification and rehabilitation services to alcoholics and drug addicts without regard to certain statutory limitations placed on the provision of room or board, medical and remedial care, and services to individuals in certain institutions. (These limitations require that medical and remedial care and room and board be integral but subordinate to a particular service and that services provided to individuals living in hospitals, skilled nursing facilities (SNFs), intermediate care facilities (ICFs) or prisons be provided by staff other than the staff of such facilities.) A series of temporary legislative amendments exempts services for alcoholics and drug addicts from these limitations. Pub. L. 96–272 amends section 2002(a)(7) and (a)(11) of the Act to make these exemptions permanent. Under the amendments, FFP is available in expenditures for medical care and room or board that are a part of the entire rehabilitative process whether or not more than one provider participates in the process. FFP is also available in expenditures for initial detoxification in a hospital, SNF or ICF if the detoxification is integral to the further provision of services under title XX, even if the detoxification services are provided by the institution's own staff. Sections 1396.40, 1396.41, and 1396.44 are revised to incorporate these exemptions.

4. *Emergency Shelter For Adults*—Prior to enactment of Pub. L. 96–272, emergency shelter was available under section 2002(a)(11) of the Act only for children who were in danger of abuse, neglect or exploitation. Under current rules, this service may be provided to such children for a period not to exceed 30 days in any six-month period. Pub. L. 96–272 amends section 2002(a)(11) to allow States to provide emergency shelter for adults. In order to receive this service, the adult must be in danger of physical or mental injury, neglect, maltreatment or exploitation. This provision will enable States to respond more effectively in situations such as domestic violence, where battered spouses and other vulnerable adults who are unable to protect their own interests are in need of emergency shelter. The new provision regarding emergency shelter for adults is incorporated into Section 1396.46.

5. *Funding Provisions*—Pub. L. 96–272 made several changes with respect to funding.

First, the allocation of title XX funds will be indexed annually based on the Consumer Price Index until a maximum of $3.3 billion is reached. Section 1396.52 is amended to reflect this change.

Second, Pub. L. 96–272 places a limitation on training funds for fiscal years 1980 and 1981. Prior to fiscal year 1980, States were not limited as to the amount of Federal funds that could be exended for personnel training and retraining directly related to the provision of services.

Third, section 2002(a)(1) of the Act was amended to specify that, beginning in FY 1982, funds for training expenditures will not have a ceiling but States will be reimbursed only for expenditures included in the training plan approved by the Secretary. Section 1396.81 is revised to incorporate this change.

Fourth, Pub. L. 96–272 amended section 2002(a)(7) with respect to donations for training for FY 1980 and FY 1981. States may accept funds donated for personnel training by a public or private non-profit provider of training and use this donation to match the Federal share. In other words, for these two fiscal years, States may accept "restricted" private donations for their training programs. Section 1396.53 is modified to reflect this change.

Finally, Pub. L. 96–272 extends permanently the provision which allows 100% Federal matching for child day care services. During fiscal years 1977, 1978 and 1979, $200 million above the title XX funding ceiling was available for child day care services at 100 percent Federal matching. Under Pub. L. 96–272, up to $200 million for child day care services is included within the ceiling for FY 1980 and FY 1981. For FY 1982 and thereafter, the States will be limited to 8 percent of their title XX ceiling at the 100 percent match for these services. Including these funds within the State's allotment means that a State may, at its option, use its share of these funds for child day services, and claim 100 percent or use these funds for other services at the 75 percent match. Section 1396.51 revised to incorporate this change.

6. *AFDC Recipient*—Pub. L. 96–272 established a new Part E of title IV of the Social Security Act under which foster care maintenance and adoption assistance payments may be made on behalf of certain children. Sections 472 and 473 of Part E provide that any child for whom such payments are made shall be deemed an "AFDC" recipient under title IV–A for purposes of titles XIX and XX. We have accordingly included these individuals in Section 1396.56 (Fifty percent rule) and 1396.60 (Persons eligible and access to services) as part of the AFDC category.

7. *The Training Plan*—As we stated earlier, one of the purposes of our proposals for the training program is to strengthen the State agency's administration of the title XX services program. We believe the requirement for a training plan will enable States to plan for, cost out in advance and better manage a comprehensive training program that directly relates to their social services programs.

We believe one purpose of the Congress in enacting this new training plan and approval requirement was to enable the Federal Government to contain training costs. We especially solicit comment on whether the proposed requirements will achieve this purpose and provide a reasonable basis for decisions both on individual training activities and on over-all budgetary levels. In addition, we solicit suggestions about proven standards or approaches to assessment of training needs which the Department should encourage States to meet or use.

A training plan was originally required by the title XX regulations issued in June 1975, but the regulations did not specify any requirements for the plan. The requirement was removed by the Department during the first major revision of the regulations in January 1977, despite strong support by commentors, on the grounds that it imposed unnecessary paperwork requirements on the States. Even so, some States have continued to transmit to the Regional Offices a copy of their title XX training plan along with their annual services plan. Strong support for a training plan has also been expressed by provider agencies, the academic community, and public interest groups. For the most part, the training plan is not seen as a burden but as a needed management tool.

Section 2002(a)(2)(A)(iii) II of the Act, as added by Pub. L. 96–272, contains the following requirement:

> Payment to a State with respect to such expenditures [training] for fiscal year 1982 or any succeeding fiscal year may be made only if the State has submitted to the Secretary in accordance with paragraph (18) (prior to the beginning of the fiscal year involved) a

training plan specifying how its funds expended for such training or retraining in that fiscal year will be used, and only with respect to expenditures included in such plan which are approved by the Secretary in accordance with criteria prescribed by him.

Section 2002(a)(18), added by Pub. L. 96–272, prescribes the following requirements for a training plan:

Effective October 1, 1981, no payment may be made under this section for training or retraining expenditures except in accordance with a training plan approved by the Secretary which, at a minimum—

(A) Describes how training needs were assessed and how the assessment was used to structure the training programs, the individuals to be trained, and the training resources to be used;

(B) Demonstrates that the training activities have a direct relationship to the title XX services program and to the State's staffing needs to carry out the title XX services programs; and

(C) Describes the State agency's plan to monitor training programs and to evaluate the agency's overall staff training and development program.

To carry out these requirements, we are proposing to require what we believe is the minimum data required by law and needed as the basis for Departmental approval of training expenditures. We considered asking for more detailed and more specific data. This was rejected as being too burdensome on States although Congress and others repeatedly express concern at our lack of data on the training program. On the other hand, we felt we could not require less data and still fulfill the requirement of the law that expenditures be approved. Therefore, we have proposed in § 1396.87 that States submit, in line with paperwork burden reduction and simplified State planning efforts, the following:

(a) An assurance that the State agency has a full time staff development director and adequate staff to manage the title XX training program;

(b) A summary statment of program goals and objectives;

(c) A brief description of the needs assessment process used;

(d) An assurance that the results of the needs assessment are on file in the State agency and available for review by the Department;

(e) A prioritized list of training needs;

(f) A statement of the amounts of Federal, State appropriated and donated funds available for training;

(g) Estimated training activities and expenditures;

(h) A description that demonstrates that the training program was based on the needs assessment and has a direct relationship to the current services program and to the State's staffing needs;

(i) A description of the agency's plan for monitoring training programs; and

(j) A description of the State agency's plan for evaluating the training programs.

The data we are proposing to require as a part of the training plan are based on statutory requirements. With respect to the requirement for a full-time staff development director, we believe a direct relationship exists between the quality of a training program and the designation of a full-time official responsible for the program, as well as adequate staff to carry out the duties and responsibilities related to all phases of training program operations. By full-time director we mean an individual who is employed full time and may, in addition to title XX training, be responsible for other training programs in the agency, e.g., training under title IV–A or title XIX.

Statutory requirements also include information specified in § 1396.87(g), "Estimated Activities and Expenditures." We view this requirement as the operational backbone of the training plan.

We propose to require data concerning:

(a) The training activities (e.g., workshops, courses);

(b) The subject of the training;

(c) The number of persons to be trained;

(d) The expenditures associated with trainees (i.e., per diem, travel, education costs);

(e) The provider of the training; and

(f) The expenditures associated with the provider of the training (e.g., salaries, purchase or development of teaching materials).

In developing this regulation, we have had much discussion concerning what constitutes an expenditure (i.e., what level of detail should be required, do we mean actual or estimated expenditures); what constitutes approval of an expenditure and of the training plan as required by law; and, after approval of a plan, under what conditions are amendments required.

We have resolved the first concern by proposing to allow States to submit aggregate and estimated activity and expenditure data as opposed to requiring actual expenditure data on an activity by activity basis. This means that for example, States may provide estimated expenditure data for 50 workshops on interviewing for State and provider agency staff throughout the State, or 100 courses on child development for provider agency staff. (A chart for illustrative purposes is included following this section of the regulation and gives further examples.)

This aggregate and estimated activity and expenditures data will be reviewed and approved as one part of the training plan by the Regional Administrator, HDS. FFP will be available only for approved expenditures in an approved training plan.

We think that it is clear that Congress intended that we approve training expenditures in advance. Advance approval can only be on the basis of estimates, and we are aware that no matter how careful a State's estimates are, actual expenditures may well vary somewhat from those estimates. Accordingly, we are proposing to allow up to a 5 percent deviation in actual expenditures from the approved estimated amounts. Expenditures in excess of the 5 percent deviation will be disallowed unless the State amends its plan and obtains advance approval for the amendment. We have tried to build flexibility into the approval and amendment process as we view the training plan as an operational, on-going plan rather than a static, formal one. Accordingly, we propose to allow States to amend their training plans and/or activities and expenditures at any time.

With respect to approval of the training plan, all the information required by § 1396.87 must be submitted before a plan can be approved. We propose to allow that the training plan, amendments or the annual activities and expenditure data required by § 1396.87(g) to be approved, even though certain specific activities and/or expenditures are not approved. (All specific activities and expenditures must be approved, however, in order to receive FFP for these expenditures.) This proposal allows FFP to continue uninterrupted for those approved activities and expenditures while questions concerning specific activities and expenditures are being resolved.

All States must submit their initial training plans for approval at least 60 days prior to October 1, 1981, before FFP can be claimed for training expenditures in FY 1982. Subsequent training plans must be submitted at least 60 days prior to the beginning of the Federal fiscal year. We are proposing to require that States conduct a needs assessment and an evaluation of their training programs at least once every three years. Accordingly, we are proposing that States submit new training plans at least once every three years. For those years that a new training plan is not required, States may submit either all the information required by § 1396.87 or only the estimated activities and expenditure data required by

§ 1396.87(g) if previously submitted information in the training plan is still accurate and current. This also is in in line with paperwork reduction efforts.

In cases where the Regional Administrator questions a part of the training plan, the State agency shall be responsible for documenting, justifying or correcting the item in question.

Items not resolved through negotiation may be appealed to the Assistant Secretary in accordance with § 1396.88.

8. *Permanent Extension of Grants to Day Care Providers to Hire Welfare Recipients and Win Tax Credit*— Through a series of temporary legislative amendments, from September, 1976, through September 30, 1978, States, at their option, could make title XX grants to day care providers to hire welfare recipients. Proprietary day care providers were also eligible to receive WIN tax credits. This option, with a few additions, was extended by Pub. L. 96–178 for the period October 1, 1979 through March 31, 1980 and made permanent by Pub. L. 96–272. The amount of grants to day care providers to hire welfare recipients is now set at $6,000 annually in the case of public or non-profit providers; and $5,000 annually in the case of other providers. Also, a new provision expanded the definition of an eligible welfare recipient to include a part time employee if the employee's employment is related to the provision of child care services. We have accepted the suggestion in the Conference Report that a part time employee be defined as one who is employed at least 8 hours per week. (96th Congress, 2nd Session, House Rept. No. 96–900, p. 63.) A new subpart J contains these provisions.

Conforming Changes to Parts 1392 and 1393. Prior to Pub. L. 96–272, in addition to funds for social services available to the Territories under Section 1108 of the Act, funds were also made available to the Territories under Section 2002 of the Act contingent upon the States' certifying that they would not use all of their title XX allotments. The maximum amount that could be available to the Territories under Section 2002 was $16 million, if the States so certified.

Pub. L. 96–272 amends section 2002(a)(2) to authorize a separate entitlement for the Territories of $16.1 million. Even though the entitlement is authorized under Section 2002, the title XX program requirements and options were not extended to the Territories. For services under titles I, IV–A, X, XIV and XVI(AABD), Guam and the Virgin Islands are entitled to $500,000 each and Puerto Rico is entitled to $15 million. The Commonwealth of the Northern Mariana Islands is entitled to $100,000 for services under title IV–A and for services to other individuals as defined by the Secretary. We are proposing to define "other individuals" as aged, blind and disabled persons who are former, current, or potential recipients of SSI. Potential recipients refers to individuals whose income and life circumstances make it likely that they will, within one year, become SSI recipients unless preventive services are provided to them. In our consideration of this proposal, we were guided by Congressional intent as expressed in the Omnibus Territories Act (Pub. L. 94–241) that the Commonwealth of the Northern Marianas be provided with the same options as are available to Guam with respect to services for their residents. We particularly solicit comments from the Northern Marianas on this suggestion.

Conforming changes to implement this legislative provision and to make other technical changes are proposed in the relevant sections of Parts 1392 and 1393.

The Department is required to submit to the Office of Management and Budget (OMB) for review and approval Subpart H of Part 1396 which contain reporting and recordkeeping requirements in connection with the training plan. The Department will submit that Subpart to OMB.

The Department has determined that these proposed regulations do not exceed the threshold criteria established by Executive Order 12044 for regulatory analyses. Therefore, a full regulatory analysis was not done. The completed threshold study which describes an estimate of potential costs the regulations might create is available for public review. Since these proposed rules have implications for cost increases only as related to the title XX training regulations (Subpart H of Part 1396), we have confined the study to that area of the NPRM.

Under chapter 6 of the Administrative Procedure Act, which was recently added by the Regulatory Flexibility Act, Pub. L. 96–354, September 19, 1980, an agency is required to make available for public comment an initial regulatory flexibility analysis, which describes the impact of proposed regulations on small entities, e.g., small businesses, small organizations, and small governmental jurisdictions, unless the head of the agency certifies that the regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The Secretary of Health and Human Services certifies that the regulation proposed in this notice of proposed rule making will not have a significant economic impact on a substantial number of small entities.

Consequently, an initial regulatory flexibility analysis has not been prepared for this rule.

The reasons for the Secretary's certification in this NPRM are that (1) most of these regulations impose conditions for Federal financial participation on the State agency and do not impact directly or indirectly upon small businesses, small organizations, or small governmental jurisdictions as defined in the Act; (2) although a few of these regulations require the State to impose conditions of eligibility for grants or contracts for which small entities may be eligible, these conditions are required by law or are information requirements that can be met with available data or their cost would be paid by the grant or contract; or (3) these regulations impose no compliance or recordkeeping or reporting requirements or small entities.

(Sec. 1102, 49.647 (42 U.S.C. 1302) Pub. L. 96–272)

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients)

Dated: January 7, 1981.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: January 16, 1981.

Patricia Roberts Harris,

Secretary.

We propose to amend Parts 1392, 1393, 1396 and 1397 of 45 CFR Chapter XIII, as follows:

1. The Table of Contents of 45 CFR Part 1392 is amended by revising the title of § 1392.64 as follows:

PART 1392—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF THE SOCIAL SECURITY ACT

* * * * *

Subpart C—Federal Financial Participation

Sec.

1392.64 Federal financial participation: Provisions common to title IV–A and B.

* * * * *

2. 45 CFR 1392.61(f) is corrected to remove the word "delete" inadvertently included in the heading and to revise § 1392.61(f) introductory text and (f)(3)(iii) as follows:

§ 1392.61 Federal financial participation; AFDC.

* * * * *

(f) *Rates and amounts of Federal financial participation (FFP) and cost allocation requirements for Puerto Rico, the Virgin Islands, Guam, and the*

Commonwealth of the Northern Mariana Islands.

* * * * *

(3) * * *

(iii) Guam shall not exceed $90,000.

* * * * *

3. In § 1392.61, a new paragraph (g) is added and the current paragraph (g) is redesignated as paragraph (h), and the word "delete" is removed from subparagraph (h)(3).

* * * * *

(g) *Allotments to the Territories under section 2002 of the Act.* (1) In addition to amounts available under section 1108 of the Act, beginning in FY 1980 the Secretary allocates:

(i) To Puerto Rico, $15,000,000;

(ii) To the Virgin Islands, $500,000;

(iii) To Guam, $500,000; and

(iv) To the Commonwealth of the Northern Mariana Islands, $100,000.

(2) The amounts specified in paragraphs (g)(1) (i), (ii) and (iii) of this section are for the purpose of payments for services under sections 3(a) (4) and (5), 403(a)(3), 1003(a) (3) and (4), 1403(a) (3) and (4); and 1603(a) (4) and (5) of the Act.

(3) The amount specified in paragraph (g)(1)(iv) of this section shall be used to provide services under title IV–A, and to aged, blind, and disabled individuals who are former, current, or potential recipients of SSI. Potential recipients are individuals whose income and life circumstances make it likely that they will, within one year, become SSI recipients unless preventive services are provided to them.

(h) *Federal financial participation in the work incentive program.* (1) Federal financial participation at the rate of 90 percent is available in the costs of self-support services (and the related administrative costs) provided by the separate administrative units in accordance with 45 CFR 224.15(c).

* * * * *

(3) This paragraph does not apply to Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

4. Section 1392.64 is amended by revising the title of the section and paragraph (b) as follows:

§ 1392.64 Federal financial participation; provisions common to title IV–A and B.

* * * * *

(b) *Restrictions on State's share.* The State's share in claiming FFP under both Parts A and B of title IV shall be in accordance with 45 CFR 1396.53 except that paragraph (a)(3) does not apply.

5. The Table of Contents of 45 CFR Part 1393 is amended by adding the title for a new § 1393.91.

PART 1393—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, AND XVI (AABD) OF THE SOCIAL SECURITY ACT

* * * * *

Subpart E—Federal Financial Participation

Sec.

1393.91 Allotments to the Territories under section 2002 of the Act.

* * * * *

6. Section 1393.89(b) is revised as follows:

§ 1393.89 Conditions for FFP.

* * * * *

(b) *Restrictions on State's share.* The State's share in claiming FFP under this part shall be in accordance with 45 CFR 1396.53 except that paragraph (a)(3) does not apply.

7. A new § 1393.91 is added to Part 1393 as follows:

§ 1393.91 Allotments to the Territories under section 2002 of the Act.

The allotments to the Territories under section 2002 of the Act shall be made in accordance with the requirements of § 1392.61(g) of this title.

8. In 45 CFR Part 1396, the Table of Contents is amended by adding a new § 1396.37, deleting references to "annual" and "program year," and substituting "program period," removing § 1396.29–a, revising Subpart H, and adding a new Subpart J as follows:

PART 1396—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

* * * * *

Subpart C—Comprehensive Services Program Plan

Sec.

1396.20 Conditions for FFP.
1396.21 Establishment of program period.
1396.22 Services plan.
1396.23 Program goals and objectives.
1396.24 Individuals to be served.
1396.25 Availability of services by geographic area.
1396.26 Services.
1396.27 Estimates of individuals to be served and expenditures.
1396.28 Program resources.
1396.29 Program coordination and utilization.
1396.30 Organizational structure.
1396.31 Needs assessment.
1396.32 Planning, evaluation and reporting.
1396.33 The public review process.
1396.34 Regional review of proposed and final services plan.
1396.35 Correction of proposed and final services plans and display advertisements.
1396.36 Amendments to final services plan.
1396.37 State mechanism for annually disseminating certain information to the public.

* * * * *

Subpart H—Training for the Title XX Program

Sec.

1396.87 The training plan: Content.
1396.88 The training plan: Submittal and approval procedures.
1396.89 The training plan: Appeal procedures.

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

Sec.

1396.100 Definitions.
1396.101 Conditions for FFP.
1396.102 Claims for FFP.

9. Section 1396.1, "Program definitions," is amended by adding a definition for "Training plan," and removing the reference to "annual" with respect to the annual services plan in "categories of individuals" and "service plan", as follows:

§ 1396.1 Program definitions.

* * * * *

Categories of individuals means groupings of persons on the basis of common characteristics such as recipient status (AFDC, SSI, Medcaid), income level, age, physical or mental condition or any other characteristic that the State specifies in its comprehensive (Delete "annual" services plan.

* * * * *

Services plan means the State Comprehensive (Delete "annual") Services Program Plan under section 2004 of the Act.

* * * * *

Training plan means the State agency's title XX training plan under § 1396.87 of this Part.

10. Section 1396.5 is amended to add the training plan as a responsibility of the State agency in paragraph (e). As revised paragraph (e) reads as follows:

Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance

§ 1396.5 Appropriate State agency.

* * * * *

(e) *Authority and responsibility of the agency.* There shall be maintained within the appropriate State agency the authority and responsibility for:

(1) The State plan;

(2) The Services plan;

(3) The training plan;

(4) The projection of estimated expenditures;

(5) The accountability for Federal funds;

(6) The establishing and maintaining of standards for the determination of eligibility;

(7) The administration or supervision of the administration for the provision of services;

(8) Operating the program on a Statewide basis;

(9) Complying with any program reporting requirements;

(10) Maintaining a working relationship between the Secretary and the State; and

(11) Overall supervision, control and oversight of title XX activities.

* * * * *

11. Section 1396.18 is revised as follows:

§ 1396.18 Maintenance of effort.

(a) Each State that participates in the program shall spend during each fiscal year (as selected under § 1396.21) from State and local appropriated funds an amount for services under this Part that is not less than the amount spent from appropriated funds for services under an approved State plan for titles I, IV-A, VI, X, XIV or XVI(AABD) during the fiscal year ending June 30, 1973 or June 30, 1974, whichever is less.

(b) Paragraph (a) of this section does not apply to any State for any services program period in which the payments to the State, other than payments for training expenditures defined in Subpart H of this Part, equal the State's allotment.

12. Section 1396.21 is revised to change the term program "year" to program "period" and to reflect the option States have for a multi-year program period as follows:

§ 1396.21 Establishment of program period.

(a) Beginning with program periods established on or after June 17, 1980, the State shall establish a program period of one, two, or three years;

(b) The beginning of the State's services program period shall be the beginning of the fiscal year of the Federal Government, the State, Government, or a political subdivision of the State;

(c) The end of the State's services program period shall be the end of the first, second, or third fiscal year adopted by the State in accordance with paragraphs (a) and (b) of this section;

(d) In order to exercise the options in paragraph (b) of this section, when changing the length of its program period, the State may have a program period of less than 12 months or may extend the program period for not more than 36 months.

13. Section 1396.22 is amended by removing the reference to the Comprehensive Annual Services Plan and inserting the words "services plan"; removing the word "year" with respect to program year and inserting the term program "period"; and adding new items of information which must be included in the services plan in paragraphs (b)(3) and (c). As revised, § 1396.22 reads as follows:

§ 1396.22 Services plan.

(a) The Chief Executive Officer of the State, or such other official as the laws of the State shall provide, shall publish in both proposed and final form the services plan prepared by the State agency prior to the beginning of each services program period. The proposed and final services plans shall meet all requirements of this Subpart.

(b) The final services plan shall also include: (1) A summary of the public comments; including the State's response to the comments;

(2) An explanation of differences between the proposed and final services plan if any and the reasons therefor; and

(3) A statement of the fiscal year(s) on which the program period is based.

(c) For States with a multi-year plan (in proposed and final services plans) a description of how they plan to make the information available in accordance with § 1396.37.

14. Sections 1396.24(a) and 1396.26(b) are amended by removing the word "year" with respect to program year and inserting, in its place, the word "period" as follows:

§ 1396.24 Individuals to be served.

The proposed and final services plans shall:

(a) Specify which of the categories of individuals described in § 1396.60 will be provided services in the forthcoming program period; describe the income levels for eligibility, and include the Statewide definition of family in accordance with § 1396.1;

* * * * *

§ 1396.26 Services.

The services plan shall:

* * * * *

(b) Specify the effective date when each discrete service is available if the effective date is other than the beginning of the program period.

* * * * *

15. Section 1396.27 is amended by removing the word "year" with respect to program year and inserting the word "period" and adding language to show that estimates are required for each year of the program period. As revised § 1396.27 reads as follows:

§ 1396.27 Estimates of individuals to be served and expenditures.

In order to provide residents of the State with information on the scope of the services program, the services plan shall include estimates of State and Federal expenditures applicable to the title XX program as follows:

(a) For each discrete service for each year of the forthcoming program period, a list of estimated expenditures and estimated numbers of individuals to be served, by each category of eligible individuals and by each geographic area; and

(b) A comparison of estimated aggregate non-Federal expenditures for the forthcoming program period with those of the preceding completed comparable program period.

16. Section 1396.28 is amended in paragraph (b) by removing the word "year" with respect to program year and inserting the word "period"; by revising and designating the last two sentences of paragraph (b) as paragraph (c), and by adding a new paragraph (d) as follows:

§ 1396.28 Program resources.

* * * * *

(b) Where a State program period is the same as the Federal fiscal year, States shall include in the services plan the full amount of the federal allotment.

(c) Where a State program period extends through more than one fiscal year, a State shall include in the services plan the full amount of the Federal allotment for any fiscal year or portion thereof within the program period for which such information has been promulgated by the Secretary in accordance with § 1396.52.

(d) A State shall include in its services plan an estimate of the Federal allotment for any fiscal year within the program period for which the actual amount has not been promulgated.

§ 1396.29–a [Removed]

17. Section 1396.29–a is removed.

18. Section 1396.33 is amended to remove the word "year" with respect to program year and insert the word "period" in the introducing paragraph and in paragraphs (b)(1), (d), (g)(1), and (h)(1). Paragraph (b)(10) is redesignated as (b)(11) and a new (b)(10) is added. The amendments read as follows:

§ 1396.33 The public review process.

A State's services plan does not become effective for its services program period until the public review process is completed in accordance with §§ 1396.33, 1396.34, and 1396.35 (if applicable).

* * * * *

(b) *Scope.* The public review process shall include at least:

(1) Publication of the proposed services plan and a display advertisement describing that plan, and a summary of the plan, if any, at least 90 days before the beginning of the program period, with a 45-day period for public comment;

* * * * *

(10) Publication on an annual basis of information that must be made generally available to the public in accordance with § 1396.37 in States that adopt a services program planning period longer than one year.

(11) Public access to copies of the proposed and final services plans.

* * * * *

(d) *Retention of published services plans.* Copies of the proposed and final services plans shall be retained for at least three years beyond the expiration date of the State's program period in specified local public offices and made available for public and Federal inspection throughout the program period.

* * * * *

(g) *Display advertisement for the proposed plan.* A display advertisement shall at least:

(1) Specify the beginning and ending dates of the program period;

* * * * *

(h) *Summary of proposed services plan.* If the State publishes a services plan summary (to be provided free in lieu of a free copy of the entire services plan), it shall contain at least the following information:

(1) The beginning and ending dates of the program period;

* * * * *

19. Section 1396.36(a)(1) is revised as follows:

§ 1396.36 Amendments to final services plan.

(a) Amendments to the final services plan are necessary at least when:

(1) Change is to be made in the period of time encompassed by the program period (See § 1396.21);

* * * * *

20. A new § 1396.37 if added as follows:

§ 1396.37 State mechanism for disseminating certain information to the public annually.

(a) If a State adopts a services program period that is longer than one year, the State agency shall annually publish in written form and make generally available to the public the following information at a minimum:

(1) The name of the State agency administering the plan;

(2) The services program period, including the publication date of the services plan;

(3) The actual amount of the Federal allotment for the forthcoming fiscal year;

(4) A name and address or a toll-free number where information may be obtained about the services program and where to apply for services;

(5) A name and address or a toll-free number where copies of the services plan and any amendments are available for review and distribution to the public either free or at a reasonable cost; and

(6) The information required in § 1397.30 of this chapter concerning standards for residential facilities for SSI recipients.

(b) If the State agency has a program period longer than one year, it shall make generally available at least annually throughout the State the following information at a minimum:

(1) A description of the services available in each local area;

(2) A description of who may be eligible for services; and

(3) A toll-free number where additional information may be obtained throughout the year about the services program and where to apply for services.

(c) The State agency shall make the information required by paragraphs (a) and (b) of this section available in foreign language(s) when the agency decides it is appropriate.

(d) The information required by paragraphs (a) and (b) of this section shall be published and/or made generally available at least 45 days prior to the beginning of the second and any succeeding fiscal year that is part of the services program period established in accordance with § 1396.21.

(e) The agency shall maintain a copy of the published information required by paragraph (a) of this section and a copy or a description of the information required by paragraph (b) of this section as verification that the requirements of this section have been met.

21. Section 1396.40 is amended by adding a new paragraph (c) as follows:

§ 1396.40 Minor medical and remedial care.

* * * * *

(c) Notwithstanding the requirement of paragraph (a) of this section, that medical and remedial care must be integral but subordinate to a particular service, FFP is available for medical and remedial care provided on or after October 1, 1975 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When medical and remedial care is provided in the initial detoxification of such persons for no more than 7 days, and such detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; or

(2) When medical and remedial care is integral but subordinate to the entire rehabilitative process (rather than to a particular service). The rehabilitative process may include, but is not limited to, initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

* * * * *

22. Section 1396.41 is amended by adding a new paragraph (e) to read as follows:

§ 1396.41 Room or board.

* * * * *

(e) Notwithstanding the requirement of paragraph (a) of this section, that room or board must be integral but subordinate to a particular service, FFP is available for room or board provided on or after October 1, 1975 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When room or board is provided in the initial detoxification of such persons for no more than 7 days, and the detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; or

(2) When room or board is integral but subordinate to the entire rehabilitative process (rather than a particular service). The rehabilitative process may include but is not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

23. Section 1396.44 is amended by adding a new paragraph (e) to read as follows:

§ 1396.44 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.

* * * * *

(e) Nothwithstanding the requirements of paragraphs (a)(2) and (b) of this section, FFP is available on or after October 1, 1975 for the cost of providing initial detoxification services for no more than 7 days for drug and alcohol

abusers when the detoxification is integral to the further provision of other title XX services, even though:

(1) Hospital or other institutional staff provide detoxification services to resident drug and alcohol abusers; and

(2) Such detoxification services include inherent or intrinsic responsibilities of the facility where they are provided.

24. Section 1396.46(a) is revised to allow emergency shelter for adults as follows:

§ 1396.46 Emergency shelter.

(a) FFP is available for emergency shelter as a protective service to any child, including runaways, or adult only under the followng conditions:

(1) The child is in danger of abuse, neglect or exploitation;

(2) The need for emergency shelters for children is documented by personnel authorized by State law to place children; or by an Indian tribal council.

(3) The adult is in danger of physical or mental injury, neglect, maltreatment or exploitation;

(4) The need for emergency shelter for adults is documented by State or provider agency personnel; and

(5) Emergency shelter is provided for not in excess of 30 days in any 6 month period which may be consecutive or may accumulate over more than one stay.

* * * * *

25. Section 1396.51(c) is revised as follows:

§ 1396.51 Matching rates.

* * * * *

(c) *One hundred percent FFP.* (1) Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate for the provision of day care services, not to exceed:

(i) In FY 1980 and 1981, an amount which bears the same ratio to $200,000,000 as the amount of the State's allotment under § 1396.52(b)(1) bears to the total allotment for such years; and

(ii) In FY 1982 and thereafter, 8% of the State's allotment under § 1396.52(b)(1).

(2) FFP at the 100 percent rate is only available for:

(i) Grants to child day care providers to hire welfare recipients in accordance with Subpart J of this Part. To the extent feasible, the State shall use funds available under this paragraph for this purpose;

(ii) Day care services provided to children in their own homes, in day care centers, group day care homes, and family day care homes that meet the requirements of § 1396.42; and

(iii) Staff activities in direct support of child day care services such as:

(A) Licensing homes or facilities used by title XX children;

(B) Monitoring title XX child day care services delivery; and

(C) Training staff in accordance with Subpart H of this Part.

26. Section 1396.52 is revised as follows:

§ 1396.52 Allotments to States.

(a) *Basic Title XX Allotment.* The basic allotment of Federal funds payable to the States under this Part for any fiscal year for expenditures for services, administration and training is limited to the amounts available according to the provisions described in paragraph (b) of this section.

(b) *Basic Allotments to the States for each Fiscal Year.* (1) For fiscal year 1980 and each succeeding fiscal year the total allotment under the ceiling will be indexed annually in accordance with Section 2002(a)(2)(A) of the Act. For any fiscal year the amount of the allotment may not exceed $3.3 billion.

(2) For each State, the allotment in any fiscal year will be an amount which bears the same ratio to the total allotment as the population of the State bears to the population of all the States.

(3) The Secretary promulgates the allotment for each State for each fiscal year prior to December 1 of the preceding fiscal year. The population of each State is determined by the most recent satisfactory data available from the Department of Commerce.

(c) *Training allotment.* For FY 1980 and 1981, the allotment for training (in excess of the allotment under paragraph (b) of this section) shall be limited to the highest of:

(1) 4 percent of the State's allotment for title XX services; or

(2) The actual amount of Federal matching for the amounts spent by the States for training in fiscal year 1979; and

(3) The amount payable to the State with respect to State appropriations made prior to October 1, 1979 for fiscal year 1980 limited to $6 million distributed proportionally among affected States.

(4) For fiscal year 1982 or any succeeding fiscal year, there is no allotment ceiling for training expenditures.

(d) *Date of expenditure and review of expenditures.* (1) Expenditures for services are ordinarily considered to be incurred on the date on which the State agency makes payment or the date to which the expenditure was allocated, according to the cost principles of Subpart Q of Part 74 of this title and the cost allocation principles of § 1395.2 of this Part.

(2) In the case of a locally administering title XX agency the date of expenditure by the local agency governs.

(3) In the case of purchase of services from another public agency, the date of expenditure by such other public agency governs.

(4) Different rules regarding the date of expenditure may be applied with respect to a State either generally or for particular classes of expenditures, only when justified by the State and approved by the Assistant Secretary. In reviewing State requests for approval, the Assistant Secretary will consider generally applicable State law, consistency of State practice, and other factors relevant to the purposes of this section.

27. Section 1396.53 is amended by adding a new paragraph (a)(3) as follows:

§ 1396.53 Restriction on State's share in claiming FFP.

(a) Subpart G of 45 CFR Part 74 shall be followed in meeting the State's share in claiming FFP for the services program, including training and other administrative functions except:

* * * * *

(3) For fiscal years 1980 and 1981 the restrictions in paragraph (a)(2) (ii) and (iii) of this section do not apply to funds donated for training by a public or non-profit entity that conducts training.

* * * * *

28. Section 1396.56(a) is revised as follows:

§ 1396.56 Fifty Percent Rule.

(a) In each fiscal year, a State must spend an amount equal to at least one-half of the Federal funds it receives for that year on services to individuals:

(1) Who are AFDC recipients (including children for whom a foster care maintenance or adoption assistance payment is made under title IV–E of the Act), or eligible to receive such aid; or

(2) Whose needs are taken into account in determining the needs of an individual receiving AFDC; or

(3) Who are eligible to have their needs taken into account in determining the eligibility of an individual who is receiving AFDC or is eligible to receive AFDC; or

(4) With respect to whom supplementary security income benefits under title XVI or State supplementary payments, are being paid, or who are eligible to have such benefits or payments paid with respect to them; or

(5) Whose income and resources are taken into account in determining the amount of supplemental security income benefits or State supplementary payments being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him; or

(6) Who are eligible for medical assistance under the plan of the State approved under title XIX.

* * * * *

30. Section 1396.60 is amended by revising paragraphs (b)(1)(i) and (c)(1) as follows:

Subpart F—Limitations: Individuals Served, Eligibility and Fees

§ 1396.60 Persons eligible and access to services.

* * * * *

(b) *Categories of individuals who may receive services—*

(1) *Income maintenance status.* The following individuals are eligible on the basis of income maintenance status:

(i) Recipients of AFDC, including children for whom a foster care maintenance or adoption assistance payment is made under title IV–E of the Act.

* * * * *

(c) *Median income.* (1) On or before December 1 of each year, beginning with calendar year 1975, the Secretary will promulgate the median income for a family of four for each State and for the 50 States and the District of Columbia. This promulgation shall be used for purposes of determining eligibility and establishing fees in the fiscal year established by the State in accordance with § 1396.21 for which the median income is promulgated.

* * * * *

31. Subpart H of 45 CFR Part 1396 is amended by adding three new §§ 1396.87, 1396.88 and 1396.89.

§ 1396.87 The training plan: Content.

To be approved, the training plan shall contain the following information—

(a) An assurance that the State agency has a full-time director of staff development for the title XX program and adequate staff to administer the title XX training program.

(b) A summary statement of the long- and short-term goals and objectives of the State agency's services program.

(c) A brief description of the training needs assessment process used to collect the data for the development of the training plan, including a statement that demonstrates that the State agency coordinated with other human service programs in the process and reviewed the training needs of all State and provider agency staff and volunteers involved in the title XX program.

(d) An assurance that the training needs assessment is performed every 3 years at a minimum and that the data are on file with the State agency and are available for review by the Department.

(e) A prioritized list of the skills and knowledge needed by prioritized categories of State and provider agency staff and State agency volunteers and others eligible to be trained identified by the needs assessment programs.

(f) A statement of the amount of the Federal share and the estimated aggregate amounts of appropriated and donated funds available for the training program.

(g) *Estimated training activities and expenditures.* (1) The training activities and expenditures must meet the requirements of this Subpart and must have a direct relationship to the title XX services program and its staffing needs.

(2) At a minimum, the following aggregated information for each type of training activity must be submitted:

(i) The subject areas of training (e.g., skills, knowledge);

(ii) The categories and estimated number of State and provider agency staff, volunteers, and other eligible individuals to be trained;

(iii) The estimated expenditures, as appropriate, for travel, per diem, salaries, stipends, and education costs;

(iv) The training resources to be used, e.g., State and provider agency staff development staff, experts, universities; and

(v) The estimated cost for State and provider agency staff development staff and staff development activities; and for each identified university, and expert, e.g., salaries, purchase or development of teaching materials. (See sample chart at end of this section.)

(h) A description that demonstrates that the training was designed based on the results of the needs assessment; and that the training activities have a direct relationship to the services program for the current period, and to the State's staffing needs to carry out the program.

(i) A description of the State agency's plan for monitoring training programs, including an assurance that the State agency has staff assigned to monitor all grants and contracts awarded for the period covered by the training plan.

(j) A description of the State agency's plan for evaluation of the overall staff training and development program and an assurance that it will be completed, at a minimum, at least every three years.

Sample Chart for § 1396.87(g); Estimated Training Activities and Expenditures

Training activity	Subject area (Skills, knowledge)	Estimated number to be trained by category	Estimated trainee costs	Provider of training	Estimated provider costs
Workshops	Eligibility determination	400 State agency staff, 200 provider agency staff.	Travel	State agency staff development staff.	Salaries. Travel. Materials.
20 seminars	Characteristics of aging and service delivery to elderly.	100 State agency supervisors; 200 State agency workers.	Per diem Travel	State agency staff development staff plus experts from State Agency Office.	
10 degree oriented academic courses.	Social welfare administration	10 State agency middle managers; 50 State agency first line supervisors.	Stipends	University of Graduate School of Social Work Administration.	
50 workshops	Interviewing	All newly hired staff in State agency; 100 provider agency staff.	Per diem Travel	State agency staff development staff and provider agency staff development staff.	
20 degree oriented courses	Child development	500 provider agency staff	Per diem Travel	Community College	
10 workshops	Nutrition needs of elderly	200 State and provider homemaker staff.	Travel	County extension offices	No cost to title XX.

§ 1396.88 The training plan: Submittal and approval procedures.

(a) *Submittal of the initial training plan.* (1) The State agency shall submit two copies of the initial training plan to the Regional Administrator, HDS, for approval no later than August 2, 1981.

(2) The initial training plan shall contain all of the information required in § 1396.87.

(b) *Submittal of subsequent training plans.* (1) 60 days prior to the beginning of each Federal fiscal year, the State agency shall submit for approval two copies to the Regional Administrator, HDS, of either:

(i) All the information required by § 1396.87; or

(ii) Only the activities and expenditure information required by § 1396.87(g) if all other information required by § 1396.87 is still accurate and current. The information required by § 1396.87(g) must be submitted annually as the basis for approval of the State's training expenditures.

(2) The remaining information required by § 1396.87 may be submitted annually, or on a one-time basis with amendments submitted as required in paragraph (c).

(3) The State shall submit a new training plan that contains all the information specified in § 1396.87 at least once every three years.

(c) *Amendments to the approved training plan.* (1) Amendments to the approved training plan shall be submitted to the Regional Administrator, HDS, for prior approval at any time during the period covered by the training plan.

(2) Whenever a State agency anticipates that a training expenditure will deviate 5% or more from the amount approved for a particular activity in the training plan, it shall amend the training plan. Deviations of 5% or more must approved in advance for FFP to be provided.

(3) The State agency shall amend the training plan when changes are made in the other information required by § 1396.87.

(d) *Approval of the training plan.* (1) The training plan, amendments, or annual activities and expenditures required by § 1396.87(g) may be approved even though specific activities or expenditures may not be approved. Specific activities and expenditures must be approved in advance, however, in order to receive FFP for those items.

(2) The Regional Administrator, HDS, notifies the State in writing of the approval of the plan, the annual activities and expenditures or amendments and the effective date for FFP, or their disapproval and the reason therefor, at least 30 working days after receipt of these items.

(3) In cases where the Regional Administrator questions a specific activity, expenditure or other part of the plan, the State agency shall be responsible for documenting and justifying the appropriateness of that item.

(4) Training expenditures are approved subject to the availability of funds.

§ 1396.89 The training plan: Appeal procedures.

(a) A State agency which is unable to resolve non-approval of the training plan, amendments, or specific activities and expenditures through negotiation with the Regional Administrator, HDS, may appeal the action to the Assistant Secretary, HDS.

(b) The request for a hearing must be in writing and must be postmarked or delivered in person within 60 days of the date of the disapproval notice. The request must include:

(1) A copy of the notice of disapproval; (2) a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response; and (3) any and all documentation to support the State's position.

(c) The Assistant Secretary, HDS, will respond within 30 days to the merits of the State's request.

(d) After his or her response, the Assistant Secretary sets a date for the hearing. He or she notifies the State agency in writing of the date, time and place for the hearing.

(e) The hearing procedures include the right of the State agency to—

(1) A hearing before the Assistant Secretary or an official designated by him or her;

(2) Be heard in person;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Assistant Secretary or designated official decides that oral evidence is necessary for the proper resolution of the issues involved.

(f) The Assistant Secretary or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and maintains order, and has all powers necessary to these ends.

(g) Formal rules of evidence do not apply to the hearings.

(h) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(i) After consideration of the record, the assistant Secretary or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the State agency.

(j) Either the State agency or the Assistant Secretary may request for good cause, an extension of any of the time limits specified in this section.

32. In 45 CFR Part 1396, a new Subpart J is added as follows:

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

§ 1396.100 Definitions.

For purposes of this Subpart:

(a) *A qualified child day care provider* is one in whose facility the costs for services to at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An *eligible employee* is, as defined in sections 50B (h) and (i) of the Internal Revenue Code of 1954, one who meets the following requirements:

(1) Has been certified by the State or local welfare department as:

(i) Eligible for AFDC and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired; or

(ii) Placed in employment under the WIN program;

(2) Has been a full-time or part-time employee of the provider for more than 30 consecutive days, if the individual is employed as a child day care worker. (A part-time employee is one who is employed at least 8 hours per week);

(3) Has not displaced any other individual from employment by the provider. A qualified child day care provider may not terminate, lay-off, or reduce the working hours of an employee for the purpose of hiring an eligible employee with funds available under this Part. The day care provider may not hire an eligible employee when another person is on lay-off from the same or any substantially equivalent job; and

(4) Is not a migrant worker. (Section 50B(h) of the Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the

nature of the job requires the worker to travel from place to place over a short period of time.)

§ 1396.101 Conditions for FFP.

(a) FFP is available for wages paid under grants which States make in accordance with this Subpart to qualified public, nonprofit private, and proprietary child day care providers under contract to the State agency, to employ eligible employees.

(b) The grants may not exceed:

(1) $6,000 to public and nonprofit private providers for any employee's wages per year; and

(2) $5,000 to other providers for any employee's wages per year, or 80 percent of the annual wages paid to any employee.

(c) Pursuant to § 1396.17, States shall submit statistical and financial reports on the AFDC recipients hired under these grants, in accordance with instructions issued by the Secretary.

§ 1396.102 Claims for FFP.

States may claim for salaries paid by child day care providers for the 30 days of full-time or part-time continuous employment needed to make a recipient eligible, as defined in § 1396.100(b).

33. In 45 CFR Part 1397, §§ 1397.20(a)(4), and 1397.30(a) (3) and (b) are revised to comport with State option for a multi-year program period as follows:

PART 1397—STANDARD SETTING REQUIREMENTS FOR MEDICAL AND NONMEDICAL FACILITIES WHERE SSI RECIPIENTS RESIDE

§ 1397.20 Responsibilities of designated standard-setting authorities.

Each standard-setting authority shall, effective October 1, 1977:

(a) *Establish standards.*

* * * * *

(4) The authority shall provide annually to the State title XX agency the information required in § 1397.30.

* * * * *

§ 1397.30 State certification to the Department of Health and Human Services.

(a) Each State shall certify annually to the HHS official in the Regional Office who receives title XX plans, that:

* * * * *

(3) It has published the following information in the State's title XX proposed and final services plans or, for States in the second or third year of a multi-year program period, it has published the following information in accordance with § 1396.37:

* * * * *

(b) The certification shall be in the form of a factual statement signed by the Chief Executive of the State or his designee and submitted within the first quarter following the beginning of each fiscal year that is part of a State's title XX program period.

[FR Doc. 81-2336 Filed 1-21-81; 8:45 am]

BILLING CODE 4110-92-M

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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
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DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
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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

ENERGY DEPARTMENT

84928 12–23–80 / Coal leasing; final rulemaking regarding coal bidding systems

PERSONNEL MANAGEMENT OFFICE

84755 12–23–80 / Excepted service; amendment to regulation authorizing establishment of a new temporary schedule C authority

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.**

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 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:

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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: February 13 and 27; March 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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